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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Australian Federal Integrity Commission
Bill 2020**

No. , 2020

(Dr Haines)

**A Bill for an Act to establish the Australian Federal
Integrity Commission, and for related purposes**

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1 **A Bill for an Act to establish the Australian Federal**
2 **Integrity Commission, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act is the *Australian Federal Integrity Commission Act 2020*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

Part 1 Preliminary

Section 3

1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 285	The day after the day on which the Consolidated Revenue Fund is appropriated under an Act to the Department in which this Act is administered for payment for the purposes of the Australian National Integrity Commission.	
3 Schedule 1	At the same time as the provisions covered by table item 2.	

4 Note: This table relates only to the provisions of this Act as originally
5 enacted. It will not be amended to deal with any later amendments of
6 this Act.

7 (2) Any information in column 3 of the table is not part of this Act.
8 Information may be inserted in this column, or information in it
9 may be edited, in any published version of this Act.

10 **3 Simplified outline of this Act**

11 This Act establishes the Australian Federal Integrity Commission
12 (AFIC).

13 AFIC consists of:

- 14 (a) the Federal Integrity Commissioner; and
15 (b) the Law Enforcement Integrity Commissioner; and
16 (c) the Whistleblower Protection Commissioner; and

- 1 (d) the Assistant Federal Integrity Commissioner for
2 Research and Public Interest; and
- 3 (e) the Assistant Federal Integrity Commissioner for
4 Assessment, Investigations and Inquiries; and
- 5 (f) the Assistant Federal Integrity Commissioner for
6 Education, Training and Prevention; and
- 7 (g) any other Assistant Federal Integrity Commissioners;
8 and
- 9 (h) Assistant Law Enforcement Integrity Commissioners.

10 The Federal Integrity Commissioner has functions relating to:

- 11 (a) promoting and improving the integrity and
12 accountability of Commonwealth public administration
13 in a sound, evidence-based manner; and
- 14 (b) preventing, investigating, exposing and addressing
15 corruption issues involving or affecting Commonwealth
16 public administration.

17 Those functions include the following:

- 18 (a) undertaking or procuring quality research into the
19 incidence of corruption in Australia, its causes and
20 antecedents, and methods of prevention to provide a
21 sound evidence base for AFIC's work and decisions;
- 22 (b) giving advice and assistance in relation to promoting
23 integrity and reduce the likelihood of the occurrence of
24 corrupt conduct;
- 25 (c) educating and disseminate information to combat
26 corrupt conduct;
- 27 (d) leading and supporting the preparation of strategies for
28 corruption prevention, national and international
29 coordination of anti-corruption efforts, and the
30 development and implementation of a National Integrity
31 and Anti-Corruption Plan;
- 32 (e) investigating and conducting public inquiries into
33 corruption issues that are serious and/or systemic in
34 nature, and in the public interest to investigate;

Section 3

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- (f) referring certain corruption issues to other agencies for investigation, or managing, overseeing or reviewing such investigations;
- (g) preparing reports and making recommendations about legislative or other action relating to integrity and corruption.

The Whistleblower Protection Commissioner has functions including:

- (a) receiving and investigating disclosures of wrongdoing; and
- (b) providing advice, assistance, guidance and support to persons and agencies relating to the making of disclosures of wrongdoing.

AFIC has a CEO who is responsible for its administration and for assisting it to perform its functions.

This Act also provides for the appointment of the Parliamentary Joint Committee on the Australian Federal Integrity Commission. The Committee's duties include:

- (a) considering proposed recommendations for certain appointments under this Act; and
- (b) monitoring the performance of certain functions under this Act;
- (c) reporting to Parliament about matters relating to AFIC or about evidence-based trends and changes in law enforcement relating to corruption.

The Parliamentary Inspector of the Australian Federal Integrity Commission is established by this Act as an independent officer of the Parliament. The functions of the Parliamentary Inspector include:

- (a) inspecting records of AFIC for purposes including reviewing whether AFIC has exercised power in an appropriate way; and
- (b) investigating complaints about the conduct or activities of AFIC or staff of AFIC; and

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- (c) functions in relation to the protection of information by AFIC and alleged incidences of possible unauthorised disclosures; and
- (d) reviewing information given by AFIC to the Parliamentary Joint Committee on the Australian Federal Integrity Commission; and
- (e) reviewing AFIC's financial status and fiscal allocations, and periodically evaluating whether AFIC is appropriately resourced to fulfil its objectives as outlined in this Act to the fullest extent possible.

11

4 Objects of Act

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- (1) The objects of this Act are:
- (a) to promote and improve the integrity and accountability of Commonwealth public administration in a sound evidence-based manner; and
 - (b) to prevent, investigate, expose and address corruption issues involving or affecting Commonwealth public administration that are serious and either or both systemic in nature, and in the public interest to investigate; and
 - (c) to identify changes in laws, practices, policies or procedures which, on the basis of sound evidence, are necessary to promote integrity and reduce the likelihood of the current and future occurrence of corruption in Commonwealth public administration; and
 - (d) to undertake and procure quality research into the incidence of corruption in Australia, its causes and antecedents, and methods of prevention to provide a sound evidence base for the work of AFIC and its decisions; and
 - (e) to create an additional pathway for criminal offences to be referred for prosecution, civil and disciplinary proceedings to be brought, and other remedies to be obtained as a result of the investigation of corruption issues; and
 - (f) to educate government agencies, public officials and members of the public about corruption and its detrimental effects on public administration and the community, and

Section 4

- 1 about actions that should be or have been taken, or are being
2 taken, to address corruption; and
- 3 (g) to ensure a comprehensive, efficient, evidence-based,
4 coordinated approach to the prevention, detection, reduction
5 and remediation of corruption in:
- 6 (i) Commonwealth public administration;
7 (ii) Australia generally; and
8 (iii) Australia's relations with other countries; and
- 9 (h) to assist in the cooperative implementation of Australia's
10 international anti-corruption responsibilities, including under
11 the United Nations Convention Against Corruption (2005);
12 and
- 13 (i) to provide information, advice, guidance and support to:
- 14 (i) persons who, in the public interest, disclose corruption
15 or other wrongdoing in Australia or involving
16 Australian institutions; and
- 17 (ii) government agencies and other bodies dealing with
18 disclosures of corruption or other wrongdoing; and
- 19 (j) to ensure support and protection is provided to persons who
20 disclose corruption or other wrongdoing under the *Public*
21 *Interest Disclosure Act 2013* or Part 9.4AAA of the
22 *Corporations Act 2001* or related Commonwealth legislation.
- 23 (2) To assist in achieving the objects in paragraphs (1)(a) to (h), this
24 Act establishes the office of the Federal Integrity Commissioner.
- 25 (3) To assist in achieving the objects in paragraphs (1)(i) and (j), this
26 Act establishes the office of the Whistleblower Protection
27 Commissioner.
- 28 (4) To assist in achieving the objects in paragraphs (1)(a) to (e), this
29 Act establishes the office of the Assistant Federal Integrity
30 Commissioner for Research and Public Interest.
- 31 (5) To assist in achieving the objects in paragraphs (1)(a) to (e), this
32 Act establishes the office of the Assistant Federal Integrity
33 Commissioner for Assessment, Investigations and Inquiries.

- 1 (6) To assist in achieving the objects in paragraphs (1)(f) to (h), this
2 Act establishes the Assistant Federal Integrity Commissioner for
3 Education, Training and Prevention.

4 **5 Saving of powers, privileges and immunities**

5 Except as expressly provided otherwise in this Act, this Act does
6 not affect the powers, privileges and immunities of each House of
7 the Parliament, and of the members and committees of each House.

8 **6 Act binds the Crown**

9 This Act binds the Crown in right of the Commonwealth.

10 **7 Application of Act**

11 This Act applies both within and outside Australia and extends to
12 every external Territory.

13 **8 Definitions**

14 (1) In this Act:

15 *Australian Federal Integrity Commission* or *AFIC* means the
16 Australian Federal Integrity Commission established under
17 section 11.

18 *AFIC*: see *Australian Federal Integrity Commission*.

19 *AFP* means the Australian Federal Police.

20 *applicable code of conduct* means:

21 (a) in the case of a Minister:

22 (i) a Ministerial code of conduct imposed by the Prime
23 Minister on the Prime Minister's Ministers; or

24 (ii) a Ministerial code of conduct:

25 (A) prescribed by the regulations; or

26 (B) adopted by resolution of the House of which the
27 Minister is or was a member;

28 for the purposes of this definition; or

Section 8

- 1 (b) in the case of a parliamentarian (including a Minister):
2 (i) the code of conduct in the *Commonwealth*
3 *Parliamentary Standards Act 2020*; or
4 (ii) a code of conduct for parliamentarians adopted by
5 resolution of the House of which the parliamentarian is
6 or was a member; or
7 (c) in the case of an APS employee or a former APS employee—
8 the Code of Conduct within the meaning of the *Public*
9 *Service Act 1999*; or
10 (d) in the case of a Parliamentary Service employee (within the
11 meaning of the *Parliamentary Service Act 1999*)—the Code
12 of Conduct within the meaning of that Act; or
13 (e) in any case of an employee of a Commonwealth agency—
14 any code of conduct for the agency issued (however
15 described) by the head of the agency or the accountable
16 authority (within the meaning of the *Public Governance,*
17 *Performance and Accountability Act 2013*) of the agency; or
18 (f) in the case of an official (within the meaning of the *Public*
19 *Governance, Performance and Accountability Act 2013*) or
20 the accountable authority (within the meaning of that Act) of
21 a Commonwealth entity—a provision of that Act that
22 imposes a duty on the official or accountable authority.

23 ***Assistant Commissioner*** means any of the following:

- 24 (a) the Assistant Federal Integrity Commissioner for Research
25 and Public Interest;
26 (b) the Assistant Federal Integrity Commissioner for
27 Assessment, Investigations and Inquiries;
28 (c) the Assistant Federal Integrity Commissioner for Education,
29 Training and Prevention;
30 (d) any other Assistant Federal Integrity Commissioner
31 appointed under section 210.

32 ***Assistant Law Enforcement Integrity Commissioner*** means a
33 person appointed under section 185 of the *Law Enforcement*
34 *Integrity Commissioner Act 2006* as an Assistant Integrity
35 Commissioner.

1 ***assisting officer***, in relation to a warrant for a person's arrest or a
2 search warrant, means:

3 (a) a person who:

4 (i) is an authorised officer or a member or special member
5 of the AFP; and

6 (ii) is assisting in executing the warrant; or

7 (b) a person who:

8 (i) is not an authorised officer; and

9 (ii) is not a member or special member of the AFP; and

10 (iii) has the appropriate skills and qualifications to assist in
11 executing the warrant in an ethical and proper manner;
12 and

13 (iv) has been authorised by the authorised officer who is
14 executing the warrant to assist in executing the warrant.

15 ***authorised officer*** means:

16 (a) the Federal Integrity Commissioner; or

17 (b) a person authorised under section 149.

18 ***CEO*** means the Chief Executive Officer of AFIC.

19 ***charged***: a person is ***charged*** with an offence if a process for
20 prosecuting the person for the offence commences.

21 ***civil penalty proceeding*** means a proceeding for a civil penalty in
22 relation to a contravention of a law of the Commonwealth or of a
23 State or Territory.

24 ***civil penalty provision*** means a provision of a law of the
25 Commonwealth or of a State or Territory in relation to a
26 contravention of which a civil penalty may be imposed.

27 ***Commissioner*** means:

28 (a) the Whistleblower Protection Commissioner; or

29 (b) the Law Enforcement Integrity Commissioner.

30 ***Commonwealth agency*** means:

31 (a) an Agency within the meaning of the *Public Service Act*
32 *1999*; or

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- 1 (b) a Department of the Parliament that is established under the
2 *Parliamentary Service Act 1999*; or
3 (c) a person or body holding office, or exercising power, under
4 or because of the Constitution or a law of the
5 Commonwealth; or
6 (d) a body or organisation, whether incorporated or
7 unincorporated, established for a public purpose:
8 (i) by or under a law of the Commonwealth or of a
9 Territory (other than the Australian Capital Territory or
10 the Northern Territory); or
11 (ii) by the Governor-General; or
12 (iii) by a Minister;

13 but does not include a Commonwealth judicial officer.

14 ***Commonwealth entity*** has the same meaning as in the *Public*
15 *Governance, Performance and Accountability Act 2013*.

16 ***Commonwealth judicial officer*** has the same meaning as in the
17 *Criminal Code*.

18 ***confiscation proceeding*** means a proceeding under:

- 19 (a) the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act*
20 *2002*; or
21 (b) a corresponding law within the meaning of either of those
22 Acts;

23 but does not include a criminal prosecution for an offence under
24 either of those Acts or a corresponding law.

25 ***constable*** means:

- 26 (a) a member or special member of the AFP; or
27 (b) a member of the police force or police service of a State or
28 Territory.

29 ***corrupt conduct***:

- 30 (a) other than in Parts 4 to 8—has the meaning given by
31 subsections 9(1) to (4); and
32 (b) in Parts 4 to 8—has the meaning given by subsection 9(5).

- 1 **corruption investigation** means an investigation of a corruption
2 issue under this Act.
- 3 **corruption issue:**
- 4 (a) other than in Parts 4 to 8—has the meaning given by
5 subsection 10(1); and
- 6 (b) in Parts 4 to 8—has the meaning given by subsection 10(2).
- 7 **criminal offence** means an offence against a law of the
8 Commonwealth or of a State or Territory.
- 9 **criminal proceeding** means:
- 10 (a) a prosecution for an offence against a law of the
11 Commonwealth or of a State or Territory; or
- 12 (b) a confiscation proceeding.
- 13 **data** has the same meaning as in Part IAA of the *Crimes Act 1914*.
- 14 **data held in a computer** has the same meaning as in Part IAA of
15 the *Crimes Act 1914*.
- 16 **data storage device** has the same meaning as in Part IAA of the
17 *Crimes Act 1914*.
- 18 **disciplinary offence** includes any misconduct, irregularity, neglect
19 of duty, breach of discipline or other matter that constitutes or may
20 constitute grounds for disciplinary action under any law.
- 21 **disciplinary proceeding:**
- 22 (a) means a proceeding of a disciplinary nature under a law of
23 the Commonwealth or of a State or Territory; and
- 24 (b) includes action taken under Subdivision D of Division 3 of
25 Part V of the *Australian Federal Police Act 1979*.
- 26 **disclosure of wrongdoing** means:
- 27 (a) a public interest disclosure within the meaning of the *Public*
28 *Interest Disclosure Act 2013*; or
- 29 (b) a disclosure of information qualifying for protection under
30 Part 9.4AAA of the *Corporations Act 2001*; or
- 31 (c) a referral of an allegation, or information, that raises a
32 corruption issue under Part 4 of this Act, where made by a

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- 1 current or former employee, volunteer or contractor of an
2 organisation to whom the corruption issue also relates; or
3 (d) an alleged or suspected contravention of the *Commonwealth*
4 *Parliamentary Standards Act 2020*, where made by a current
5 or former employee, volunteer or contractor of an
6 organisation to whom the contravention also relates; or
7 (e) a disclosure of wrongdoing of a type prescribed by the
8 regulations for the purposes of this paragraph.

9 ***eligible seizable*** item means anything that:

- 10 (a) would present a danger to a person; or
11 (b) could be used to assist a person to escape from lawful
12 custody.

13 ***employee*** of a Commonwealth agency includes:

- 14 (a) the head of the agency; and
15 (b) a temporary employee of the agency; and
16 (c) an independent contractor providing a service to or on behalf
17 of the agency.

18 ***engage in conduct*** means:

- 19 (a) do an act; or
20 (b) omit to do an act.

21 ***evidential material*** means:

- 22 (a) in relation to an investigation warrant—a thing that may be
23 relevant to:
24 (i) a corruption investigation; or
25 (ii) a public inquiry; or
26 (b) in relation to an offence warrant—a thing relevant to an
27 offence against a law of the Commonwealth.

28 ***Federal Circuit Court*** means the Federal Circuit Court of
29 Australia.

30 ***Federal Court*** means the Federal Court of Australia.

31 ***Federal Integrity Commissioner*** means the Federal Integrity
32 Commissioner appointed under section 191.

1 ***federal integrity commissioner functions*** has the meaning given
2 by section 12.

3 ***former parliamentarian*** means a former member of either House
4 of the Parliament.

5 ***frisk search*** has the same meaning as in Part IAA of the *Crimes*
6 *Act 1914*.

7 ***frivolous***, in relation to an allegation or referral, includes
8 allegations or referrals that are:

- 9 (a) trivial in nature and have no serious purpose or value; or
10 (b) so meritless that further investigation would be a waste of
11 time or cost.

12 ***gift*** means a gift whether it is or is not registrable in accordance
13 with a resolution or resolutions of a House of the Parliament.

14 ***government agency*** means:

- 15 (a) a Commonwealth agency; or
16 (b) a Department of a State or Territory; or
17 (c) a body (whether incorporated or not) established for a public
18 purpose by or under a law of a State or Territory.

19 ***head*** of a government agency means:

- 20 (a) the person holding, or performing the duties of, the principal
21 office in respect of the agency; or
22 (b) if the government agency is a person—that person.

23 ***in contempt of AFIC*** has the meaning given by section 98.

24 ***industrial, civil or administrative body*** means:

- 25 (a) Fair Work Australia; or
26 (b) a court or commission (however described) performing or
27 exercising, under an industrial law within the meaning of the
28 *Fair Work Act 2009*, functions and powers corresponding to
29 those conferred on Fair Work Australia by the *Fair Work Act*
30 *2009*; or
31 (c) a court or commission (however described) performing or
32 exercising, under a workplace law (within the meaning of the

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- 1 *Fair Work Act 2009*), functions and powers corresponding to
2 those conferred on Fair Work Australia by the *Fair Work*
3 (*Registered Organisations*) Act 2009; or
4 (d) a civil or administrative appeals tribunal of the
5 Commonwealth or of a State or Territory; or
6 (e) an anti-discrimination, equal opportunity or human rights
7 protection body, commission or tribunal of the
8 Commonwealth or of a State or Territory.

9 **interest** means an interest whether it is or is not registrable in
10 accordance with a resolution or resolutions of a House of the
11 Parliament.

12 **investigation warrant** means a warrant to search for a thing that
13 may be relevant to:

- 14 (a) a corruption investigation; or
15 (b) a public inquiry.

16 **issuing officer** means:

- 17 (a) for an investigation warrant:
18 (i) a Judge of the Federal Court of Australia sitting in
19 Chambers; or
20 (ii) a Judge of the Federal Circuit Court of Australia sitting
21 in Chambers; or
22 (iii) a Judge of a court of a State or Territory; or
23 (b) for an offence warrant—a magistrate.

24 **law enforcement agency** has the same meaning as in the *Law*
25 *Enforcement Integrity Commissioner Act 2006*.

26 **law enforcement function** means any of the following functions:

- 27 (a) investigating whether:
28 (i) an offence has been committed against a law of the
29 Commonwealth; or
30 (ii) there has been a contravention of a law of the
31 Commonwealth in relation to which civil penalty
32 proceedings may be brought;
33 (b) preparing the material necessary to prosecute a person for an
34 offence against a law of the Commonwealth;

- 1 (c) preparing the material necessary to bring civil penalty
2 proceedings against a person for a contravention of a law of
3 the Commonwealth;
- 4 (d) collecting, maintaining, correlating, analysing, accessing or
5 distributing information for the purpose of assisting the
6 enforcement of laws of the Commonwealth;
- 7 (e) assisting in carrying out a function referred to in
8 paragraphs (a) to (d).

9 **Law Enforcement Integrity Commissioner** means the person
10 appointed under section 175 of the *Law Enforcement Integrity*
11 *Commissioner Act 2006* as the Integrity Commissioner.

12 **law enforcement integrity commissioner functions** has the
13 meaning given by section 13.

14 **law enforcement secrecy provision** means:

- 15 (a) Part 11 of the *Anti-Money Laundering and*
16 *Counter-Terrorism Financing Act 2006*; or
- 17 (b) section 45 of the *Surveillance Devices Act 2004*; or
- 18 (c) sections 63 and 133 of the *Telecommunications (Interception*
19 *and Access) Act 1979*; or
- 20 (d) anything done under a provision referred to in paragraphs (a)
21 to (c).

22 **legal aid officer** means:

- 23 (a) a member, or member of staff, of an authority established by
24 or under a law of a State or Territory for purposes that
25 include providing legal assistance; or
- 26 (b) a person to whom the Attorney-General has delegated his or
27 her powers and functions under section 113.

28 **legal practitioner** means a barrister, a solicitor, a barrister and
29 solicitor or a legal practitioner, of the High Court or of the
30 Supreme Court of a State or Territory.

31 **manage** an investigation of a corruption issue by a Commonwealth
32 agency has the meaning given by section 155.

33 **national law enforcement agencies** means:

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- 1 (a) the AFP; or
2 (b) the Australian Criminal Intelligence Commission; or
3 (c) any other Commonwealth agency that:
4 (i) has a law enforcement function; and
5 (ii) is prescribed by the regulations for the purposes of this
6 paragraph.

7 ***nominated contact*** of a Commonwealth agency for an
8 investigation of a corruption issue means:

- 9 (a) a representative of the agency nominated under section 154
10 as the nominated contact for the investigation; or
11 (b) if representative is not nominated—the head of the agency.

12 ***occupier*** of premises means the person apparently in charge of the
13 premises.

14 ***offence warrant*** means a warrant to search for a thing relevant to
15 an offence against a law of the Commonwealth.

16 ***official matter*** means any of the following (whether past, present
17 or contingent):

- 18 (a) a corruption investigation;
19 (b) a hearing held by the Federal Integrity Commissioner or a
20 special investigator in relation to a corruption investigation;
21 (c) court proceedings.

22 ***ordinary search*** means a search of a person or of articles in the
23 possession of a person that may include:

- 24 (a) requiring the person to remove his or her overcoat, coat or
25 jacket or any gloves, shoes or hat; and
26 (b) an examination of those items.

27 ***oversee*** an investigation of a corruption issue by a Commonwealth
28 agency has the meaning given by section 156.

29 ***paid work*** means work for financial gain or reward (whether as an
30 employee, a self-employed person or otherwise).

31 ***parliamentarian*** means:

- 32 (a) a senator; or
-

- 1 (b) a member of the House of Representatives; or
2 (c) a Minister of State who is not a senator or member of the
3 House of Representatives; or
4 (d) a person who is taken to be the President of the Senate under
5 the *Parliamentary Presiding Officers Act 1965* and who is
6 not a senator or member of the House of Representatives; or
7 (e) a person who is taken to be the Speaker of the House of
8 Representatives under the *Parliamentary Presiding Officers*
9 *Act 1965* and who is not a senator or member of the House of
10 Representatives.

11 ***parliamentary allowances*** means allowances (including
12 allowances by way of salary) and entitlements (including
13 superannuation entitlements) of parliamentarians under a law of the
14 Commonwealth.

15 ***Parliamentary Inspector*** means the Parliamentary Inspector of the
16 Australian National Integrity Commission referred to in
17 section 257.

18 ***Parliamentary Joint Committee*** means the Parliamentary Joint
19 Committee on the Australian National Integrity Commission for
20 the time being constituted under Part 11.

21 ***premises*** includes a place, vehicle, vessel and aircraft.

22 ***presiding officer*** means:

- 23 (a) in relation to the Senate—the President of the Senate; or
24 (b) in relation to the House of Representatives—the Speaker of
25 the House of Representatives.

26 ***presiding officers*** means the President of the Senate and the
27 Speaker of the House of Representatives acting jointly.

28 ***public inquiry*** means a public inquiry conducted by the Federal
29 Integrity Commissioner under Part 5.

30 ***public official*** means a person having Commonwealth public
31 official functions or acting in a Commonwealth public official
32 capacity, and includes but is not limited to any of the following:

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- 1 (a) the Governor-General (whether or not acting with the advice
2 of the Federal Executive Council);
3 (b) a Minister;
4 (c) a parliamentarian;
5 (d) a person employed under the *Members of Parliament (Staff)*
6 *Act 1984*;
7 (e) an employee or a temporary employee of a Commonwealth
8 agency, including:
9 (i) the head of a Commonwealth agency; and
10 (ii) an independent contractor providing a service to or on
11 behalf of a Commonwealth agency;
12 (f) a person declared by the regulations to be a public official for
13 the purposes of this definition;
14 (g) an employee of or any person otherwise engaged by or acting
15 for or on behalf of, or in the place of, or as deputy or delegate
16 of, any person or body described in any of paragraphs (a) to
17 (f);

18 but does not include a Commonwealth judicial officer.

19 **refer**, in relation to an allegation or information, has the meaning
20 given by subsections (2) and (3).

21 **referred corruption issue** means a corruption issue referred under
22 section 45.

23 **search warrant** means an investigation warrant, or an offence
24 warrant, that is issued under section 118:

- 25 (a) to search premises; or
26 (b) to carry out an ordinary search, or frisk search, of a person.

27 **secrecy provision** means:

- 28 (a) a provision of a law of the Commonwealth that purports to
29 prohibit; or
30 (b) anything done, under a provision of a law of the
31 Commonwealth, to prohibit;

32 the communication, divulging or publication of information, the
33 production of, or the publication of the contents of, a document, or
34 the production of a thing.

- 1 ***sensitive information*** means information the disclosure of which:
2 (a) could prejudice:
3 (i) the security, defence or international relations of
4 Australia; or
5 (ii) relations between the Commonwealth Government and
6 the Government of a State or between the Government
7 of a State and the Government of another State; or
8 (b) would involve disclosing:
9 (i) deliberations or decisions of the Cabinet, or of a
10 Committee of the Cabinet, of the Commonwealth or of a
11 State; or
12 (ii) deliberations or advice of the Federal Executive Council
13 or the Executive Council of a State or the Northern
14 Territory; or
15 (iii) deliberations or decisions of the Australian Capital
16 Territory Executive or of a committee of that Executive;
17 or
18 (c) could reveal, or enable a person to ascertain, the existence or
19 identity of a confidential source of information in relation to:
20 (i) the enforcement of the criminal law of the
21 Commonwealth, a State or Territory or a foreign
22 country; or
23 (ii) a corruption investigation; or
24 (iii) a public inquiry under this Act; or
25 (d) could endanger a person's life or physical safety; or
26 (e) could prejudice the protection of public safety; or
27 (f) could prejudice the fair trial of a person or the impartial
28 adjudication of a matter; or
29 (g) could prejudice the proper enforcement of the law (including
30 through corruption investigations); or
31 (h) would involve disclosing information whose disclosure is
32 prohibited (absolutely or subject to qualifications) by or
33 under another law of the Commonwealth; or
34 (i) would involve unreasonably disclosing a person's personal
35 affairs; or
36 (j) would involve unreasonably disclosing confidential
37 commercial information.

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- 1 **staff member** of AFIC means:
- 2 (a) the Federal Integrity Commissioner; or
- 3 (b) the Law Enforcement Integrity Commissioner; or
- 4 (c) the Whistleblower Protection Commissioner; or
- 5 (d) the Assistant Federal Integrity Commissioner for Research
- 6 and Public Interest;
- 7 (e) the Assistant Federal Integrity Commissioner for
- 8 Assessment, Investigations and Inquiries;
- 9 (f) the Assistant Federal Integrity Commissioner for Education,
- 10 Training and Prevention;
- 11 (g) any other Assistant Commissioners; or
- 12 (h) any Assistant Law Enforcement Integrity Commissioners; or
- 13 (i) the CEO; or
- 14 (j) the staff referred to in section 231; or
- 15 (k) consultants engaged under section 232.

16 **strip search** has the same meaning as in Part IAA of the *Crimes*

17 *Act 1914*.

18 **taxation secrecy provision** means a secrecy provision that is a

19 provision of a taxation law within the meaning of the *Taxation*

20 *Administration Act 1953*.

21 **thing relevant to an indictable offence** has the same meaning as in

22 the *Crimes Act 1914*.

23 **vexatious** in relation to an allegation or referral, includes

24 allegations or referrals that are:

25 (a) solely focused on the harassment, frustration or the bringing

26 of undue financial burden upon an individual or organisation;

27 or

28 (b) unduly repetitive, burdensome, and unwarranted when

29 compared to their merits.

30 **Whistleblower Protection Commissioner** means the Whistleblower

31 Protection Commissioner appointed under section 201.

32 **whistleblower protection commissioner functions** has the meaning

33 given by section 14.

1 ***whistleblower protection issue*** means:

- 2 (a) an act or omission constituting reprisal or victimisation or
3 which causes detriment to any person, as a result of that
4 person or any other person making a disclosure of
5 wrongdoing; or
6 (b) a failure of by any person or body to fulfil whistleblower
7 protection responsibilities in respect of a disclosure of
8 wrongdoing, in circumstances where the failure has led, will
9 lead or is likely to lead to detriment or harm to any person;
10 and includes an allegation, reasonable suspicion, or information
11 relating to such an act, omission or failure.

12 ***whistleblower protection responsibilities*** means, in relation to a
13 person who made, may have made or may make a disclosure of
14 wrongdoing, or to any related person, a duty under any law or
15 applicable code of conduct or policy to:

- 16 (a) support, protect, or prevent detriment from being caused to,
17 the person; or
18 (b) deal with a disclosure of wrongdoing in any particular way
19 prescribed by law for the purpose of protecting the rights,
20 interests and welfare of the person; or
21 (c) not cause detriment, by act or omission, to the person; or
22 (d) not victimise or engage in reprisal against the person.
- 23 (2) A reference in this Act to a person ***referring*** an allegation includes
24 a reference to the person making the allegation.
- 25 (3) A reference in this Act to a person ***referring*** information includes a
26 reference to the person giving information.

27 **9 Meaning of *corrupt conduct***

- 28 (1) For the purposes of this Act (other than Parts 4 to 8), ***corrupt***
29 ***conduct*** is:
30 (a) any conduct of any person that adversely affects, or that
31 could adversely affect, either directly or indirectly, the honest
32 or impartial exercise of official functions by any of the
33 following:
34 (i) the Parliament;

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- 1 (ii) a Commonwealth agency;
2 (iii) any public official;
3 (iv) any group or body of public officials; or
4 (b) any conduct of any person that involves, or could induce, a
5 public official to place private interests over the public good;
6 or
7 (c) any conduct of any person that involves or could impair the
8 efficacy and probity of an exercise of an official function, or
9 public administration by a public official; or
10 (d) any conduct of a public official that constitutes or involves
11 the dishonest or partial exercise of any of his or her official
12 functions; or
13 (e) any conduct of a public official that constitutes or involves,
14 or of a former public official that constituted or involved, a
15 breach of public trust; or
16 (f) any conduct of a public official that involves, or that is
17 engaged in for the purpose of, the public official abusing his
18 or her office as a public official; or
19 (g) any conduct of a public official that involves, or of a former
20 public official that involved, the misuse of information or
21 material that he or she acquired in the course of his or her
22 official functions, whether or not for his or her benefit or for
23 the benefit of any other person.
- 24 (2) For the purposes of subsection (1), **corrupt conduct** includes (but
25 is not limited to) any of the following conduct:
26 (a) official misconduct (including breach of trust, fraud in office,
27 nonfeasance, misfeasance, malfeasance, oppression, extortion
28 or imposition);
29 (b) conduct constituting an offence against section 142.2 of the
30 *Criminal Code* (abuse of public office);
31 (c) bribery;
32 (d) blackmail;
33 (e) obtaining or offering secret commissions;
34 (f) fraud;
35 (g) theft;
36 (h) perverting the course of justice;

-
- 1 (i) embezzlement;
2 (j) election bribery;
3 (k) election funding offences;
4 (l) election fraud (including breaches of lobbying codes of
5 conduct or electoral funding laws);
6 (m) impropriety in government procurement and tender
7 processes, including collusive tendering;
8 (n) fraud in relation to applications for licences, permits or other
9 authorities under legislation designed to protect health and
10 safety or the environment or designed to facilitate the
11 management and commercial exploitation of resources;
12 (o) dishonestly obtaining or assisting in obtaining, or dishonestly
13 benefiting from, the payment or application of public funds
14 for private advantage or the disposition of public assets for
15 private advantage;
16 (p) defrauding the public revenue;
17 (q) fraudulently obtaining or retaining employment or
18 appointment as a public official;
19 (r) any serious Commonwealth offence within the meaning of
20 Part IAB of the *Crimes Act 1914*;
21 (s) treating;
22 (t) tax evasion;
23 (u) revenue evasion;
24 (v) currency violations;
25 (w) illegal drug dealings;
26 (x) illegal gambling;
27 (y) obtaining financial benefit by vice engaged in by others;
28 (z) bankruptcy and company violations;
29 (za) harbouring criminals;
30 (zb) forgery;
31 (zc) treason or other offences against the Sovereign;
32 (zd) homicide or violence;
33 (ze) matters of the same or a similar nature to any listed above;
34 (zf) any conspiracy or attempt in relation to any of the above.

Section 9

1 (3) Conduct may amount to **corrupt conduct** under this section even
2 though it occurred before the commencement of this subsection,
3 and it does not matter that some or all of the effects or other
4 ingredients necessary to establish such corrupt conduct occurred
5 before that commencement and that any person or persons
6 involved are no longer public officials.

7 Note: This subsection does not require the retrospective application of laws
8 or codes of conduct. Whether conduct is corrupt conduct is assessed
9 against the law that applied at the time the conduct occurred.

10 (4) Conduct committed by or in relation to a person who was not or is
11 not a public official may amount to **corrupt conduct** under this
12 section with respect to the exercise of his or her official functions
13 after becoming a public official.

14 (5) For the purposes of Parts 4 to 8 of this Act, conduct referred to in
15 subsection (1) or (2) is **corrupt conduct** if it could constitute or
16 involve:
17 (a) a criminal offence or conduct giving rise to a civil liability; or
18 (b) a disciplinary offence; or
19 (c) reasonable grounds for dismissing, dispensing with the
20 services of or otherwise terminating the services of a public
21 official; or
22 (d) a substantial breach of an applicable code of conduct.

23 Note: The Commissioner must consider various matters in addition to
24 whether conduct constitutes corrupt conduct before conducting
25 investigations or private or public hearings or publishing reports into
26 that conduct. This includes considering whether the corrupt conduct is
27 serious and/or systemic and in the public interest to investigate or
28 inquire into. See, for example, section 72, subsection 86(4), section 51
29 and paragraph 35(c).

30 (6) For the purposes of paragraphs (5)(a), (b) and (c), it does not
31 matter that proceedings or action in relation to such an offence or
32 civil liability can no longer be brought or continued, or that action
33 for such dismissal, dispensing or other termination can no longer
34 be taken.

10 Meaning of *corruption issue*

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- (1) For the purposes of this Act (other than Parts 4 to 8), a ***corruption issue*** is an issue whether a person:
- (a) has, or may have, engaged in corrupt conduct; or
 - (b) is, or may be, engaging in corrupt conduct; or
 - (c) will, or may at any time in the future, engage in corrupt conduct.
- (2) For the purposes of Parts 4 to 8 of this Act, a ***corruption issue*** is an issue whether a person:
- (a) has, or may have, engaged in corrupt conduct within the meaning of subsection 9(5); or
 - (b) is, or may be, engaging in corrupt conduct within the meaning of subsection 9(5); or
 - (c) will, or may at any time in the future, engage in corrupt conduct within the meaning of subsection 9(5).
- (3) To avoid doubt, an allegation, or information, may raise a ***corruption issue*** even if the identity of the person is unknown, is uncertain or is not disclosed in the allegation or information.

1 **Part 2—The Australian Federal Integrity**
2 **Commission**

3 **Division 1—Establishment**

4 **11 Establishment**

5 (1) The Australian Federal Integrity Commission is established by this
6 section.

7 (2) AFIC consists of:

- 8 (a) the Federal Integrity Commissioner; and
9 (b) the Law Enforcement Integrity Commissioner; and
10 (c) the Whistleblower Protection Commissioner; and
11 (d) the Assistant Federal Integrity Commissioner for Research
12 and Public Interest; and
13 (e) the Assistant Federal Integrity Commissioner for
14 Assessment, Investigations and Inquiries; and
15 (f) the Assistant Federal Integrity Commissioner for Education,
16 Training and Prevention; and
17 (g) any other Assistant Commissioners; and
18 (h) any Assistant Law Enforcement Integrity Commissioners.

19 (3) For the purposes of the finance law (within the meaning of the
20 *Public Governance, Performance and Accountability Act 2013*):

- 21 (a) AFIC is a listed entity; and
22 (b) the CEO is the accountable authority of AFIC; and
23 (c) the following persons are officials of AFIC:
24 (i) the Federal Integrity Commissioner;
25 (ii) the Commissioners;
26 (iii) the Assistant Federal Integrity Commissioner for
27 Research and Public Interest;
28 (iv) the Assistant Federal Integrity Commissioner for
29 Assessment, Investigations and Inquiries;

- 1 (v) the Assistant Federal Integrity Commissioner for
2 Education and Prevention;
3 (vi) any other Assistant Commissioners;
4 (vii) any Assistant Law Enforcement Integrity
5 Commissioners;
6 (viii) the CEO;
7 (ix) the staff referred to in section 231;
8 (x) consultants engaged under section 232; and
9 (d) the purposes of AFIC include:
10 (i) the functions of the Commissioner conferred by this
11 Act; and
12 (ii) the federal integrity commissioner functions; and
13 (iii) the law enforcement integrity commissioner functions;
14 and
15 (iv) the whistleblower protection commissioner functions;
16 and
17 (v) the functions of the CEO referred to in section 220.

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1 **Division 2—Functions and powers of the Federal Integrity**
2 **Commissioner and Commissioners**

3 **12 Definition of *federal integrity commissioner functions***

4 (1) The *federal integrity commissioner functions* are as follows:

- 5 (a) to advise and assist any public official, Commonwealth
6 agency or other person on changes in laws, practices or
7 procedures compatible with the effective exercise of their
8 functions which the Federal Integrity Commissioner thinks
9 necessary to promote integrity and reduce the likelihood of
10 the occurrence of corrupt conduct;
- 11 (b) to educate and disseminate information to public officials,
12 Commonwealth agencies and the community on strategies to
13 combat corrupt conduct;
- 14 (c) to undertake and procure quality evidence-driven research
15 into the incidence and risk of corruption in Australia, its
16 causes and antecedents, and methods of prevention, for the
17 primary (but not sole) purpose of providing a sound evidence
18 base for the work of AFIC and its decisions;
- 19 (d) to lead and support Commonwealth and national strategies
20 for corruption prevention, national and international
21 coordination of anti-corruption efforts, and development and
22 implementation of a Federal Integrity and Anti-Corruption
23 Plan;
- 24 (e) on the Federal Integrity Commissioner's own initiative, or at
25 the request of the Minister or either House of the Parliament,
26 to make reports and recommendations to the Parliament
27 about the need for or the desirability of legislative or
28 administrative action on issues in relation to:
- 29 (i) the integrity of public officials; or
30 (ii) corruption generally in Commonwealth agencies; or
31 (iii) corruption generally in or affecting Australia;
32 whether those issues arose before or after the commencement
33 of this section;

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- 1 (f) to investigate and conduct public inquiries (that are in the
2 public interest and for the purposes of identifying changes in
3 laws, practices or procedures which the Commissioner thinks
4 necessary to promote integrity and reduce the likelihood of
5 the current and future occurrence of corrupt conduct) into
6 corruption issues involving:
7 (i) a public official; or
8 (ii) a Commonwealth agency;
9 and report on the results of those investigations and inquiries,
10 whether those corruption issues arose before or after the
11 commencement of this section;
- 12 (g) to refer corruption issues, in appropriate circumstances, to
13 appropriate government agencies for investigation;
- 14 (h) to manage, oversee or review, in appropriate circumstances,
15 the investigation of corruption issues by Commonwealth
16 agencies;
- 17 (i) to communicate to appropriate authorities and to the public
18 the results of investigations and inquiries, including
19 recommendations for action that should be or have been
20 taken, or are being taken, in relation to those results;
- 21 (j) with the consent of the Minister, to enter into an arrangement
22 to perform the functions of a Territory integrity
23 commissioner under a scheme established in accordance with
24 the conditions of licences or authorities granted under an Act
25 of a Territory;
- 26 (k) to support the Whistleblower Protection Commissioner in the
27 discharge of their functions;
- 28 (l) to chair meetings of AFIC and of committees established
29 under Part 3 of this Act;
- 30 (m) any other function conferred on the Federal Integrity
31 Commissioner by this Act or another law of the
32 Commonwealth;
- 33 (n) to do anything incidental or conducive to the performance of
34 the above functions.
- 35 (2) An arrangement referred to in paragraph (1)(j) may include
36 provision for payment by the other party to the arrangement for the

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1 performance of functions by the Federal Integrity Commissioner in
2 accordance with the arrangement.

3 (3) To avoid doubt, when investigating and conducting public
4 inquiries into corruption issues arising before the commencement
5 of this section, the Federal Integrity Commissioner must apply and
6 consider the laws and policies that were in force at the time the
7 corruption issue arose.

8 **13 Definition of *law enforcement integrity commissioner functions***

9 The *law enforcement integrity commissioner functions* are as
10 follows:

- 11 (a) the functions conferred on the Law Enforcement Integrity
12 Commissioner under section 15 of the *Law Enforcement
13 Integrity Commissioner Act 2006*;
- 14 (b) any other function conferred by this Act or another Act (or an
15 instrument under this Act or another Act) on the Law
16 Enforcement Integrity Commissioner.

17 **14 Definition of *whistleblower protection commissioner functions***

18 (1) The *whistleblower protection commissioner functions* are as
19 follows:

- 20 (a) to provide advice, assistance, guidance and support to any
21 public official, Commonwealth agency or other person on
22 rights, obligations and processes relating to the making of
23 disclosures of wrongdoing as defined by this Act;
- 24 (b) to receive disclosures of wrongdoing from any person;
- 25 (c) to safeguard the identity and confidentiality of persons who
26 make disclosures of wrongdoing, to the maximum extent
27 possible by law and appropriate to the circumstances;
- 28 (d) to assess and, where appropriate, refer disclosures of
29 wrongdoing to appropriate Commonwealth agencies, other
30 government agencies, or other bodies, with functions and
31 powers to deal with those disclosures;
- 32 (e) to monitor and, where appropriate, provide advice or
33 assistance to agencies or bodies to whom disclosures of

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- 1 provisions of remedies or rewards in favour of persons who
2 make disclosures of wrongdoing;
- 3 (n) to provide legal advice, representation or other practical
4 support, as appropriate, to persons who make disclosures of
5 wrongdoing and who are, or may become, a party to
6 proceedings in a court or to a matter before an industrial,
7 civil or administrative body, under any law, if the
8 Whistleblower Protection Commissioner considers that
9 representing the person will promote compliance with
10 whistleblower protection responsibilities;
- 11 (o) to commence proceedings in a court, or to make applications
12 to an industrial, civil or administrative body, to enforce this
13 Act or any Commonwealth law containing whistleblower
14 protection responsibilities;
- 15 (p) to support the Federal Integrity Commissioner, the Law
16 Enforcement Integrity Commissioner, other Commonwealth
17 agencies and other government agencies in the discharge of
18 their functions;
- 19 (q) such other functions as are delegated by the Federal Integrity
20 Commissioner under this Act or another Act;
- 21 (r) any other function conferred on the Whistleblower Protection
22 Commissioner by this Act or another law of the
23 Commonwealth;
- 24 (s) to do anything incidental or conducive to the performance of
25 the above functions.
- 26 (2) The Whistleblower Protection Commissioner must consult with the
27 Federal Integrity Commissioner in exercising any function relating
28 to the functions of the Federal Integrity Commissioner.

29 **15 Functions and powers of the Federal Integrity Commissioner**

- 30 (1) The Federal Integrity Commissioner has the federal integrity
31 commissioner functions.
- 32 (2) The Federal Integrity Commissioner has power to do all things
33 necessary or convenient to be done for or in connection with the
34 performance of the federal integrity commissioner functions
35 conferred by this section.

- 1 (3) In performing functions or exercising powers conferred on the
2 Federal Integrity Commissioner, the Federal Integrity
3 Commissioner must:
4 (a) as far as practicable, direct attention to serious corrupt
5 conduct and/or systemic corrupt conduct; and
6 (b) take into account the responsibility and role other public
7 authorities and public officials have in the prevention of
8 corrupt conduct.

9 **16 Functions and powers of the Law Enforcement Integrity**
10 **Commissioner**

- 11 (1) The Law Enforcement Integrity Commissioner has the law
12 enforcement integrity commissioner functions.
13 (2) The Law Enforcement Integrity Commissioner has the powers
14 conferred under Parts 9 and 12 of the *Law Enforcement Integrity*
15 *Commissioner Act 2006* to do things necessary or convenient to be
16 done for or in connection with the performance of the law
17 enforcement integrity commissioner functions.

18 Note: The Law Enforcement Integrity Commissioner is subject to direction
19 by the Federal Integrity Commissioner in relation to the performance
20 of certain functions and the exercise of certain powers (see section 184
21 of the *Law Enforcement Integrity Commissioner Act 2006*).

22 **17 Functions and powers of the Whistleblower Protection**
23 **Commissioner**

- 24 (1) The Whistleblower Protection Commissioner has the
25 whistleblower protection commissioner functions.
26 (2) The Whistleblower Protection Commissioner has power to do all
27 things necessary or convenient to be done for or in connection with
28 the performance of the whistleblower protection commissioner
29 functions conferred by this section.

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1 **18 Functions and powers of the Assistant Federal Integrity**
2 **Commissioner for Research and Public Interest**

3 (1) The Assistant Federal Integrity Commissioner for Research and
4 Public Interest has the following functions:

- 5 (a) to assist the Federal Integrity Commissioner to perform the
6 function referred to in paragraph 12(1)(c);
7 (b) to provide quality evidence-driven research advice as
8 requested by the Federal Integrity Commissioner from time
9 to time to assist the Federal Integrity Commissioner to make
10 relevant decisions under Parts 4 to 8.

11 (2) The Assistant Federal Integrity Commissioner for Research and
12 Public Interest has power to do all things necessary or convenient
13 to be done for or in connection with the performance of the
14 Assistant Federal Integrity Commissioner for Research and Public
15 Interest's functions conferred by this section.

16 **19 Functions and powers of the Assistant Federal Integrity**
17 **Commissioner for Assessment, Investigations and**
18 **Inquiries**

19 (1) The Assistant Federal Integrity Commissioner for Assessment,
20 Investigations and Inquiries has the function of assisting the
21 Federal Integrity Commissioner to perform the functions referred
22 to in paragraphs 12(1)(e), (f), (g), (h), (i), (j) and (k).

23 (2) The Assistant Federal Integrity Commissioner for Assessment,
24 Investigations and Inquiries has power to do all things necessary or
25 convenient to be done for or in connection with the performance of
26 the Assistant Federal Integrity Commissioner for Assessment,
27 Investigations and Inquiries' functions conferred by this section.

28 **20 Functions and powers of the Assistant Federal Integrity**
29 **Commissioner for Education, Training and Prevention**

30 (1) The Assistant Federal Integrity Commissioner for Education,
31 Training and Prevention has the function of assisting the Federal

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- 1 Integrity Commissioner to perform the functions referred to in
2 paragraphs 12(1)(b) and (d).
- 3 (2) The Assistant Federal Integrity Commissioner for Education,
4 Training and Prevention has power to do all things necessary or
5 convenient to be done for or in connection with the performance of
6 the Assistant Federal Integrity Commissioner for Education,
7 Training and Prevention's functions conferred by this section.

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1 **Part 3—Corruption prevention, research and**
2 **coordination**

3 **Division 1—Promoting integrity in public administration**
4 **and Australia**

5 **21 Role of the Federal Integrity Commissioner**

- 6 (1) The Federal Integrity Commissioner has the following duties for
7 the purpose of promoting integrity and preventing corruption in
8 Australia:
- 9 (a) to develop and implement a strategy for how AFIC can best
10 contribute to the promotion of integrity and prevention of
11 corruption;
 - 12 (b) to develop and publish rules, guidance and standards for
13 Commonwealth agency integrity and anti-corruption plans
14 under Division 2; and to review, monitor and support such
15 plans;
 - 16 (c) to lead and assist in improvement of the capacity of the
17 public sector to strengthen its integrity systems and prevent
18 corrupt conduct, including through corruption prevention
19 inquiries under Division 3;
 - 20 (d) to lead and facilitate training, education of, and advice to, the
21 public sector and the community about consequences and
22 prevention of corruption, including under Division 4;
 - 23 (e) to undertake research into the incidence of corruption, its
24 causes and antecedents, and methods of prevention, as
25 provided for in Division 5 and to inform decisions made
26 under Parts 4 to 8;
 - 27 (f) to lead and support cooperation and coordination among
28 Commonwealth agencies responsible for promoting integrity
29 and preventing or dealing with corruption or related issues, in
30 the public sector, as provided for in Division 6; and
 - 31 (g) to lead and support cooperation and coordination among
32 government agencies, including State, Territory and
33 international agencies, and other stakeholders, in strategies

1 for combatting corruption in Australia, including the
2 development and implementation of the National Integrity
3 and Anti-Corruption Plan under Division 7.

4 **22 Role of AFIC**

5 (1) In determining how to fulfil the duties under this Part, and in
6 fulfilling the duties, the Federal Integrity Commissioner will
7 consult with the Whistleblower Protection Commissioner and the
8 Law Enforcement Integrity Commissioner.

9 (2) The Federal Integrity Commissioner may enter into an agreement
10 with the head of a Commonwealth agency for the purpose of
11 assisting the agency with fulfilment of any duty or obligation under
12 this Part.

13 (3) The CEO must, by writing, designate positions in AFIC as
14 positions assisting the Federal Integrity Commissioner with the
15 fulfilment of duties under this Part.

16 Note: For creation of positions, see section 77 of the *Public Service Act*
17 *1999*.

18 (4) A person in a position designated under subsection (3) may be
19 located in any Commonwealth agency with whom the CEO enters
20 into an agreement under subsection (3).

1 **Division 2—Commonwealth integrity and anti-corruption**
2 **plans**

3 **23 Preparation of integrity and anti-corruption plans**

- 4 (1) The head of each Commonwealth agency is to prepare, every 2
5 years, a plan to protect and enhance integrity in the performance of
6 the agency's functions (including the prevention of corruption in
7 its program delivery, use of financial assets and information,
8 decision-making, and the conduct of its staff) covering at least the
9 next 4-year period.

10 Note: The first integrity and anti-corruption plan is to be prepared within 2
11 years of the commencement of this Act.

- 12 (2) Each agency's integrity and anti-corruption plan must be consistent
13 with any relevant rule, guidance or standard made under this Act.
- 14 (3) Nothing in this Act prevents a Commonwealth agency that is a
15 Commonwealth entity from combining its integrity and
16 anti-corruption plan with a fraud control plan, or corporate plan,
17 for the entity under the *Public Governance, Performance and*
18 *Accountability Act 2013*.
- 19 (4) However, despite subsection (3), an integrity and anti-corruption
20 plan must not be wholly contained within an agency's fraud control
21 plan and must deal with topics of integrity and anti-corruption
22 beyond simply fraud.
- 23 (5) An agency head may elect to not publish the agency's integrity and
24 anti-corruption plan, or may choose to redact it for publication, but
25 only in circumstances where publication of some or all of the plan
26 would be counter to the interests of preventing or dealing with
27 corruption in or by the agency.

28 **24 Audit Committee to monitor plans**

29 If a Commonwealth agency is a Commonwealth entity, the audit
30 committee for the agency must review the integrity and
31 anti-corruption plan, monitor its implementation and assess its

1 effectiveness, having regard to the level of corruption risk
2 applicable to the agency and its programs.

3 Note 1: See section 45 of the *Public Governance, Performance and*
4 *Accountability Act 2013* (which deals with audit committees for
5 Commonwealth entities).

6 Note 2: The responsibility for preparing and implementing the entity's plan
7 remains with the accountable authority for the entity.

8 **25 Federal Integrity Commissioner to receive plans on request**

9 (1) A copy of a Commonwealth agency's integrity and anti-corruption
10 plan, together with (for a Commonwealth entity) any audit
11 committee comments or reports relating to its preparation or
12 monitoring, is to be provided by the head of the agency on request
13 by the Federal Integrity Commissioner.

14 (2) The head of a Commonwealth agency, including at the
15 recommendation of an audit committee, may request the Federal
16 Integrity Commissioner to review the agency's integrity and
17 anti-corruption plan or advise on its preparation.

18 (3) The Federal Integrity Commissioner may provide comments to the
19 head of the Commonwealth agency, designed to strengthen the
20 agency's integrity and anti-corruption plan.

21 (4) Despite any other provision of this Act, the Federal Integrity
22 Commissioner may publish a Commonwealth agency's integrity
23 and anti-corruption plan, in part or whole, together with any
24 comments, if satisfied it is in the public interest to do so.

25 **26 Consideration of adequacy of plans**

26 (1) This section applies to any report of an investigation or public
27 inquiry under section 59 or section 74, or any special report under
28 section 238, which identifies that a corruption issue arose in
29 respect of any particular Commonwealth agency or agencies.

30 (2) In preparing the report, the Federal Integrity Commissioner must
31 consider, address and, where relevant, report upon:

32 (a) whether the agency had in place an integrity and
33 anti-corruption plan;

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Division 2 Commonwealth integrity and anti-corruption plans

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- 1 (b) the adequacy of the integrity and anti-corruption plan;
- 2 (c) recommendations for the improvement of the agency's
- 3 integrity and anti-corruption plan, or the integrity and
- 4 anti-corruption plans of other agencies or in general; and
- 5 (d) whether there were any failures to implement the integrity
- 6 and anti-corruption plan, or to prevent corrupt conduct, and,
- 7 if so, the nature of and reasons for those failures.

1 **Division 3—Corruption prevention inquiries**

2 **27 Federal Integrity Commissioner may conduct inquiries**

3 (1) The Federal Integrity Commissioner may conduct a public inquiry
4 if: the inquiry is for the purposes of identifying changes in laws,
5 practices or procedures which the Federal Integrity Commissioner
6 thinks necessary to promote integrity and reduce the likelihood of
7 the occurrence of serious and/or systemic corrupt conduct.

8 (2) An inquiry under this Division may be undertaken on the Federal
9 Integrity Commissioner’s own initiative, or at the request of the
10 Minister or either House of the Parliament.

11 **28 Scope and powers of inquiries**

12 (1) An inquiry under this Division may concern laws, practices or
13 procedures relating to any of the following:

- 14 (a) the integrity of public officials;
15 (b) corruption or prevention of corruption generally in
16 Commonwealth agencies;
17 (c) corruption generally, or the prevention of corruption, in or
18 affecting Australia.

19 (2) An inquiry under this Division may concern such issues as the
20 Federal Integrity Commissioner deems relevant for the purposes of
21 subsection (1), whether those issues arose before or after the
22 commencement of this section.

23 (3) An inquiry under this Division may review and make general
24 recommendations about practices, procedures and standards in
25 relation to integrity, propriety, ethics, and the prevention of
26 corruption, in any of the following:

- 27 (a) Commonwealth agencies;
28 (b) government generally;
29 (c) other institutions or bodies in Australia;
30 (d) the community at large.

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- 1 (4) An inquiry under this Division is to be conducted as a public
2 inquiry under Division 3 of Part 5 of this Act.

3 **29 Reports of inquiries**

- 4 (1) A report of an inquiry under this Division is to be prepared in
5 accordance with Division 4 of Part 5 of this Act.
- 6 (2) A report may include such recommendations, to any person, as the
7 Federal Integrity Commissioner sees fit.
- 8 (3) Without limiting subsection (2), a report may include
9 recommendations to the Parliament about the need for or the
10 desirability of legislative or administrative action on any issues in
11 relation to:
12 (a) the integrity of public officials; or
13 (b) corruption generally in Commonwealth agencies; or
14 (c) corruption generally in or affecting Australia;
15 whether those issues arose before or after the commencement of
16 this section.

1 **Division 4—Education, training and advice**

2 **30 Agency heads to provide training**

3 The head of each Commonwealth agency is to ensure that officers
4 of the agency are given appropriate education and training relating
5 to ethical conduct, corruption risk and the prevention of corrupt
6 conduct, including any obligations arising under this Act.

7 **31 Role of Federal Integrity Commissioner**

- 8 (1) The Federal Integrity Commissioner will develop and implement a
9 strategy for how AFIC can best lead, facilitate and support the
10 training and education of, and provision of advice to, the public
11 sector and the community about the consequences and prevention
12 of corruption.
- 13 (2) The Federal Integrity Commissioner will assist the heads of
14 Commonwealth agencies in ensuring that officers are given
15 appropriate education and training under section 30.
- 16 (3) The Federal Integrity Commissioner may enter into contracts,
17 agreements and partnerships with other entities to support AFIC's
18 training, education and advice functions.
- 19 (4) In developing and implementing the strategy under subsection (1),
20 the Federal Integrity Commissioner will consult with:
- 21 (a) the Australian Public Service Commission;
- 22 (b) the Merit Protection Commissioner;
- 23 (c) the Commonwealth Ombudsman; and
- 24 (d) such other agencies or bodies as the Federal Integrity
25 Commissioner sees fit.

1 **Division 5—Research and intelligence**

2 **32 Research functions**

- 3 (1) The Federal Integrity Commissioner, in consultation with the
4 Assistant Federal Integrity Commissioner for Research and Public
5 Interest, will develop and implement a strategy for research to
6 support the performance of AFIC's functions.
- 7 (2) The research strategy must include research into any of the
8 following:
- 9 (a) the promotion of integrity and ethical conduct;
10 (b) individual and organisational behaviour related to integrity
11 and ethical conduct;
12 (c) the incidence and prevention of corruption;
13 (d) detection and investigatory processes relating to corruption;
14 (e) factors giving rise, and factors influencing responses, to
15 corruption issues among Commonwealth agencies;
16 (f) continuous improvement in responses to corruption;
17 (g) any other matter relating to the promotion of integrity or the
18 prevention and eradication of corruption.
- 19 (3) Any research conducted by the Federal Integrity Commissioner or
20 the Assistant Federal Integrity Commissioner for Research and
21 Public Interest must state any limitations of the research.
- 22 (4) Subsection (3) does not otherwise limit the inferences,
23 recommendations or advice that can be based on that research by
24 the Federal Integrity Commissioner or the Assistant Federal
25 Integrity Commissioner for Research and Public Interest.

26 **33 Research strategy—consultation and implementation**

- 27 (1) In developing and implementing the research strategy under
28 section 32, the Federal Integrity Commissioner will consult with:
- 29 (a) the Australian Institute of Criminology;
30 (b) the Australian Criminal Intelligence Commission;

- 1 (c) such other apolitical public agencies or bodies as the Federal
2 Integrity Commissioner sees fit.
- 3 (2) The Parliamentary Joint Committee may make suggestions to the
4 Federal Integrity Commissioner regarding issues suitable for
5 inclusion in AFIC's research strategy.
- 6 (3) The Federal Integrity Commissioner may enter into contracts,
7 agreements and partnerships with other entities to support AFIC's
8 research functions.

9 **34 Relationship between research and operations**

10 In developing and implementing the research strategy under
11 section 32, the Federal Integrity Commissioner and the Assistant
12 Federal Integrity Commissioner for Research and Public Interest
13 will give priority to research which:

- 14 (a) assists AFIC in identifying and dealing with specific
15 corruption issues among Commonwealth agencies, including
16 areas of corruption risk to be addressed by AFIC; and
- 17 (b) applies, includes and makes use of AFIC's experience in
18 dealing with specific corruption issues among
19 Commonwealth agencies, including information (including
20 records and statistics) arising from enquiries, referrals or
21 investigations relating to corruption issues.

1 **Division 6—Commonwealth cooperation and coordination**

2 **35 Principles of operation of Federal Integrity Commission**

3 The Federal Integrity Commissioner, Whistleblower Protection
4 Commissioner and Law Enforcement Integrity Commissioner will
5 exercise their functions and powers in such a way as to:

- 6 (a) work cooperatively with other Commonwealth agencies
7 responsible for integrity, ethics and the prevention of or
8 responses to corruption, including parliamentary officers and
9 agencies; and
10 (b) improve the capacity of Commonwealth agencies to prevent
11 and respond to corruption issues; and
12 (c) not duplicate or interfere with work that it considers has been
13 undertaken or is being undertaken appropriately by a
14 Commonwealth agency.

15 **36 Cooperation and coordination with other Commonwealth**
16 **agencies**

- 17 (1) This section applies to any Commonwealth agency with
18 responsibility for integrity, ethics or the prevention of, or responses
19 to, corruption in Commonwealth public administration, including
20 the agencies listed in subsection 37(2).
- 21 (2) The Federal Integrity Commissioner will facilitate cooperation and
22 coordination among agencies to whom this section applies, and
23 between any and all of those agencies and AFIC.
- 24 (3) In facilitating cooperation and coordination under subsection (2), it
25 will be the objective of the Federal Integrity Commissioner to
26 ensure a comprehensive, efficient, nationally coordinated approach
27 to the prevention, detection, reduction and remediation of
28 corruption in Commonwealth public administration.
- 29 (4) Despite any other Act, any agency to which this section applies
30 may:

- 1 (a) exchange any information relating to the promotion of
2 integrity, or to preventing or responding to corruption, with
3 any other agency to whom this section applies; and
4 (b) engage in joint activities, projects or operations relating to
5 the promotion of integrity, or to preventing or responding to
6 corruption, with any other agency to which this section
7 applies.

8 **37 Commonwealth Integrity Coordination Committee**

- 9 (1) The Commonwealth Integrity Coordination Committee is
10 established by this section.
- 11 (2) The Commonwealth Integrity Coordination Committee consists of
12 the persons who, from time to time, hold the following offices:
- 13 (a) Commonwealth Ombudsman;
14 (b) Australian Information Commissioner;
15 (c) Auditor-General;
16 (d) Australian Public Service Commissioner;
17 (e) Merit Protection Commissioner;
18 (f) Australian Electoral Commissioner;
19 (g) Inspector-General of Taxation;
20 (h) Inspector-General of Intelligence and Security;
21 (i) Australian Federal Police Commissioner;
22 (j) CEO of the Australian Criminal Intelligence Commission;
23 (k) CEO of the Independent Parliamentary Expenses Authority;
24 (l) Parliamentary Standards Commissioner;
25 (m) Secretary of the Attorney-General's Department;
26 (n) Law Enforcement Integrity Commissioner;
27 (o) Whistleblower Protection Commissioner;
28 (p) Federal Integrity Commissioner;
29 (q) the Assistant Federal Integrity Commissioner for Research
30 and Public Interest;
31 (r) the Assistant Federal Integrity Commissioner for
32 Assessment, Investigations and Inquiries;
33 (s) the Assistant Federal Integrity Commissioner for Education,
34 Training and Prevention;
-

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- 1 (t) any other office that, in the opinion of the Federal Integrity
2 Commissioner, has significant responsibility for integrity,
3 ethics or the prevention of, or responses to, corruption in
4 Commonwealth public administration (other than a Minister
5 or other political office holder).
- 6 (3) The Committee will be chaired by:
7 (a) a member of the Committee as agreed by the members of the
8 Committee from time to time; or
9 (b) if, no other member is agreed under paragraph (a), the
10 Federal Integrity Commissioner.
- 11 (3) The Committee will meet no less than twice in any calendar year.

12 **38 Functions of the Commonwealth Integrity Coordination**
13 **Committee**

- 14 The Commonwealth Integrity Coordination Committee has the
15 following functions:
16 (a) to foster cooperation and coordination between the members
17 of the Committee and their respective agencies;
18 (b) to facilitate the exchange of information between agencies in
19 performance of their functions;
20 (c) to develop common and consistent definitions, language and
21 promotional and educational materials relating to integrity
22 and anti-corruption in Commonwealth administration;
23 (d) to provide a forum for consultation on the development of
24 Rules, standards or guidance to be developed by the Federal
25 Integrity Commissioner, Whistleblower Protection
26 Commissioner or any other member agency;
27 (e) to provide a forum for consultation on the research,
28 education, training or advice strategies of the Federal
29 Integrity Commissioner or any other member agency;
30 (f) to identify priority areas of corruption risk for the
31 Commonwealth, or priority areas or opportunities for the
32 promotion of integrity and prevention of corruption;
33 (g) to identify and support joint activities, projects, initiatives or
34 operations relating to integrity and anti-corruption in
35 Commonwealth administration;
-

- 1 (h) to develop common strategies for engaging and
2 communicating with Commonwealth agencies and the wider
3 community on issues relating to integrity and anti-corruption
4 in Commonwealth administration;
- 5 (i) to consult and provide advice to Government or the
6 Parliament on issues of law, practice or procedure relating to
7 integrity and anti-corruption in Commonwealth
8 administration;
- 9 (j) to do anything incidental to or conducive to the performance
10 of the above functions.

1 **Division 7—National cooperation and coordination**

2 **39 Role of the Federal Integrity Commissioner**

3 (1) It is the duty of the Federal Integrity Commissioner to:

4 (a) promote and assist in a comprehensive, efficient, nationally
5 coordinated approach to the prevention, detection, reduction
6 and remediation of corruption in:

7 (i) Australia generally; and

8 (ii) Australia's relations with other countries; and

9 (b) assist in the cooperative implementation of Australia's
10 international anti-corruption responsibilities, including under
11 the United Nations Convention Against Corruption (2005).

12 (2) In fulfilling their duty under subsection (1), the Federal Integrity
13 Commissioner may undertake research or initiatives about, or have
14 regard, express opinions, provide advice or make recommendations
15 relating to:

16 (a) corruption and its prevention in Commonwealth public
17 administration; or

18 (b) corruption and its prevention in government generally in
19 Australia; or

20 (c) issues relating to corruption and its prevention in business or
21 the wider community in Australia; or

22 (d) issues among other countries relating to corruption and
23 prevention, that affect, or may affect, Australia.

24 (3) In fulfilling their duty under subsection (1), the Federal Integrity
25 Commissioner will give priority to:

26 (a) their role in preparation of the National Integrity and
27 Anti-Corruption Plan under section 40; and

28 (b) their role in assisting the implementation of the National
29 Integrity and Anti-Corruption Plan.

40 National Integrity and Anti-corruption Plan

- 1
2 (1) The Minister is to publish a National Integrity and Anti-corruption
3 Plan no less frequently than every 4 years, covering at least the
4 next 4-year period.

5 Note: The first National Integrity and Anti-corruption Plan is to be published
6 within 2 years of the commencement of this Part.

- 7 (2) The National Integrity and Anti-corruption Plan must include the
8 following:

- 9 (a) identification of key corruption threats and related risks to
10 integrity affecting, or likely to affect, Commonwealth public
11 administration;

12 Note: Threats and risk factors may include, but is not limited to: organised
13 crime; influence peddling; political lobbying; internal fraud, external
14 collusion, solicitation and bribery; maladministration, malfeasance
15 and misconduct.

- 16 (b) data on such corruption threats and related risks;
17 (c) identification of key corruption threats and related risks to
18 integrity affecting, or likely to affect, Australia generally;
19 (d) key mechanisms in place and any additional measures
20 planned to mitigate corruption threats and risks to integrity;
21 (e) the role of business and the wider community in promoting
22 integrity and combatting corruption in Australia;
23 (f) the role of the States and Territories in promoting integrity
24 and combatting corruption in Australia;
25 (g) priority areas for Commonwealth reform or action to promote
26 integrity and combat corruption;
27 (h) key actions to be undertaken or recommended to be
28 undertaken to promote integrity and combat corruption,
29 including a timetable and parties responsible for those
30 actions;
31 (i) any other items specified in the Rules.

- 32 (3) The National Integrity and Anti-corruption Plan must include an
33 assessment and recommendations regarding the adequacy of
34 strategies to counter risks to integrity in high-risk areas of
35 Commonwealth public administration, including the following:

- 36 (a) major procurement and capital works;
-

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- 1 (b) the allocation of grants and subsidies;
2 (c) enforcement of the criminal law;
3 (d) regulatory enforcement of industry and commerce;
4 (e) border crime and transboundary corruption;
5 (f) elections;
6 (g) the use of contractors to carry out work and any conflicts of
7 interests of such contractors;
8 (h) any other item specified in the Rules;
9 (i) any other area considered relevant for inclusion by the
10 Minister.
- 11 (4) The National Integrity and Anti-corruption Plan must also consider
12 appropriate measures to ensure continual improvement in the
13 facilitation and protection of whistleblowers.

14 **41 Preparation of plan**

- 15 (1) In preparing the National Integrity and Anti-Corruption Plan, the
16 Minister is to consult and have regard to the views of the
17 following:
18 (a) the Federal Integrity Commissioner;
19 (b) the members of the Commonwealth Integrity Coordination
20 Committee established by section 37;
21 (c) the members of the National Integrity and Anti-Corruption
22 Advisory Committee established by section 43;
23 (d) such other persons as the Minister sees fit.
- 24 (2) In preparing the plan, the Minister will request the Federal
25 Integrity Commissioner to:
26 (a) comment on a first draft of the plan;
27 (b) contribute research to the development of the plan;
28 (c) comment on the final draft of the plan prior to its adoption by
29 the Minister.
- 30 (3) The Minister must not publish a plan unless it has been prepared
31 following a period of public consultation that is at least 6 months.

1 **42 Examination of plan**

2 The Parliamentary Joint Committee is to inquire into each National
3 Integrity and Anti-Corruption Plan, and report to both houses on
4 any matters it sees fit within 18 months of publication of the
5 National Integrity and Anti-Corruption Plan by the Minister.

6 **43 National Integrity and Anti-Corruption Advisory Committee**

7 (1) The National Integrity and Anti-Corruption Advisory Committee is
8 established by this section.

9 (2) The National Integrity and Anti-Corruption Advisory Committee
10 consists of the following:

11 (a) the persons who, from time to time, hold the following
12 offices:

13 (i) Secretary of the Department administered by the
14 Attorney-General;

15 (ii) Federal Integrity Commissioner;

16 (iii) Australian Federal Police Commissioner;

17 (iv) CEO of the Australian Criminal Intelligence
18 Commission;

19 (v) Chairperson of the Australian Securities and
20 Investments Commission;

21 (vi) Chairperson of the Australian Competition and
22 Consumer Commission.

23 (b) at least 3 representatives of State or Territory agencies with
24 significant responsibility for integrity, ethics or the
25 prevention of, or responses to, corruption;

26 (c) at least 2 representatives of civil society organisations
27 concerned with integrity, ethics or the prevention of, or
28 responses to, corruption;

29 (d) at least 2 representatives of business organisations concerned
30 with integrity, ethics or the prevention of, or responses to,
31 corruption;

32 (e) at least 2 persons with independent specialist expertise in
33 integrity, ethics or the prevention of, or responses to,
34 corruption;

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- 1 (f) such other persons that, in the opinion of the Minister, can
2 contribute to the development of the National Integrity and
3 Anti-Corruption Plan.
- 4 (2) The Committee is to be chaired by the Secretary of the
5 Attorney-General's Department.
- 6 (3) The Committee will meet no less than twice in any calendar year.

44 Functions of the advisory committee

8 The National Integrity and Anti-corruption Advisory Committee
9 has the following functions:

- 10 (a) to foster cooperation and coordination between the members
11 of the Committee and their respective agencies and
12 organisations, and other organisations;
- 13 (b) to facilitate the exchange of information between agencies in
14 performance of their functions;
- 15 (c) to provide a forum for consultation on the research,
16 education, training or advice strategies of the Federal
17 Integrity Commissioner or any other member agency;
- 18 (d) to identify priority areas of corruption risk for Australia, or
19 priority areas or opportunities for the promotion of integrity
20 and prevention of corruption;
- 21 (e) to identify and support joint activities, projects, initiatives or
22 operations relating to integrity and anti-corruption in
23 Australia;
- 24 (f) to provide a forum for consultation on the development of the
25 National Integrity and Anti-Corruption Plan;
- 26 (g) to do anything incidental to or conducive to the performance
27 of the above functions.

1 **Part 4—Dealing with corruption issues**

2 **Division 1—Referring corruption issues to Federal**
3 **Integrity Commissioner**

4 **45 Referral of corruption issues**

- 5 (1) A person may refer to the Federal Integrity Commissioner under
6 this section an allegation, or information, that raises a corruption
7 issue.
- 8 (2) Without limiting subsection (1):
- 9 (a) the person may refer the allegation or information on behalf
10 of:
- 11 (i) another person; or
12 (ii) a Commonwealth agency; or
13 (iii) a body or association of persons; and
- 14 (b) the person may refer the allegation or information
15 anonymously; and
- 16 (c) the person may refer the allegation or information either
17 orally or in writing.
- 18 (3) If the person refers the allegation or information orally, the Federal
19 Integrity Commissioner may require the person to put the
20 allegation or the information in writing.
- 21 (4) Subject to paragraph (2)(b), whether the person refers the
22 allegation or information orally or in writing, the Federal Integrity
23 Commissioner may request (but not require) the person to identify,
24 in writing, the nature of the person's relationship with any other
25 persons or agencies identified in the referral.
- 26 (5) If the person is asked to put the allegation or information in writing
27 under subsection (3), the Federal Integrity Commissioner may
28 refuse to investigate the corruption issue that the allegation or
29 information raises, or to investigate the corruption issue further,
30 until the allegation or information is put in writing.

Section 46

- 1 (6) If the Ombudsman:
2 (a) decides, under subsection 6(15A) of the *Ombudsman Act*
3 *1976*, to refer an allegation or information to the Federal
4 Integrity Commissioner; or
5 (b) is required, under subsection 6(15B) of that Act, to refer an
6 allegation or information to the Federal Integrity
7 Commissioner;
8 the person who referred the allegation or information to the
9 Ombudsman is taken to have referred the allegation or information
10 to the Federal Integrity Commissioner under this section.
- 11 (7) The Assistant Federal Integrity Commissioner for Assessment,
12 Investigations and Inquiries must collect and publish de-identified
13 data on referrals made under subsection (1), including the
14 following:
15 (a) types of referrals;
16 (b) sources of referrals;
17 (c) volume of referrals;
18 (d) subjects of referrals.

19 **46 Referral under section 45 by person in custody**

20 *Application of section*

- 21 (1) This section applies if a person who is detained in custody (the
22 **prisoner**) wishes to refer an allegation or information to the
23 Federal Integrity Commissioner under section 45.
- 24 (2) A reference in this section to a **custodian** is a reference to:
25 (a) the person in whose custody the prisoner is detained; or
26 (b) any other person performing duties in connection with the
27 prisoner's detention.

28 *Facilities to be provided for communicating with Integrity*
29 *Commissioner*

- 30 (3) The prisoner is entitled to be provided with facilities for:
31 (a) preparing a written record of the allegation or information;
32 and

- 1 (b) for enclosing that written record in a sealed envelope;
2 if the prisoner requests a custodian to have those facilities
3 provided.
- 4 (4) The prisoner is entitled to have sent to the Federal Integrity
5 Commissioner, without undue delay, a sealed envelope that is:
6 (a) delivered by the prisoner to a custodian; and
7 (b) addressed to the Federal Integrity Commissioner;
8 if the prisoner requests a custodian to have the envelope sent to the
9 Federal Integrity Commissioner.
- 10 (5) The prisoner is entitled to have delivered to the prisoner, without
11 undue delay, any sealed envelope that:
12 (a) is addressed to the prisoner; and
13 (b) is sent by the Federal Integrity Commissioner; and
14 (c) comes into the possession, or under the control, of a
15 custodian.

16 *Dealing with communications between prisoner and Integrity*
17 *Commissioner*

- 18 (6) If:
19 (a) the prisoner delivers to a custodian a sealed envelope
20 addressed to the Federal Integrity Commissioner for sending
21 to the Federal Integrity Commissioner; or
22 (b) a sealed envelope addressed to the prisoner and sent by the
23 Federal Integrity Commissioner comes into the possession, or
24 under the control, of a custodian;
25 neither that custodian, nor any other custodian, is entitled to open
26 the envelope or to inspect any document enclosed in the envelope.

27 *Arrangements with State and Territory prison authorities*

- 28 (7) For the purposes of this section, the Federal Integrity
29 Commissioner may make arrangements with the appropriate
30 authority of a State or a Territory for the identification and delivery
31 of sealed envelopes sent by the Federal Integrity Commissioner to
32 persons detained in custody in that State or Territory.

Section 47

1 **47 Public officials must refer corruption issues**

- 2 (1) As soon as practicable after a public official becomes aware of an
3 allegation, or information, that raises a corruption issue, the public
4 official must:
- 5 (a) refer the allegation or information to the Federal Integrity
6 Commissioner under section 45; or
- 7 (b) if the public official is an employee of a Commonwealth
8 agency other than the head of the agency—notify the head of
9 the agency of the allegation or information.
- 10 Note: The head of a Commonwealth agency is a public official.
- 11 (2) Subsection (1) does not apply if the public official:
- 12 (a) has already taken action referred to in subsection (1) in
13 relation to the allegation or information; or
- 14 (b) has reasonable grounds to believe that the Federal Integrity
15 Commissioner is already aware of the allegation or
16 information.
- 17 (3) Action taken under subsection (1) by the head of a Commonwealth
18 agency must be taken in accordance with any direction, guidance
19 or agreement under section 48 that applies to the agency.

20 **48 Federal Integrity Commissioner may enter into agreements etc.**
21 **with head of Commonwealth agency**

- 22 (1) The Federal Integrity Commissioner may issue directions or
23 guidance to, or enter into an agreement with, the head of a
24 Commonwealth agency in relation to either or both of the
25 following matters:
- 26 (a) the level of detail required to refer an allegation or
27 information to the Federal Integrity Commissioner;
- 28 (b) the way in which information or documents in relation to an
29 allegation or information may be given to the Federal
30 Integrity Commissioner (whether for the purpose of referring
31 an allegation or information to the Federal Integrity
32 Commissioner or otherwise).

- 1 (2) The Federal Integrity Commissioner may revoke the direction,
2 guidance or agreement by written notice given to the head of the
3 agency. The revocation takes effect on a day specified in the
4 notice, which must be at least 14 days after the day it is given.
- 5 (3) Without limiting subsection (1), the direction, guidance or
6 agreement may set out how it may be varied and other ways how it
7 may be revoked.

1 **Division 2—How Federal Integrity Commissioner deals**
2 **with corruption issues**

3 **Subdivision A—General**

4 **49 How Federal Integrity Commissioner may deal with corruption**
5 **issues**

- 6 (1) The Federal Integrity Commissioner may deal with a corruption
7 issue in any of the following ways:
8 (a) by investigating the corruption issue;
9 (b) if the corruption issue relates to a Commonwealth agency—
10 by referring the corruption issue to the agency for
11 investigation and:
12 (i) managing the investigation; or
13 (ii) overseeing the investigation; or
14 (iii) neither managing nor overseeing the investigation;
15 (c) if the corruption issue relates to a Commonwealth agency
16 that is not the AFP—by referring the corruption issue to the
17 AFP for investigation and:
18 (i) managing the investigation; or
19 (ii) overseeing the investigation; or
20 (iii) neither managing nor overseeing the investigation;
21 (d) by managing an investigation of the corruption issue that is
22 being conducted by a Commonwealth agency;
23 (e) by overseeing an investigation of the corruption issue that is
24 being conducted by a Commonwealth agency.
- 25 (2) The Federal Integrity Commissioner may investigate the corruption
26 issue under paragraph (1)(a) either alone or jointly with another
27 government agency with appropriate functions or powers for the
28 purpose.
- 29 (3) Subsections (1) and (2) have effect subject to section 50.

1 **50 Alleged contraventions of the *Commonwealth Parliamentary***
2 ***Standards Act 2020***

- 3 (1) This section applies if:
- 4 (a) a corruption issue involves an alleged contravention of the
5 *Commonwealth Parliamentary Standards Act 2020*; and
- 6 (b) the corruption issue was not referred to the Federal Integrity
7 Commissioner by the Parliamentary Standards
8 Commissioner.
- 9 (2) The Federal Integrity Commissioner must refer the corruption issue
10 to the Parliamentary Standards Commissioner in accordance with
11 paragraph 49(1)(b)(iii), unless the Federal Integrity Commissioner
12 considers that exceptional circumstances apply in relation to the
13 corruption issue.
- 14 (3) Without limiting subsection (2), the Federal Integrity
15 Commissioner may consider that exceptional circumstances apply
16 in relation to the corruption issue if the Federal Integrity
17 Commissioner is satisfied that:
- 18 (a) referring the corruption issue to the Parliamentary Standards
19 Commissioner is likely to prejudice:
- 20 (i) the investigation of the corruption issue or another
21 corruption investigation; or
- 22 (ii) protection of the identity or confidentiality of any
23 person who referred or provided information in relation
24 to the corruption issue, or protection of such a person
25 from reprisal or detrimental action; or
- 26 (iii) any action taken as a result of an investigation referred
27 to in paragraph (a); or
- 28 (b) the corruption issue involves serious corrupt conduct or
29 systemic corrupt conduct.
- 30 (4) In deciding whether exceptional circumstances apply in relation to
31 the corruption issue, the Federal Integrity Commissioner may
32 obtain advice from the Parliamentary Standards Commissioner.
- 33 (5) To avoid doubt, the Federal Integrity Commissioner must have
34 regard to the criteria in section 51:

Section 51

- 1 (a) in deciding whether the corruption issue must be referred to
2 the Parliamentary Standards Commissioner in accordance
3 with this section; and
4 (b) if the Federal Integrity Commissioner decides that
5 exceptional circumstances apply in relation to the corruption
6 issue—in deciding to deal with the corruption issue in
7 accordance with another one of the ways referred to in
8 subsection 49(1).

9 **51 Criteria for deciding how to deal with a corruption issue**

- 10 (1) The Federal Integrity Commissioner must have regard to the
11 matters set out in subsection (2) in deciding:
12 (a) how to deal with a corruption issue; or
13 (b) whether to take no further action in relation to a corruption
14 issue.
- 15 (2) The matters to which the Federal Integrity Commissioner must
16 have regard are the following:
17 (a) the need to ensure that the corruption issue is fully
18 investigated;
19 (b) the rights and obligations of any other agency to investigate
20 the corruption issue;
21 (c) the rights and obligations of any person who refers or
22 provides information in relation to the corruption issue,
23 including any need to protect the person's identity or
24 confidentiality or to protect the person from reprisal or
25 detrimental action;
26 (d) if a joint investigation of the corruption issue by the Federal
27 Integrity Commissioner and another agency is being
28 considered—the extent to which the other agency is able to
29 cooperate in the investigation;
30 (e) the resources that are available to any other agency to
31 investigate the corruption issue;
32 (f) the need to ensure a balance between:
33 (i) the Federal Integrity Commissioner's role in dealing
34 with corruption issues (particularly in dealing with
35 significant corruption issues); and

- 1 (ii) ensuring that the heads of Commonwealth agencies take
2 responsibility for managing their agencies;
- 3 (g) the likely significance of the corruption issue for any agency
4 and for the Commonwealth;
- 5 (h) any advice requested of the Assistant Federal Integrity
6 Commissioner for Research and Public Interest about the
7 seriousness and/or systematic nature of the corruption issue,
8 and the need for reform.
- 9 (3) Subsection (2) does not limit the matters to which the Federal
10 Integrity Commissioner may have regard.

11 **52 Dealing with multiple corruption issues**

- 12 (1) The Federal Integrity Commissioner may, in the Federal Integrity
13 Commissioner's discretion, deal with a number of corruption
14 issues together (whether or not they are raised by the same
15 allegation or information).
- 16 (2) Without limiting subsection (1), if an allegation, or information,
17 raises a number of corruption issues, the Federal Integrity
18 Commissioner:
- 19 (a) may deal with some or all of those corruption issues together;
20 and
21 (b) may deal with some or all of those corruption issues
22 separately.
- 23 (3) Without limiting subsection (1), the Federal Integrity
24 Commissioner may prepare a single report in relation to a number
25 of corruption issues.

26 **Subdivision B—Federal Integrity Commissioner dealing with** 27 **referred corruption issues**

28 **53 Federal Integrity Commissioner must make a decision**

- 29 (1) If an allegation, or information, that raises a corruption issue is
30 referred to the Federal Integrity Commissioner under section 45,
31 the Federal Integrity Commissioner (in consultation with the

Section 53

1 Assistant Federal Integrity Commissioner for Assessment,
2 Investigations and Inquiries) must decide:

3 (a) to deal with the corruption issue in one of the ways referred
4 to in subsection 49(1); or

5 (b) to take no further action in relation to the corruption issue.

6 (2) The Federal Integrity Commissioner must keep records of reasons
7 for decisions made under subsection (1).

8 *Requesting information to assist in making the decision*

9 (3) For the purposes of making a decision under subsection (1), the
10 Federal Integrity Commissioner may request the head of any
11 Commonwealth agency to give the Federal Integrity Commissioner
12 the information specified in the request.

13 (4) The head of the Commonwealth agency must comply with the
14 request.

15 (5) Subsection (3) does not limit the information to which the Federal
16 Integrity Commissioner may have regard in making a decision
17 under subsection (1).

18 *Direction not to investigate*

19 (6) If the corruption issue relates to a Commonwealth agency and the
20 Federal Integrity Commissioner decides to deal with the corruption
21 issue in one of the ways referred to in subsection 49(1), the Federal
22 Integrity Commissioner may direct the head of the agency that the
23 agency is not to investigate the corruption issue.

24 (7) If a direction under subsection (5) is given in writing, the direction
25 is not a legislative instrument.

26 *Deciding to take no further action*

27 (8) The Federal Integrity Commissioner may decide under
28 subsection (1) to take no further action in relation to the corruption
29 issue only if the Federal Integrity Commissioner is satisfied that:

30 (a) the corruption issue is already being, or will be, investigated
31 by another Commonwealth agency who the Commissioner is

- 1 satisfied is capable of independently conducting an
2 investigation into the issue; or
- 3 (b) the referral of the allegation, or information, that raises the
4 corruption issue is frivolous or vexatious; or
- 5 (c) the corrupt conduct to which the corruption issue relates has
6 been, is or will be, the subject of proceedings before a court;
7 or
- 8 (d) investigation of the corruption issue is not warranted having
9 regard to all the circumstances, including the following:
- 10 (i) that the referral of the allegation, or information, that
11 raises the corruption issue lacks detail or evidence to
12 suggest the corruption issue actually exists;
- 13 (ii) that the person referring the allegation, or information,
14 is too remote from the corruption issue.
- 15 (9) For the purposes of paragraph (8)(d), the Federal Integrity
16 Commissioner must consider whether the Commissioner could
17 make reasonable additional enquiries to obtain the detail or
18 evidence required.
- 19 (10) To avoid doubt, paragraph (8)(d) does not prevent the
20 Commissioner taking into account those circumstances when
21 performing other functions under this Act.
- 22 (11) If the corruption issue relates to a Commonwealth agency, the
23 Federal Integrity Commissioner must advise the head of the agency
24 of a decision under subsection (1) to take no further action in
25 relation to the corruption issue. That advice must be given:
- 26 (a) in writing; and
27 (b) as soon as reasonably practicable after the decision is made.
- 28 (12) This Act continues to apply to the head of a Commonwealth
29 agency given advice under subsection (11), in relation to the
30 corruption issue unless the Federal Integrity Commissioner advises
31 otherwise:
- 32 (a) in the advice given under subsection (11); or
33 (b) in a later written advice given to the head of that agency.

Section 54

1 **54 Advising person who refers corruption issue of decision about**
2 **how to deal with corruption issue**

3 The Federal Integrity Commissioner may advise a person (or a
4 representative nominated by the person) of:

- 5 (a) the Federal Integrity Commissioner’s decision under
6 section 53 in relation to a corruption issue raised by the
7 person in a referral under section 49; and
8 (b) any decision the Federal Integrity Commissioner makes
9 under section 59 on a reconsideration of how the corruption
10 issue should be dealt with.

11 **55 Advising person to whom referred corruption issue relates of**
12 **decision about how to deal with corruption issue**

13 If the Federal Integrity Commissioner makes a decision under
14 section 53 in relation to a referred corruption issue that relates to a
15 person, the Federal Integrity Commissioner may advise the person
16 of the Federal Integrity Commissioner’s decision.

17 **Subdivision C—Federal Integrity Commissioner dealing with**
18 **corruption issues on own initiative**

19 **56 Federal Integrity Commissioner may deal with corruption issues**
20 **on own initiative**

21 *Federal Integrity Commissioner may decide to deal with a*
22 *corruption issue*

- 23 (1) If the Federal Integrity Commissioner becomes aware of an
24 allegation, or information, that raises a corruption issue, the
25 Federal Integrity Commissioner may, on the Federal Integrity
26 Commissioner’s own initiative (in consultation with the Assistant
27 Integrity Commissioner for Public Interest Research and
28 Protection), deal with the corruption issue in one of the ways
29 referred to in subsection 49(1).

1 (2) Subsection (1) does not apply if the Federal Integrity
2 Commissioner becomes aware of the allegation or information
3 because of action taken under Division 1 of this Part.

4 *Requesting information to assist in making the decision*

5 (3) For the purposes of making a decision under subsection (1), the
6 Federal Integrity Commissioner may request the head of any
7 Commonwealth agency to give the Federal Integrity Commissioner
8 the information specified in the request.

9 (4) The head of the Commonwealth agency must comply with the
10 request.

11 (5) Subsection (3) does not limit the information to which the Federal
12 Integrity Commissioner may have regard in making a decision
13 under subsection (1).

14 *Direction not to investigate*

15 (6) If the corruption issue relates to a Commonwealth agency and the
16 Federal Integrity Commissioner decides to deal with the corruption
17 issue in one of the ways referred to in subsection 49(1), the Federal
18 Integrity Commissioner may direct the head of the agency that the
19 agency is not to investigate the corruption issue.

20 (7) If a direction under subsection (6) is given in writing, the direction
21 is not a legislative instrument.

22 *Becoming aware of another corruption issue*

23 (8) Without limiting subsection (1), if the Federal Integrity
24 Commissioner:
25 (a) is investigating, or inquiring into, a particular corruption
26 issue; and
27 (b) in the course of doing so, becomes aware of an allegation, or
28 information, that raises another corruption issue;
29 the Federal Integrity Commissioner may deal with that other
30 corruption issue in one of the ways referred to in subsection 49(1).

Section 57

1 **57 Advising head of Commonwealth agency of decision to deal with**
2 **corruption issue on own initiative**

3 *Application of section*

- 4 (1) This section applies if:
- 5 (a) the Federal Integrity Commissioner decides, on the Federal
 - 6 Integrity Commissioner's own initiative, to deal with a
 - 7 corruption issue in one of the ways referred to in
 - 8 subsection 49(1); and
 - 9 (b) the corruption issue relates to the conduct of a person who is
 - 10 an employee of a Commonwealth agency (other than the
 - 11 head of the agency).

12 *Advising head of Commonwealth agency*

- 13 (2) The Federal Integrity Commissioner must advise the head of that
- 14 Commonwealth agency of:
- 15 (a) the Federal Integrity Commissioner's decision to deal with
 - 16 the corruption issue in that way; and
 - 17 (b) any decision the Federal Integrity Commissioner makes
 - 18 under section 59 on a reconsideration of how the corruption
 - 19 issue should be dealt with.

20 *Form and timing of advice*

- 21 (3) The Federal Integrity Commissioner must advise the head of the
- 22 Commonwealth agency of the decision:
- 23 (a) in writing; and
 - 24 (b) as soon as reasonably practicable after the decision is made.

25 *Exception*

- 26 (4) However, the Federal Integrity Commissioner need not advise the
- 27 head of the Commonwealth agency if doing so would be likely to
- 28 prejudice:
- 29 (a) the investigation of the corruption issue or another corruption
 - 30 investigation; or

- 1 (b) any action taken as a result of an investigation referred to in
2 paragraph (a).

3 **58 Advising person of decision to deal with corruption issue on own**
4 **initiative**

5 If:

- 6 (a) the Federal Integrity Commissioner decides, on the Federal
7 Integrity Commissioner's own initiative (in consultation with
8 the Assistant Integrity Commissioner for Public Interest
9 Research and Protection), to deal with a corruption issue in
10 one of the ways referred to in subsection 49(1); and
11 (b) the corruption issue relates to a person who is, or has been, a
12 public official;
13 the Federal Integrity Commissioner may advise the person of:
14 (c) the Federal Integrity Commissioner's decision to deal with
15 the corruption issue in that way; and
16 (d) any decision the Federal Integrity Commissioner makes
17 under section 59 on a reconsideration of how the corruption
18 issue should be dealt with.

19 **Subdivision D—Reconsidering how to deal with a corruption**
20 **issue**

21 **59 Reconsidering how to deal with a corruption issue**

- 22 (1) The Federal Integrity Commissioner may, at any time, reconsider
23 how a particular corruption issue should be dealt with.
24 (2) On that reconsideration, the Federal Integrity Commissioner may:
25 (a) if the corruption issue is not being dealt with in one of the
26 ways referred to in subsection 49(1)—decide to deal with the
27 corruption issue in accordance with one of the ways referred
28 to in that subsection; or
29 (b) if the corruption issue is being dealt with in one of the ways
30 referred to in subsection 49(1)—decide to deal with the
31 corruption issue in another of the ways referred to in that
32 subsection, or to take no further action in relation to the
33 corruption issue.

Part 4 Dealing with corruption issues

Division 2 How Federal Integrity Commissioner deals with corruption issues

Section 59

- 1 (3) The Federal Integrity Commissioner may decide under
2 subsection (2) to take no further action in relation to the corruption
3 issue only if the Federal Integrity Commissioner is satisfied that:
4 (a) the corruption issue is already being, or will be, investigated
5 by another Commonwealth agency; or
6 (b) the referral of the allegation, or information, that raises the
7 corruption issue is frivolous or vexatious; or
8 (c) the corrupt conduct to which the corruption issue relates has
9 been, is or will be, the subject of proceedings before a court;
10 or
11 (d) further investigation of the corruption issue is not warranted
12 having regard to all the circumstances.

1 **Division 3—Information sharing when decision made on**
2 **how to deal with corruption issue**

3 **60 If Commonwealth agency to conduct, or continue conducting,**
4 **investigation of corruption issue**

- 5 (1) This section applies if:
- 6 (a) the Federal Integrity Commissioner decides to deal with a
7 corruption issue that relates to a Commonwealth agency by
8 referring the corruption issue to:
- 9 (i) the agency; or
10 (ii) the AFP;
11 for investigation; or
- 12 (b) an allegation, or information, that raises a corruption issue is
13 referred to the Federal Integrity Commissioner under
14 section 45 by the head of a Commonwealth agency and the
15 Commonwealth agency is investigating the corruption issue.

- 16 (2) The Federal Integrity Commissioner must give the head of the
17 Commonwealth agency investigating the corruption issue
18 information or a document if:
- 19 (a) the information or document:
- 20 (i) relates to the corruption issue to the extent to which the
21 agency is investigating the issue; and
22 (ii) is in the possession, or under the control, of the Federal
23 Integrity Commissioner; and
- 24 (b) the head of the agency does not already have the information
25 or document.

26 Note: Under section 163, the Federal Integrity Commissioner has a
27 continuing obligation to pass on information that the Federal Integrity
28 Commissioner becomes aware of and that is relevant to the corruption
29 issue.

- 30 (3) The Federal Integrity Commissioner may give the original or a
31 copy of a document.

Part 4 Dealing with corruption issues

Division 3 Information sharing when decision made on how to deal with corruption issue

Section 61

1 **61 If Commonwealth agency has already commenced investigating**
2 **corruption issue**

3 (1) This section applies if:

4 (a) the Federal Integrity Commissioner decides to deal with a
5 corruption issue that relates to a Commonwealth agency in
6 one of the ways referred to in subsection 49(1); and

7 (b) the agency has started or continued investigating the
8 corruption issue before the Federal Integrity Commissioner
9 makes that decision.

10 (2) The Federal Integrity Commissioner may direct the head of the
11 agency investigating the corruption issue to give the Federal
12 Integrity Commissioner, or the head of another government
13 agency, all information or documents that:

14 (a) relate to the corruption issue; and

15 (b) are in the possession, or under the control, of the head of the
16 agency.

17 (3) The direction must be in writing.

18 (4) A direction given under this section is not a legislative instrument.

1 **Part 5—Investigations and public inquiries by the**
2 **Federal Integrity Commissioner**

3 **Division 1—Investigations**

4 **62 Application of Division**

5 This Division applies if the Federal Integrity Commissioner
6 investigates a corruption issue (whether alone or jointly with
7 another person or persons).

8 **63 Federal Integrity Commissioner to determine manner of**
9 **conducting investigation**

10 The Federal Integrity Commissioner may conduct the investigation
11 in such manner as the Federal Integrity Commissioner thinks fit.

12 Note: Part 6 provides for particular powers that are available to the Federal
13 Integrity Commissioner for the purposes of the investigation.

14 **64 Information sharing for joint investigation**

15 (1) If:

- 16 (a) the Federal Integrity Commissioner is investigating a
17 corruption issue jointly with another government agency; and
18 (b) information or documents in relation to the investigation are
19 in the possession, or under the control, of the Federal
20 Integrity Commissioner; and
21 (c) the head of the agency does not already have the information
22 or documents;

23 the Federal Integrity Commissioner may give the head of the
24 agency the information or documents.

25 (2) The Federal Integrity Commissioner may give the head of the
26 agency the original or a copy of a document under subsection (1).

Section 65

1 **65 Opportunity to be heard**

2 *Opinion or finding critical*

3 (1) Subject to subsection (2), the Federal Integrity Commissioner must
4 not include in a report under section 67 in relation to an
5 investigation of a corruption issue an opinion or finding that is
6 critical of a Commonwealth agency or a person (either expressly or
7 impliedly) unless the Federal Integrity Commissioner has taken the
8 action required by subsection (3) or (4) before completing the
9 investigation.

10 (2) Subsection (1) does not apply if the Federal Integrity
11 Commissioner is satisfied that:

12 (a) a person may have:

13 (i) committed a criminal offence; or

14 (ii) contravened a civil penalty provision; or

15 (iii) engaged in conduct that could be the subject of
16 disciplinary proceedings; or

17 (iv) engaged in conduct that could be grounds for
18 terminating the person's appointment or employment;
19 and

20 (b) taking action under subsection (3) or (4) would compromise
21 the effectiveness of:

22 (i) the investigation of the corruption issue or another
23 corruption investigation; or

24 (ii) any action taken as a result of an investigation referred
25 to in subparagraph (i).

26 *Opportunity to appear and make submissions*

27 (3) If the opinion or finding is critical of a Commonwealth agency, the
28 Federal Integrity Commissioner must give the head of the
29 Commonwealth agency:

30 (a) a statement setting out the opinion or finding; and

31 (b) a reasonable opportunity to appear before him or her and to
32 make submissions in relation to the opinion or finding.

- 1 (4) If the opinion or finding is critical of a person, the Federal Integrity
2 Commissioner must give the person:
3 (a) a statement setting out the opinion or finding; and
4 (b) a reasonable opportunity to appear before him or her and to
5 make submissions in relation to the opinion or finding.
- 6 (5) Submissions under subsection (3) or (4) may be made orally or in
7 writing.

8 *Representation*

- 9 (6) The head of a Commonwealth agency may:
10 (a) appear before the Federal Integrity Commissioner personally;
11 or
12 (b) authorise another person to appear before the Federal
13 Integrity Commissioner on the head of the agency's behalf.
- 14 (7) A person referred to in subsection (4):
15 (a) may appear before the Federal Integrity Commissioner
16 personally; or
17 (b) may, with the Federal Integrity Commissioner's approval, be
18 represented by another person.

1 **Division 2—Reporting in relation to investigations**

2 **Subdivision A—Reporting during investigation**

3 **66 Federal Integrity Commissioner may keep person who referred**
4 **corruption issue informed of progress of investigation**

5 The Federal Integrity Commissioner may keep a person (or a
6 representative nominated by the person) informed of the progress
7 of an investigation of a corruption issue if the person raised the
8 corruption issue in a referral under section 45.

9 **Subdivision B—Reporting at the end of investigation**

10 **67 Report on investigation**

11 *Report and its contents*

12 (1) After completing an investigation of a corruption issue, the Federal
13 Integrity Commissioner must prepare a report on the investigation.

14 (2) The report must set out:

- 15 (a) the reasons why the investigation was in the public interest
16 (including whether the corruption issue was serious and/or
17 systemic) and any related advice requested of the Assistant
18 Federal Integrity Commissioner for Research and Public
19 Interest; and
20 (b) the Federal Integrity Commissioner’s findings on the
21 corruption issue; and
22 (c) the evidence and other material on which those findings are
23 based; and
24 (d) any action that the Federal Integrity Commissioner has taken,
25 or proposes to take, under Part 7 in relation to the
26 investigation; and
27 (e) any recommendations that the Federal Integrity
28 Commissioner thinks fit to make and, if recommendations are
29 made, the reasons for those recommendations.

30 This subsection has effect subject to subsections (4) and (5).

1 Note 1: See section 65 for the need for the Federal Integrity Commissioner to
2 give certain people an opportunity to be heard before including critical
3 statements in a report.

4 Note 2: The Federal Integrity Commissioner may publish the report if
5 satisfied that it is in the public interest to do so: see section 243. Under
6 section 237, the report must be tabled in each House of the Parliament
7 if a public hearing has been held in the course of the investigation to
8 which the report relates.

- 9 (3) Without limiting paragraph (2)(d), the Federal Integrity
10 Commissioner may recommend:
- 11 (a) taking action in relation to a person, in accordance with
12 relevant procedures, with a view to the person improving the
13 person's performances; or
 - 14 (b) the termination of the employment of a person in accordance
15 with the relevant procedures; or
 - 16 (c) taking action to rectify or mitigate the effects of the conduct
17 of a person; or
 - 18 (d) the adoption of measures to remedy deficiencies in the
19 policy, procedures or practices that facilitated:
 - 20 (i) a person engaging in corrupt conduct; or
 - 21 (ii) the failure to detect corrupt conduct engaged in by a
22 person;
 - 23 (e) taking appropriate action with a view to having a person
24 charged with a criminal offence; or
 - 25 (f) taking appropriate action to initiate disciplinary proceedings
26 against a person.
- 27 (4) The Federal Integrity Commissioner may exclude information
28 from the report if the Federal Integrity Commissioner is satisfied
29 that:
- 30 (a) the information is sensitive information or the inclusion of
31 the information may:
 - 32 (i) endanger a person's life or physical safety; or
 - 33 (ii) prejudice proceedings brought as a result of a corruption
34 investigation or public inquiry, or an investigation of a
35 corruption issue that the Federal Integrity Commissioner
36 manages or oversees; or

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- 1 (iii) compromise operational activities, or methodologies, of
2 AFIC; and
3 (b) it is desirable in the circumstances to exclude the information
4 from the report.
- 5 (5) In deciding whether to exclude information from the report under
6 subsection (4), the Federal Integrity Commissioner must seek to
7 achieve an appropriate balance between:
8 (a) the public interest that would be served by including the
9 information in the report; and
10 (b) the prejudicial consequences that might result from including
11 the information in the report.

12 *Supplementary report*

- 13 (6) If the Federal Integrity Commissioner excludes information from a
14 report under subsection (4), the Federal Integrity Commissioner
15 must prepare a supplementary report that sets out:
16 (a) the information; and
17 (b) the reasons for excluding the information from the report
18 under subsection (4).

19 **68 Federal Integrity Commissioner to give report to Minister**

20 The Federal Integrity Commissioner must give the Minister:

- 21 (a) the report prepared under subsection 67(1); and
22 (b) if a supplementary report is prepared under subsection 67(6)
23 in relation to the investigation—the supplementary report.

24 Note: Section 237 provides that the Minister must table a copy of the report
25 prepared under subsection 67(1) in each House of the Parliament if a
26 public hearing has been held in the course of the investigation to
27 which the report relates. The Minister is not required, however, to
28 table a copy of a supplementary report under subsection 67(6) in each
29 House of the Parliament.

1 **69 Advising person who referred corruption issue of outcome of the**
2 **investigation**

3 *Advice to person who referred issue under section 45*

- 4 (1) The Federal Integrity Commissioner may advise a person (or a
5 representative nominated by the person) of the outcome of an
6 investigation of a corruption issue raised by the person in a referral
7 under section 45.

8 *Manner of giving advice*

- 9 (2) One way of advising the person (or the representative) is to give a
10 copy of all or part of any report prepared under subsection 67(1) in
11 relation to the investigation.

- 12 (3) In advising the person of the outcome of the investigation, the
13 Federal Integrity Commissioner may exclude information from the
14 advice if the Federal Integrity Commissioner is satisfied that:

- 15 (a) the information is sensitive information; and
16 (b) it is desirable in the circumstances to exclude the information
17 from the advice.

- 18 (4) In deciding whether to exclude information from the advice under
19 paragraph (3)(b), the Federal Integrity Commissioner must seek to
20 achieve an appropriate balance between:

- 21 (a) the person's interest in having the information included in the
22 advice; and
23 (b) the prejudicial consequences that might result from including
24 the information in the advice.

25 **70 Advising person whose conduct is investigated of outcome of the**
26 **investigation**

- 27 (1) If the Federal Integrity Commissioner investigates a corruption
28 issue that relates to a person, the Federal Integrity Commissioner
29 must:

- 30 (a) advise the person of the outcome of the investigation; and

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- 1 (b) allow the person an opportunity to respond to the outcome
2 before any report prepared in relation to the investigation
3 under subsection 67(1) is published.
- 4 (2) Without limiting subsection (1), the Federal Integrity
5 Commissioner must advise the person of the outcome of the
6 investigation by giving the person a copy of the whole or a part of
7 the report prepared in relation to the investigation under
8 subsection 67(1).
- 9 (3) In advising the person under subsection (1), the Federal Integrity
10 Commissioner may exclude information from the advice if the
11 Federal Integrity Commissioner is satisfied that:
12 (a) the information is sensitive information; and
13 (b) it is desirable in the circumstances to exclude the information
14 from the advice.
- 15 (4) In deciding whether to exclude information from the advice under
16 subsection (3), the Federal Integrity Commissioner must seek to
17 achieve an appropriate balance between:
18 (a) the person's interest in having the information included in the
19 advice; and
20 (b) the prejudicial consequences that might result from including
21 the information in the advice.

71 Standalone reports for critical views or reputational risks

- 22
- 23 (1) If during an investigation of a corruption issue, the Federal
24 Integrity Commissioner:
25 (a) holds a public hearing that involves testing a critical view or
26 opinion of a person; and
27 (b) the person is exonerated of that critical view or opinion in the
28 course of the investigation;
29 the Federal Integrity Commissioner must, in addition to the report
30 required under subsection 67(1), produce a standalone report that
31 sets out that finding.
- 32 (2) If during an investigation of a corruption issue, the Federal
33 Integrity Commissioner:
-

- 1 (a) holds a public hearing that involves subjecting a witness to
2 high personal reputational risk by the witness being publicly
3 associated with the investigation; and
4 (b) no critical views or opinions are formed about that person in
5 the course of the investigation;
6 the Federal Integrity Commissioner must, in addition to the report
7 required under subsection 67(1), produce a standalone report that
8 sets out that finding.
- 9 (3) The Federal Integrity Commissioner must give a report under
10 subsection (1) or (2):
11 (a) to the person referred to in paragraph (1)(a) or (2)(a) (as the
12 case requires); and
13 (b) to the Minister.
- 14 Note: Section 237 provides that the Minister must table a copy of the report
15 in each House of the Parliament.

1 **Division 3—Conducting a public inquiry**

2 **72 Federal Integrity Commissioner may conduct public inquiry**

3 The Federal Integrity Commissioner may conduct a public inquiry
4 in relation to a corruption issue or issues if the Federal Integrity
5 Commissioner is satisfied that it is in the public interest to do so
6 based on the following (and any related advice requested of the
7 Assistant Federal Integrity Commissioner for Research and Public
8 Interest):

- 9 (a) the seriousness and/or systemic nature of the corruption issue
10 or issues; and
11 (b) the prevalence of, or risk of occurrence of, the corruption
12 issue or issues;
13 (c) the probity of the current evidence available about the
14 corruption issue or issues.

15 Note: Part 6 provides for particular powers that are available to the Federal
16 Integrity Commissioner for the purposes of the public inquiry.

17 **73 Publicising inquiry**

18 (1) The Federal Integrity Commissioner must invite submissions on
19 the corruption issue that is to be the subject of the public inquiry.

20 Note: Subsection 115(1) provides certain protections for people who make
21 submissions.

22 (2) The invitation must specify the closing date for submissions.

23 (3) If the Federal Integrity Commissioner receives a submission, the
24 Federal Integrity Commissioner may, if satisfied that it is in the
25 public interest to do so, authorise it to be published on AFIC's
26 website.

1 **Division 4—Reporting in relation to public inquiries**

2 **74 Report on public inquiry**

3 *Report and its contents*

4 (1) After conducting a public inquiry, the Federal Integrity
5 Commissioner must prepare a report on the inquiry.

6 (2) The report must set out:

7 (a) the reasons why the public inquiry was in the public interest
8 (including whether the corruption issue was serious and/or
9 systemic) and any related advice requested of the Assistant
10 Federal Integrity Commissioner for Research and Public
11 Interest; and

12 (b) the Federal Integrity Commissioner's findings as a result of
13 the public inquiry; and

14 (c) the evidence and other material on which those findings are
15 based; and

16 (d) any action that the Federal Integrity Commissioner has taken,
17 or proposes to take, under Part 7 in relation to the inquiry;
18 and

19 (e) any recommendations that the Federal Integrity
20 Commissioner thinks fit to make and, if recommendations are
21 made, the reasons for those recommendations.

22 Note: Under section 237, the report must be tabled in each House of the
23 Parliament.

24 *Sensitive information etc.*

25 (3) The Federal Integrity Commissioner may exclude information
26 from the report if the Federal Integrity Commissioner is satisfied
27 that:

28 (a) the information is sensitive information or the inclusion of
29 the information may:

30 (i) endanger a person's life or physical safety; or

31 (ii) prejudice proceedings brought as a result of a corruption
32 investigation or public inquiry, or an investigation of a

1 **76 Standalone reports for critical views or reputational risks**

- 2 (1) If during a public inquiry, the Federal Integrity Commissioner:
3 (a) holds a public hearing that involves testing a critical view or
4 opinion of a person; and
5 (b) the person is exonerated of that critical view or opinion in the
6 course of the inquiry;
7 the Federal Integrity Commissioner must, in addition to the report
8 required under subsection 74(1), produce a standalone report that
9 sets out that finding.
- 10 (2) If during a public inquiry, the Federal Integrity Commissioner:
11 (a) holds a public hearing that involves subjecting a witness to
12 high personal reputational risk by the witness being publicly
13 associated with the investigation; and
14 (b) no critical views or opinions are formed about that person in
15 the course of the investigation;
16 the Federal Integrity Commissioner must, in addition to the report
17 required under subsection 74(1), produce a standalone report that
18 sets out that finding.
- 19 (3) The Federal Integrity Commissioner must give a report under
20 subsection (1) or (2):
21 (a) to the person referred to in paragraph (1)(a) or (2)(a) (as the
22 case requires); and
23 (b) to the Minister.

24 Note: Section 237 provides that the Minister must table a copy of the report
25 in each House of the Parliament.

Part 6 Federal Integrity Commissioner's powers in conducting investigations and public inquiries

Division 1 Requiring people to give information or produce documents or things

Section 77

1 **Part 6—Federal Integrity Commissioner's powers**
2 **in conducting investigations and public**
3 **inquiries**

4 **Division 1—Requiring people to give information or**
5 **produce documents or things**

6 **Subdivision A—Requirement by Federal Integrity**
7 **Commissioner**

8 **77 Notice to give information or to produce document or thing**

9 *Giving notice*

10 (1) For the purpose of investigating a corruption issue, the Federal
11 Integrity Commissioner may, by notice in writing, require a person
12 to do either or both of the following:

13 (a) give the information specified in the notice;

14 (b) produce the documents or things specified in the notice;

15 if the Federal Integrity Commissioner has reasonable grounds to
16 suspect that the information, documents or things will be relevant
17 to the investigation.

18 Note: In certain cases, disclosing the existence of a notice, or any
19 information about it, is an offence: see section 81.

20 (2) The Federal Integrity Commissioner may require that information
21 specified under paragraph (1)(a) is to be given in writing.

22 (3) The notice must:

23 (a) be served on the person; and

24 (b) be signed by the Federal Integrity Commissioner; and

25 (c) specify the period within which, and the manner in which,
26 the person must comply with the notice.

27 (4) The period specified under paragraph (3)(c) must be at least 14
28 days after the day the notice is served on the person, unless the

- 1 Federal Integrity Commissioner considers that allowing a 14-day
2 period would significantly prejudice a corruption investigation, in
3 which case a shorter period may be specified.
- 4 (5) If a shorter period is specified under paragraph (3)(c), the Federal
5 Integrity Commissioner must record, in writing:
6 (a) the name of the corruption investigation that would be
7 prejudiced; and
8 (b) why a 14-day period would significantly prejudice the
9 investigation.
- 10 (6) The Federal Integrity Commissioner may serve a notice on a
11 person without holding a hearing.

12 **78 Compliance with notice**

13 *Compliance with notice*

- 14 (1) A person served with a notice under section 77 must comply with
15 the notice:
16 (a) within the period specified in the notice; or
17 (b) within such further time as the Federal Integrity
18 Commissioner allows under subsection (3).
- 19 Note: Failure to comply with a notice is an offence: see section 82.

20 *Extension of time*

- 21 (2) A person served with a notice under section 77 may apply to the
22 Federal Integrity Commissioner, in writing, for further time to
23 comply with the notice:
24 (a) before the period expires; or
25 (b) as soon as possible after the period expires.
- 26 (3) The Federal Integrity Commissioner may allow a person served
27 with a notice further time to comply with the notice whether or not
28 an application has been made.

Part 6 Federal Integrity Commissioner's powers in conducting investigations and public inquiries

Division 1 Requiring people to give information or produce documents or things

Section 79

1 *Acknowledgement*

- 2 (4) If a person served with a notice has given the information and/or
3 produced the documents or things specified in the notice, the
4 Federal Integrity Commissioner must give the person a written
5 acknowledgement of that fact.

6 **79 Federal Integrity Commissioner may retain documents and**
7 **things**

- 8 (1) If a document or thing is produced in accordance with a notice
9 under section 77, the Federal Integrity Commissioner:
10 (a) may take possession of, and may make copies of, the
11 document or thing, or take extracts from the document; and
12 (b) may retain possession of the document or thing for such
13 period as is necessary for the purposes of the investigation to
14 which the document or thing relates.
- 15 (2) While the Federal Integrity Commissioner retains the document or
16 thing, the Federal Integrity Commissioner must allow a person who
17 would otherwise be entitled to inspect the document or view the
18 thing to do so at the times that the person would ordinarily be able
19 to do so.

20 **Subdivision B—Prohibitions against disclosing information**
21 **about notices**

22 **80 Disclosure of notice may be prohibited**

23 *Application*

- 24 (1) This section applies in respect of a notice served on a person under
25 section 77.

26 *Notation prohibiting disclosure of information about notice*

- 27 (2) The Federal Integrity Commissioner may include a notation in the
28 notice to the effect that disclosure of information about:
29 (a) the notice; or

-
- 1 (b) any official matter connected with the notice;
2 is prohibited except in the circumstances (if any) specified in the
3 notation.
- 4 (3) The Federal Integrity Commissioner must include a notation in the
5 notice if the Federal Integrity Commissioner is satisfied that failure
6 to do so would reasonably be expected to prejudice:
7 (a) a person's safety or reputation; or
8 (b) a person's fair trial, if the person has been charged with an
9 offence or such a charge is imminent; or
10 (c) the investigation to which the notice relates or another
11 corruption investigation; or
12 (d) any action taken as a result of an investigation referred to in
13 paragraph (c).
- 14 (4) The Federal Integrity Commissioner may include a notation in the
15 notice if the Federal Integrity Commissioner is satisfied that:
16 (a) failure to do so might prejudice:
17 (i) a person's safety or reputation; or
18 (ii) a person's fair trial, if the person has been charged with
19 an offence or such a charge is imminent; or
20 (iii) the investigation to which the notice relates or another
21 corruption investigation; or
22 (iv) any action taken as a result of an investigation referred
23 to in subparagraph (iii); or
24 (b) failure to do so might otherwise be contrary to the public
25 interest.
- 26 (5) The Federal Integrity Commissioner must not include a notation in
27 the notice in any other case.
- 28 *Written statement to accompany notation*
- 29 (6) If a notation is included in the notice, it must be accompanied by a
30 written statement setting out the rights and obligations conferred or
31 imposed by section 81 on the person on whom the notice is served.

Part 6 Federal Integrity Commissioner's powers in conducting investigations and public inquiries

Division 1 Requiring people to give information or produce documents or things

Section 81

Cancellation of notation

- 1
- 2 (7) A notation included in the notice is cancelled by this subsection if:
- 3 (a) the Federal Integrity Commissioner concludes the
- 4 investigation to which the notice relates; and
- 5 (b) any criminal proceedings or civil penalty proceedings
- 6 resulting from the investigation are commenced.
- 7 (8) If a notation is cancelled by subsection (7), the Federal Integrity
- 8 Commissioner must advise the person who was served with the
- 9 notated notice, in writing, of the cancellation.

10 *Relationship of notation with the Privacy Act 1988*

- 11 (9) If:
- 12 (a) a notation has been included in the notice in relation to the
- 13 disclosure of information about the notice or any official
- 14 matter connected with the notice; and
- 15 (b) the notation has not been cancelled; and
- 16 (c) apart from this subsection, a credit reporting body (within the
- 17 meaning of the *Privacy Act 1988*) would be required, under
- 18 subsection 20E(5) of that Act, to make a note about the
- 19 disclosure of the information;
- 20 such a note must not be made until the notation is cancelled.

21 **81 Offences of disclosure**

- 22 (1) A person commits an offence if:
- 23 (a) the person is served with a notice under section 77; and
- 24 (b) the notice includes a notation under section 80; and
- 25 (c) the person discloses the existence of, or any information
- 26 about:
- 27 (i) the notice; or
- 28 (ii) any official matter connected with the notice; and
- 29 (d) when the disclosure is made:
- 30 (i) the notation has not been cancelled by subsection 80(7);
- 31 and

1 (ii) the period of 5 years after the notice is served under
2 section 77 has not ended.

3 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

4 (2) In proceedings for an offence against subsection (1), it is a defence
5 if the person makes the disclosure:

6 (a) in the circumstances, if any, permitted by the terms of the
7 notation; or

8 (b) to a legal practitioner for the purpose of obtaining legal
9 advice or representation in relation to the notice; or

10 (c) to a legal aid officer for the purpose of seeking assistance
11 under section 277 in relation to the notice; or

12 (d) if the person is a body corporate—to an officer or agent of
13 the body corporate for the purpose of ensuring compliance
14 with the notice; or

15 (e) if the person is a legal practitioner—for the purpose of
16 obtaining the agreement of another person under
17 subsection 83(3) to the legal practitioner answering a
18 question or producing a document or thing.

19 Note: A defendant bears an evidential burden in relation to the matters in
20 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

21 (3) A person commits an offence if:

22 (a) a disclosure is made to a person about:

23 (i) a notice under section 77 that includes a notation under
24 section 80; or

25 (ii) any official matter connected with a notice under
26 section 77 that includes a notation under section 80; and

27 (b) the disclosure is permitted under subsection (2) or (4)
28 because the person is a person of a particular kind; and

29 (c) while the person is a person of that kind, the person discloses
30 the existence of, or any information about:

31 (i) the notice; or

32 (ii) any official matter connected with the notice; and

33 (d) when the disclosure by the person is made:

34 (i) the notation has not been cancelled by subsection 80(7);
35 and

Part 6 Federal Integrity Commissioner’s powers in conducting investigations and public inquiries

Division 1 Requiring people to give information or produce documents or things

Section 81

1 (ii) the period of 5 years after the notice is served under
2 section 77 has not ended.

3 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

4 (4) In proceedings for an offence against subsection (3), it is a defence
5 if the person discloses the information:

6 (a) if the person is an officer or agent of a body corporate
7 referred to in paragraph (2)(d):

8 (i) to another officer or agent of the body corporate for the
9 purpose of ensuring compliance with the notice; or

10 (ii) to a legal practitioner for the purpose of obtaining legal
11 advice or representation in relation to the notice; or

12 (iii) to a legal aid officer for the purpose of seeking
13 assistance under section 225 in relation to the notice; or

14 (b) if the person is a legal practitioner—for the purpose of giving
15 legal advice, making representations, or seeking assistance
16 under section 277, in relation to the notice; or

17 (c) if the person is a legal aid officer—for the purpose of
18 obtaining legal advice or representation in relation to the
19 notice.

20 Note: A defendant bears an evidential burden in relation to the matters in
21 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

22 (5) A person commits an offence if:

23 (a) a disclosure is made to a person about:

24 (i) a notice under section 77 that includes a notation under
25 section 80; or

26 (ii) any official matter connected with a notice under
27 section 77 that includes a notation under section 80; and

28 (b) the disclosure is permitted under subsection (2) or (4)
29 because the person is a person of a particular kind; and

30 (c) when the person is no longer a person of that kind, the
31 person:

32 (i) makes a record of the notice; or

33 (ii) discloses the existence of the notice; or

34 (iii) discloses any information about the notice or the
35 existence of it; and

- 1 (d) when the record, or disclosure, is made by the person:
2 (i) the notation has not been cancelled by subsection 80(7);
3 and
4 (ii) the period of 5 years after the notice is served under
5 section 2 has not ended.

6 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- 7 (6) A reference in this section to disclosing something's existence
8 includes disclosing information from which a person could
9 reasonably be expected to infer its existence.

10 **Subdivision C—Offence and related provisions**

11 **82 Failure to comply with notice**

- 12 (1) A person commits an offence if:
13 (a) the person is served with a notice under section 77; and
14 (b) the person fails to comply with the notice:
15 (i) within the period specified in the notice; or
16 (ii) if the Federal Integrity Commissioner has allowed the
17 person further time under subsection 78(3)—within
18 such further time.

19 Note 1: If a notice requires a document or thing to be produced, a legal
20 practitioner may refuse to produce the document or thing in certain
21 circumstances: see section 83.

22 Note 2: This section is not subject to the privilege against self-incrimination
23 but there are limits on the uses to which the evidence the person gives
24 may be put: see section 84.

25 Penalty: Imprisonment for 2 years.

- 26 (2) In proceedings for an offence against subsection (1), it is a defence
27 if it is not reasonably practicable for the person to comply with the
28 notice:
29 (a) within the period specified in the notice; or
30 (b) within such further time as allowed by the Federal Integrity
31 Commissioner under subsection 78(3).

Part 6 Federal Integrity Commissioner's powers in conducting investigations and public inquiries

Division 1 Requiring people to give information or produce documents or things

Section 83

1 Note: A defendant bears an evidential burden in relation to the matter in
2 subsection (2); see subsection 13.3(3) of the *Criminal Code*.

3 **83 Legal practitioner not required to disclose privileged**
4 **communications**

- 5 (1) A legal practitioner may refuse:
6 (a) to give information; or
7 (b) to produce a document or thing;
8 when served with a notice to do so under section 77 if the
9 information would disclose, or the document contains, a privileged
10 communication made by the legal practitioner (or to the legal
11 practitioner) for the purpose of providing legal professional
12 services in relation to the appearance, or reasonably anticipated
13 appearance, of a person at a compulsory examination or public or
14 private hearing before the Federal Integrity Commissioner.
- 15 (2) Subsection (1) has effect subject to paragraph 84(4)(c).
- 16 (3) Subsection (1) does not apply if the person to whom the
17 communication was made (or by whom the communication was
18 made) agrees to the legal practitioner:
19 (a) giving the information; or
20 (b) producing the document or thing.
- 21 (4) If the legal practitioner refuses:
22 (a) to give the information; or
23 (b) to produce the document or thing;
24 he or she must, if required by the Federal Integrity Commissioner,
25 give the Federal Integrity Commissioner the name and address of
26 the person to whom the communication was made (or by whom the
27 communication was made).
- 28 (5) If a legal practitioner gets agreement, as mentioned in
29 subsection (3):
30 (a) the fact that he or she:
31 (i) gives information; or
32 (ii) produces a document or thing;

- 1 does not otherwise affect a claim of legal professional
2 privilege that anyone may make in relation to that
3 information, document or thing; and
4 (b) the information or document does not cease to be the subject
5 of legal professional privilege merely because it is given,
6 produced or referred to.

7 **84 Self-incrimination etc.**

8 *Self-incrimination*

- 9 (1) A person is not excused from:
10 (a) giving information; or
11 (b) producing a document or thing;
12 when served with a notice to do so under section 77 on the ground
13 that doing so would tend to incriminate the person.
- 14 (2) Subsection (3) does not apply to the production of a document that
15 is, or forms part of, a record of an existing or past business.
- 16 (3) None of the following:
17 (a) the information given;
18 (b) the document or thing produced;
19 is admissible in evidence against the person in criminal
20 proceedings other than:
21 (c) proceedings for an offence against section 82; or
22 (d) confiscation proceedings; or
23 (e) proceedings for an offence against section 137.1 or 137.2 of
24 the *Criminal Code* (which deals with false or misleading
25 information or documents) that relates to this Act; or
26 (f) proceedings for an offence against section 149.1 of the
27 *Criminal Code* (which deals with obstruction of
28 Commonwealth public officials) that relates to this Act; or
29 (g) disciplinary proceedings against the person if the person is an
30 employee of a Commonwealth agency.

- 1 section 77 has the same protection as a witness in proceedings in
2 the High Court.
- 3 (2) Subsection (3) applies if it appears to the Federal Integrity
4 Commissioner that, because a person:
5 (a) is to give information, or produce a document or thing; or
6 (b) has given information, or produced a document or thing;
7 to the Federal Integrity Commissioner in response to a notice under
8 section 77, either:
9 (c) the safety of the person or any other person may be
10 prejudiced; or
11 (d) the person or any other person may be subjected to
12 intimidation or harassment.
- 13 (3) The Federal Integrity Commissioner may make such arrangements
14 as are necessary:
15 (a) to protect the safety of any person mentioned in
16 paragraph (2)(c); or
17 (b) to protect any person mentioned in paragraph (2)(d) from
18 intimidation or harassment.
- 19 (4) For the purpose of subsection (3), the arrangements that the
20 Federal Integrity Commissioner may make include arrangements
21 with:
22 (a) members of the AFP; or
23 (b) members of the police force of a State or Territory.
- 24 (5) This section does not affect the *Witness Protection Act 1994*.

1 **Division 2—Conducting hearings**

2 **Subdivision A—General provisions**

3 **86 Federal Integrity Commissioner may hold hearings**

4 *Federal Integrity Commissioner may hold hearings for*
5 *investigations or public inquiries*

6 (1) The Federal Integrity Commissioner may hold a hearing for the
7 purpose of:

- 8 (a) investigating a corruption issue; or
9 (b) conducting a public inquiry.

10 (2) Subject to subsections (3) to (5), a hearing may be conducted in
11 such manner as the Federal Integrity Commissioner thinks fit.

12 *Hearing in relation to an investigation of a corruption issue*

13 (3) The Federal Integrity Commissioner may decide to hold the whole
14 (or a part) of a hearing in relation to an investigation of corruption
15 issue either in public or in private if the Commissioner considers it
16 is in the public interest to do so.

17 (4) In deciding under subsection (3) whether it is in the public interest
18 that a hearing (or a part of a hearing) is to be held in public or in
19 private, the Federal Integrity Commissioner must have regard to
20 the following:

- 21 (a) any advice provided by the Assistant Federal Integrity
22 Commissioner for Research and Public Interest about the
23 seriousness and/or systemic nature of the type of corruption
24 issue;
- 25 (b) whether evidence that may be given by the person, or a
26 matter that may arise during the hearing (or that part of the
27 hearing), relates to the confidential operations of the
28 commission or to the alleged or suspected commission of an
29 offence;

Section 86

- 1 (c) whether evidence that may be given by the person, or a
2 matter that may arise during the hearing (or that part of the
3 hearing), is of a confidential nature, including (but not
4 limited to) a journalistic source;
- 5 (d) any unfair prejudice to a person's reputation or unfair
6 exposure of a person's private life that would be likely to be
7 caused if the evidence was given in public, or a matter that
8 may arise during the hearing (or that part of the hearing) is
9 held in public (including by way of simple association with
10 the commission);
- 11 (e) whether the person has a particular vulnerability (such as
12 membership of a minority group);
- 13 (f) whether the person is under the direct instruction or control
14 of another person (such as a junior staff member or other
15 relationship that involves significant power differentials);
- 16 (g) any other relevant matter.

17 Note: If the hearing is to be held in public, a witness may request that the
18 witness's evidence be taken in private: see section 93.

19 *Hearing in relation to a public inquiry*

- 20 (5) A hearing in relation to a public inquiry must be held in public.
21 However, a part of a hearing in relation to a public inquiry may be
22 held in private if the Federal Integrity Commissioner so directs.

23 Note: A witness may request that the witness's evidence be taken in private:
24 see section 93.

25 *Record of hearing*

- 26 (6) The Federal Integrity Commissioner must make a record of a
27 hearing.
- 28 (7) If the Federal Integrity Commissioner is conducting a public
29 inquiry, the record of the hearing must include:
- 30 (a) any document produced to the Federal Integrity
31 Commissioner at the hearing; or
- 32 (b) a description of any thing (other than a document) produced
33 to the Federal Integrity Commissioner at the hearing;
34 unless the Federal Integrity Commissioner directs otherwise.

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Section 87

1 *Direction is not a legislative instrument*

2 (8) If a direction under this section is given in writing, the direction is
3 not a legislative instrument.

4 **87 Federal Integrity Commissioner may summon person**

5 (1) The Federal Integrity Commissioner may summon a person to
6 attend a hearing at a time and place specified in the summons to do
7 either or both of the following:

- 8 (a) give evidence;
9 (b) produce any documents or other things referred to in the
10 summons;

11 if the Federal Integrity Commissioner has reasonable grounds to
12 suspect that the evidence, documents or things will be relevant to
13 the investigation of a corruption issue or the conduct of a public
14 inquiry.

15 Note 1: Disclosing the existence of a summons, or any information about it,
16 may be an offence: see section 81.

17 Note 2: Failure to comply with a summons is an offence: see section 97.

18 Note 3: A person may apply for legal and financial assistance in respect of his
19 or her attendance: see section 113.

20 (2) A summons must:

- 21 (a) be in writing and signed by the Federal Integrity
22 Commissioner; and
23 (b) be served on the person required to attend a hearing.

24 The Federal Integrity Commissioner must record in writing the
25 reasons for the summons. The record must be made at or before the
26 time the summons is issued.

27 (3) The matters in relation to which the Federal Integrity
28 Commissioner may require the person to give evidence, or produce
29 documents or things, at the hearing may include:

- 30 (a) the subject matter of any charge, or imminent charge, against
31 the person; and
32 (b) the subject matter of any confiscation proceeding, or
33 imminent confiscation proceeding, against the person.

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- 1 (4) If the hearing is held for the purpose of investigating a corruption
2 issue, a summons requiring a person to give evidence must set out,
3 so far as is reasonably practicable, the general nature of the matters
4 in relation to which the Federal Integrity Commissioner intends to
5 question the person.
- 6 (5) Subsection (4) does not prevent the Federal Integrity
7 Commissioner from questioning the person in relation to:
8 (a) any aspect of the corruption issue to which the hearing
9 relates; or
10 (b) another corruption issue.
- 11 (6) Subsection (4) does not apply if the Federal Integrity
12 Commissioner is satisfied that complying with that subsection is
13 likely to prejudice:
14 (a) the investigation to which the hearing relates or another
15 corruption investigation; or
16 (b) any action taken as a result of an investigation referred to in
17 paragraph (a).
- 18 (7) The Federal Integrity Commissioner may, at the hearing, require
19 the witness to produce a document or other thing.
- 20 (8) A witness appearing at a hearing is entitled to be paid by the
21 Commonwealth any allowances for travelling and other expenses
22 that are prescribed by the regulations.
- 23 (9) Without limiting its effect apart from this subsection, this Act also
24 has the effect it would have if:
25 (a) subsection (3) had not been enacted; or
26 (b) subsection (3) were, by express provision, confined to
27 dealing with a charge against the person or such a charge that
28 is imminent; or
29 (c) subsection (3) were, by express provision, confined to
30 dealing with a confiscation proceeding against the person that
31 has commenced or is imminent.

Section 88

1 **88 Federal Integrity Commissioner may take evidence outside**
2 **Australia**

3 If arrangements have been made between Australia and another
4 country in relation to the taking of evidence in that country by the
5 Federal Integrity Commissioner for a hearing held under this
6 Division, the Federal Integrity Commissioner may:

- 7 (a) take evidence on oath or by affirmation; and
8 (b) use any evidence taken in that country in accordance with
9 those arrangements;

10 for the purpose of performing any function, or exercising any
11 power, under this Act.

12 **Subdivision B—Procedure at hearing**

13 **89 Who may be represented at a hearing**

- 14 (1) A person giving evidence at a hearing may be represented by a
15 legal practitioner.
16 (2) A person who is not giving evidence may be represented at a
17 hearing by a legal practitioner if:
18 (a) special circumstances exist; and
19 (b) the Federal Integrity Commissioner consents to the person
20 being so represented.

21 **90 Who may be present at a hearing**

22 *Who may be present*

- 23 (1) The Federal Integrity Commissioner may determine who may be
24 present during all or part of a hearing held in private.
25 (2) The Federal Integrity Commissioner must allow the following
26 persons to be present when evidence is being given:
27 (a) a legal practitioner representing the person giving evidence;
28 (b) a legal practitioner representing a person who:
29 (i) is not giving evidence; but

- 1 (ii) has the Federal Integrity Commissioner's consent to
2 being present at that time.

3 *Opportunity to comment on a person's presence*

- 4 (3) If:
5 (a) a person (the *witness*) is giving evidence at a hearing; and
6 (b) another person is present at the hearing at that time; and
7 (c) the other person is not:
8 (i) a staff member of AFIC; or
9 (ii) a legal practitioner representing a person at the hearing;
10 the Federal Integrity Commissioner must:
11 (d) inform the witness that the person is present; and
12 (e) give the witness an opportunity to comment on the person's
13 presence.
14 (4) To avoid doubt, a person is still entitled to be present during all or
15 part of the hearing even if:
16 (a) the Federal Integrity Commissioner fails to comply with
17 subsection (3); or
18 (b) a witness comments adversely on the person's presence
19 under paragraph (3)(e).

20 *Offence*

- 21 (5) A person commits an offence if:
22 (a) the person is present while evidence is being given in private
23 at a hearing; and
24 (b) the person is none of the following:
25 (i) the person giving evidence;
26 (ii) a person whom the Federal Integrity Commissioner
27 must, under subsection (2), allow to be present while the
28 evidence is being given;
29 (iii) a person who may be present at the hearing in
30 accordance with a determination under subsection (1).

31 Penalty: Imprisonment for 12 months.

Section 91

1 *Determination of who may be present not a legislative instrument*

2 (6) If the determination of who may be present at a hearing is made in
3 writing, the determination is not a legislative instrument.

4 **Subdivision C—Taking evidence at hearing**

5 **91 Evidence on oath or by affirmation**

- 6 (1) At a hearing, the Federal Integrity Commissioner may:
7 (a) require a witness to either take an oath or make an
8 affirmation; and
9 (b) administer an oath or affirmation to the witness.

10 Note 1: Failure to take an oath or make an affirmation is an offence: see
11 section 97.

12 Note 2: This means that a hearing is a *judicial proceeding* for the purposes of
13 Part III of the *Crimes Act 1914*, which creates various offences in
14 relation to judicial proceedings.

- 15 (2) The Federal Integrity Commissioner may administer an oath or
16 affirmation to a person appearing as a witness in another country,
17 but must do so in accordance with:
18 (a) any provision of the arrangements made between Australia
19 and that other country, as referred to in section 88; and
20 (b) the laws of that other country.

21 (3) The oath or affirmation is an oath or affirmation that the evidence
22 the person will give will be true.

23 (4) The Federal Integrity Commissioner may allow a person attending
24 a hearing who has been sworn, or who has made an affirmation, to
25 give evidence by tendering a written statement and verifying it by
26 oath or affirmation.

27 **92 Examination and cross-examination of witnesses**

28 At a hearing, the following persons may, so far as the Federal
29 Integrity Commissioner thinks appropriate, examine or
30 cross-examine any witness on any matter that the Federal Integrity
31 Commissioner considers relevant:

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- 1 (a) counsel assisting the Federal Integrity Commissioner
2 generally or in relation to the investigation or public inquiry
3 to which the hearing relates;
4 (b) a person summoned, or otherwise authorised, to appear
5 before the Federal Integrity Commissioner;
6 (c) any legal practitioner representing a person at the hearing.

7 **93 Person may request that particular evidence be given in private**

- 8 (1) A person giving evidence at a hearing held in public (including a
9 person who has been called to give evidence but is yet to appear)
10 may request to give particular evidence in private at any time.
- 11 (2) The Federal Integrity Commissioner may, if the Federal Integrity
12 Commissioner considers it appropriate, allow the evidence to be
13 given in private.
- 14 (3) In deciding under subsection (2) whether it is appropriate to allow
15 the evidence to be given in private, the Federal Integrity
16 Commissioner must have regard to the following:
- 17 (a) any advice provided by the Assistant Federal Integrity
18 Commissioner for Research and Public Interest about the
19 seriousness and/or systemic nature of the type of corruption
20 issue;
- 21 (b) whether evidence that may be given by the person, or a
22 matter that may arise during the hearing (or that part of the
23 hearing), relates to the confidential operations of the
24 commission or to the alleged or suspected commission of an
25 offence;
- 26 (c) whether evidence that may be given by the person, or a
27 matter that may arise during the hearing (or that part of the
28 hearing), is of a confidential nature, including (but not
29 limited to) a journalistic source;
- 30 (d) any unfair prejudice to a person's reputation or unfair
31 exposure of a person's private life that would be likely to be
32 caused if the evidence was given in public, or a matter that
33 may arise during the hearing (or that part of the hearing) is
34 held in public (including by way of simple association with
35 the commission);
-

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Section 94

- 1 (e) whether the person has a particular vulnerability (such as
2 membership of a minority group);
3 (f) whether the person is under the direct instruction or control
4 of another person (such as a junior staff member or other
5 relationship that involves significant power differentials);
6 (g) any other relevant matter.
- 7 (4) If the Federal Integrity Commissioner receives a request under
8 subsection (1), the Commissioner must give the person a private
9 hearing for the purposes of making a decision under subsection (2).

10 **94 Directions in relation to confidentiality**

11 *Prohibition or limitation on publication*

- 12 (1) The Federal Integrity Commissioner may direct that:
13 (a) particular evidence given at a hearing; or
14 (b) the contents of a particular document, or a description of any
15 thing, produced to the Federal Integrity Commissioner at the
16 hearing; or
17 (c) particular information that might enable a person who has
18 given evidence at the hearing to be identified; or
19 (d) the fact that a particular person has given or may be about to
20 give evidence at the hearing;
21 must not be published, or must not be published except in such
22 manner, and to such persons, as the Federal Integrity
23 Commissioner specifies.

24 Note: Failure to comply with a direction is an offence: see subsection (6).

- 25 (2) If the hearing is held in private, the Federal Integrity
26 Commissioner must give a direction under subsection (1) if the
27 Federal Integrity Commissioner is satisfied that the failure to give
28 such a direction might prejudice:
29 (a) a person's safety or reputation; or
30 (b) the fair trial of a person who has been, or may be, charged
31 with an offence.

- 1 (3) The Federal Integrity Commissioner may vary or revoke a
2 direction in writing. However, the Federal Integrity Commissioner
3 must not vary or revoke a direction if the Federal Integrity
4 Commissioner is satisfied that doing so might prejudice:
5 (a) a person's safety or reputation; or
6 (b) the fair trial of a person who has been, or may be, charged
7 with an offence.

8 *Court certificate in relation to evidence in respect of which a*
9 *direction has been given*

- 10 (4) If:
11 (a) a person has been charged with an offence before a federal
12 court or a court of a State or Territory; and
13 (b) the court considers that it may be desirable in the interests of
14 justice that particular evidence given at a hearing, in respect
15 of which the Federal Integrity Commissioner has given a
16 direction under subsection (1), be made available to the
17 person or to a legal practitioner representing the person;
18 the court may give to the Federal Integrity Commissioner a
19 certificate to that effect. If the court does so, the Federal Integrity
20 Commissioner must make the evidence available to the court.

- 21 (5) If:
22 (a) the Federal Integrity Commissioner makes evidence available
23 to a court under subsection (4); and
24 (b) the court, after examining the evidence, is satisfied that the
25 interests of justice so require;
26 the court may make the evidence available to the person charged
27 with the offence concerned or to a legal practitioner representing
28 the person.

29 *Offence*

- 30 (6) A person commits an offence if:
31 (a) the person is given a direction by the Federal Integrity
32 Commissioner under subsection (1); and
33 (b) the person contravenes the direction.

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Division 2 Conducting hearings

Section 95

1 Penalty: Imprisonment for 12 months.

2 *Direction is not a legislative instrument*

3 (7) If direction given to a person under subsection (1) is given in
4 writing, the direction is not a legislative instrument.

5 **Subdivision D—Prohibitions against disclosing information**
6 **about a summons**

7 **95 Disclosure of summons may be prohibited**

8 *Application*

9 (1) This section applies if:

- 10 (a) a summons is served on a person (the *person served*) under
11 section 87 to attend a hearing; and
12 (b) the hearing is to be held in private, or the Federal Integrity
13 Commissioner believes that there is a reasonable likelihood
14 that part of the hearing will be held in private based on the
15 considerations referred to in subsection 86(4) or 93(3).

16 *Notation prohibiting disclosure of information about summons*

17 (2) The Federal Integrity Commissioner may include a notation in the
18 summons to the effect that disclosure of information about:

- 19 (a) the summons; or
20 (b) any official matter connected with the summons;
21 is prohibited except in the circumstances (if any) specified in the
22 notation.

23 (3) The Federal Integrity Commissioner must include a notation in the
24 summons if the Federal Integrity Commissioner is satisfied that
25 failure to do so would reasonably be expected to prejudice:

- 26 (a) a person’s safety or reputation; or
27 (b) the fair trial of a person who has been, or may be, charged
28 with an offence; or
29 (c) the investigation to which the hearing relates or another
30 corruption investigation; or

- 1 (d) any action taken as a result of an investigation referred to in
2 paragraph (c).
- 3 (4) The Federal Integrity Commissioner may include a notation in the
4 summons if the Federal Integrity Commissioner is satisfied that:
5 (a) failure to do so might prejudice:
6 (i) a person's safety or reputation; or
7 (ii) the fair trial of a person who has been, or may be,
8 charged with an offence; or
9 (iii) the investigation to which the hearing relates or another
10 corruption investigation; or
11 (iv) any action taken as a result of an investigation referred
12 to in subparagraph (iii); or
13 (b) failure to do so might otherwise be contrary to the public
14 interest.
- 15 (5) The Federal Integrity Commissioner must not include a notation in
16 the summons in any other case.
- 17 *Written statement to accompany notation*
- 18 (6) If a notation is included in the summons, it must be accompanied
19 by a written statement setting out the rights and obligations
20 conferred or imposed by section 96 on the person served.
- 21 *Cancellation of notation*
- 22 (7) A notation included in the summons is cancelled by this subsection
23 if:
24 (a) the Federal Integrity Commissioner concludes the
25 investigation to which the hearing relates; and
26 (b) any criminal proceedings or civil penalty proceedings
27 resulting from the investigation are commenced.
- 28 (8) If a notation is cancelled by subsection (7), the Federal Integrity
29 Commissioner must advise the person served, in writing, of the
30 cancellation.

Section 96

Relationship of notation with Privacy Act 1988

(9) If:

- (a) a notation has been included in the summons in relation to the disclosure of information about the summons or any official matter connected with the summons; and
- (b) the notation has not been cancelled; and
- (c) apart from this subsection, a credit reporting body (within the meaning of the *Privacy Act 1988*) would be required, under subsection 20E(5) of that Act, to make a note about the disclosure of the information;

such a note must not be made until the notation is cancelled.

96 Offences of disclosure

(1) A person commits an offence if:

- (a) the person is served with a summons under section 87; and
- (b) the summons includes a notation under section 95; and
- (c) the person discloses the existence of, or any information about:
 - (i) the summons; or
 - (ii) any official matter connected with the summons; and
- (d) when the disclosure is made:
 - (i) the notation has not been cancelled by subsection 95(7); and
 - (ii) the period of 5 years after the summons is served under section 87 has not ended.

Penalty: Imprisonment for 12 months.

(2) In proceedings for an offence against subsection (1), it is a defence if the person makes the disclosure:

- (a) in the circumstances, if any, permitted by the terms of the notation; or
- (b) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the summons; or
- (c) to a legal aid officer for the purpose of obtaining assistance under section 113 in relation to the summons; or

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- 1 (d) if the person is a body corporate—to an officer or agent of
2 the body corporate for the purpose of ensuring compliance
3 with the summons.

4 Note: A defendant bears an evidential burden in relation to the matters in
5 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

6 (3) A person commits an offence if:

7 (a) a disclosure is made to the person about:

8 (i) a summons under section 87 that includes a notation
9 under section 95; or

10 (ii) any official matter connected with a summons under
11 section 87 that includes a notation under section 95; and

12 (b) the disclosure is permitted under subsection (2) or (4)
13 because the person is a person of a particular kind; and

14 (c) while the person is a person of that kind, the person discloses
15 the existence of, or any information about:

16 (i) the summons; or

17 (ii) any official matter connected with the summons; and

18 (d) when the disclosure by the person is made:

19 (i) the notation has not been cancelled by subsection 95(7);
20 and

21 (ii) the period of 5 years after the summons is served under
22 section 87 has not ended.

23 Penalty: Imprisonment for 12 months.

24 (4) In proceedings for an offence against subsection (3), it is a defence
25 if the person discloses the information:

26 (a) if the person is an officer or agent of a body corporate
27 referred to in paragraph (2)(d):

28 (i) to another officer or agent of the body corporate for the
29 purpose of ensuring compliance with the summons; or

30 (ii) to a legal practitioner for the purpose of obtaining legal
31 advice or representation in relation to the summons; or

32 (iii) to a legal aid officer for the purpose of obtaining
33 assistance under section 113 in relation to the summons;
34 or

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- 1 (b) if the person is a legal practitioner—for the purpose of giving
2 legal advice, making representations, or obtaining assistance
3 under section 113, in relation to the summons; or
4 (c) if the person is a legal aid officer—for the purpose of
5 obtaining legal advice or representation in relation to the
6 summons.

7 Note: A defendant bears an evidential burden in relation to the matters in
8 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- 9 (5) A person commits an offence if:
10 (a) a disclosure is made to the person about:
11 (i) a summons under section 87 that includes a notation
12 under section 95; or
13 (ii) any official matter connected with a summons under
14 section 87 that includes a notation under section 95; and
15 (b) the disclosure is permitted under subsection (2) or (4)
16 because the person is a person of a particular kind; and
17 (c) when the person is no longer a person of that kind, the
18 person:
19 (i) makes a record of the summons; or
20 (ii) discloses the existence of the summons; or
21 (iii) discloses any information about the summons or the
22 existence of it; and
23 (d) when the record, or disclosure, is made by the person:
24 (i) the notation has not been cancelled by subsection 95(7);
25 and
26 (ii) the period of 5 years after the summons is served under
27 section 87 has not ended.

28 Penalty: Imprisonment for 12 months.

- 29 (6) A reference in this section to disclosing something’s existence
30 includes disclosing information from which a person could
31 reasonably be expected to infer its existence.

Subdivision E—Offences in relation to hearings

97 Offences

Failure to attend hearing

- (1) A person commits an offence if:
- (a) the person is served with a summons to attend a hearing; and
 - (b) the person:
 - (i) fails to attend as required by the summons; or
 - (ii) fails to appear and report from day to day unless excused or released from further attendance by the Federal Integrity Commissioner.

Note: A defendant bears an evidential burden in relation to the excuse or release from further attendance referred to in subparagraph (b)(ii): see subsection 13.3(3) of the *Criminal Code*.

Penalty: Imprisonment for 12 months.

Failure to swear an oath, make an affirmation or answer a question

- (2) A person commits an offence if:
- (a) the person is served with a summons to attend a hearing; and
 - (b) the person fails:
 - (i) to be sworn or to make an affirmation at the hearing; or
 - (ii) to answer a question at the hearing that the Federal Integrity Commissioner requires the person to answer.

Note 1: A person may refuse to answer a question on the ground of legal professional privilege: see section 103.

Note 2: This subsection is not subject to the privilege against self-incrimination but there are limits on the uses to which the evidence the person gives may be put: see section 106.

Penalty: Imprisonment for 2 years.

Failure to produce a document or thing

- (3) A person commits an offence if:

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Section 98

1 (a) the person is served with a summons to produce a document
2 or thing specified in the summons; and

3 (b) the person fails to produce the document or thing that the
4 person was required to produce.

5 Note 1: A person may refuse to produce a document or thing on the ground of
6 legal professional privilege: see section 104.

7 Note 2: This subsection is not subject to the privilege against
8 self-incrimination but there are limits on the uses to which the
9 evidence the person gives may be put: see section 106.

10 Penalty: Imprisonment for 2 years.

11 **98 Contempt of AFIC**

12 (1) A person is *in contempt of AFIC* if the person:

13 (a) when served with a summons to attend a hearing:

14 (i) fails to attend as required by the summons; or

15 (ii) fails to appear and report from day to day unless
16 excused or released from further attendance by the
17 Federal Integrity Commissioner; or

18 (iii) refuses or fails to be sworn or make an affirmation at
19 the hearing; or

20 (iv) subject to subsection (2), refuses or fails to answer a
21 question at the hearing that the Federal Integrity
22 Commissioner requires the person to answer; or

23 (v) subject to subsection (3), refuses or fails to produce a
24 document or thing that the person was required to
25 produce by a summons or notice under this Act that was
26 served on him or her as prescribed; or

27 (vi) subject to subsection (3), refuses or fails to produce a
28 document or thing that the person was required to
29 produce under subsection 87(7); or

30 (b) is a legal practitioner who is required to answer a question or
31 produce a document or thing at a hearing and both of the
32 following apply:

33 (i) the answer to the question would disclose, or the
34 document or thing contains, a privileged communication

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- 1 made by or to the legal practitioner in his or her capacity
2 as a legal practitioner;
- 3 (ii) he or she refuses to comply with the requirement and
4 does not, when required by the Federal Integrity
5 Commissioner, give the Federal Integrity Commissioner
6 the name and address of the person to whom or by
7 whom the communication was made; or
- 8 (c) gives evidence at a hearing that he or she knows is false or
9 misleading in a material particular; or
- 10 (d) obstructs or hinders the Federal Integrity Commissioner in
11 the performance of his or her functions or the exercise of his
12 or her powers; or
- 13 (e) disrupts a hearing that is being held for the purpose of:
14 (i) investigating a corruption issue; or
15 (ii) conducting a public inquiry; or
- 16 (f) threatens a person present at a hearing that is being held for
17 the purpose of:
18 (i) investigating a corruption issue; or
19 (ii) conducting a public inquiry.
- 20 (2) Subparagraph (1)(a)(iv) does not apply in the case of a legal
21 practitioner who refuses or fails to answer a question at a hearing
22 on the ground that the answer to the question would disclose a
23 privileged communication made by or to the legal practitioner for
24 the purpose of providing legal professional services in relation to
25 the appearance, or reasonably anticipated appearance, of a person
26 at a compulsory examination or public or private hearing before the
27 Federal Integrity Commissioner.
- 28 (3) Subparagraph (1)(a)(v) does not apply in the case of a legal
29 practitioner who refuses or fails to produce a document or thing at
30 a hearing on the ground that the document or thing contains a
31 privileged communication made by or to the legal practitioner for
32 the purpose of providing legal professional services in relation to
33 the appearance, or reasonably anticipated appearance, of a person
34 at a compulsory examination or public or private hearing before the
35 Federal Integrity Commissioner.

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Section 99

- 1 (4) For the purposes of paragraphs (1)(d) and (e), a peaceful protest
2 outside the physical location of the commission does not constitute
3 the obstruction or hindering of the Federal Integrity Commissioner
4 or the disrupting of a hearing.

5 **99 Federal Court or Supreme Court to deal with contempt**

6 *Application*

- 7 (1) If, in respect of a hearing, the Federal Integrity Commissioner is of
8 the opinion that a person is in contempt of AFIC, the Federal
9 Integrity Commissioner may apply to either of the following courts
10 for the person to be dealt with in relation to the contempt:
11 (a) the Federal Court;
12 (b) the Supreme Court of the State or Territory in which the
13 hearing is held.
- 14 (2) Before making the application, the Federal Integrity Commissioner
15 must inform the person that the Federal Integrity Commissioner
16 proposes to make the application.
- 17 (3) The application must be accompanied by a certificate that states:
18 (a) the grounds for making the application; and
19 (b) evidence in support of the application.
- 20 (4) A copy of the certificate must be given to the person before, or at
21 the same time as, the application is made.
- 22 (5) To avoid doubt, if the Federal Integrity Commissioner makes an
23 application under this section, the Federal Integrity Commissioner
24 need not give the evidence to the relevant person or authority under
25 section 151.

26 *How court may deal with application*

- 27 (6) If, after:
28 (a) considering the matters specified in the certificate; and
29 (b) hearing or receiving any evidence or statements by or in
30 support of Commission; and

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- 1 (c) hearing or receiving any evidence or statements by or in
2 support of the person;
3 the court to which the application was made finds that the person
4 was in contempt of AFIC, the court may deal with the person as if
5 the acts or omissions involved constituted a contempt of that court.
- 6 (7) For the purposes of determining whether a person is in contempt of
7 AFIC under subsection (1), Chapter 2 of the *Criminal Code* applies
8 as if:
9 (a) being in contempt of AFIC were an offence; and
10 (b) references to a person being criminally responsible for an
11 offence were references to a person being responsible for
12 being in contempt of AFIC.

13 **100 Conduct of contempt proceedings**

- 14 (1) This section applies if an application is made to the Federal Court
15 or to the Supreme Court of a State or Territory under section 99.
- 16 (2) Proceedings in relation to the application are, subject to this Act, to
17 be instituted, carried on, heard and determined in accordance with
18 the laws (including any Rules of Court) that apply in relation to the
19 punishment of a contempt of the court to which the application was
20 made.
- 21 (3) In proceedings relating to the application, a certificate under
22 subsection 99(3) is prima facie evidence of the matters specified in
23 the certificate.

24 **101 Federal Integrity Commissioner may withdraw contempt
25 application**

26 The Federal Integrity Commissioner may, at any time, withdraw an
27 application under subsection 99(1).

28 **102 Double jeopardy**

- 29 (1) If an act or omission by a person is an offence against this Act and
30 is also an offence against a law of a State, the person may be
31 prosecuted and convicted under this Act or under that law of that

Part 6 Federal Integrity Commissioner's powers in conducting investigations and public inquiries

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Section 103

- 1 State in respect of the act or omission, but nothing in this Act
2 renders a person liable to be punished twice in respect of the same
3 act or omission.
- 4 (2) If:
- 5 (a) an application is made to the Federal Court or a Supreme
6 Court under subsection 99(1) in respect of an act or omission
7 by a person; and
- 8 (b) the person is dealt with by the court under that section in
9 respect of the act or omission;
- 10 the person is not liable to be prosecuted for an offence in respect of
11 that act or omission.
- 12 (3) If a person is prosecuted for an offence in respect of an act or
13 omission referred to in subsection 98(1) without an application
14 being made to the Federal Court or a Supreme Court under
15 subsection 99(1) in respect of the act or omission, an application
16 must not be made under subsection 99(1) in respect of the act or
17 omission.

103 Legal professional privilege—answer to question

- 18
- 19 (1) A person must not refuse or fail to answer a question at a hearing
20 that the Federal Integrity Commissioner requires the person to
21 answer on the ground that the answer (or the relevant part of the
22 answer) would disclose a communication that is subject to legal
23 professional privilege.
- 24 (2) Subsection (1) does not apply in relation to a communication made
25 for the for the purpose of providing or receiving legal professional
26 services in relation to the appearance, or reasonably anticipated
27 appearance, of a person at a compulsory examination or public or
28 private hearing before the Federal Integrity Commissioner.

104 Legal professional privilege—documents or things

- 29
- 30 (1) A person must not refuse or fail to produce a document or thing to
31 the Federal Integrity Commissioner at a hearing on the ground that
32 the document or thing is subject to legal professional privilege.

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- 1 (2) Subsection (1) does not apply in relation to a document or thing
2 that exists for the purpose of providing or receiving legal
3 professional services in relation to the appearance, or reasonably
4 anticipated appearance, of a person at a compulsory examination or
5 public inquiry before the Federal Integrity Commissioner.

6 **105 Offences relating to claims for legal professional privilege**

- 7 (1) A person commits an offence if:
8 (a) the person had been served with a summons:
9 (i) to attend a hearing and the person fails to answer a
10 question at the hearing that the Federal Integrity
11 Commissioner requires the person to answer; or
12 (ii) to produce a document or thing specified in the
13 summons and the person fails to produce the document;
14 and
15 (b) the person refuses or fails to answer the question or produce
16 the document or thing as the Federal Integrity Commissioner
17 requires; and
18 (c) subsection 103(2) or 104(2) does not apply.

19 Penalty: Imprisonment for 6 months or 10 penalty units.

20 (2) Subsection (1) is an offence of strict liability.

21 (3) Subsection (1) does not apply if the person has a reasonable
22 excuse.

23 (5) It is a defence to a prosecution for an offence against this section
24 constituted by a refusal or failure to answer a question or to
25 produce a document or thing if the answer, document or thing was
26 not relevant to the corruption issue or public inquiry to which the
27 hearing related.

28 Note: A defendant bears an evidential burden in relation to the matters in
29 subsections (3) and (5) (see subsection 13.3(3) of the *Criminal Code*).

Section 106

1 **106 Self-incrimination etc.**

2 *Self-incrimination*

- 3 (1) A person is not excused from:
4 (a) answering a question; or
5 (b) producing a document or thing;
6 when summoned, under section 87, to attend a hearing to do so on
7 the ground that doing so would tend to incriminate the person or
8 expose the person to a penalty.

9 *Use indemnity*

- 10 (2) Subsection (4) applies if:
11 (a) the person:
12 (i) answers the question (whether orally or in writing); or
13 (ii) produces the document or thing;
14 and, before doing so, claims that answering the question, or
15 producing the document or thing, might tend to incriminate
16 the person or expose the person to a penalty; or
17 (b) the person answers the question in writing and claims, in a
18 written statement accompanying the answer, that answering
19 the question might tend to incriminate the person or expose
20 the person to a penalty; or
21 (c) the person produces the document or thing and claims, in a
22 written statement accompanying the document or thing, that
23 producing the document or thing might tend to incriminate
24 the person or expose the person to a penalty.
- 25 (3) Subsection (4) does not apply to the production of a document that
26 is, or forms part of, a record of an existing or past business.
- 27 (4) Neither of the following:
28 (a) the answer given;
29 (b) the document or thing produced;
30 is admissible in evidence against the person in criminal
31 proceedings, or any other proceedings for the imposition or
32 recovery of a penalty, other than:

- 1 (c) proceedings for an offence against section 97; or
2 (d) confiscation proceedings; or
3 (e) proceedings for an offence against section 137.1 or 137.2 of
4 the *Criminal Code* (which deals with false or misleading
5 information or documents) that relates to this Act; or
6 (f) proceedings for an offence against section 149.1 of the
7 *Criminal Code* (which deals with obstruction of
8 Commonwealth public officials) that relates to this Act; or
9 (g) disciplinary proceedings against the person if the person is an
10 employee of a Commonwealth agency.

11 *Public interest grounds*

- 12 (5) A person is not excused from:
13 (a) answering a question; or
14 (b) producing a document or thing;
15 when summoned, under section 87, to attend a hearing to do so on
16 the ground that doing so:
17 (c) would disclose one of the following:
18 (i) legal advice given to a Minister or a Commonwealth
19 agency;
20 (ii) a communication between an officer of a
21 Commonwealth agency and another person or body,
22 being a communication protected against disclosure by
23 legal professional privilege; or
24 (d) would breach a secrecy provision other than:
25 (i) a taxation secrecy provision; or
26 (ii) a law enforcement secrecy provision; or
27 (e) would be otherwise contrary to the public interest.
- 28 (6) The fact that a person is not excused under subsection (5) from:
29 (a) answering a question; or
30 (b) producing a document or thing;
31 does not otherwise affect a claim of legal professional privilege
32 that anyone may make in relation to that answer, document or
33 thing.

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- 1 (7) A person who is served with a summons under section 87 does not
2 commit an offence, and is not liable to any penalty, under the
3 provisions of any other enactment (other than a taxation secrecy
4 provision or a law enforcement secrecy provision) because the
5 person:
6 (a) answers a question at a hearing that the Federal Integrity
7 Commissioner requires the person to answer; or
8 (b) produces a document or thing that the person is required to
9 produce in accordance with the summons.

10 **Subdivision F—Court orders for delivery of witness's passport**
11 **and witness's arrest**

12 **107 Federal Integrity Commissioner may apply for order that**
13 **witness deliver passport**

- 14 (1) The Federal Integrity Commissioner may apply to a Judge of the
15 Federal Court for an order that a person deliver the person's
16 passport to the Federal Integrity Commissioner if:
17 (a) either of the following apply:
18 (i) a summons under section 87 has been issued requiring
19 the person to attend a hearing (whether or not the
20 summons has been served) in relation to a corruption
21 investigation or public inquiry;
22 (ii) the person has appeared at a hearing in relation to a
23 corruption investigation or public inquiry to give
24 evidence or to produce documents or things; and
25 (b) there are reasonable grounds for believing that the person
26 may be able:
27 (i) to give evidence, or further evidence, that is relevant to
28 the investigation or public inquiry; or
29 (ii) to produce documents or things, or further documents or
30 things, that are relevant to the investigation or public
31 inquiry; and
32 (c) there are reasonable grounds for suspecting that the person:
33 (i) intends to leave Australia; and

- 1 (ii) has in the person's possession, custody or control a
2 passport issued to him or her.
- 3 (2) The Federal Integrity Commissioner must give the Judge
4 information on oath, or by affirmation, in support of the grounds
5 for the application.

6 **108 Court orders**

7 *Court order for witness to appear before the Court*

- 8 (1) If a Judge of the Federal Court, sitting in Chambers, is satisfied, on
9 the evidence, that the requirements of paragraphs 107(1)(a), (b)
10 and (c) are met, the Judge may make an order:
11 (a) requiring the person to appear before the Federal Court on a
12 date, and at a time and place, specified in the order; and
13 (b) requesting the person to show cause why the person should
14 not be ordered to deliver the passport to the Federal Integrity
15 Commissioner.

16 *Offence*

- 17 (2) A person commits an offence if:
18 (a) the person leaves Australia; and
19 (b) an order has been made in relation to the person under
20 subsection (1); and
21 (c) a copy of the order has been served on the person.

22 Penalty: Imprisonment for 2 years.

- 23 (3) In proceedings for an offence against subsection (2), it is a defence
24 if:
25 (a) the person has appeared before the Federal Court as required
26 by the order referred to in paragraph (2)(b); and
27 (b) if the Court makes an order in relation to the person under
28 paragraph (4)(a)—the person has complied with the terms of
29 the order and any passport delivered to the Federal Integrity
30 Commissioner in accordance with the order has been
31 returned to the person.

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1 *Court order that witness deliver passport to Federal Integrity*
2 *Commissioner*

- 3 (4) If the person appears before the Federal Court as required by the
4 order made under subsection (1), the Court may, if it thinks fit,
5 make an order:
6 (a) requiring the person to deliver to the Federal Integrity
7 Commissioner any passport:
8 (i) issued to him or her; and
9 (ii) in the person's possession, custody or control; and
10 (b) authorising the Federal Integrity Commissioner to retain the
11 passport until the end of the period (not exceeding one
12 month) that is specified in the order.

13 *Extension of period that Federal Integrity Commissioner may*
14 *retain passport*

- 15 (5) The Federal Court may, upon application by the Federal Integrity
16 Commissioner, extend for a further period (of not more than one
17 month), or further periods (of not more than one month in each
18 case), the period for which the Federal Integrity Commissioner is
19 authorised to retain a passport. However, the total period for which
20 the Federal Integrity Commissioner is authorised to retain the
21 passport must not exceed 3 months.

22 *Revocation of court order*

- 23 (6) If the Federal Court makes an order authorising the Federal
24 Integrity Commissioner to retain a passport issued to a person, the
25 person may apply to the Federal Court for the order to be revoked.
26 (7) If the Federal Court revokes the order, the Federal Integrity
27 Commissioner must return the passport to the person immediately.

28 *Jurisdiction of the Federal Court*

- 29 (8) The Federal Court has jurisdiction with respect to matters arising
30 under this section.

1 *Definition*

2 (9) In this section:

3 *Australia* includes the external Territories.

4 **109 Applying for a warrant to arrest witness**

5 (1) An authorised officer may apply to a Judge of the Federal Court, or
6 of the Supreme Court of a State or Territory, for a warrant to arrest
7 a person if the authorised officer has reasonable grounds to believe
8 that:

9 (a) the person:

10 (i) has been ordered to deliver the person's passport to the
11 Federal Integrity Commissioner (whether or not the
12 person has complied with the order); and

13 (ii) is likely to leave Australia for the purpose of avoiding
14 giving evidence at a hearing before the Federal Integrity
15 Commissioner; or

16 (b) the person has been served with a summons under section 87
17 and:

18 (i) has absconded or is likely to abscond; or

19 (ii) is otherwise attempting, or likely to attempt, to evade
20 service of the summons; or

21 (c) the person has committed an offence under subsection 97(1)
22 or is likely to do so.

23 (2) The authorised officer must give the Judge information on oath, or
24 by affirmation, in support of the grounds for the application.

25 **110 Warrant for arrest**

26 *Issue of warrant*

27 (1) If a Judge, sitting in Chambers, is satisfied, on the evidence, that
28 there are reasonable grounds for believing that
29 paragraph 109(1)(a), (b) or (c) is met, the Judge may issue a
30 warrant authorising the authorised officer to arrest the person.

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Execution of warrant

- (2) For the purpose of executing a warrant, if the authorised officer executing the warrant (or an assisting officer) believes on reasonable grounds that the person is on any premises, the authorised officer (or the assisting officer) may break into and enter those premises.
- (3) However, the authorised officer executing the warrant (or an assisting officer) must not enter a dwelling house at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the authorised officer (or the assisting officer) believes on reasonable grounds that it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time.
- (4) The authorised officer executing the warrant (or an assisting officer) must not, in the course of arresting the person, use more force, or subject the other person to greater indignity, than is necessary and reasonable:
 - (a) to make the arrest; or
 - (b) to prevent the escape of the person after the arrest.
- (5) The warrant may be executed even if the authorised officer does not have a copy of the warrant in the authorised officer's possession at the time it is executed.
- (6) The authorised officer executing the warrant (or an assisting officer who arrests the person) must inform the person, at the time of the arrest, of the reason for which the person is being arrested.
- (7) It is sufficient if the person is informed of the substance of the reason and it is not necessary that this be done in language of a precise or technical nature.
- (8) Subsection (6) does not apply to the arrest of the person if:
 - (a) the person should, in the circumstances, know the substance of the reason for which the person is being arrested; or
 - (b) the person's actions make it impracticable for the authorised officer executing the warrant (or an assisting officer making

Section 111

1 the arrest) to inform the person of the reason for which the
2 person is being arrested.

3 (9) Nothing in this section prevents the arrest of a person in
4 accordance with any other law.

5 *Definitions*

6 (10) In this section:

7 *dwelling house* includes a conveyance, and a room in a hotel,
8 motel, boarding house or club, in which people ordinarily retire for
9 the night.

10 *Judge* means:

11 (a) a Judge of the Federal Court; or

12 (b) a Judge of the Supreme Court of a State or Territory.

13 **111 Powers of Judge in relation to person arrested**

14 (1) A person arrested under a warrant issued under section 110 must
15 be brought, as soon as practicable, before a Judge.

16 (2) The Judge may:

17 (a) grant the person bail:

18 (i) on such security as the Judge thinks fit; and

19 (ii) on such conditions as the Judge thinks are necessary to
20 ensure that the person appears as a witness at a hearing
21 before the Federal Integrity Commissioner; or

22 (b) order that the person continue to be detained for the purpose
23 of ensuring that the person appears as a witness at a hearing
24 before the Federal Integrity Commissioner; or

25 (c) order that the person be released.

26 (3) A person who is detained under paragraph (2)(b) must be brought
27 before a Judge:

28 (a) within 14 days after the person was brought, or last brought,
29 before a Judge; or

30 (b) within such shorter or longer time as a Judge fixed on the
31 person's last previous appearance before a Judge;

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1 and the Judge may exercise any of the powers under subsection (2).

2 (4) In this section:

3 ***Judge*** means:

4 (a) a Judge of the Federal Court; or

5 (b) a Judge of the Supreme Court of a State or Territory.

6 **Subdivision G—Miscellaneous**

7 **112 Federal Integrity Commissioner may retain documents or things**

8 (1) If a document or thing is produced to the Federal Integrity
9 Commissioner in accordance with a summons under section 87, the
10 Federal Integrity Commissioner:

11 (a) may take possession of, and may make copies of, the
12 document or thing, or take extracts from the document; and

13 (b) may retain possession of the document or thing for such
14 period as is necessary for the purposes of the investigation or
15 public inquiry to which the document or thing relates.

16 (2) While the Federal Integrity Commissioner retains the document or
17 thing, the Federal Integrity Commissioner must allow a person who
18 would otherwise be entitled to inspect the document or view the
19 thing to do so at the times that the person would ordinarily be able
20 to do so.

21 **113 Person may apply for legal and financial assistance**

22 (1) A person who is summoned under section 87 to attend a hearing
23 before the Federal Integrity Commissioner may apply to the
24 Attorney-General for assistance in respect of:

25 (a) the person’s attendance at the hearing; or

26 (b) the person’s representation at the hearing by a legal
27 practitioner.

28 Note 1: A person summoned to appear as a witness at a hearing is entitled to
29 be paid allowances for travelling and other expenses prescribed by
30 regulations: see subsection 87(8).

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1 Note 2: A person may also apply for assistance in respect of an application to
2 the Federal Court or the Federal Circuit Court under the
3 *Administrative Decisions (Judicial Review) Act 1977* for an order of
4 review in respect of a matter arising under this Act: see section 277.

- 5 (2) A person who:
6 (a) is not giving evidence at a hearing before the Federal
7 Integrity Commissioner; and
8 (b) is being represented at the hearing by a legal practitioner with
9 the consent of the Federal Integrity Commissioner;
10 may apply to the Attorney-General for assistance in respect of that
11 representation.

12 Note: A person may also apply for assistance in respect of an application to
13 the Federal Court or the Federal Circuit Court under the
14 *Administrative Decisions (Judicial Review) Act 1977* for an order of
15 review in respect of a matter arising under this Act: see section 277.

- 16 (3) If a person applies under subsection (1) or (2), the
17 Attorney-General may, if the Attorney-General is satisfied that:
18 (a) it would involve substantial hardship to the person to refuse
19 the application; or
20 (b) the circumstances of the case are of such a special nature that
21 the application should be granted;
22 authorise the Commonwealth to provide the person with legal or
23 financial assistance, determined by the Attorney-General, in
24 respect of:
25 (c) the person's attendance at the hearing; or
26 (d) the person's representation at the hearing by a legal
27 practitioner.
- 28 (4) Legal or financial assistance may be given:
29 (a) unconditionally; or
30 (b) subject to such conditions as the Attorney-General
31 determines.
- 32 (5) An instrument that determines the conditions on which legal or
33 financial assistance may be given is not a legislative instrument.

Section 114

1 **114 Protection of Federal Integrity Commissioner etc.**

- 2 (1) The Federal Integrity Commissioner has, in exercising the Federal
3 Integrity Commissioner's power to hold a hearing, the same
4 protection and immunity as a Justice of the High Court.
- 5 (2) A legal practitioner assisting the Federal Integrity Commissioner,
6 or representing a person at a hearing, has the same protection and
7 immunity as a barrister appearing for a party in proceedings in the
8 High Court.
- 9 (3) To avoid doubt, this section does not limit the powers of the
10 Ombudsman under the *Ombudsman Act 1976* to investigate issues
11 of administrative practice in relation to a hearing under this
12 Division.
- 13 (4) A reference in this section to the Federal Integrity Commissioner
14 includes a reference to an Assistant Commissioner who exercises
15 the power to hold a hearing in relation to a corruption issue under
16 an authorisation under section 233.

17 **115 Protection of witnesses etc.**

- 18 (1) A person who:
19 (a) gives evidence at a hearing conducted under this Act; or
20 (b) produces a document or thing at a hearing conducted under
21 this Act; or
22 (c) makes a submission to the Federal Integrity Commissioner in
23 relation to a public inquiry;
24 has the same protection as a witness in proceedings in the High
25 Court.
- 26 (2) Subsection (3) applies if it appears to the Federal Integrity
27 Commissioner that, because a person:
28 (a) is to give evidence, or produce a document or thing, at a
29 hearing under this Act; or
30 (b) has given evidence, or produced a document or thing, at a
31 hearing under this Act; or
32 (c) is to make, or has made, a submission to the Federal Integrity
33 Commissioner in relation to a public inquiry;
-

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- 1 either:
2 (d) the safety of the person or any other person may be
3 prejudiced; or
4 (e) the person or any other person may be subjected to
5 intimidation or harassment.
- 6 (3) The Federal Integrity Commissioner may make such arrangements
7 as are necessary:
8 (a) to protect the safety of any person mentioned in
9 paragraph (2)(d); or
10 (b) to protect any person mentioned in paragraph (2)(e) from
11 intimidation or harassment.
- 12 (4) For the purpose of subsection (3), the arrangements that the
13 Federal Integrity Commissioner may make include arrangements
14 with:
15 (a) members of the AFP; or
16 (b) members of the police force of a State or Territory.
- 17 (5) This section does not affect the *Witness Protection Act 1994*.

1 **Division 3—Search warrants**

2 **Subdivision A—Preliminary**

3 **116 Application to things under the control of a person**

4 This Division applies to a person (the *possessor*) who has a thing
5 under the possessor's control in any place (whether for the use or
6 benefit of the possessor or another person), even if another person
7 has the actual possession or custody of the thing, as if the possessor
8 has possession of the thing.

9 **Subdivision B—Applying for a search warrant**

10 **117 Authorised officer may apply for a search warrant**

11 *Application for warrant to search premises (investigation warrant)*

- 12 (1) An authorised officer may apply to an issuing officer for an
13 investigation warrant to search premises if the authorised officer:
14 (a) has reasonable grounds for suspecting that there is, or there
15 will be within the next 72 hours, any evidential material on
16 the premises; and
17 (b) has reasonable grounds for believing that, if a person was
18 served with a summons to produce the evidential material,
19 the material might be concealed, lost, mutilated or destroyed.

20 Note: In special circumstances and urgent cases, an application may be made
21 by telephone, fax, email or other electronic means: see section 120.

22 *Application for warrant to search premises (offence warrant)*

- 23 (2) An authorised officer may apply to an issuing officer for an
24 offence warrant to search premises if the authorised officer has
25 reasonable grounds for suspecting that there is, or there will be
26 within the next 72 hours, any evidential material on the premises.

27 Note: In special circumstances and urgent cases, an application may be made
28 by telephone, fax, email or other electronic means: see section 120.

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Application for a warrant to search person (investigation warrant)

- 1
- 2 (3) An authorised officer may apply to an issuing officer for an
- 3 investigation warrant to carry out an ordinary search or a frisk
- 4 search of a person if the authorised officer:
- 5 (a) has reasonable grounds for suspecting that the person has in
- 6 the person's possession, or will within the next 72 hours have
- 7 in the person's possession, any evidential material; and
- 8 (b) has reasonable grounds for believing that, if the person was
- 9 served with a summons to produce the evidential material,
- 10 the material might be concealed, lost, mutilated or destroyed.

11 Note: In special circumstances and urgent cases, an application may be made

12 by telephone, fax, email or other electronic means: see section 120.

13 *Application for a warrant to search person (offence warrant)*

- 14 (4) An authorised officer may apply to an issuing officer for an
- 15 offence warrant to carry out an ordinary search or a frisk search of
- 16 a person if the authorised officer has reasonable grounds for
- 17 suspecting that the person has in the person's possession, or will
- 18 within the next 72 hours have in the person's possession, any
- 19 evidential material.

20 Note: In special circumstances and urgent cases, an application may be made

21 by telephone, fax, email or other electronic means: see section 120.

22 *Information in support of application*

- 23 (5) An authorised officer must give the issuing officer information on
- 24 oath or by affirmation to support the grounds for an application
- 25 under subsection (1), (2), (3) or (4).
- 26 (6) If an authorised officer applying for a search warrant suspects that,
- 27 in executing the warrant, it will be necessary to use firearms, the
- 28 authorised officer must state that suspicion, and the grounds for it,
- 29 in the information given under subsection (5).
- 30 (7) If the authorised officer applying for a search warrant (or another
- 31 authorised officer who will be an assisting officer in relation to the
- 32 search warrant) has, at any time previously, applied for a search
- 33 warrant under this Act or another Act in relation to the same person

Section 118

1 or premises, the authorised officer must state particulars of those
2 applications, and their outcome, in the information given under
3 subsection (5).

4 **Subdivision C—Issue of a search warrant**

5 **118 When search warrants may be issued**

6 *Issue of a warrant to search premises (investigation warrant)*

7 (1) If:

- 8 (a) an authorised officer makes an application to an issuing
9 officer under subsection 117(1); and
10 (b) the issuing officer is satisfied, on the information given under
11 subsection 117(5), that:
12 (i) there are reasonable grounds for suspecting that there is,
13 or there will be within the next 72 hours, evidential
14 material on the premises in relation to which the
15 application is made; and
16 (ii) there are reasonable grounds for believing that, if a
17 person was served with a summons to produce the
18 evidential material, the material might be concealed,
19 lost, mutilated or destroyed;
20 the issuing officer may issue an investigation warrant authorising
21 the authorised officer to search the premises.

22 *Issue of a warrant to search premises (offence warrant)*

23 (2) If:

- 24 (a) an authorised officer makes an application to an issuing
25 officer under subsection 117(2); and
26 (b) the issuing officer is satisfied, on the information given under
27 subsection 117(5), that there are reasonable grounds for
28 suspecting that there is, or there will be within the next 72
29 hours, evidential material on the premises in relation to
30 which the application is made;
31 the issuing officer may issue an offence warrant authorising the
32 authorised officer to search the premises.

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Issue of a warrant to search a person (investigation warrant)

(3) If:

- (a) an authorised officer makes an application to an issuing officer under subsection 117(3); and
- (b) the issuing officer is satisfied, on the information given under subsection 117(5), that:
 - (i) there are reasonable grounds for suspecting that the person in relation to whom the application is made has in the person's possession, or will within the next 72 hours have in the person's possession, evidential material; and
 - (ii) there are reasonable grounds for believing that, if the person was served with a summons to produce the evidential material, the material might be concealed, lost, mutilated or destroyed;

the issuing officer may issue an investigation warrant authorising the authorised officer to carry out an ordinary search or a frisk search of the person.

Issue of a warrant to search a person (offence warrant)

(4) If:

- (a) an authorised officer makes an application to an issuing officer under subsection 117(4); and
- (b) the issuing officer is satisfied, on the information given under subsection 117(5), that there are reasonable grounds for suspecting that the person in relation to whom the application is made has in the person's possession, or will within the next 72 hours have in the person's possession, evidential material;

the issuing officer may issue an offence warrant authorising the authorised officer to carry out an ordinary search or a frisk search of the person.

Issue of a warrant by State/Territory issuing officers

(5) An issuing officer in a State or internal Territory may:

- (a) issue a search warrant in relation to premises or a person in that State or Territory; or

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- 1 (b) issue a search warrant in relation to premises or a person in
2 an external Territory; or
- 3 (c) issue a search warrant in relation to premises or a person in
4 another State or internal Territory (including the Jervis Bay
5 Territory) if the issuing officer is satisfied that there are
6 special circumstances that make the issue of the warrant
7 appropriate; or
- 8 (d) issue a search warrant in relation to a person wherever the
9 person is in Australia or in an external Territory if the issuing
10 officer is satisfied that it is not possible to predict where the
11 person may be.
- 12 (6) An issuing officer in New South Wales or the Australian Capital
13 Territory may issue a search warrant in relation to premises or a
14 person in the Jervis Bay Territory.
- 15 (7) Subsections (5) and (6) do not apply if the issuing officer is:
16 (a) a Judge of the Federal Court; or
17 (b) a Judge of the Federal Circuit Court.
- 18 *Issue of a warrant by issuing officers*
- 19 (8) The function of issuing a search warrant is conferred on an issuing
20 officer in a personal capacity and not as a court or a member of a
21 court. The issuing officer need not accept the function conferred.
- 22 (9) An issuing officer performing a function of, or connected with,
23 issuing a search warrant has the same protection and immunity as
24 if the issuing officer were performing that function as, or as a
25 member of, the court of which the issuing officer is a member.

26 **119 Content of warrants**

27 *General contents of warrant*

- 28 (1) If an issuing officer issues a search warrant under section 118, the
29 issuing officer is to state in the warrant:
30 (a) either:

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- 1 (i) if the warrant is an investigation warrant—the
2 corruption issue or public inquiry to which the warrant
3 relates; or
4 (ii) if the warrant is an offence warrant—the offence to
5 which the warrant relates; and
6 (b) a description of the premises to which the warrant relates or
7 the name or a description of a person to whom it relates; and
8 (c) the kinds of evidential material that are to be searched for
9 under the warrant; and
10 (d) the name of the authorised officer who, unless the authorised
11 officer inserts the name of another authorised officer in the
12 warrant, is to be responsible for executing the warrant; and
13 (e) the time at which the warrant expires; and
14 (f) whether the warrant may be executed at any time or only
15 during particular hours.

- 16 (2) The time stated in the warrant as the time at which the warrant
17 expires must be a time that is not later than the end of the seventh
18 day after the day on which the warrant is issued.

19 Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified
20 in the warrant must not be later than midnight on Monday in the
21 following week.

22 *Additional matters for warrant in relation to premises*

- 23 (3) If the search warrant relates to premises, the issuing officer is also
24 to state:
25 (a) that the warrant authorises the seizure of a thing (other than
26 evidential material of the kind referred to in paragraph (1)(c))
27 found at the premises in the course of the search that the
28 authorised officer or an assisting officer believes on
29 reasonable grounds to be:
30 (i) if the warrant is an investigation warrant—evidential
31 material in relation to the corruption issue or public
32 inquiry to which the warrant relates; or
33 (ii) if the warrant is an offence warrant—a thing relevant to
34 the offence to which the warrant relates; or

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- 1 (iii) in any case—evidential material (within the meaning of
2 the *Proceeds of Crime Act 2002*) or tainted property
3 (within the meaning of that Act); or
4 (iv) in any case—a thing relevant to an indictable offence;
5 if the authorised officer or the assisting officer believes on
6 reasonable grounds that seizure of the thing is necessary to
7 prevent its concealment, loss or destruction or its use in
8 committing an offence; and
9 (b) whether the warrant authorises an ordinary search or a frisk
10 search of a person who is at or near the premises when the
11 warrant is executed if the authorised officer or an assisting
12 officer suspects on reasonable grounds that the person has in
13 the person's possession:
14 (i) in the case of an investigation warrant—any evidential
15 material in relation to the corruption issue or public
16 inquiry to which the warrant relates; or
17 (ii) in the case of an offence warrant—a thing relevant to
18 the offence to which the warrant relates; or
19 (iii) in any case—evidential material (within the meaning of
20 the *Proceeds of Crime Act 2002*) or tainted property
21 (within the meaning of that Act); or
22 (iv) in any case—a thing relevant to an indictable offence; or
23 (v) in any case—any eligible seizable items.

24 *Additional matters for warrant in relation to person*

- 25 (4) If the search warrant relates to a person, the issuing officer is also
26 to state:
27 (a) the kind of search (ordinary or frisk) of the person that the
28 warrant authorises; and
29 (b) that the warrant authorises the seizure of a thing (other than
30 evidential material of the kind referred to in paragraph (1)(c))
31 found, in the course of the search, in the possession of the
32 person or in, or on, an aircraft, vehicle or vessel that the
33 person had operated or occupied at any time within 24 hours
34 before the search began, being a thing that the authorised
35 officer or an assisting officer believes on reasonable grounds
36 to be:

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- 1 (i) in the case of an investigation warrant—evidential
2 material in relation to the corruption issue or public
3 inquiry to which the warrant relates; or
4 (ii) in the case of an offence warrant—a thing relevant to
5 the offence to which the warrant relates; or
6 (iii) in any case—evidential material (within the meaning of
7 the *Proceeds of Crime Act 2002*) or tainted property
8 (within the meaning of that Act); or
9 (iv) in any case—a thing relevant to an indictable offence;
10 if the authorised officer or the assisting officer believes on
11 reasonable grounds that seizure of the thing is necessary to
12 prevent its concealment, loss or destruction or its use in
13 committing an offence.

14 *Successive warrants*

- 15 (5) Paragraph (1)(e) does not prevent the issue of successive warrants
16 in relation to the same premises or person.

17 **120 Application by telephone etc. and issue of warrant**

- 18 (1) An authorised officer may apply to an issuing officer for a search
19 warrant by telephone, fax, email or other electronic means:
20 (a) in an urgent case; or
21 (b) if the delay that would occur if an application were made in
22 person would frustrate the effective execution of the warrant.
- 23 (2) The issuing officer:
24 (a) may require communication by voice to the extent that is
25 practicable in the circumstances; and
26 (b) may make a recording of the whole or any part of any such
27 communication by voice.
- 28 (3) An application under this section must include all information that
29 is required in an ordinary application for a search warrant, but the
30 application may, if necessary, be made before the information is
31 sworn or affirmed.
- 32 (4) If an application is made under this section:
-

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- 1 (a) sections 117 and 118 apply as if subsections 117(1), (2), (3)
2 and (4) and 118(1), (2), (3) and (4) referred to 48 hours rather
3 than 72 hours; and
- 4 (b) section 119 applies as if subsection 119(2) referred to the end
5 of the 48th hour rather than the end of the seventh day.
- 6 (5) If an application is made to an issuing officer under this section
7 and the issuing officer, after considering the information and
8 having received and considered such further information (if any) as
9 the issuing officer required, is satisfied that:
- 10 (a) a search warrant in the terms of the application should be
11 issued urgently; or
- 12 (b) the delay that would occur if an application were made in
13 person would frustrate the effective execution of the warrant;
14 the issuing officer may complete and sign the same form of search
15 warrant that would be issued under section 118.
- 16 (6) If the issuing officer decides to issue the search warrant, the issuing
17 officer is to inform the applicant, by telephone, fax, email or other
18 electronic means, of the terms of the warrant and the day on which
19 and the time at which it was signed.
- 20 (7) The applicant must then complete a form of search warrant in
21 terms substantially corresponding to those given by the issuing
22 officer, stating on the form the name of the issuing officer and the
23 day on which and the time at which the warrant was signed.
- 24 (8) The applicant must give or transmit to the issuing officer:
- 25 (a) the form of search warrant completed by the applicant; and
26 (b) if the information referred to in subsection (3) was not sworn
27 or affirmed—that information duly sworn or affirmed.
- 28 (9) The applicant must do so not later than the day after the warrant
29 expires or the day after the day on which the search warrant was
30 executed, whichever is the earlier.
- 31 (10) The issuing officer is to attach to the documents provided under
32 subsection (8) the form of search warrant the issuing officer has
33 completed.

Section 121

- 1 (11) If:
2 (a) it is material, in any proceedings, for a court to be satisfied
3 that the exercise of a power under a search warrant issued
4 under this section was duly authorised; and
5 (b) the form of search warrant signed by the issuing officer is not
6 produced in evidence;
7 the court is to assume, unless the contrary is proved, that the
8 exercise of the power was not duly authorised.

- 9 (12) In this section:
10 *applicant* means the authorised officer who applied for the search
11 warrant.

12 **121 The things authorised by a search warrant in relation to**
13 **premises**

- 14 A search warrant in force in relation to premises authorises the
15 authorised officer executing the warrant or an assisting officer to
16 do any of the following:
17 (a) to enter the premises;
18 (b) to search for and record fingerprints found at the premises
19 and to take samples of things found at the premises for
20 forensic purposes;
21 (c) to search the premises for the kinds of evidential material
22 specified in the warrant, and to seize things of that kind
23 found on the premises;
24 (d) to seize other things found on the premises in the course of
25 the search that the authorised officer or the assisting officer
26 believes on reasonable grounds to be:
27 (i) in the case of an investigation warrant—evidential
28 material in relation to the corruption issue or public
29 inquiry to which the warrant relates; or
30 (ii) in the case of an offence warrant—a thing relevant to
31 the offence to which the warrant relates; or
32 (iii) in any case—evidential material (within the meaning of
33 the *Proceeds of Crime Act 2002*) or tainted property
34 (within the meaning of that Act); or

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- 1 (iv) in any case—a thing relevant to an indictable offence;
2 if the authorised officer or the assisting officer believes on
3 reasonable grounds that seizure of the thing is necessary to
4 prevent its concealment, loss or destruction or its use in
5 committing an offence;
- 6 (e) to seize other things found at the premises in the course of
7 the search that the authorised officer or the assisting officer
8 believes on reasonable grounds to be eligible seizable items;
- 9 (f) if the warrant so allows—to conduct an ordinary search or a
10 frisk search of a person at or near the premises if the
11 authorised officer or the assisting officer suspects on
12 reasonable grounds that the person has in the person's
13 possession:
- 14 (i) in the case of an investigation warrant—any evidential
15 material in relation to the corruption issue or public
16 inquiry to which the warrant relates; or
- 17 (ii) in the case of an offence warrant—a thing relevant to
18 the offence to which the warrant relates; or
- 19 (iii) in any case—evidential material (within the meaning of
20 the *Proceeds of Crime Act 2002*) or tainted property
21 (within the meaning of that Act); or
- 22 (iv) in any case—a thing relevant to an indictable offence; or
23 (v) in any case—any eligible seizable items.

24 **122 The things authorised by a search warrant in relation to a**
25 **person**

- 26 (1) A search warrant in force in relation to a person authorises the
27 authorised officer executing the warrant or an assisting officer to
28 do any of the following:
- 29 (a) to search:
- 30 (i) the person as specified in the warrant and things found
31 in the possession of the person; and
- 32 (ii) any aircraft, vehicle or vessel that the person had
33 operated or occupied at any time within 24 hours before
34 the search began, for things specified in the warrant;
- 35 (b) to:

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- 1 (i) seize things of that kind; or
2 (ii) record fingerprints from things; or
3 (iii) take forensic samples from things;
4 found in the course of the search;
- 5 (c) to seize other things found on, or in, the possession of the
6 person or in the aircraft, vehicle or vessel referred to in
7 subparagraph (a)(ii) in the course of the search that the
8 authorised officer or the assisting officer believes on
9 reasonable grounds to be:
- 10 (i) in the case of an investigation warrant—evidential
11 material in relation to the corruption issue or public
12 inquiry to which the warrant relates; or
13 (ii) in the case of an offence warrant—a thing relevant to
14 the offence to which the warrant relates; or
15 (iii) in any case—evidential material (within the meaning of
16 the *Proceeds of Crime Act 2002*) or tainted property
17 (within the meaning of that Act); or
18 (iv) in any case—a thing relevant to an indictable offence;
19 if the authorised officer or the assisting officer believes on
20 reasonable grounds that seizure of the thing is necessary to
21 prevent its concealment, loss or destruction or its use in
22 committing an offence;
- 23 (d) to seize other things found in the course of the search that the
24 authorised officer or the assisting officer believes on
25 reasonable grounds to be eligible seizable items.
- 26 (2) If the search warrant authorises an ordinary search or a frisk search
27 of a person, a search of the person different from that authorised by
28 the warrant must not be done under the warrant.

29 **123 Restrictions on personal searches**

30 A search warrant may not authorise a strip search or a search of a
31 person's body cavities.

Section 124

1 **124 When warrant may be executed etc.**

- 2 (1) If a search warrant states that it may be executed only during
3 particular hours, the warrant must not be executed outside those
4 hours.
- 5 (2) If things are seized under a search warrant, the warrant authorises
6 the authorised officer executing the warrant to make the things
7 available to officers of other government agencies if it is necessary
8 to do so for the purpose of investigating or prosecuting an offence
9 to which the things relate.

10 **Subdivision D—General provisions about executing a search**
11 **warrant**

12 **125 Announcement before entry**

- 13 (1) An authorised officer executing the search warrant must, before
14 any person enters premises under the warrant:
15 (a) announce that the authorised officer is authorised to enter the
16 premises; and
17 (b) give any person at the premises an opportunity to allow entry
18 to the premises.
- 19 (2) An authorised officer is not required to comply with subsection (1)
20 if the authorised officer believes on reasonable grounds that
21 immediate entry to the premises is required:
22 (a) to ensure the safety of a person (including an authorised
23 officer or assisting officer); or
24 (b) to ensure that the effective execution of the warrant is not
25 frustrated.

26 **126 Availability of assistance and use of force in executing a warrant**

- 27 (1) In executing a search warrant, the authorised officer executing the
28 warrant may:
29 (a) obtain the assistance that is necessary and reasonable in the
30 circumstances; and

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- 1 (b) use the force against persons and things that is necessary and
2 reasonable in the circumstances.
- 3 (2) In executing a search warrant:
- 4 (a) if an assisting officer is also an authorised officer or a
5 constable—the assisting officer may use the force against
6 persons and things that is necessary and reasonable in the
7 circumstances; and
- 8 (b) if an assisting officer is not an authorised officer or a
9 constable—the assisting officer may use the force against
10 things that is necessary and reasonable in the circumstances.
- 11 (3) Only an authorised officer or a constable may take part in
12 searching a person.

13 **Subdivision E—Specific provisions about executing a warrant**
14 **in relation to premises**

15 **127 Application**

16 This Subdivision applies if a search warrant in relation to premises
17 is being executed.

18 **128 Copy of warrant to be shown to occupier etc.**

- 19 (1) If the occupier of the premises, or another person who apparently
20 represents the occupier, is present at the premises, the authorised
21 officer executing the search warrant or an assisting officer must
22 make a copy of the warrant available to the person.
- 23 (2) If a person is searched under a search warrant in relation to
24 premises, the authorised officer executing the warrant or an
25 assisting officer must show the person a copy of the warrant.
- 26 (3) The authorised officer must identify himself or herself to the
27 person at the premises.
- 28 (4) The copy of the search warrant need not include the signature of
29 the issuing officer who issued it.

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1 **129 Occupier entitled to watch search**

- 2 (1) The occupier of the premises, or another person who apparently
3 represents the occupier, who is present at the premises, is entitled
4 to watch the search.
- 5 (2) Subsection (1) is subject to Part IC of the *Crimes Act 1914*.
- 6 (3) The right to watch the search being conducted ceases if the person
7 impedes the search.
- 8 (4) This section does not prevent 2 or more areas of the premises being
9 searched at the same time.

10 **130 Specific powers available to person executing a warrant**

- 11 (1) The authorised officer executing the search warrant or an assisting
12 officer may take photographs or video recordings of the premises
13 or things on the premises:
14 (a) for a purpose incidental to the execution of the warrant; or
15 (b) with the written consent of the occupier of the premises.
- 16 (2) The authorised officer executing the search warrant and all
17 assisting officers may, if the warrant is still in force, finish
18 executing the warrant after all of them temporarily stop executing
19 it and leave the premises:
20 (a) for not more than one hour; or
21 (b) for a longer period with the written consent of the occupier of
22 the premises.
- 23 (3) The execution of a search warrant that is stopped by an order of a
24 court may be completed if:
25 (a) the order is later revoked or reversed on appeal; and
26 (b) the warrant is still in force.

27 **131 Use of equipment to examine or process things**

- 28 (1) The authorised officer executing the search warrant or an assisting
29 officer may bring to the premises any equipment (including
30 electronic equipment) reasonably necessary to examine or process

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- 1 things found at the premises in order to determine whether they are
2 things that may be seized under the warrant.
- 3 (2) A thing found at the premises may be moved to another place for
4 examination or processing in order to determine whether it may be
5 seized under a warrant if:
- 6 (a) both of the following apply:
- 7 (i) it is significantly more practicable to do so having
8 regard to the timeliness and cost of examining or
9 processing the thing at another place and the availability
10 of expert assistance;
- 11 (ii) there are reasonable grounds to believe that the thing
12 contains or constitutes evidential material; or
- 13 (b) the occupier of the premises consents in writing.
- 14 (3) If things are moved to another place for the purpose of examination
15 or processing, the authorised officer must, if it is practicable to do
16 so:
- 17 (a) inform the occupier of the address of the place and the time
18 at which the examination or processing will be carried out;
19 and
- 20 (b) allow the occupier or the occupier's representative to be
21 present during the examination or processing.
- 22 (4) The thing may be moved to another place for examination or
23 processing for no longer than 72 hours.
- 24 (5) An authorised officer may apply to an issuing officer for one or
25 more extensions of that time if the authorised officer believes on
26 reasonable grounds that the thing cannot be examined or processed
27 within 72 hours or that time as previously extended.
- 28 (6) The authorised officer must give notice of the application for an
29 extension to the occupier of the premises, and the occupier is
30 entitled to be heard in relation to the application.
- 31 (7) The provisions of this Division in relation to the issuing of search
32 warrants apply, with such modifications as are necessary, to the
33 issuing of an extension.

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- 1 (8) The authorised officer executing the search warrant or an assisting
2 officer may operate equipment (including electronic equipment)
3 already on the premises to examine or process a thing found on the
4 premises in order to determine whether it may be seized under the
5 warrant, if the authorised officer or the assisting officer believes on
6 reasonable grounds that:
- 7 (a) the equipment is suitable for the examination or processing;
8 and
9 (b) the examination or processing can be carried out without
10 damaging the equipment or thing.
- 11 (9) A notice of the application for an extension given to the occupier
12 of the premises under this section is not a legislative instrument.

13 **132 Use of electronic equipment at premises without expert**
14 **assistance**

- 15 (1) The authorised officer executing the search warrant or an assisting
16 officer may operate electronic equipment on the premises to access
17 data (including data not held at the premises) if the authorised
18 officer or assisting officer believes on reasonable grounds that:
- 19 (a) the data might constitute evidential material; and
20 (b) the equipment can be operated without damaging it.
- 21 Note: An authorised officer can obtain an order requiring a person with
22 knowledge of a computer or computer system to provide assistance:
23 see section 134.
- 24 (2) If the authorised officer or the assisting officer believes on
25 reasonable grounds that any data accessed by operating the
26 electronic equipment might constitute evidential material, the
27 authorised officer or assisting officer may:
- 28 (a) copy the data to a disk, tape or other associated device
29 brought to the premises; or
30 (b) if the occupier of the premises agrees in writing—copy the
31 data to a disk, tape or other associated device at the premises;
32 and take the device from the premises.
- 33 (3) If:

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- 1 (a) the authorised officer or the assisting officer takes the device
2 from the premises; and
- 3 (b) the Federal Integrity Commissioner is satisfied that the data
4 is not required (or is no longer required) for:
- 5 (i) investigating a corruption issue; or
6 (ii) conducting a public inquiry; or
7 (iii) judicial proceedings or administrative review
8 proceedings;
- 9 the Federal Integrity Commissioner must arrange for:
- 10 (c) the removal of the data from any device in the control of
11 AFIC; and
- 12 (d) the destruction of any other reproduction of the data in the
13 control of AFIC.
- 14 (4) However, the Federal Integrity Commissioner must not do so if the
15 data is evidence that the Federal Integrity Commissioner must deal
16 with in accordance with Part 7.
- 17 (5) If the authorised officer or the assisting officer, after operating the
18 equipment, finds that evidential material is accessible by doing so,
19 the authorised officer or assisting officer may:
- 20 (a) seize the equipment and any disk, tape or other associated
21 device; or
- 22 (b) if the material can, by using facilities at the premises, be put
23 in documentary form—operate the facilities to put the
24 material in that form and seize the documents so produced.
- 25 (6) A person may seize equipment under paragraph (5)(a) only if:
- 26 (a) it is not practicable to put the material in documentary form
27 as referred to in paragraph (5)(b); or
- 28 (b) possession of the equipment by the occupier could constitute
29 an offence.

30 **133 Use of electronic equipment at premises with expert assistance**

- 31 (1) If the authorised officer executing the search warrant or an
32 assisting officer believes on reasonable grounds that:

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- 1 (a) evidential material may be accessible by operating electronic
2 equipment at the premises; and
3 (b) expert assistance is required to operate the equipment; and
4 (c) if the authorised officer or assisting officer does not take
5 action under this subsection, the material may be destroyed,
6 altered or otherwise interfered with;
7 the authorised officer or assisting officer may do whatever is
8 necessary to secure the equipment, whether by locking it up,
9 placing a guard or otherwise.
- 10 (2) The authorised officer or the assisting officer must notify the
11 occupier of the premises, in writing, of:
12 (a) the authorised officer's or assisting officer's intention to
13 secure the equipment; and
14 (b) the fact that the equipment may be secured for up to 24
15 hours.
- 16 (3) The equipment may be secured for up to 24 hours to allow the
17 equipment to be operated by an expert.
- 18 (4) If the authorised officer or the assisting officer believes on
19 reasonable grounds that expert assistance will not be available
20 within 24 hours, the authorised officer or assisting officer may
21 apply to an issuing officer for an extension of that period.
- 22 (5) The authorised officer or the assisting officer must give notice of
23 the application for an extension to the occupier of the premises,
24 and the occupier is entitled to be heard in relation to the
25 application.
- 26 (6) The provisions of this Division in relation to the issuing of search
27 warrants apply, with such modifications as are necessary, to the
28 issuing of an extension.
- 29 (7) A notice of the application for an extension given to the occupier
30 of the premises under this section is not a legislative instrument.

134 Person with knowledge of a computer or a computer system to assist access etc.

(1) The authorised officer executing the search warrant may apply to an issuing officer for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow the officer or an assisting officer or to do one or more of the following:

- (a) access data held in a computer, or accessible from a computer, that is on premises in relation to which the warrant is in force;
- (b) copy the data to a data storage device;
- (c) convert the data into documentary form.

(2) The issuing officer may grant the order if the issuing officer is satisfied that:

- (a) there are reasonable grounds for suspecting that evidential material is held in, or is accessible from, the computer; and
- (b) the specified person is:
 - (i) in the case of an investigation warrant—reasonably suspected of having, or having access to, data that may be relevant to the corruption issue or public inquiry to which the warrant relates; or
 - (ii) in the case of an offence warrant—reasonably suspected of having committed the offence stated in the warrant; or
 - (iii) the owner or lessee of the computer; or
 - (iv) an employee of the owner or lessee of the computer; and
- (c) the specified person has relevant knowledge of:
 - (i) the computer or a computer network of which the computer forms a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer.

(3) A person commits an offence if the person fails to comply with the order.

Penalty: Imprisonment for 6 months.

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135 Accessing data held on other premises—notification to occupier of those premises

- (1) If:
- (a) data that is held on premises (other than the premises in relation to which the warrant is in force) is accessed under subsection 132(1); and
 - (b) it is practicable to notify the occupier of the other premises that the data has been accessed under a warrant;
- the authorised officer executing the search warrant must:
- (c) do so as soon as practicable; and
 - (d) if the authorised officer has arranged, or intends to arrange, for continued access to the data under subsection 132(2) or (5)—include that information in the notification.
- (2) A notification under subsection (1) must include sufficient information to allow the occupier of the other premises to contact the authorised officer.

136 Compensation for damage to electronic equipment

- (1) This section applies if:
- (a) as a result of equipment being operated as mentioned in section 131, 132 or 133:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

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- 1 (3) However, if the owner or user and the Commonwealth fail to
2 agree, the owner or user may institute proceedings in the Federal
3 Court for such reasonable amount of compensation as the Court
4 determines.
- 5 (4) In determining the amount of compensation payable, regard is to
6 be had to whether the occupier of the premises, or the occupier's
7 employees or agents, if they were available at the time, had
8 provided any appropriate warning or guidance on the operation of
9 the equipment.
- 10 (5) Compensation is payable out of money appropriated by the
11 Parliament by another Act.
- 12 (6) For the purpose of subsection (1):
- 13 *damage*, in relation to data, includes damages by erasure of data or
14 addition of other data.

15 **137 Copies of seized things to be provided**

- 16 (1) If the authorised officer executing the search warrant or an
17 assisting officer seizes:
- 18 (a) a document, film, computer file or other thing that can be
19 readily copied; or
- 20 (b) a device storing information that can be readily copied;
- 21 the authorised officer or the assisting officer must, if requested to
22 do so by the occupier of the premises or another person who
23 apparently represents the occupier and who is present when the
24 warrant is executed, give a copy of the thing or the information to
25 that person as soon as practicable after the seizure.
- 26 (2) However, subsection (1) does not apply if:
- 27 (a) the thing that has been seized was seized under
28 subsection 132(2) or paragraph 132(5)(a); or
- 29 (b) possession of the document, film, computer file, thing or
30 information by the occupier could constitute an offence.

Section 138

1 **138 Receipts of things seized under warrant**

2 (1) If a thing is seized under a search warrant or moved under
3 subsection 131(2), the authorised officer executing the warrant or
4 an assisting officer must provide a receipt for the thing.

5 (2) If 2 or more things are seized or moved, they may be covered by
6 the one receipt.

7 **Subdivision F—Specific provisions about executing a warrant**
8 **in relation to a person**

9 **139 Copy of warrant to be shown to person**

10 (1) If a search warrant in relation to a person is being executed, the
11 authorised officer executing the warrant or an assisting officer
12 must make a copy of the warrant available to that person.

13 (2) The authorised officer must identify himself or herself to the
14 person being searched.

15 (3) The copy of the warrant need not include the signature of the
16 issuing officer who issued it.

17 **140 Conduct of an ordinary search or a frisk search**

18 An ordinary search or a frisk search of a person must, if
19 practicable, be conducted by a person of the same sex as the person
20 being searched.

21 **Subdivision G—Offences**

22 **141 Making false statements in warrants**

23 A person commits an offence if:

24 (a) the person makes a statement in applying for a search
25 warrant; and

26 (b) the person knows that the statement is false or misleading in
27 a material particular.

1 Penalty: Imprisonment for 2 years.

2 **142 Offence for stating incorrect names in telephone warrants**

3 A person commits an offence if:

- 4 (a) the person states a name of an issuing officer in a document;
5 and
6 (b) the document purports to be a form of search warrant under
7 section 120; and
8 (c) the name is not the name of the issuing officer who issued the
9 search warrant.

10 Penalty: Imprisonment for 2 years.

11 **143 Offence for unauthorised form of warrant**

12 A person commits an offence if:

- 13 (a) the person states a matter in a form of search warrant under
14 section 120; and
15 (b) the person knows that the matter departs in a material
16 particular from the form authorised by the issuing officer.

17 Penalty: Imprisonment for 2 years.

18 **144 Offence for executing etc. an unauthorised form of warrant**

19 A person commits an offence if:

- 20 (a) the person executes or presents a document to another
21 person; and
22 (b) the document purports to be a form of search warrant under
23 section 120; and
24 (c) the person knows that the document:
25 (i) has not been approved by an issuing officer under that
26 section; or
27 (ii) departs in a material particular from the terms
28 authorised by an issuing officer under that section.

29 Penalty: Imprisonment for 2 years.

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1 **145 Offence for giving unexecuted form of warrant**

2 A person commits an offence if:

- 3 (a) the person gives an issuing officer a form of search warrant
4 under section 120; and
5 (b) the document is not the form of search warrant that the
6 person executed.

7 Penalty: Imprisonment for 2 years.

8 **Subdivision H—Miscellaneous**

9 **146 Other laws about search, arrest etc. not affected**

- 10 (1) This Division is not intended to limit or exclude the operation of
11 another law of the Commonwealth relating to:
12 (a) the search of persons or premises; or
13 (b) arrest and related matters; or
14 (c) the seizure of things.
- 15 (2) To avoid doubt, even though another law of the Commonwealth
16 provides power to do one or more of the things referred to in
17 subsection (1), a similar power conferred by this Division may be
18 used despite the existence of the power under the other law.

19 **147 Law relating to legal professional privilege not affected**

20 This Division does not affect the law relating to legal professional
21 privilege.

1 **Division 4—Powers of arrest**

2 **148 Authorised officers may exercise powers of arrest**

3 For the purposes of investigating a corruption issue, an authorised
4 officer who is not a constable (within the meaning of the *Crimes*
5 *Act 1914*) has the same powers and duties under Divisions 4 and 5
6 of Part IAA of the *Crimes Act 1914* as a constable as if the
7 authorised officer were a constable.

1 **Division 5—Authorised officers**

2 **149 Appointment of authorised officers**

- 3 (1) The Federal Integrity Commissioner may, in writing, authorise a
4 person to be an authorised officer for the purposes of this Part.
- 5 (2) The person must be:
6 (a) a staff member of AFIC whom the Federal Integrity
7 Commissioner declares has suitable qualifications or
8 experience based on official industry standards for police
9 training and competency; or
10 (b) a member of the AFP.
- 11 (3) The Federal Integrity Commissioner may authorise a person
12 referred to in paragraph (2)(b) only if the Commissioner of the
13 AFP agrees to the appointment.
- 14 (4) In exercising powers as an authorised officer, an authorised officer
15 must comply with any directions given by the Federal Integrity
16 Commissioner.
- 17 (5) If the Federal Integrity Commissioner gives a direction under
18 subsection (4) in writing, the direction is not a legislative
19 instrument.

20 **150 Identity cards**

21 *Issue of identity card*

- 22 (1) The Federal Integrity Commissioner must issue an identity card to
23 a person who is an authorised officer for the purposes of this Part.

24 *Form of identity card*

- 25 (2) An identity card:
26 (a) must be in the form prescribed by the regulations; and
27 (b) must contain a recent photograph of the authorised officer.

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Identity card to be carried and produced on request

- 1
- 2 (3) An authorised officer must carry the identity card at all times when
3 exercising powers as an authorised officer in accordance with this
4 Part.
- 5 (4) An authorised officer is not entitled to exercise any powers under
6 this Part in relation to premises if:
- 7 (a) the occupier of the premises requires the authorised officer to
8 produce the authorised officer's identity card for inspection
9 by the occupier; and
- 10 (b) the authorised officer fails to comply with the requirement.
- 11 (5) An authorised officer is not entitled to exercise any powers under
12 this Part in relation to a person if:
- 13 (a) the person requires the authorised officer to produce the
14 authorised officer's identity card for inspection by the
15 person; and
- 16 (b) the authorised officer fails to comply with the requirement.

17 *Offence*

- 18 (6) A person commits an offence if:
- 19 (a) the person has been issued with an identity card; and
- 20 (b) the person ceases to be an authorised officer; and
- 21 (c) the person does not return the identity card to the Federal
22 Integrity Commissioner immediately after ceasing to be an
23 authorised officer.

24 Penalty: 1 penalty unit.

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1 **Part 7—Dealing with evidence and information**
2 **obtained in investigation or public inquiry**
3

4 **151 Evidence of offence or liability to civil penalty**

5 *Commonwealth offence or civil penalty*

- 6 (1) If, in investigating a corruption issue or conducting a public
7 inquiry, the Federal Integrity Commissioner obtains:
- 8 (a) evidence of an offence against a law of the Commonwealth
9 that would be admissible in a prosecution for the offence; or
 - 10 (b) evidence of the contravention of a law of the
11 Commonwealth:
 - 12 (i) in relation to which civil penalty proceedings may be
13 brought; and
 - 14 (ii) that would be admissible in civil penalty proceedings
15 for the contravention;
- 16 the Federal Integrity Commissioner must:
- 17 (c) assemble the evidence; and
 - 18 (d) give the evidence to:
 - 19 (i) the Commonwealth Director of Public Prosecutions; or
 - 20 (ii) another person or authority who is authorised by or
21 under a law of the Commonwealth to prosecute the
22 offence or bring the civil penalty proceedings.

23 *State or Territory offence or civil penalty*

- 24 (2) If, in investigating a corruption issue or conducting a public
25 inquiry, the Federal Integrity Commissioner obtains:
- 26 (a) evidence of an offence against a law of a State or Territory
27 that would be admissible in a prosecution for the offence; or
 - 28 (b) evidence of the contravention of a law of a State or Territory:
 - 29 (i) in relation to which civil penalty proceedings may be
30 brought; and

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- 1 (ii) that would be admissible in civil penalty proceedings
2 for the contravention;
3 the Federal Integrity Commissioner must:
4 (c) assemble the evidence; and
5 (d) give the evidence to:
6 (i) the head (however described) of the police force of the
7 State or Territory; or
8 (ii) another person or authority who is authorised by or
9 under a law of the State or Territory to prosecute the
10 offence or bring the civil penalty proceedings.
11 Note: See also subsection 99(5).

152 Evidence that could be used in confiscation proceedings*Commonwealth proceedings*

- 14 (1) If, in investigating a corruption issue or conducting a public
15 inquiry, the Federal Integrity Commissioner obtains evidence that
16 would be admissible in a proceeding under the *Proceeds of Crime*
17 *Act 1987* or the *Proceeds of Crime Act 2002* (other than a criminal
18 prosecution for an offence under that Act), the Federal Integrity
19 Commissioner must:
20 (a) assemble the evidence; and
21 (b) give the evidence to:
22 (i) the Commissioner of the AFP; or
23 (ii) another person or authority who is authorised by or
24 under a law of the Commonwealth to bring the
25 proceeding.

State or Territory proceedings

- 27 (2) If, in investigating a corruption issue or conducting a public
28 inquiry, the Federal Integrity Commissioner obtains evidence that
29 would be admissible in a proceeding under a corresponding law
30 within the meaning of the *Proceeds of Crime Act 1987* or the
31 *Proceeds of Crime Act 2002* (other than a criminal prosecution for
32 an offence under the corresponding law), the Federal Integrity
33 Commissioner must:

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- 1 (a) assemble the evidence; and
2 (b) give the evidence to:
3 (i) the head (however described) of the police force of the
4 State or Territory; or
5 (ii) another person or authority who is authorised by or
6 under a law of the State or Territory to bring the
7 proceeding.

8 **153 Evidence of, or information suggesting, wrongful conviction**

9 *Commonwealth offence*

- 10 (1) If the Federal Integrity Commissioner:
11 (a) in investigating a corruption issue or conducting a public
12 inquiry, obtains evidence that a person was wrongly
13 convicted of an offence against a law of the Commonwealth;
14 and
15 (b) is satisfied that the evidence is, in all the circumstances, of
16 sufficient force to justify the Federal Integrity
17 Commissioner's doing so;
18 the Federal Integrity Commissioner must:
19 (c) bring the evidence to the notice of the Minister; and
20 (d) advise the person that the Federal Integrity Commissioner
21 has brought the evidence to the notice of the Minister.

22 *State or Territory offence*

- 23 (2) If the Federal Integrity Commissioner:
24 (a) in investigating a corruption issue or conducting a public
25 inquiry, obtains evidence that a person was wrongly
26 convicted of an offence against a law of a State or Territory;
27 and
28 (b) is satisfied that the evidence is, in all the circumstances, of
29 sufficient force to justify the Federal Integrity
30 Commissioner's doing so;
31 the Federal Integrity Commissioner must:
32 (c) bring the evidence to the notice of the Minister; and

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- 1 (d) advise the person that the Federal Integrity Commissioner
2 has brought the evidence to the notice of the Minister.

1 **Part 8—Investigations by other Commonwealth**
2 **agencies**

3 **Division 1—Nominated contact for investigations by**
4 **Commonwealth agencies**

5 **154 Nominating contact for investigation**

- 6 (1) If the Federal Integrity Commissioner decides to deal with a
7 corruption issue by:
8 (a) referring the corruption issue to a Commonwealth agency for
9 investigation; or
10 (b) managing or overseeing an investigation of the corruption
11 issue by a Commonwealth agency;
12 the head of the agency may nominate a representative of the
13 agency as the contact for the investigation.

14 Note: If the head of the agency does not nominate someone under this
15 subsection, the head of the agency is the nominated contact for the
16 investigation (see the definition of *nominated contact* in section 8).

- 17 (2) The nomination must be made by notice in writing to the Federal
18 Integrity Commissioner.

1 **Division 2—Managing or overseeing investigations by**
2 **Commonwealth agencies**

3 **155 Managing an investigation**

- 4 (1) The Federal Integrity Commissioner *manages* an investigation of a
5 corruption issue by a Commonwealth agency by giving the
6 agency's nominated contact for the investigation detailed guidance
7 about the planning, and carrying out, of the investigation.

8 Note: The Federal Integrity Commissioner can request the agency to provide
9 information about the investigation under sections 157 and 158.

- 10 (2) The head of the agency must ensure that:
11 (a) the agency adheres to the Federal Integrity Commissioner's
12 detailed guidance in planning and carrying out the
13 investigation; and
14 (b) the agency cooperates with the Federal Integrity
15 Commissioner in relation to the planning and carrying out of
16 the investigation.

17 **156 Overseeing an investigation**

- 18 (1) The Federal Integrity Commissioner *oversees* an investigation of a
19 corruption issue by a Commonwealth agency by giving the
20 agency's nominated contact for the investigation general guidance
21 about the planning, and carrying out, of the investigation.
22 (2) The head of the agency must ensure that the agency follows the
23 Federal Integrity Commissioner's general guidance in relation to
24 the planning and carrying out of the investigation.

1 **Division 3—Reporting**

2 **Subdivision A—Reporting by Commonwealth agencies during**
3 **investigations**

4 **157 Federal Integrity Commissioner may request individual**
5 **progress report**

- 6 (1) If a Commonwealth agency is investigating a corruption issue, the
7 Federal Integrity Commissioner may request:
- 8 (a) if the Federal Integrity Commissioner referred the corruption
9 issue to the agency for investigation or is managing or
10 overseeing the investigation—the nominated contact for the
11 investigation; or
12 (b) in any other case—the head of the agency;
13 to give him or her a progress report on the investigation.
- 14 (2) The request:
- 15 (a) must be in writing; and
16 (b) must specify the date by which the progress report must be
17 given to the Federal Integrity Commissioner; and
18 (c) may specify particular matters in relation to the investigation
19 that the report is to address.
20 The date specified under paragraph (b) must be at least 7 days after
21 the request is made.
- 22 (3) The nominated contact, or the head of the agency, must comply
23 with the request.

24 **158 Federal Integrity Commissioner may request periodic progress**
25 **reports**

- 26 (1) If a Commonwealth agency is investigating a corruption issue, the
27 Federal Integrity Commissioner may request:
- 28 (a) if the Federal Integrity Commissioner referred the corruption
29 issue to the agency for investigation or is managing or

1 overseeing the investigation—the nominated contact for the
2 investigation; or

3 (b) in any other case—the head of the agency;
4 to give him or her periodic progress reports on the investigation.

5 (2) The request:

6 (a) must be in writing; and

7 (b) must specify the frequency with which the reports are to be
8 given and the periods to which they are to relate; and

9 (c) may specify particular matters in relation to the investigation
10 that the reports are to address.

11 (3) The nominated contact, or the head of the agency, must comply
12 with the request.

13 **Subdivision B—Reporting by Commonwealth agencies at end**
14 **of investigations**

15 **159 Final report on investigation**

16 (1) After a Commonwealth agency completes:

17 (a) an investigation of a corruption issue; or

18 (b) a further investigation of a corruption issue recommended by
19 the Federal Integrity Commissioner under section 160;

20 the head of the agency must cause a report on the investigation to
21 be prepared.

22 (2) The report:

23 (a) must set out:

24 (i) the agency's findings on the corruption issue; and

25 (ii) the evidence and other material on which those findings
26 are based; and

27 (iii) what action (if any) the head of the agency has taken, or
28 proposes to take, to address those findings; and

29 (iv) if action is to be taken—the reasons for the proposed
30 action; and

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- 1 (b) if the agency is the AFP and the corruption issue relates to
2 another Commonwealth agency—may also set out
3 recommendations relating to the other agency.
- 4 (3) The head of the agency must give a copy of the report to the
5 Federal Integrity Commissioner as soon as reasonably practicable
6 after the investigation or further investigation is completed.

7 **160 Federal Integrity Commissioner may comment on final report**

8 *Federal Integrity Commissioner may make comments or*
9 *recommendations*

- 10 (1) The Federal Integrity Commissioner may, if he or she thinks fit,
11 make comments or recommendations on any matter relating to or
12 arising out of:
13 (a) a report given to the Federal Integrity Commissioner by the
14 head of a Commonwealth agency under section 159; or
15 (b) the investigation to which the report relates.
- 16 Note: Under section 59, the Federal Integrity Commissioner could, after
17 receiving the report, reconsider how the corruption issue should be
18 dealt with.
- 19 (2) The Federal Integrity Commissioner must put any such comments
20 or recommendations in writing and give them to the head of the
21 Commonwealth agency.
- 22 (3) If:
23 (a) the Commonwealth agency that gives the report to the
24 Federal Integrity Commissioner is the AFP; and
25 (b) the corruption issue relates to another Commonwealth
26 agency;
27 the Federal Integrity Commissioner must also give the comments
28 or recommendations to the head of that other agency.
- 29 (4) Without limiting subsection (1), the Federal Integrity
30 Commissioner may recommend that:
31 (a) the head of a Commonwealth agency take appropriate action
32 with a view to having a person charged with a criminal
33 offence; or

- 1 (b) the head of a Commonwealth agency take appropriate action:
2 (i) to initiate disciplinary proceedings against a person; or
3 (ii) to determine whether a person's employment or
4 appointment should be terminated; or
5 (c) the head of a Commonwealth agency that gave the report to
6 the Federal Integrity Commissioner investigate the corruption
7 issue further.

8 Note: Under section 59, the Federal Integrity Commissioner could, instead
9 of recommending that the agency investigate the corruption issue
10 further, decide that the corruption issue should be dealt with in another
11 way.

12 *Request for details of action to be taken*

- 13 (5) The Federal Integrity Commissioner may request the head of the
14 Commonwealth agency to which the Federal Integrity
15 Commissioner's recommendations are directed to give the Federal
16 Integrity Commissioner, within a specified time, details of any
17 action that the head of the agency proposes to take with respect to
18 the recommendations.
- 19 (6) The head of the agency must comply with the request.
- 20 (7) If the Federal Integrity Commissioner is not satisfied with the
21 response of the head of the agency to the request, the Federal
22 Integrity Commissioner may refer to the relevant Minister for the
23 agency:
24 (a) the Federal Integrity Commissioner's recommendation and
25 the reasons for that recommendation; and
26 (b) the response of the head of the agency to the
27 recommendation; and
28 (c) the Federal Integrity Commissioner's reasons for not being
29 satisfied with that response.
- 30 (8) If the Federal Integrity Commissioner refers material to a Minister
31 under subsection (7), the Federal Integrity Commissioner may also
32 send a copy of that material to:
33 (a) the President of the Senate for presentation to the Senate; and
34 (b) the Speaker of the House of Representatives for presentation
35 to the House of Representatives.
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Sensitive information

- (9) The Federal Integrity Commissioner may exclude information from the copy of the material sent under subsection (8) if the Federal Integrity Commissioner is satisfied that:
 - (a) the information is sensitive information; and
 - (b) it is desirable in the circumstances to exclude the information from the material sent.

- (10) In deciding whether to exclude information from the copy of the material sent under subsection (8), the Federal Integrity Commissioner must seek to achieve an appropriate balance between:
 - (a) the public interest that would be served by including the information in the material sent; and
 - (b) the prejudicial consequences that might result from including the information in the material sent.

- (11) After the material is presented to the Parliament, the Federal Integrity Commissioner may discuss any matter to which the material relates with the head of the agency for the purpose of resolving the matter.

161 Advising person who referred corruption issue of outcome of the investigation

- (1) The head of a Commonwealth agency must advise a person (or a representative nominated by the person) of the outcome of the agency's investigation of a corruption issue:
 - (a) raised by the person in a referral under section 45; and
 - (b) referred to the agency under paragraph 49(1)(b) or (c).

- (2) One way of advising the person (or the representative) is to give a copy of all or part of any report prepared under section 159 in relation to the investigation.

1 **162 Advising person whose conduct is investigated of outcome of the**
2 **investigation**

- 3 (1) If a Commonwealth agency investigates a corruption issue that
4 relates to a person who is, or has been, an employee or officer of
5 the agency, the head of the agency must advise the person of the
6 outcome of the investigation.
- 7 (2) Without limiting subsection (1), the head of the agency must
8 advise the person by giving the person a copy of the whole or a
9 part of the report prepared in relation to the investigation under
10 section 159.

1 **Division 4—Federal Integrity Commissioner to pass on**
2 **information relevant to agency**

3 **163 Federal Integrity Commissioner to pass on information relevant**
4 **to agency investigation**

5 If:

- 6 (a) a Commonwealth agency is investigating a corruption issue;
7 and
8 (b) either:
9 (i) the Federal Integrity Commissioner referred the
10 corruption issue to the agency for investigation; or
11 (ii) the head of the agency referred corruption issue to the
12 Federal Integrity Commissioner under section 45; and
13 (c) the Federal Integrity Commissioner becomes aware of
14 information that is relevant to the corruption issue; and
15 (d) the head of the agency does not already have the information;
16 the Federal Integrity Commissioner must give the information to
17 the head of the agency.

1 **Part 9—Whistleblower Protection**

2 **Division 1—Disclosures, information or requests**

3 **164 Receipt of disclosures, information or requests**

- 4 (1) A person may:
- 5 (a) make, or provide information about, a disclosure of
- 6 wrongdoing, to; or
- 7 (b) request information, advice, guidance or assistance in relation
- 8 to a disclosure of wrongdoing or a whistleblower protection
- 9 issue, from;
- 10 the Whistleblower Protection Commissioner.
- 11 (2) Without limiting subsection (1):
- 12 (a) the person may make the disclosure or request, or provide the
- 13 information on behalf of:
- 14 (i) another person; or
- 15 (ii) a Commonwealth agency; or
- 16 (iii) a body or association of persons; and
- 17 (b) the person may make the disclosure or request, or provide the
- 18 information anonymously; and
- 19 (c) the person may make the disclosure or request, or provide the
- 20 information either orally or in writing.
- 21 (3) If the person who makes the disclosure or request, or provides the
- 22 information, orally, the Whistleblower Protection Commissioner
- 23 may require the person to put the disclosure, request, or
- 24 information in writing.
- 25 (4) If the person is asked to put the disclosure, request, or information
- 26 in writing under subsection (3), the Whistleblower Protection
- 27 Commissioner may refuse to deal further with the disclosure,
- 28 request or information until it is put in writing.
- 29 (5) If a government agency:

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- 1 (a) decides, under relevant legislation, to refer a disclosure,
2 request, or information to the Whistleblower Protection
3 Commissioner; or
4 (b) is required, under relevant legislation, to refer a disclosure,
5 request, or information to the Whistleblower Protection
6 Commissioner;
7 the person who made the disclosure or request, or provided the
8 information, to the agency is taken to have made the disclosure or
9 request, or provided the information to the Whistleblower
10 Protection Commissioner under this section.
- 11 (6) To avoid doubt, a disclosure of wrongdoing may include or consist
12 of an allegation, or information, that raises a corruption issue, and
13 to which the definition of *disclosure of wrongdoing* in this Act
14 also applies.

15 **165 Person making disclosure or request under section 164 may**
16 **elect to be kept informed**

- 17 (1) If a person makes a disclosure or request, or provides information
18 to the Whistleblower Protection Commissioner under section 164,
19 the Whistleblower Protection Commissioner must ask the person to
20 elect whether or not to be kept informed of the action taken in
21 relation to the disclosure, request or information.
- 22 (2) Subsection (1) does not apply if the person makes the disclosure or
23 request, or provides the information, anonymously.
- 24 (3) If the person fails to make an election when asked to do so, the
25 person is taken to have elected not to be kept informed of the
26 action taken in relation to the disclosure, request or information.
- 27 (4) If the person elects to be kept informed of the action taken in
28 relation to the disclosure, request or information, the person may
29 revoke the election at any time by notice to the Whistleblower
30 Protection Commissioner.

1 **166 Public officials must refer whistleblower protection issues**

- 2 (1) As soon as practicable after a public official becomes aware of an
3 allegation, or information, that raises a whistleblower protection
4 issue, the public official must:
5 (a) refer the allegation or information to the Whistleblower
6 Protection Commissioner under section 164; or
7 (b) if the public official is an employee of a Commonwealth
8 agency other than the head of the agency—notify the head of
9 the agency of the allegation or information.

10 Note: The head of a Commonwealth agency is a public official.

- 11 (2) Subsection (1) does not apply if the public official:
12 (a) has already taken action referred to in subsection (1) in
13 relation to the allegation or information; or
14 (b) has reasonable grounds to believe that the Whistleblower
15 Protection Commissioner is already aware of the allegation
16 or information.
- 17 (3) Action taken under subsection (3) by the head of a Commonwealth
18 agency must be taken in accordance with any direction, guidance
19 or agreement under section 167 that applies to the agency.

20 **167 Whistleblower Protection Commissioner may enter into**
21 **agreements etc. with head of Commonwealth agency**

- 22 (1) The Whistleblower Protection Commissioner may issue directions
23 or guidance to, or enter into an agreement with, the head of a
24 Commonwealth agency in relation to either or both of the
25 following matters:
26 (a) the level of detail required to refer an allegation or
27 information to the Whistleblower Protection Commissioner;
28 (b) the way in which information or documents in relation to an
29 allegation or information may be given to the Whistleblower
30 Protection Commissioner (whether for the purpose of
31 referring an allegation or information to the Whistleblower
32 Protection Commissioner or otherwise).

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Division 1 Disclosures, information or requests

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- 1 (2) The Whistleblower Protection Commissioner may revoke the
2 direction, guidance or agreement by written notice given to the
3 head of the agency. The revocation takes effect on a day specified
4 in the notice, which must be at least 14 days after the day it is
5 given.
- 6 (3) Without limiting subsection (1), the direction, guidance or
7 agreement may set out how it may be varied and other ways how it
8 may be revoked.
- 9 (4) Before issuing directions or guidance to, or entering into an
10 agreement with, the head of a Commonwealth agency for the
11 purposes of this section, the Whistleblower Protection
12 Commissioner must consult with:
- 13 (a) the Federal Integrity Commissioner; and
14 (b) the Commonwealth Ombudsman; and
15 (c) the Australian Public Service Commission; and
16 (d) the Australian Securities and Investments Commission; and
17 (e) any other Commonwealth agency with responsibility for
18 issuing directions or guidance, or entering into agreements
19 with, the heads of Commonwealth agencies with respect to
20 the receipt, referral or investigation of disclosures of
21 wrongdoing or whistleblower protection issues.
- 22 (5) Directions, guidance or agreements for the purposes of this section
23 may be included in directions, guidance or agreements issued or
24 entered into by the Federal Integrity Commissioner for the
25 purposes of section 48.

168 General information, advice, guidance and assistance

- 26
- 27 (1) The Whistleblower Protection Commissioner is to provide general
28 information, advice, guidance and assistance to persons who:
- 29 (a) make, or provide information about, disclosures of
30 wrongdoing; or
31 (b) request information, advice, guidance or assistance in relation
32 to a disclosure of wrongdoing or a whistleblower protection
33 issue; or

- 1 (c) are responsible for whistleblower protection responsibilities
2 in any Commonwealth agency or any other body in relation
3 to whom a disclosure of wrongdoing has been made or can be
4 made; or
5 (d) are responsible for investigating or otherwise dealing with
6 disclosures of wrongdoing.
- 7 (2) In determining the nature of general information, advice, guidance
8 and assistance to be provided under this Part, the Whistleblower
9 Protection Commissioner must consult with:
10 (a) the Federal Integrity Commissioner; and
11 (b) the Commonwealth Ombudsman; and
12 (c) the Australian Public Service Commission; and
13 (d) the Australian Securities and Investments Commission; and
14 (e) a body or bodies representing the interests of employers in
15 the public and private sectors; and
16 (f) a body or bodies representing the interests of employees or
17 workers in the public and private sectors; and
18 (g) one or more civil society organisations representing persons
19 with experience of making disclosures of wrongdoing or with
20 expertise in whistleblower protection; and
21 (h) any other government agencies with responsibility for issuing
22 directions or guidance to other agencies or organisations with
23 respect to whistleblower protection issues; and
24 (i) any other person or body that the Whistleblower Protection
25 Commissioner deems fit.
- 26 (3) In making arrangements and giving direction for the provision of
27 general information, advice, guidance and assistance to persons
28 who:
29 (a) make, or provide information about, disclosures of
30 wrongdoing; or
31 (b) request information, advice, guidance or assistance in relation
32 to a disclosure of wrongdoing or a whistleblower protection
33 issue;
34 the Whistleblower Protection Commissioner must ensure that the
35 relevant staff members of AFIC have appropriate specialist training
36 and experience in the provision of legal, administrative,
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Part 9 Whistleblower Protection

Division 1 Disclosures, information or requests

Section 168

- 1 investigative, psychological and workplace-related advice,
2 guidance and support.

1 **Division 2—How Whistleblower Protection Commissioner**
2 **deals with disclosures of wrongdoing and**
3 **whistleblower protection issues**

4 **Subdivision A—General**

5 **169 How Whistleblower Protection Commissioner may deal with**
6 **disclosures of wrongdoing**

- 7 (1) The Whistleblower Protection Commissioner may deal with a
8 disclosure of wrongdoing, or information about a disclosure of
9 wrongdoing, in any of the following ways:
- 10 (a) if the disclosure of wrongdoing relates to a Commonwealth
11 agency—by referring the disclosure or information to the
12 agency for investigation;
 - 13 (b) if the disclosure of wrongdoing relates to a matter that is
14 within the functions and powers of a government agency to
15 investigate or otherwise deal with—by referring the
16 disclosure or information to the agency for investigation or to
17 be otherwise dealt with.
- 18 (2) If a disclosure of wrongdoing includes an allegation or information
19 that raises a corruption issue, that allegation or information must,
20 unless it concerns the Federal Integrity Commissioner, be referred
21 to the Federal Integrity Commissioner under section 45.
- 22 (3) If the Whistleblower Protection Commissioner refers a disclosure
23 of wrongdoing, or information about a disclosure to another
24 government agency, the Whistleblower Protection Commissioner
25 may, for the purpose of ensuring that whistleblower protection
26 responsibilities are fulfilled:
- 27 (a) monitor the way in which the agency investigates or deals
28 with the disclosure or information; and
 - 29 (b) provide advice, guidance or assistance to the person who
30 made the disclosure or provided the information, or any
31 related person; and

Part 9 Whistleblower Protection

Division 2 How Whistleblower Protection Commissioner deals with disclosures of wrongdoing and whistleblower protection issues

Section 170

- 1 (c) provide advice, guidance or assistance to the agency or any
2 other person with respect to the way in which the agency
3 investigates or deals with the disclosure or information.

4 *Requesting information to assist in monitoring and guidance*

- 5 (4) For the purposes of subsection (1), the Whistleblower Protection
6 Commissioner may request the head of any government agency to
7 give the Whistleblower Protection Commissioner any information
8 specified in the request.
- 9 (5) The head of a Commonwealth agency must comply with the
10 request.

11 **170 How Whistleblower Protection Commissioner may deal with**
12 **whistleblower protection issues**

- 13 (1) The Whistleblower Protection Commissioner may deal with an
14 allegation, or information that raises a whistleblower protection
15 issue in any of the following ways:
- 16 (a) by investigating the whistleblower protection issue;
- 17 (b) if the whistleblower protection issue relates to a
18 Commonwealth agency—by referring the whistleblower
19 protection issue to the agency for investigation and:
- 20 (i) managing the investigation; or
21 (ii) overseeing the investigation; or
22 (iii) neither managing nor overseeing the investigation;
- 23 (c) if the whistleblower protection issue relates to a matter that is
24 within the functions and powers of a government agency to
25 investigate or otherwise deal with—by referring the
26 whistleblower protection issue to the agency for investigation
27 or to be otherwise dealt with and:
- 28 (i) managing the investigation; or
29 (ii) overseeing the investigation; or
30 (iii) neither managing nor overseeing the investigation;
- 31 (d) by managing an investigation of the whistleblower protection
32 issue that is being conducted by a Commonwealth agency;

Section 171

- 1 (e) by overseeing an investigation of the whistleblower
2 protection issue that is being conducted by a Commonwealth
3 agency.
- 4 (2) The Whistleblower Protection Commissioner may investigate the
5 whistleblower protection issue under paragraph (1)(a) either alone
6 or jointly with another government agency with appropriate
7 functions or powers for the purpose.
- 8 (3) The Whistleblower Protection Commissioner may not deal with a
9 disclosure of wrongdoing or information relating to a disclosure in
10 any of the ways provided for in this section, unless the disclosure
11 or information involves a whistleblower protection issue.

12 **171 Criteria for deciding how to deal with a disclosure of**
13 **wrongdoing or whistleblower protection issue**

- 14 (1) The Whistleblower Protection Commissioner must have regard to
15 the matters set out in subsection (2) in deciding:
16 (a) how to deal with a disclosure of wrongdoing, or
17 whistleblower protection issue; or
18 (b) whether to take no further action in relation to a disclosure of
19 wrongdoing, or whistleblower protection issue.
- 20 (2) The matters to which the Whistleblower Protection Commissioner
21 must have regard are the following:
22 (a) the need to ensure that disclosures of wrongdoing and
23 whistleblower protection issues are fully investigated;
24 (b) the rights and obligations of any other agency to investigate a
25 the disclosure of wrongdoing or the whistleblower protection
26 issue;
27 (c) the rights and obligations of any person who makes or
28 provides information in relation to the disclosure of
29 wrongdoing or raises the whistleblower protection issue,
30 including any need to protect the person's identity or
31 confidentiality or to protect the person from reprisal or
32 detrimental action;
33 (d) if a joint investigation of the whistleblower protection issue
34 by the Whistleblower Protection Commissioner and another

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Division 2 How Whistleblower Protection Commissioner deals with disclosures of wrongdoing and whistleblower protection issues

Section 172

- 1 agency is being considered—the extent to which the other
2 agency is able to cooperate in the investigation;
- 3 (e) the resources that are available to any other agency to
4 investigate the whistleblower protection issue;
- 5 (f) the need to ensure a balance between:
- 6 (i) the Whistleblower Protection Commissioner’s role in
7 dealing with whistleblower protection issues
8 (particularly in dealing with significant whistleblower
9 protection issues); and
- 10 (ii) ensuring that the heads of Commonwealth agencies take
11 responsibility for managing their agencies, or for
12 investigating and dealing with whistleblower protection
13 issues;
- 14 (g) the likely significance of the whistleblower protection issue
15 for any person to whom it relates, for any agency and for the
16 Commonwealth.
- 17 (3) Subsection (2) does not limit the matters to which the
18 Whistleblower Protection Commissioner may have regard.

172 Dealing with multiple whistleblower protection issues

- 19
- 20 (1) The Whistleblower Protection Commissioner may, in the
21 Whistleblower Protection Commissioner’s discretion, deal with a
22 number of whistleblower protection issues together (whether or not
23 they are raised by the same allegation or information).
- 24 (2) Without limiting subsection (1), if an allegation, or information,
25 raises a number of whistleblower protection issues, the
26 Whistleblower Protection Commissioner:
- 27 (a) may deal with some or all of those whistleblower protection
28 issues together; and
- 29 (b) may deal with some or all of those whistleblower protection
30 issues separately.
- 31 (3) Without limiting subsection (1), the Whistleblower Protection
32 Commissioner may prepare a single report in relation to a number
33 of whistleblower protection issues.

1 **Subdivision B—Whistleblower Protection Commissioner**
2 **dealing with referred whistleblower protection issues**

3 **173 Whistleblower Protection Commissioner must make a decision**

- 4 (1) If an allegation, or information, that raises a whistleblower
5 protection issue is referred to the Whistleblower Protection
6 Commissioner under subsection 164(5), the Whistleblower
7 Protection Commissioner must decide:
8 (a) to deal with the whistleblower protection issue in one of the
9 ways referred to in subsection 170(1); or
10 (b) to take no further action in relation to the whistleblower
11 protection issue.

12 *Requesting information to assist in making the decision*

- 13 (2) For the purposes of making a decision under subsection (1), the
14 Whistleblower Protection Commissioner may request the head of
15 any government agency to give the Whistleblower Protection
16 Commissioner the information specified in the request.
17 (3) The head of a Commonwealth agency must comply with the
18 request.
19 (4) Subsections (2) and (3) do not limit the information to which the
20 Whistleblower Protection Commissioner may have regard in
21 making a decision under subsection (1).

22 *Direction not to investigate*

- 23 (5) If the whistleblower protection issue relates to a Commonwealth
24 agency and the Whistleblower Protection Commissioner decides to
25 deal with the whistleblower protection issue in one of the ways
26 referred to in subsection 170(1), the Whistleblower Protection
27 Commissioner may direct the head of the agency that the agency is
28 not to investigate the whistleblower protection issue.
29 (6) If a direction under subsection (5) is given in writing, the direction
30 is not a legislative instrument.

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Division 2 How Whistleblower Protection Commissioner deals with disclosures of wrongdoing and whistleblower protection issues

Section 174

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Deciding to take no further action

- (7) The Whistleblower Protection Commissioner may decide under subsection (1) to take no further action in relation to the whistleblower protection issue only if the Whistleblower Protection Commissioner is satisfied that:
 - (a) the whistleblower protection issue is already being, or will be, investigated by another government agency; or
 - (b) the referral of the allegation, or information, that raises the whistleblower protection issue is frivolous or vexatious; or
 - (c) the whistleblower protection issue has been, is or will be, the subject of proceedings before a court or an application to an industrial, civil or administrative body; or
 - (d) investigation of the whistleblower protection issue is not warranted having regard to all the circumstances.
- (8) If the whistleblower protection issue relates to a Commonwealth agency, the Whistleblower Protection Commissioner must advise the head of the agency of a decision under subsection (1) to take no further action in relation to the whistleblower protection issue. That advice must be given:
 - (a) in writing; and
 - (b) as soon as reasonably practicable after the decision is made.
- (9) This Act continues to apply to the head of a Commonwealth agency given advice under subsection (8), in relation to the whistleblower protection issue unless the Whistleblower Protection Commissioner advises otherwise:
 - (a) in the advice given under subsection (8); or
 - (b) in a later written advice given to the head of that agency.

174 Advising person who raises whistleblower protection issue of decision about how to deal with issue

Whistleblower Protection Commissioner to advise person who raises whistleblower protection issue

- (1) If a person:

Section 174

- 1 (a) makes an allegation, or provides information, that raises a
2 whistleblower protection issue to the Whistleblower
3 Protection Commissioner under section 164; and
4 (b) elects under section 165 to be kept informed of the action
5 taken in relation to the whistleblower protection issue;
6 the Whistleblower Protection Commissioner must advise the
7 person of:
8 (c) the Whistleblower Protection Commissioner's decision under
9 section 173 in relation to the whistleblower protection issue;
10 and
11 (d) any decision the Whistleblower Protection Commissioner
12 makes under section 179 on a reconsideration of how the
13 whistleblower protection issue should be dealt with.

14 *Form and timing of advice*

- 15 (2) The Whistleblower Protection Commissioner must advise the
16 person of the decision:
17 (a) in writing; and
18 (b) as soon as reasonably practicable after the decision is made.

19 *Exception*

- 20 (3) However, the Whistleblower Protection Commissioner need not
21 advise the person if the Whistleblower Protection Commissioner is
22 satisfied that doing so is likely to prejudice:
23 (a) the investigation of the whistleblower protection issue or any
24 other investigation; or
25 (b) protection of the identity or confidentiality of any person who
26 referred or provided information in relation to the
27 whistleblower protection issue, or protection of such a person
28 from reprisal or detrimental action; or
29 (c) any action taken as a result of an investigation referred to in
30 paragraph (a).

31 *Advice to nominated person or office holder*

- 32 (4) If:

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Division 2 How Whistleblower Protection Commissioner deals with disclosures of wrongdoing and whistleblower protection issues

Section 175

- 1 (a) a person refers an allegation, or information, that raises a
2 whistleblower protection issue to the Whistleblower
3 Protection Commissioner on behalf of:
4 (i) another person; or
5 (ii) a Commonwealth agency; or
6 (iii) a body or association of persons; and
7 (b) the other person, the agency, the body or the association
8 nominates:
9 (i) another person; or
10 (ii) the holder of a particular office in the agency, body or
11 association;
12 by notice in writing to the Whistleblower Protection
13 Commissioner to receive communications from the
14 Whistleblower Protection Commissioner;
15 the Whistleblower Protection Commissioner must give the advice
16 required by subsection (1) to the person nominated or the person
17 for the time being holding the office nominated.

18 **175 Advising person to whom referred whistleblower protection**
19 **issue relates of decision about how to deal with issue**

20 If the Whistleblower Protection Commissioner makes a decision
21 under section 173 in relation to a referred whistleblower protection
22 issue that relates to a person, the Whistleblower Protection
23 Commissioner may advise the person of the Whistleblower
24 Protection Commissioner's decision.

1 **Subdivision C—Whistleblower Protection Commissioner**
2 **dealing with whistleblower protection issues on own**
3 **initiative**

4 **176 Whistleblower Protection Commissioner may deal with**
5 **whistleblower protection issues on own initiative**

6 *Whistleblower Protection Commissioner may decide to deal with a*
7 *whistleblower protection issue*

- 8 (1) If the Whistleblower Protection Commissioner becomes aware of
9 an allegation, or information, that raises a whistleblower protection
10 issue, the Whistleblower Protection Commissioner may, on the
11 Whistleblower Protection Commissioner’s own initiative, deal with
12 the whistleblower protection issue in one of the ways referred to in
13 subsection 170(1).
- 14 (2) Subsection (1) does not apply if the Whistleblower Protection
15 Commissioner becomes aware of the allegation or information
16 because of action taken under Division 1 of this Part.

17 *Requesting information to assist in making the decision*

- 18 (3) For the purposes of making a decision under subsection (1), the
19 Whistleblower Protection Commissioner may request the head of
20 any Commonwealth agency to give the Whistleblower Protection
21 Commissioner the information specified in the request.
- 22 (4) The head of the Commonwealth agency must comply with the
23 request.
- 24 (5) Subsection (3) does not limit the information to which the
25 Whistleblower Protection Commissioner may have regard in
26 making a decision under subsection (1).

27 *Direction not to investigate*

- 28 (6) If the whistleblower protection issue relates to a Commonwealth
29 agency and the Whistleblower Protection Commissioner decides to
30 deal with the whistleblower protection issue in one of the ways

Part 9 Whistleblower Protection

Division 2 How Whistleblower Protection Commissioner deals with disclosures of wrongdoing and whistleblower protection issues

Section 177

1 referred to in subsection 170(1), the Whistleblower Protection
2 Commissioner may direct the head of the agency that the agency is
3 not to investigate the whistleblower protection issue.

4 (7) If a direction under subsection (6) is given in writing, the direction
5 is not a legislative instrument.

6 *Becoming aware of another whistleblower protection issue*

7 (8) Without limiting subsection (1), if the Whistleblower Protection
8 Commissioner:

9 (a) is investigating, or inquiring into, a particular whistleblower
10 protection issue; and

11 (b) in the course of doing so, becomes aware of an allegation, or
12 information, that raises another whistleblower protection
13 issue;

14 the Whistleblower Protection Commissioner may deal with that
15 other whistleblower protection issue in one of the ways referred to
16 in subsection 170(1).

17 **177 Advising head of Commonwealth agency of decision to deal with**
18 **whistleblower protection issue on own initiative**

19 *Application of section*

20 (1) This section applies if:

21 (a) the Whistleblower Protection Commissioner decides, on the
22 Whistleblower Protection Commissioner's own initiative, to
23 deal with a whistleblower protection issue in one of the ways
24 referred to in subsection 170(1); and

25 (b) the whistleblower protection issue relates to the conduct of a
26 person who is an employee of a Commonwealth agency
27 (other than the head of the agency).

28 *Advising head of Commonwealth agency*

29 (2) The Whistleblower Protection Commissioner must advise the head
30 of that Commonwealth agency of:

Section 178

- 1 (a) the Whistleblower Protection Commissioner's decision to
2 deal with the whistleblower protection issue in that way; and
3 (b) any decision the Whistleblower Protection Commissioner
4 makes under section 179 on a reconsideration of how the
5 whistleblower protection issue should be dealt with.

6 *Form and timing of advice*

- 7 (3) The Whistleblower Protection Commissioner must advise the head
8 of the Commonwealth agency of the decision:
9 (a) in writing; and
10 (b) as soon as reasonably practicable after the decision is made.

11 *Exception*

- 12 (4) However, the Whistleblower Protection Commissioner need not
13 advise the head of the Commonwealth agency if doing so would be
14 likely to prejudice:
15 (a) the investigation of the whistleblower protection issue or
16 another corruption investigation; or
17 (b) any action taken as a result of an investigation referred to in
18 paragraph (a).

19 **178 Advising person of decision to deal with whistleblower**
20 **protection issue on own initiative**

21 If:

- 22 (a) the Whistleblower Protection Commissioner decides, on the
23 Whistleblower Protection Commissioner's own initiative, to
24 deal with a whistleblower protection issue in one of the ways
25 referred to in subsection 170(1); and
26 (b) the whistleblower protection issue relates to a person who is,
27 or has been, a public official;

28 the Whistleblower Protection Commissioner may advise the person
29 of:

- 30 (c) the Whistleblower Protection Commissioner's decision to
31 deal with the whistleblower protection issue in that way; and

Part 9 Whistleblower Protection

Division 2 How Whistleblower Protection Commissioner deals with disclosures of wrongdoing and whistleblower protection issues

Section 179

- 1 (d) any decision the Whistleblower Protection Commissioner
2 makes under section 179 on a reconsideration of how the
3 whistleblower protection issue should be dealt with.

4 **Subdivision D—Reconsidering how to deal with a**
5 **whistleblower protection issue**

6 **179 Reconsidering how to deal with a whistleblower protection issue**

- 7 (1) The Whistleblower Protection Commissioner may, at any time,
8 reconsider how a particular whistleblower protection issue should
9 be dealt with.
- 10 (2) On that reconsideration, the Whistleblower Protection
11 Commissioner may:
- 12 (a) if the whistleblower protection issue is not being dealt with in
13 one of the ways referred to in subsection 170(1)—decide to
14 deal with the whistleblower protection issue in accordance
15 with one of the ways referred to in that subsection; or
- 16 (b) if the whistleblower protection issue is being dealt with in
17 one of the ways referred to in subsection 170(1)—decide to
18 deal with the whistleblower protection issue in another of the
19 ways referred to in that subsection, or to take no further
20 action in relation to the whistleblower protection issue.
- 21 (3) The Whistleblower Protection Commissioner may decide under
22 subsection (2) to take no further action in relation to the
23 whistleblower protection issue only if the Whistleblower
24 Protection Commissioner is satisfied that:
- 25 (a) the whistleblower protection issue is already being, or will
26 be, investigated by another government agency; or
- 27 (b) the allegation, or information, that raises the whistleblower
28 protection issue is frivolous or vexatious; or
- 29 (c) the whistleblower protection issue relates has been, is or will
30 be, the subject of proceedings before a court or an application
31 to an industrial, civil or administrative body; or
- 32 (d) further investigation of the whistleblower protection issue is
33 not warranted having regard to all the circumstances.

1 **Division 3—Information sharing when decision made on**
2 **how to deal with whistleblower protection issue**

3 **180 If Commonwealth agency to conduct, or continue conducting,**
4 **investigation of whistleblower protection issue**

5 (1) This section applies if:

- 6 (a) the Whistleblower Protection Commissioner decides to deal
7 with a whistleblower protection issue that relates to a
8 Commonwealth agency by referring the whistleblower
9 protection issue to that or another Commonwealth agency for
10 investigation; or
11 (b) an allegation, or information, that raises a whistleblower
12 protection issue is referred to the Whistleblower Protection
13 Commissioner under subsection 164(5) by the head of a
14 Commonwealth agency and the Commonwealth agency is
15 investigating the whistleblower protection issue.

16 (2) The Whistleblower Protection Commissioner must give the head of
17 the Commonwealth agency investigating the whistleblower
18 protection issue information or a document if:

- 19 (a) the information or document:
20 (i) relates to the whistleblower protection issue to the
21 extent to which the agency is investigating the issue;
22 and
23 (ii) is in the possession, or under the control, of the
24 Whistleblower Protection Commissioner; and
25 (b) the head of the agency does not already have the information
26 or document.

27 Note: Under section 163, the Whistleblower Protection Commissioner has a
28 continuing obligation to pass on information that the Whistleblower
29 Protection Commissioner becomes aware of and that is relevant to the
30 whistleblower protection issue.

31 (3) The Whistleblower Protection Commissioner may give the original
32 or a copy of a document.

Part 9 Whistleblower Protection

Division 3 Information sharing when decision made on how to deal with whistleblower protection issue

Section 181

181 If Commonwealth agency has already commenced investigating whistleblower protection issue

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- (1) This section applies if:
 - (a) the Whistleblower Protection Commissioner decides to deal with a whistleblower protection issue that relates to a Commonwealth agency in one of the ways referred to in subsection 170(1); and
 - (b) the agency has started or continued investigating the whistleblower protection issue before the Whistleblower Protection Commissioner makes that decision.
- (2) The Whistleblower Protection Commissioner may direct the head of the agency investigating the whistleblower protection issue to give the Whistleblower Protection Commissioner, or the head of another government agency, all information or documents that:
 - (a) relate to the whistleblower protection issue; and
 - (b) are in the possession, or under the control, of the head of the agency.
- (3) The direction must be in writing.
- (4) A direction given under this section is not a legislative instrument.

1 **Division 4—Investigations and public inquiries by the**
2 **Whistleblower Protection Commissioner**

3 **182 Manner and powers of investigation**

- 4 (1) This Division applies if the Whistleblower Protection
5 Commissioner investigates or conducts a public inquiry in relation
6 to a whistleblower protection issue (whether alone or jointly with
7 another person or persons).
- 8 (2) Parts 5, 6 and 7 of this Act apply to an investigation or public
9 inquiry by the Whistleblower Protection Commissioner as if a
10 reference to the Federal Integrity Commissioner were a reference
11 to the Whistleblower Protection Commissioner, and a reference to
12 a corruption issue were a reference to a whistleblower protection
13 issue.

1 **Division 5—Investigations by other Commonwealth**
2 **agencies**

3 **183 Dealing with, managing or overseeing investigations**

- 4 (1) This Division applies if the Whistleblower Protection
5 Commissioner decides to deal with a corruption issue by:
6 (a) referring the corruption issue to a Commonwealth agency for
7 investigation; or
8 (b) managing or overseeing an investigation of the corruption
9 issue by a Commonwealth agency.
- 10 (2) Part 8 of this Act applies to the investigation by the
11 Commonwealth agency as if a reference to the Federal Integrity
12 Commissioner were a reference to the Whistleblower Protection
13 Commissioner, and a reference to a corruption issue were a
14 reference to a whistleblower protection issue.

1 **Division 6—Remedial functions and powers**

2 **184 Additional recommendations**

- 3 (1) This section applies to a report of an investigation or public inquiry
4 or a special report made by the Whistleblower Protection
5 Commissioner under section 67, 74, 237 or 238 of the Act.
- 6 (2) Without limiting any recommendations that the Whistleblower
7 Protection Commissioner thinks fit to make, the Whistleblower
8 Protection Commissioner may also recommend:
- 9 (a) the adoption of measures to remedy deficiencies in the
10 policy, procedures or practices that facilitated:
 - 11 (i) a person or body engaging in reprisal, victimisation,
12 detrimental acts or omissions in relation to a person as a
13 result of the disclosure of wrongdoing; or
 - 14 (ii) a failure to support and protect, or prevent detrimental
15 acts or omissions from occurring in relation to, a person
16 as a result of the disclosure of wrongdoing; or
 - 17 (b) the adoption of measures to prevent detriment from being
18 suffered, or further detriment from being suffered, by a
19 person as a result of the disclosure of wrongdoing; or
 - 20 (c) a decision to reinstate a person's employment or duties or
21 otherwise deal with a person's employment to remedy or
22 compensate for detriment suffered; or
 - 23 (d) the payment of compensation or giving of a reward or other
24 remedies to a person, including payment of legal and other
25 costs;
 - 26 (e) the taking of appropriate action to enforce a civil penalty or
27 obtain a civil, industrial, workplace or administrative remedy
28 for a person; or
 - 29 (f) such other action as the Whistleblower Protection
30 Commissioner considers necessary to protect a person from,
31 or compensate a person for, detrimental actions or omissions
32 a result of the disclosure of wrongdoing.

Section 185

1 **185 Proceedings and applications**

2 (1) This section applies to a whistleblower protection issue that the
3 Whistleblower Protection Commissioner is investigating or has
4 investigated, or in relation to which the Whistleblower Protection
5 Commissioner has made a report under sections 67, 74, 237 or 238
6 of the Act.

7 (2) Where the Whistleblower Protection Commissioner is satisfied it is
8 in the public interest to do so, the Commissioner may, in respect of
9 the whistleblower protection issue:

10 (a) commence proceedings in a court; or

11 (b) make applications to an industrial, civil or administrative
12 body;

13 seeking such orders as may be available under any Commonwealth
14 law for remedies for a breach or apprehended breach of
15 whistleblower protection responsibilities.

16 (3) The Whistleblower Protection Commissioner may provide legal
17 advice, representation or other practical support, as appropriate, to
18 a person who:

19 (a) experienced a whistleblower protection issue as a result of a
20 disclosure of wrongdoing; and

21 (b) is, or may become, a party to proceedings in a court or to a
22 matter before an industrial, civil or administrative body,
23 under any law for enforcement or remedies in relation to a
24 whistleblower protection responsibility;

25 if the Whistleblower Protection Commissioner considers that
26 representing or providing advice or support to the person will
27 promote compliance with whistleblower protection responsibilities,
28 and is appropriate in all the circumstances.

29 (4) Practical support under subsection (3) may include payments for
30 non-legal costs, services, living support, or a reward.

31 (5) The Whistleblower Protection Commissioner must establish a fund
32 to support the provision of legal advice, representation or other
33 practical support to persons under subsection (3).

- 1 (6) The fund described in subsection (5) is to be supported by the
2 Whistleblower Protection Special Account created by section 188.
- 3 (7) Where the orders that may be sought by the Whistleblower
4 Protection Commissioner under subsection (2) include exemplary
5 damages for a breach or apprehended breach of a whistleblower
6 protection responsibility, the Whistleblower Protection
7 Commissioner:
8 (a) may seek such damages; and
9 (b) must, if such damages are awarded and the court of tribunal
10 so agrees, have the damages paid into the Whistleblower
11 Protection Special Account created by section 188.

12 **186 Mediation and arbitration**

- 13 (1) This section applies to a whistleblower protection issue:
14 (a) that the Whistleblower Protection Commissioner is
15 investigating or has investigated; or
16 (b) in relation to which the Whistleblower Protection
17 Commissioner has made a report under sections 67, 74, 237
18 or 238 of the Act;
19 and which involves a dispute between 2 or more parties in respect
20 of the whistleblower protection issue and its resolution.
- 21 (2) Where the Whistleblower Protection Commissioner is satisfied it is
22 in the public interest and the interests of all parties to do so, the
23 Commissioner may, with the consent of all parties:
24 (a) mediate the dispute; or
25 (b) arbitrate in respect of the dispute.
- 26 (3) The Whistleblower Protection Commissioner may provide legal
27 advice, representation or other practical support, as appropriate, to
28 any person involved in a mediation or arbitration under
29 subsection (2).

Section 187

1 **187 Enforceable undertakings relating to contraventions of civil**
2 **remedy provisions**

3 *Application of this section*

- 4 (1) This section applies if the Whistleblower Protection Commissioner
5 reasonably believes that a person has contravened a civil remedy
6 provision in respect of a whistleblowing protection responsibility.

7 *Accepting an undertaking*

- 8 (2) The Whistleblower Protection Commissioner may accept a written
9 undertaking given by the person in relation to the contravention.

10 *Withdrawing or varying an undertaking*

- 11 (3) The person may withdraw or vary the undertaking at any time, but
12 only with the Whistleblower Protection Commissioner's consent.

13 *Relationship with orders in relation to contraventions of civil*
14 *remedy provisions*

- 15 (4) The Whistleblower Protection Commissioner must not apply for an
16 order under subsection 185(2) in relation to a contravention of a
17 civil remedy provision by a person if an undertaking given by the
18 person under this section in relation to the contravention has not
19 been withdrawn.

20 Note: A person other than the Whistleblower Protection Commissioner who
21 is otherwise entitled to apply for an order in relation to the
22 contravention may do so.

23 *Enforcement of undertakings*

- 24 (5) If the Whistleblower Protection Commissioner considers that the
25 person who gave the undertaking has contravened any of its terms,
26 the Whistleblower Protection Commissioner may apply to the
27 Federal Court, the Federal Magistrates Court or a State or Territory
28 Court for an order under subsection (6).

- 1 (6) If the court is satisfied that the person has contravened a term of
2 the undertaking, the court may make one or more of the following
3 orders:
4 (a) an order directing the person to comply with the term of the
5 undertaking;
6 (b) an order awarding compensation for loss that a person has
7 suffered because of the contravention;
8 (c) an order that a civil penalty be paid into the Whistleblower
9 Protection Special Account created by section 188;
10 (d) any other order that the court considers appropriate.

1 **Division 7—Special Account**

2 **188 Whistleblower Protection Special Account**

3 (1) The Whistleblower Protection Special Account (the *Account*) is
4 established by this section.

5 (2) The Account is a special account for the purposes of the *Public*
6 *Governance, Performance and Accountability Act 2013*.

7 **189 Credits to the Account**

8 There may be credited to the Account amounts equal to the
9 following:

- 10 (a) amounts received by the Commonwealth in connection with
11 the performance of the Whistleblower Protection
12 Commissioner's functions under this Act, including awards
13 of exemplary damages or civil penalties under Division 6;
14 (b) interest received by the Commonwealth from the investment
15 of amounts debited from the Account;
16 (c) amounts received by the Commonwealth in relation to
17 property paid for with amounts debited from the Account;
18 (d) amounts of any gifts given or bequests made for the purposes
19 of the Account;
20 (e) such amounts as the Minister may approve for the
21 expenditure of money standing to the credit of the
22 Confiscated Assets Account, for the purpose of crime
23 prevention or law enforcement measures, under section 298
24 of the *Proceeds of Crime Act 2002*.

25 Note: An Appropriation Act provides for amounts to be credited to a special
26 account if any of the purposes of the special account is a purpose that
27 is covered by an item in the Appropriation Act.

28 **190 Purposes of the Account**

29 The purposes of the Account are as follows:

- 30 (a) paying or discharging the costs, expenses and other
31 obligations incurred by the Commonwealth in the

Section 190

- 1 performance of the Whistleblower Protection
2 Commissioner's functions;
- 3 (b) paying any remuneration and allowances payable to any staff
4 of AFIC assisting the Whistleblower Protection Commission
5 under this Act (including staff mentioned in
6 subsection 231(3));
- 7 (c) meeting the expenses of administering the Account.
- 8 Note: See section 80 of the *Public Governance, Performance and*
9 *Accountability Act 2013* (which deals with special accounts).

1 **Part 10—Administrative provisions relating to**
2 **AFIC**

3 **Division 1—Federal Integrity Commissioner**

4 **191 Appointment of Federal Integrity Commissioner**

- 5 (1) The Federal Integrity Commissioner is to be appointed by the
6 Governor-General by written instrument.
- 7 (2) A person must not be appointed as the Federal Integrity
8 Commissioner unless the person:
9 (a) is or has been a Judge of the Federal Court or the Supreme
10 Court of a State or Territory; or
11 (b) is qualified for appointment as such a Judge.
- 12 (3) Before the Minister makes a recommendation to the
13 Governor-General for the appointment of a person as the Federal
14 Integrity Commissioner:
15 (a) the Minister must refer the proposed recommendation for the
16 appointment to the Parliamentary Joint Committee under
17 section 251; and
18 (b) either:
19 (i) the period that the committee has under that section to
20 consider the proposed recommendation has ended
21 without the committee rejecting the proposed
22 recommendation; or
23 (ii) the committee notifies the Minister that it has decided to
24 approve the proposed recommendation.
- 25 (4) Subject to section 192, a person may be proposed for appointment
26 on more than one occasion.
- 27 (5) In this section and sections 250 and 251, *appointment* includes
28 re-appointment.
- 29 (6) The Governor-General may, for the purpose of appointing to the
30 office of the Federal Integrity Commissioner a person who is the

1 holder of a judicial office of a State or Territory, enter into such
2 arrangement with the Governor of that State or the Administrator
3 of that Territory, as the case may be, as is necessary to secure that
4 person's services.

5 (7) An arrangement under subsection (6) may provide for the
6 Commonwealth to reimburse a State or Territory with respect to
7 the services of the person to whom the arrangement relates.

8 **192 General terms and conditions of appointment**

9 (1) The Federal Integrity Commissioner holds office for the period
10 specified in the instrument of appointment. The period must not
11 exceed 5 years. The sum of the periods for which the Federal
12 Integrity Commissioner holds office must not exceed 10 years.

13 (2) The Federal Integrity Commissioner holds office on a full-time
14 basis.

15 (3) A person holding office as the Federal Integrity Commissioner
16 holds office on the terms and conditions (if any), in relation to
17 matters not covered by this Act, that are determined by the
18 Governor-General.

19 **193 Other paid work**

20 The Federal Integrity Commissioner must not engage in paid work
21 outside the duties of the Federal Integrity Commissioner's office
22 without the Minister's approval.

23 **194 Remuneration**

24 (1) The Federal Integrity Commissioner is to be paid the remuneration
25 that is determined by the Remuneration Tribunal. If no
26 determination of that remuneration by the Tribunal is in operation,
27 the Federal Integrity Commissioner is to be paid the remuneration
28 that is prescribed by the regulations.

29 (2) The Federal Integrity Commissioner is to be paid the allowances
30 that are prescribed by the regulations.

Section 195

- 1 (3) Subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973*
2 do not apply in relation to the office of the Federal Integrity
3 Commissioner.

4 Note: The effect of this subsection is that remuneration or allowances of the
5 Federal Integrity Commissioner will be paid out of money
6 appropriated by an Act other than the *Remuneration Tribunal Act*
7 *1973*.

- 8 (4) This section has effect subject to the *Remuneration Tribunal Act*
9 *1973* (except as provided by subsection (3)).

10 **195 Leave of absence**

- 11 (1) The Federal Integrity Commissioner has the recreation leave
12 entitlements that are determined by the Remuneration Tribunal.
- 13 (2) The Minister may grant the Federal Integrity Commissioner leave
14 of absence, other than recreation leave, on the terms and conditions
15 as to remuneration or otherwise that the Minister determines.

16 **196 Resignation**

- 17 (1) The Federal Integrity Commissioner may resign the Federal
18 Integrity Commissioner's appointment by giving the
19 Governor-General a written resignation.
- 20 (2) The resignation takes effect on the day it is received by the
21 Governor-General or, if a later day is specified in the resignation,
22 on that later day.

23 **197 Removal from office**

- 24 (1) The Governor-General may remove the Federal Integrity
25 Commissioner from office if each House of the Parliament, in the
26 same session of the Parliament, presents an address to the
27 Governor-General praying for the removal of the Federal Integrity
28 Commissioner on the ground:
29 (a) of misbehaviour; or
30 (b) that the Federal Integrity Commissioner is unable to perform
31 the duties of the Federal Integrity Commissioner's office
32 because of physical or mental incapacity.
-

- 1 (2) The Governor-General must remove the Federal Integrity
2 Commissioner from office if any of the following apply:
3 (a) the Federal Integrity Commissioner:
4 (i) becomes bankrupt; or
5 (ii) applies to take the benefit of any law for the relief of
6 bankrupt or insolvent debtors; or
7 (iii) compounds with the Federal Integrity Commissioner's
8 creditors; or
9 (iv) makes an assignment of the Federal Integrity
10 Commissioner's remuneration for the benefit of the
11 Federal Integrity Commissioner's creditors;
12 (b) the Federal Integrity Commissioner is absent, except on leave
13 of absence, for 14 consecutive days or for 28 days in any 12
14 months;
15 (c) the Federal Integrity Commissioner engages, except with the
16 Minister's approval, in paid work outside the duties of the
17 Federal Integrity Commissioner's office;
18 (d) the Federal Integrity Commissioner fails, without reasonable
19 excuse, to comply with:
20 (i) section 199 of this Act (disclosure of interests); or
21 (ii) section 29 of the *Public Governance, Performance and*
22 *Accountability Act 2013* (which deals with the duty to
23 disclose interests) or rules made for the purposes of that
24 section.

25 **198 Acting appointments**

- 26 (1) The Minister may, by written instrument, appoint a person to act as
27 the Federal Integrity Commissioner:
28 (a) during a vacancy in the office of the Federal Integrity
29 Commissioner (whether or not an appointment has previously
30 been made to the office); or
31 (b) during any period, or during all periods, when the Federal
32 Integrity Commissioner:
33 (i) is absent from duty or from Australia; or
34 (ii) is, for any reason, unable to perform the duties of the
35 office.

1 **Division 2—Law Enforcement Integrity Commissioner**

2 **200 Appointment etc. of Law Enforcement Integrity Commissioner**

3 Division 1 of Part 13 of the *Law Enforcement Integrity*
4 *Commissioner Act 2006* provides for the appointment and
5 conditions of appointment of the Law Enforcement Integrity
6 Commissioner.

Section 201

1 **Division 3—Whistleblower Protection Commissioner**

2 **201 Appointment of Whistleblower Protection Commissioner**

3 (1) The Whistleblower Protection Commissioner is to be appointed by
4 the Governor-General by written instrument.

5 Note: Subject to subsection 192(1), the Whistleblower Protection
6 Commissioner may be reappointed: see section 33AA of the *Acts*
7 *Interpretation Act 1901*.

8 (2) Before the Governor-General appoints a person as the
9 Whistleblower Protection Commissioner, the Minister must be
10 satisfied that the person:

- 11 (a) has suitable qualifications or experience; and
12 (b) is of good character.

13 (3) Before the Minister makes a recommendation to the
14 Governor-General for the appointment of a person as the
15 Whistleblower Protection Commissioner:

16 (a) the Minister must refer the proposed recommendation for the
17 appointment to the Parliamentary Joint Committee under
18 section 251; and

19 (b) either:

20 (i) the period that the committee has under that section to
21 consider the proposed recommendation has ended
22 without the committee rejecting the proposed
23 recommendation; or

24 (ii) the committee notifies the Minister that it has decided to
25 approve the proposed recommendation.

26 (4) Subject to section subsection 202(1), a person may be proposed for
27 appointment on more than one occasion.

28 (5) In this section and sections 250 and 251, **appointment** includes
29 re-appointment.

30 (6) The Governor-General may, for the purpose of appointing to the
31 office of the Whistleblower Protection Commissioner a person who
32 is the holder of a judicial office of a State or Territory, enter into

1 such arrangement with the Governor of that State or the
2 Administrator of that Territory, as the case may be, as is necessary
3 to secure that person's services.

4 (7) An arrangement under subsection (6) may provide for the
5 Commonwealth to reimburse a State or Territory with respect to
6 the services of the person to whom the arrangement relates.

7 **202 General terms and conditions of appointment**

8 (1) The Whistleblower Protection Commissioner holds office for the
9 period specified in the instrument of appointment. The period must
10 not exceed 5 years. The sum of the periods for which the
11 Whistleblower Protection Commissioner holds office must not
12 exceed 10 years.

13 (2) The Whistleblower Protection Commissioner holds office on a
14 full-time basis.

15 (3) A person holding office as the Whistleblower Protection
16 Commissioner holds office on the terms and conditions (if any), in
17 relation to matters not covered by this Act, that are determined by
18 the Governor-General.

19 **203 Other paid work**

20 The Whistleblower Protection Commissioner must not engage in
21 paid work outside the duties of the Federal Integrity
22 Commissioner's office without the Minister's approval.

23 **204 Remuneration**

24 (1) The Whistleblower Protection Commissioner is to be paid the
25 remuneration that is determined by the Remuneration Tribunal. If
26 no determination of that remuneration by the Tribunal is in
27 operation, the Federal Integrity Commissioner is to be paid the
28 remuneration that is prescribed by the regulations.

29 (2) The Whistleblower Protection Commissioner is to be paid the
30 allowances that are prescribed by the regulations.

Section 205

- 1 (3) Subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973*
2 do not apply in relation to the office of the Whistleblower
3 Protection Commissioner.

4 Note: The effect of this subsection is that remuneration or allowances of the
5 Whistleblower Protection Commissioner will be paid out of money
6 appropriated by an Act other than the *Remuneration Tribunal Act*
7 *1973*.

- 8 (4) This section has effect subject to the *Remuneration Tribunal Act*
9 *1973* (except as provided by subsection (3)).

10 **205 Leave of absence**

- 11 (1) The Whistleblower Protection Commissioner has the recreation
12 leave entitlements that are determined by the Remuneration
13 Tribunal.
- 14 (2) The Minister may grant the Whistleblower Protection
15 Commissioner leave of absence, other than recreation leave, on the
16 terms and conditions as to remuneration or otherwise that the
17 Minister determines.

18 **206 Resignation**

- 19 (1) The Whistleblower Protection Commissioner may resign the
20 Federal Integrity Commissioner's appointment by giving the
21 Governor-General a written resignation.
- 22 (2) The resignation takes effect on the day it is received by the
23 Governor-General or, if a later day is specified in the resignation,
24 on that later day.

25 **207 Removal from office**

- 26 (1) The Governor-General may remove the Whistleblower Protection
27 Commissioner from office if each House of the Parliament, in the
28 same session of the Parliament, presents an address to the
29 Governor-General praying for the removal of the Whistleblower
30 Protection Commissioner on the ground:
31 (a) of misbehaviour; or

- 1 (b) that the Whistleblower Protection Commissioner is unable to
2 perform the duties of the Whistleblower Protection
3 Commissioner's office because of physical or mental
4 incapacity
- 5 (2) The Governor-General must remove the Whistleblower Protection
6 Commissioner from office if any of the following apply:
- 7 (a) the Whistleblower Protection Commissioner:
- 8 (i) becomes bankrupt; or
9 (ii) applies to take the benefit of any law for the relief of
10 bankrupt or insolvent debtors; or
11 (iii) compounds with the Whistleblower Protection
12 Commissioner's creditors; or
13 (iv) makes an assignment of the Whistleblower Protection
14 Commissioner's remuneration for the benefit of the
15 Federal Integrity Commissioner's creditors;
- 16 (b) the Whistleblower Protection Commissioner is absent, except
17 on leave of absence, for 14 consecutive days or for 28 days in
18 any 12 months;
- 19 (c) the Whistleblower Protection Commissioner engages, except
20 with the Minister's approval, in paid work outside the duties
21 of the Federal Integrity Commissioner's office;
- 22 (d) the Whistleblower Protection Commissioner fails, without
23 reasonable excuse, to comply with:
- 24 (i) section 199 of this Act (disclosure of interests); or
25 (ii) section 29 of the *Public Governance, Performance and*
26 *Accountability Act 2013* (which deals with the duty to
27 disclose interests) or rules made for the purposes of that
28 section.

29 **208 Acting appointments**

- 30 (1) The Minister may, by written instrument, appoint a person to act as
31 the Whistleblower Protection Commissioner:
- 32 (a) during a vacancy in the office of the Whistleblower
33 Protection Commissioner (whether or not an appointment has
34 previously been made to the office); or

Section 209

- 1 (b) during any period, or during all periods, when the
2 Whistleblower Protection Commissioner:
3 (i) is absent from duty or from Australia; or
4 (ii) is, for any reason, unable to perform the duties of the
5 office.

6 Note: For rules that apply to acting appointments, see sections 33AB and
7 33A of the *Acts Interpretation Act 1901*.

- 8 (2) The Minister may appoint the Federal Integrity Commissioner to
9 act as the Whistleblower Protection Commissioner for the purposes
10 of paragraph (1)(a) or (b).

11 **209 Disclosure of interests**

- 12 (1) The Whistleblower Protection Commissioner must give a written
13 notice to the Minister of all direct or indirect pecuniary interests
14 that the Whistleblower Protection Commissioner has or acquires in
15 any business or in any body corporate carrying on any business.
- 16 (2) Subsection (1) applies in addition to any rules made for the
17 purposes of section 29 of the *Public Governance, Performance and*
18 *Accountability Act 2013*.
- 19 (3) A notice given under subsection (1) must be published on AFIC's
20 website.

1 **Division 4—Assistant Federal Integrity Commissioners**

2 **210 Appointment of Assistant Federal Integrity Commissioners**

- 3 (1) An Assistant Federal Integrity Commissioner is to be appointed by
4 the Governor-General by written instrument.

5 Note: Subject to subsection 211(1), the Assistant Federal Integrity
6 Commissioner may be reappointed: see section 33AA of the *Acts*
7 *Interpretation Act 1901*.

- 8 (2) A person must not be appointed as an Assistant Commissioner
9 unless the person:

- 10 (a) for the Assistant Commissioner for Research and Public
11 Interest:

12 (i) is or has been a professor or similarly qualified expert
13 with a high level of expertise in ethics, anti-corruption
14 and integrity research specific to Australia; and

15 (ii) is of good character and standing; or

- 16 (b) for the Assistant Commissioner for Assessment,
17 Investigations and Inquiries:

18 (i) is or has been a Judge of the Federal Court or the
19 Supreme Court of a State or Territory; or

20 (ii) is qualified for appointment as such a Judge; or

21 (iii) is a former senior registrar of the Federal Court or the
22 Supreme Court of a State or Territory; or

- 23 (c) for the Assistant Commissioner for Education, Training and
24 Prevention:

25 (i) has suitable skills and qualifications; and

26 (ii) is of good character and standing; or

- 27 (d) for any other Assistant Commissioner:

28 (i) is or has been a Judge of the Federal Court or the
29 Supreme Court of a State or Territory; or

30 (ii) is qualified for appointment as such a Judge.

- 31 (3) Before the Minister makes a recommendation to the
32 Governor-General for the appointment of a person as an Assistant
33 Commissioner:

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- 1 (a) the Minister must consult the Federal Integrity
2 Commissioner; and
3 (b) the Minister must refer the proposed recommendation for the
4 appointment to the Parliamentary Joint Committee under
5 section 251; and
6 (c) either:
7 (i) the period that the committee has under that section to
8 consider the proposed recommendation has ended
9 without the committee rejecting the proposed
10 recommendation; or
11 (ii) the committee notifies the Minister that it has decided to
12 approve the proposed recommendation.
- 13 (4) Subject to section 192, a person may be proposed for appointment
14 on more than one occasion.
- 15 (5) In this section and sections 250 and 251, *appointment* includes
16 re-appointment.
- 17 (6) The Governor-General may, for the purpose of appointing to the
18 office of the an Assistant Commissioner a person who is the holder
19 of a judicial office of a State or Territory, enter into such
20 arrangement with the Governor of that State or the Administrator
21 of that Territory, as the case may be, as is necessary to secure that
22 person's services.
- 23 (7) An arrangement under subsection (6) may provide for the
24 Commonwealth to reimburse a State or Territory with respect to
25 the services of the person to whom the arrangement relates.

211 General terms and conditions of appointment

- 27 (1) An Assistant Commissioner holds office for the period specified in
28 the instrument of appointment. The period must not exceed 5 years.
29 The sum of the periods for which a person holds office as an
30 Assistant Commissioner holds office must not exceed 10 years.
- 31 (2) An Assistant Commissioner may be appointed on either a full-time
32 or part-time basis.

- 1 (3) A person holding office as an Assistant Commissioner holds office
2 on the terms and conditions (if any), in relation to matters not
3 covered by this Act, that are determined by the Governor-General.

4 **212 Other paid work**

- 5 (1) An Assistant Commissioner appointed on a full-time basis must
6 not engage in paid work outside the duties of the Assistant
7 Commissioner's office without the Minister's approval.
- 8 (2) An Assistant Commissioner appointed on a part-time basis must
9 not engage in any paid work that, in the Minister's opinion,
10 conflicts or could conflict with the proper performance of the
11 Assistant Commissioner's duties.

12 **213 Remuneration**

- 13 (1) An Assistant Commissioner is to be paid the remuneration that is
14 determined by the Remuneration Tribunal. If no determination of
15 that remuneration by the Tribunal is in operation, an Assistant
16 Commissioner is to be paid the remuneration that is prescribed by
17 the regulations.
- 18 (2) An Assistant Commissioner is to be paid the allowances that are
19 prescribed by the regulations.
- 20 (3) Subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973*
21 do not apply in relation to the office of an Assistant Commissioner.
- 22 Note: The effect of this subsection is that remuneration or allowances of an
23 Assistant Commissioner will be paid out of money appropriated by an
24 Act other than the *Remuneration Tribunal Act 1973*.
- 25 (4) This section has effect subject to the *Remuneration Tribunal Act*
26 *1973* (except as provided by subsection (3)).

27 **214 Leave of absence**

- 28 (1) A full-time Assistant Commissioner has the recreation leave
29 entitlements that are determined by the Remuneration Tribunal.

Section 215

- 1 (2) The Minister may grant a full-time Assistant Commissioner leave
2 of absence, other than recreation leave, on the terms and conditions
3 as to remuneration or otherwise that the Minister determines.
- 4 (3) The Federal Integrity Commissioner may grant leave of absence to
5 any part-time Assistant Commissioner on the terms and conditions
6 that the Federal Integrity Commissioner determines.

7 **215 Resignation**

- 8 (1) An Assistant Commissioner may resign the Assistant
9 Commissioner's appointment by giving the Governor-General a
10 written resignation.
- 11 (2) The resignation takes effect on the day it is received by the
12 Governor-General or, if a later day is specified in the resignation,
13 on that later day.

14 **216 Removal from office**

- 15 (1) The Governor-General may remove an Assistant Commissioner
16 from office if each House of the Parliament, in the same session of
17 the Parliament, presents an address to the Governor-General
18 praying for the removal of the Assistant Commissioner on the
19 ground:
20 (a) of misbehaviour; or
21 (b) that the Assistant Commissioner is unable to perform the
22 duties of the Assistant Commissioner's office because of
23 physical or mental incapacity
- 24 (2) The Governor-General must remove the Assistant Commissioner
25 from office if any of the following apply:
26 (a) the Assistant Commissioner:
27 (i) becomes bankrupt; or
28 (ii) applies to take the benefit of any law for the relief of
29 bankrupt or insolvent debtors; or
30 (iii) compounds with the Assistant Commissioner's
31 creditors; or

- 1 (iv) makes an assignment of the Assistant Commissioner's
2 remuneration for the benefit of the Assistant
3 Commissioner's creditors;
- 4 (b) if the Assistant Commissioner is appointed on a full-time
5 basis—the Assistant Commissioner is absent, except on leave
6 of absence, for 14 consecutive days or for 28 days in any 12
7 months;
- 8 (c) if the Assistant Commissioner is appointed on a part-time
9 basis—the Assistant Commissioner is absent, except on leave
10 of absence, to an extent that the Minister considers excessive;
- 11 (d) the Assistant Commissioner engages, except with the
12 Minister's approval, in paid work outside the duties of the
13 Assistant Commissioner's office;
- 14 (e) the Assistant Commissioner fails, without reasonable excuse,
15 to comply with:
- 16 (i) section 218 of this Act (disclosure of interests); or
17 (ii) section 29 of the *Public Governance, Performance and*
18 *Accountability Act 2013* (which deals with the duty to
19 disclose interests) or rules made for the purposes of that
20 section.

21 **217 Acting appointments**

22 The Minister may appoint a person to act as an Assistant
23 Commissioner:

- 24 (a) during a vacancy in the office of the Assistant Commissioner
25 (whether or not an appointment has previously been made to
26 the office); or
- 27 (b) during any period, or during all periods, when the Assistant
28 Commissioner is absent from duty or from Australia, or is,
29 for any reason, unable to perform the duties of the office.

30 Note: For rules that apply to acting appointments, see sections 33AB and
31 33A of the *Acts Interpretation Act 1901*.

32 **218 Disclosure of interests**

- 33 (1) An Assistant Commissioner must give written notice to the
34 Minister of all direct or indirect pecuniary interests that the

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- 1 Assistant Commissioner has or acquires in any business or in any
2 body corporate carrying on any business.
- 3 (2) Subsection (1) applies in addition to any rules made for the
4 purposes of section 29 of the *Public Governance, Performance and*
5 *Accountability Act 2013*.
- 6 (3) A notice given under subsection (1) must be published on AFIC's
7 website.

1 **Division 5—Chief Executive Officer**

2 **219 CEO**

3 There is to be a Chief Executive Officer of AFIC.

4 Note: In this Act, *CEO* means the Chief Executive Officer of AFIC: see
5 section 8.

6 **220 Functions of the CEO**

7 The CEO's functions are:

- 8 (a) to manage the administration of AFIC; and
9 (b) to assist the Federal Integrity Commissioner, the Law
10 Enforcement Integrity Commissioner, the Whistleblower
11 Protection Commissioner, an Assistant Commissioner, an
12 Assistant Law Enforcement Integrity Commissioner or AFIC
13 in the performance of its functions.

14 **221 Powers of the CEO**

15 The CEO has power to do all things necessary or convenient to be
16 done for or in connection with the performance of the CEO's
17 functions.

18 **222 Commission may give directions to CEO**

- 19 (1) AFIC may give written directions to the CEO about the
20 performance of the CEO's functions.
- 21 (2) The CEO must comply with a direction under subsection (1).
- 22 (3) Subsection (2) does not apply to the extent that:
23 (a) compliance with the direction would be inconsistent with the
24 CEO's performance of functions or exercise of powers under
25 the *Public Governance, Performance and Accountability Act*
26 *2013* in relation to AFIC; or

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1 (b) the direction relates to the CEO's performance of functions
2 or exercise of powers under the *Public Service Act 1999* in
3 relation to AFIC.

4 (4) A direction under subsection (1) is not a legislative instrument.

5 **223 Appointment of CEO**

6 (1) The CEO is to be appointed by AFIC by written instrument.

7 (2) A person must not be appointed as the CEO unless AFIC is
8 satisfied that the person has appropriate qualifications, knowledge
9 or experience.

10 (3) Before AFIC appoints a person as the CEO:

11 (a) AFIC must refer the proposed recommendation for the
12 appointment to the Parliamentary Joint Committee under
13 section 251; and

14 (b) either:

15 (i) the period that the committee has under that section to
16 consider the proposed recommendation has ended
17 without the committee rejecting the proposed
18 recommendation; or

19 (ii) the committee notifies AFIC that it has decided to
20 approve the proposed recommendation.

21 (4) The CEO holds office on a full-time basis.

22 (5) The CEO holds office for the period specified in the instrument of
23 appointment. The period must not exceed 5 years.

24 Note: The CEO may be reappointed: see section 33AA of the *Acts*
25 *Interpretation Act 1901*.

26 **224 Appointment of acting CEO**

27 (1) AFIC may, by written instrument, appoint a person to act as the
28 CEO:

29 (a) during a vacancy in the office of the CEO (whether or not an
30 appointment has previously been made to the office); or

31 (b) during any period, or during all periods, when the CEO:

- 1 (i) is absent from duty or Australia; or
2 (ii) is, for any reason, unable to perform the duties of the
3 office.

4 Note: For rules that apply to acting appointments, see section 33A of the
5 *Acts Interpretation Act 1901*.

- 6 (2) A person must not be appointed to act as the CEO unless AFIC is
7 satisfied that the person has appropriate qualifications, knowledge
8 or experience.

9 **225 Remuneration of the CEO**

- 10 (1) The CEO is to be paid the remuneration that is determined by the
11 Remuneration Tribunal. If no determination of that remuneration
12 by the Tribunal is in operation, the CEO is to be paid the
13 remuneration that is prescribed by the regulations.

- 14 (2) The CEO is to be paid the allowances that are prescribed by the
15 regulations.

- 16 (3) Subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973*
17 do not apply in relation to the office of the CEO.

18 Note: The effect of this subsection is that remuneration or allowances of the
19 CEO will be paid out of money appropriated by an Act other than the
20 *Remuneration Tribunal Act 1973*.

- 21 (4) This section has effect subject to the *Remuneration Tribunal Act*
22 *1973* (except as provided by subsection (3)).

23 **226 Leave of absence of the CEO**

- 24 (1) The CEO has the recreation leave entitlements that are determined
25 by the Remuneration Tribunal.

- 26 (2) AFI may grant the CEO leave of absence, other than recreation
27 leave, on the terms and conditions as to remuneration or otherwise
28 that AFIC determines.

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1 **227 Other paid work of the CEO**

2 The CEO must not engage in paid work outside the duties of the
3 CEO's office without AFIC's approval.

4 **228 Resignation of the CEO**

- 5 (1) The CEO may resign the CEO's appointment by giving AFIC a
6 written resignation.
- 7 (2) The resignation takes effect on the day it is received by AFIC or, if
8 a later day is specified in the resignation, on that later day.

9 **229 Termination of appointment of the CEO**

10 *Misbehaviour or incapacity*

- 11 (1) AFIC may terminate the appointment of the CEO:
12 (a) for misbehaviour; or
13 (b) if the CEO is unable to perform the duties of the CEO's
14 office because of physical or mental incapacity.

15 *Bankruptcy etc.*

- 16 (2) AFIC may terminate the appointment of the CEO if:
17 (a) the CEO:
18 (i) becomes bankrupt; or
19 (ii) applies to take the benefit of any law for the relief of
20 bankrupt or insolvent debtors; or
21 (iii) compounds with the CEO's creditors; or
22 (iv) makes an assignment of the CEO's remuneration for the
23 benefit of the CEO's creditors; or
24 (b) the CEO is absent, except on leave of absence, for 14
25 consecutive days or for 28 days in any 12 months; or
26 (c) the CEO engages, except with AFIC's approval, in paid work
27 outside the duties of the CEO's office (see section 227); or
28 (d) the CEO fails, without reasonable excuse, to comply with
29 section 29 of the *Public Governance, Performance and*
30 *Accountability Act 2013* (which deals with the duty to

1 disclose interests) or rules made for the purposes of that
2 section.

3 **230 Other terms and conditions of the CEO**

4 The CEO holds office on the terms and conditions (if any) in
5 relation to matters not covered by this Act that are determined by
6 the Commission.

1 **Division 6—Staff, consultants and delegations**

2 **231 Staff**

3 (1) The staff of AFIC must be persons appointed or engaged under the
4 *Public Service Act 1999*.

5 (2) For the purposes of the *Public Service Act 1999*:

6 (a) the CEO and the staff of AFIC together constitute a Statutory
7 Agency; and

8 (b) the CEO is the Head of that Statutory Agency.

9 (3) The CEO must, by writing, designate positions in AFIC as
10 positions assisting the Whistleblower Protection Commissioner in
11 the performance of the whistleblower protection commissioner
12 functions.

13 Note: For creation of positions, see section 77 of the *Public Service Act*
14 *1999*.

15 (4) A person in a position designated under subsection (3) must not be
16 involved in assisting:

17 (a) the Federal Integrity Commissioner in the performance of the
18 federal integrity commissioner functions; or

19 (b) the Law Enforcement Integrity Commissioner in the
20 performance of the law enforcement integrity commissioner
21 functions;

22 other than in respect of the whistleblower protection commissioner
23 functions of receiving and referring disclosures of wrongdoing
24 under Division 1 of Part 9 and section 169.

25 **232 Consultants**

26 The CEO may, on behalf of the Commonwealth, engage
27 consultants to assist in the performance of the CEO's functions.

1 **233 Delegation—Federal Integrity Commissioner**

2 *Delegation to Whistleblower Protection Commissioner or an*
3 *Assistant Commissioner*

- 4 (1) The Federal Integrity Commissioner may, in writing, delegate all
5 or any of the Federal Integrity Commissioner's functions or powers
6 under this Act to the Whistleblower Protection Commissioner or an
7 Assistant Commissioner.

8 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
9 provisions relating to delegations.

- 10 (2) Subsection (1) does not apply to the power to hold a public
11 hearing.

12 *Delegation to certain staff members*

- 13 (3) The Federal Integrity Commissioner may, in writing, delegate all
14 or any of the Federal Integrity Commissioner's functions or powers
15 to a staff member of AFIC who is an SES employee or an acting
16 SES employee.

17 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
18 provisions relating to delegations.

- 19 (4) Subsection (3) does not apply to:
20 (a) the power to hold a public hearing; or
21 (b) a power under Division 1 or 2 of Part 6.

22 *Delegate must comply with directions*

- 23 (5) In performing a function or exercising a power delegated under
24 subsection (1) or (3), the delegate must comply with any written
25 directions of the Federal Integrity Commissioner.

26 **234 Delegation—Whistleblower Protection Commissioner**

- 27 (1) Section 233 applies to the Whistleblower Protection Commissioner
28 as if a reference to the Federal Integrity Commissioner were a
29 reference to the Whistleblower Protection Commissioner.

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- 1 (2) However, a function or power of the Whistleblower Protection
2 Commissioner must not be delegated to the same person to whom
3 the Federal Integrity Commissioner has delegated any function or
4 power, other than in respect of the whistleblower protection
5 commissioner functions of receiving and referring disclosures of
6 wrongdoing under Division 1 of Part 9 and section 169.

7 **235 Delegation—CEO**

- 8 (1) The CEO may, in writing, delegate all or any of the CEO's
9 functions or powers to a staff member of AFIC who is an SES
10 employee or an acting SES employee.

11 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
12 provisions relating to delegations.

- 13 (2) In performing a function or exercising a power delegated under
14 subsection (1), the delegate must comply with any written
15 directions of the CEO.

Division 7—Public reporting**236 Annual report**

- (1) The Federal Integrity Commissioner must give the Minister, for presentation to each House of the Parliament, a report (the *annual report*) on the performance of the federal integrity commissioner functions during each financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) The annual report for the financial year must include the following:
- (a) the prescribed particulars of the following:
 - (i) corruption issues raised by allegations or information referred to the Federal Integrity Commissioner under section 45 during that year;
 - (ii) corruption issues dealt with by the Federal Integrity Commissioner on the Federal Integrity Commissioner's own initiative during that year;
 - (iii) corruption issues investigated by the Federal Integrity Commissioner during that year;
 - (iv) corruption issues that the Federal Integrity Commissioner referred to a Commonwealth agency for investigation during that year;
 - (b) a description of investigations conducted by the Federal Integrity Commissioner during the financial year that the Federal Integrity Commissioner considers raise significant issues or developments in law enforcement;
 - (c) a description, which may include statistics, of any patterns or trends, and the nature and scope, of corruption:
 - (i) in Commonwealth agencies; or
 - (ii) by public officials;that have come to the Federal Integrity Commissioner's attention during that year in the performance of the federal integrity commissioner functions;
 - (d) any recommendations for changes to:
 - (i) the laws of the Commonwealth; or

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- 1 (ii) administrative practices of Commonwealth agencies;
2 that the Federal Integrity Commissioner, as a result of
3 performing the federal integrity commissioner functions
4 during that year, considers should be made;
- 5 (e) the extent to which investigations by the Federal Integrity
6 Commissioner have resulted in the prosecution in that year of
7 persons for offences;
- 8 (f) the extent to which investigations by the Federal Integrity
9 Commissioner have resulted in confiscation proceedings in
10 that year;
- 11 (g) details of the number and results of:
- 12 (i) applications made to the Federal Court or the Federal
13 Circuit Court under the *Administrative Decisions*
14 *(Judicial Review) Act 1977* for orders of review in
15 respect of matters arising under this Act; and
- 16 (ii) other court proceedings involving the Federal Integrity
17 Commissioner;
18 being applications and proceedings that were determined, or
19 otherwise disposed of, during that year.

20 **237 Reports on investigations and public inquiries**

- 21 (1) If:
- 22 (a) both:
- 23 (i) the Federal Integrity Commissioner gives the Minister a
24 report prepared under subsection 67(1); and
- 25 (ii) one or more public hearings were held in the course of
26 the investigation to which the report relates; or
- 27 (b) the Federal Integrity Commissioner gives the Minister a
28 report prepared under subsection 71(1) or (2); or
- 29 (c) the Federal Integrity Commissioner gives the Minister a
30 report prepared under subsection 74(1); or
- 31 (d) the Federal Integrity Commissioner gives the Minister a
32 report prepared under subsection 76(1) or (2);
- 33 the Minister must table the report in each House of the Parliament
34 within 5 sitting days of that House after its receipt by the Minister.

- 1 (2) To avoid doubt, the Minister is not required by subsection (1) to
2 cause a supplementary report prepared under subsection 67(6) or
3 74(5) to be tabled in either House of the Parliament.

4 **238 Special reports**

5 *Federal Integrity Commissioner may give Minister special reports*

- 6 (1) The Federal Integrity Commissioner may, from time to time, give
7 the Minister, for presentation to the Parliament, a special report:
8 (a) on the operations of AFIC for a part of a financial year; or
9 (b) on any matter relating to, or arising in connection with, the
10 performance of the federal integrity commissioner functions,
11 or the exercise of the Federal Integrity Commissioner's
12 powers, under this Act; or
13 (c) in accordance with subsection (2).
- 14 (2) The Minister or a House of the Parliament may request the Federal
15 Integrity Commissioner to, or the Federal Integrity Commissioner
16 may, on the Federal Integrity Commissioner's own initiative,
17 prepare reports about the need for or the desirability of legislative
18 or administrative action on issues in relation to:
19 (a) corruption generally in Commonwealth agencies; or
20 (b) the integrity of public officials;
21 whether those issues arose before or after the commencement of
22 this section.
- 23 (3) If the Federal Integrity Commissioner gives a special report to the
24 Minister under subsection (1), the Minister must table the report in
25 each House of the Parliament within 5 sitting days of that House
26 after its receipt by the Minister.

27 *Opinion or finding critical of a government agency or person*

- 28 (4) The Federal Integrity Commissioner must not disclose information
29 in a special report prepared under subsection (1) that includes an
30 opinion or finding that is critical of a government agency or person
31 (either expressly or impliedly) unless the Federal Integrity
32 Commissioner has taken the action required by subsection (5) or
33 (6) before disclosing the information.

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- 1 (5) If the opinion or finding is critical of a government agency, the
2 Federal Integrity Commissioner must give the head of the agency:
3 (a) a statement setting out the opinion or finding; and
4 (b) a reasonable opportunity to appear before him or her and to
5 make submissions in relation to the opinion or finding.
- 6 (6) If the opinion or finding is critical of a person, the Federal Integrity
7 Commissioner must give the person:
8 (a) a statement setting out the opinion or finding; and
9 (b) a reasonable opportunity to appear before him or her and to
10 make submissions in relation to the opinion or finding.
- 11 (7) The submissions may be made orally or in writing.
- 12 (8) The head of a government agency may:
13 (a) appear before the Federal Integrity Commissioner personally;
14 or
15 (b) authorise another person to appear before the Federal
16 Integrity Commissioner on the head of the agency's behalf.
- 17 (9) A person referred to in subsection (6):
18 (a) may appear before the Federal Integrity Commissioner
19 personally; or
20 (b) may, with the Federal Integrity Commissioner's approval, be
21 represented by another person.

239 Contents of annual or special report

- 22
- 23 (1) The Federal Integrity Commissioner may exclude information
24 from an annual report under section 236, or a special report under
25 section 238, if the Federal Integrity Commissioner is satisfied that:
26 (a) the information is sensitive information or the inclusion of
27 the information may:
28 (i) endanger a person's life or physical safety; or
29 (ii) prejudice proceedings brought as a result of a corruption
30 investigation or public inquiry, or an investigation of a
31 corruption issue that the Federal Integrity Commissioner
32 manages or oversees; or

- 1 (iii) compromise operational activities, or methodologies, of
2 AFIC; and
3 (b) it is desirable in the circumstances to exclude the information
4 from the report.
- 5 (2) In deciding whether to exclude information under subsection (1),
6 the Federal Integrity Commissioner must seek to achieve an
7 appropriate balance between:
8 (a) the public interest that would be served by including the
9 information in the report; and
10 (b) the prejudicial consequences that might result from including
11 the information in the report.

12 **240 Public reporting—Whistleblower Protection Commissioner**

- 13 (1) Sections 224 to 239 apply to the Whistleblower Protection
14 Commissioner as if a reference to the Federal Integrity
15 Commissioner were a reference to the Whistleblower Protection
16 Commissioner, a reference to a Federal Integrity Commissioner
17 function were a reference to a whistleblower protection
18 commissioner function, and a reference to corruption or corruption
19 issues were a reference to whistleblower protection issues.
- 20 (2) A report by the Whistleblower Protection Commissioner referred
21 to in this Division may, by arrangement with Federal Integrity
22 Commissioner, be published together with or as part of a report of
23 the same type by the Federal Integrity Commissioner.

1 **Division 8—Confidentiality requirements**

2 **241 Confidentiality requirements for National Integrity Commission**
3 **staff**

4 (1) A person who is, or has been, a staff member of AFIC commits an
5 offence if:

6 (a) the person (either directly or indirectly and either while the
7 person is, or after the person ceases to be, a staff member of
8 AFIC):

9 (i) makes a record of any information; or

10 (ii) divulges or communicates any information; and

11 (b) the person acquired the information:

12 (i) because of the person being a staff member of AFIC; or

13 (ii) in the course of the carrying out the person's duties as a
14 staff member of AFIC; and

15 (c) the information was disclosed or obtained under the
16 provisions of, or for the purposes of, this Act.

17 Penalty: Imprisonment for 12 months or 60 penalty units, or both.

18 (2) Subsection (1) has effect subject to sections 242 and 243.

19 (3) To avoid doubt, if a corruption issue is investigated jointly by the
20 Federal Integrity Commissioner and a government agency, any
21 information that a staff member of AFIC acquires in the course of
22 participating the joint investigation is taken:

23 (a) to have been acquired by the staff member because of his or
24 her being a staff member of AFIC; and

25 (b) to have been disclosed or obtained under the provisions of, or
26 for the purposes of, this Act.

27 (4) In this Division, *staff member* of AFIC includes:

28 (a) the Federal Integrity Commissioner; and

29 (b) the Law Enforcement Integrity Commissioner; and

30 (c) the Whistleblower Protection Commissioner; and

31 (d) any Assistant Commissioner; and

1 (e) any Assistant Law Enforcement Integrity Commissioners.

2 **242 Exceptions to confidentiality requirements**

3 *Purposes connected with Commission's functions and powers*

4 (1) Subsection 241(1) does not prevent a person from making a record
5 of information, or divulging or communicating information, if the
6 person:

- 7 (a) acquired the information in the performance of the person's
8 duties as a staff member of AFIC; and
9 (b) makes the record, or divulges or communicates the
10 information:
11 (i) for the purposes of a corruption investigation; or
12 (ii) for purposes otherwise connected with the exercise of
13 the powers, or the performance of the federal integrity
14 commissioner functions, under this Act.

15 Note: A defendant bears an evidential burden in relation to the matter in
16 subsection (1): see subsection 13.3(3) of the *Criminal Code*.

17 (2) Without limiting subsection (1), subsection 241(1) does not
18 prevent a person from communicating information to another
19 person if:

- 20 (a) the person acquired the information in the performance of the
21 person's duties as a staff member of AFIC; and
22 (b) a provision of this Act requires or permits the staff member
23 to communicate that information to the other person.

24 Note: A defendant bears an evidential burden in relation to the matter in
25 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

26 *Giving information to relevant agency*

27 (3) Subsection 241(1) does not prevent the Federal Integrity
28 Commissioner or a Commissioner from disclosing information to
29 the following heads of agencies:

- 30 (a) the Commonwealth Ombudsman;
31 (b) an Ombudsman of a State or Territory;
32 (c) the head of a law enforcement agency;

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- 1 (d) the head of a police force of a State or Territory;
2 (e) the head of another government agency;
3 if the Federal Integrity Commissioner or Commissioner is satisfied
4 that, having regard to the functions of the agency concerned, it is
5 appropriate to do so.

6 Note: A defendant bears an evidential burden in relation to the matter in
7 subsection (3): see subsection 13.3(3) of the *Criminal Code*.

8 *Federal Integrity Commissioner or Commissioner to be satisfied*
9 *that confidentiality regime in place*

- 10 (4) If the Federal Integrity Commissioner or Commissioner proposes
11 to disclose information to a person under subsection (3), the
12 Federal Integrity Commissioner or Commissioner must satisfy
13 himself or herself that a law of the Commonwealth, a State or
14 Territory makes provision corresponding to the provision made by
15 section 241 and this section with respect to the confidentiality of
16 information acquired by that person.

17 *Disclosure required by another Commonwealth law*

- 18 (5) Subsection 241(1) does not prevent a person from disclosing
19 information if the disclosure is required under another law of the
20 Commonwealth.

21 Note: A defendant bears an evidential burden in relation to the matter in
22 subsection (5): see subsection 13.3(3) of the *Criminal Code*.

23 *Disclosure to particular person*

- 24 (6) A staff member of AFIC may disclose information to a particular
25 person if the staff member is satisfied that it is necessary to do so
26 in order to protect the person's life or physical safety.

27 **243 Disclosure by Federal Integrity Commissioner in public interest**
28 **etc.**

- 29 (1) If the Federal Integrity Commissioner is satisfied that it is in the
30 public interest to do so, the Federal Integrity Commissioner may
31 disclose information to the public, or a section of the public, about:

- 1 (a) the performance of the federal integrity commissioner
2 functions; or
3 (b) the exercise of the Federal Integrity Commissioner's powers;
4 or
5 (c) an investigation of a corruption issue conducted by the
6 Federal Integrity Commissioner; or
7 (d) a public inquiry conducted by the Federal Integrity
8 Commissioner.
- 9 (2) Subsection (1) has effect:
10 (a) subject to subsection (3) and section 244; and
11 (b) despite any other provision of this Act.
- 12 (3) In deciding whether to disclose under subsection (1) information
13 that the Federal Integrity Commissioner is satisfied is sensitive
14 information, the Federal Integrity Commissioner must seek to
15 achieve an appropriate balance between:
16 (a) the public interest that would be served by disclosing the
17 information; and
18 (b) the prejudicial consequences that might result from
19 disclosing the information.

20 **244 Opportunity to be heard**

21 *Opinion or finding critical of a government agency or person*

- 22 (1) The Federal Integrity Commissioner must not disclose information
23 under section 243 in relation to an investigation of a corruption
24 issue under this Act that includes an opinion or finding that is
25 critical of a government agency or person (either expressly or
26 impliedly) unless the Federal Integrity Commissioner has taken the
27 action required by subsection (2) or (3) before disclosing the
28 information.

29 *Opportunity to appear and make submissions*

- 30 (2) If the opinion or finding is critical of a government agency, the
31 Federal Integrity Commissioner must give the head of the agency:
32 (a) a statement setting out the opinion or finding; and

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- 1 (b) a reasonable opportunity to appear before him or her and to
2 make submissions in relation to the opinion or finding.
- 3 (3) If the opinion or finding is critical of a person, the Federal Integrity
4 Commissioner must give the person:
- 5 (a) a statement setting out the opinion or finding; and
6 (b) a reasonable opportunity to appear before him or her and to
7 make submissions in relation to the opinion or finding.
- 8 (4) The submissions may be made orally or in writing.
- 9 (5) The head of a government agency may:
- 10 (a) appear before the Federal Integrity Commissioner personally;
11 or
12 (b) authorise another person to appear before the Federal
13 Integrity Commissioner on head of the agency's behalf.
- 14 (6) A person referred to in subsection (3):
- 15 (a) may appear before the Federal Integrity Commissioner
16 personally; or
17 (b) may, with the Federal Integrity Commissioner's approval, be
18 represented by another person.

19 **245 National Integrity Commission staff generally not compellable**
20 **in court proceedings**

- 21 (1) This section applies to:
- 22 (a) proceedings before a court (whether exercising federal
23 jurisdiction or not); and
24 (b) proceedings before any tribunal, authority or person having
25 power to require the production of documents or the
26 answering of questions.
- 27 (2) A person who is, or has been, a staff member of AFIC is not
28 compellable in any proceedings to which this section applies:
- 29 (a) to disclose any information that:
- 30 (i) the person acquired because of the person being or
31 having been a staff member of AFIC; and

- 1 (ii) was disclosed or obtained under the provisions of, or for
2 the purposes of, this Act; or
3 (b) to produce any document that:
4 (i) has come into the person's custody or control in the
5 course of, or because of, the performance of the
6 person's duties under this Act; and
7 (ii) was produced under the provisions of, or for the
8 purposes of, this Act.
- 9 (3) Subsection (1) does not apply to a proceeding if:
10 (a) any of the following persons is a party to the proceedings in
11 the person's official capacity:
12 (i) the Federal Integrity Commissioner;
13 (ii) a delegate of the Federal Integrity Commissioner;
14 (iii) a person authorised by the Federal Integrity
15 Commissioner to exercise a power or perform a function
16 under this Act; or
17 (b) the proceeding is brought for the purposes of carrying into
18 effect a provision of this Act; or
19 (c) the proceeding is a prosecution, civil penalty proceeding or
20 confiscation proceeding brought as a result of:
21 (i) a corruption investigation or public inquiry; or
22 (ii) an investigation of a corruption issue that the Federal
23 Integrity Commissioner manages or oversees.
- 24 (4) In this section:
25 *produce* includes permit access to, and *production* has a
26 corresponding meaning.

27 **246 Confidentiality requirements—Whistleblower Protection**
28 **Commissioner**

29 Sections 241 to 245 apply to the Whistleblower Protection
30 Commissioner as if a reference to the Federal Integrity
31 Commissioner were a reference to the Whistleblower Protection
32 Commissioner, a reference to a Federal Integrity Commissioner
33 function were a reference to a whistleblower protection

Part 10 Administrative provisions relating to AFIC

Division 8 Confidentiality requirements

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1 commissioner function, and a reference to corruption or corruption
2 issues were a reference to whistleblower protection issues.

1 **Part 11—Parliamentary Joint Committee on the**
2 **Australian Federal Integrity Commission**
3

4 **247 Definitions**

5 In this Part:

6 *ACLEI corruption issue* has the meaning given by section 8 of the
7 *Law Enforcement Integrity Commissioner Act 2006*.

8 *Australian Commission for Law Enforcement Integrity* or *ACLEI*
9 means the Australian Commission for Law Enforcement Integrity
10 established by section 195 of the *Law Enforcement Integrity*
11 *Commissioner Act 2006*.

12 *committee* means the Parliamentary Joint Committee on the
13 Australian Federal Integrity Commission for the time being
14 constituted under this Part.

15 *member* means a member of the committee.

16 *section 149 certified information* has the same meaning as in the
17 *Law Enforcement Integrity Commissioner Act 2006*.

18 *special investigator* means a person conducting a special
19 investigation of an ACLEI corruption issue under Division 4 of
20 Part 12 of the *Law Enforcement Integrity Commissioner Act 2006*.

21 **248 Parliamentary Joint Committee on the Australian Federal**
22 **Integrity Commission**

- 23 (1) As soon as practicable after the commencement of the first session
24 of each Parliament, a joint committee of members of the
25 Parliament to be known as the Parliamentary Joint Committee on
26 the Australian Federal Integrity Commission is to be appointed
27 according to the practice of the Parliament with reference to the
28 appointment of members to serve on joint select committees of
29 both Houses of the Parliament.

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- 1 (2) The committee is to consist of 12 members:
- 2 (a) 6 of whom must be members of the Senate appointed by the
- 3 Senate, and 6 of whom must be members of the House of
- 4 Representatives appointed by that House; and
- 5 (b) 5 of whom must be members of the Government; and
- 6 (c) 5 of whom must be members of the Opposition; and
- 7 (d) 2 of whom must be members of the Parliament other than
- 8 members of the Government or Opposition.
- 9 (3) The co-Chairs of the committee are to be:
- 10 (a) the member nominated as co-Chair by the Prime Minister;
- 11 and
- 12 (b) the member nominated as co-Chair by the leader of the
- 13 Opposition.
- 14 (4) A member of the Parliament is not eligible for appointment as a
- 15 member of the committee if the member is:
- 16 (a) a Minister; or
- 17 (b) the President of the Senate; or
- 18 (c) the Speaker of the House of Representatives; or
- 19 (d) the Deputy President and Chair of Committees of the Senate
- 20 or the Deputy Speaker of the House of Representatives.
- 21 (5) A member ceases to hold office:
- 22 (a) when the House of Representatives expires by the passing of
- 23 time or is dissolved; or
- 24 (b) if the member becomes the holder of an office specified in
- 25 any of the paragraphs of subsection (4); or
- 26 (c) if the member ceases to be a member of the House of the
- 27 Parliament by which the member was appointed; or
- 28 (d) if the member resigns the member's office as provided by
- 29 subsection (6) or (7).
- 30 (6) A member appointed by the Senate may resign the member's office
- 31 by writing signed by him or her and delivered to the President of
- 32 the Senate.

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1 (7) A member appointed by the House of Representatives may resign
2 the member's office by writing signed by him or her and delivered
3 to the Speaker of that House.

4 (8) Either House of the Parliament may appoint one of its members to
5 fill a vacancy amongst the members of the committee appointed by
6 that House.

249 Powers and proceedings of the committee

8 All matters relating to the powers and proceedings of the
9 committee are to be determined by resolution of both Houses of the
10 Parliament.

250 Duties of the committee

12 *Federal Integrity Commissioner*

- 13 (1) The committee has the following duties in relation to the Federal
14 Integrity Commissioner:
- 15 (a) to consider the proposed recommendation for an appointment
16 of the Federal Integrity Commissioner in accordance with
17 section 251;
 - 18 (b) to monitor the Federal Integrity Commissioner's performance
19 of federal integrity commissioner functions;
 - 20 (c) to report to both Houses of the Parliament, with such
21 comments as it thinks fit, on any matter:
 - 22 (i) connected with the performance of the federal integrity
23 commissioner functions; or
 - 24 (ii) relating to AFIC;that the committee considers should be directed to the
25 attention of Parliament;
 - 26 (d) to examine:
 - 27 (i) each annual report prepared by the Federal Integrity
28 Commissioner under section 236; and
 - 29 (ii) any special report prepared by the Federal Integrity
30 Commissioner under section 238;
- 31

Section 250

- 1 and report to the Parliament on any matter appearing in, or
2 arising out of, any such annual report or special report;
- 3 (e) to examine trends and changes in law enforcement in so far
4 as they relate to corruption and report to both Houses of the
5 Parliament on any change that the committee thinks
6 desirable:
- 7 (i) to the federal integrity commissioner functions or the
8 powers of the Federal Integrity Commissioner; or
9 (ii) to the procedures followed by the Federal Integrity
10 Commissioner; or
11 (iii) to the structure of AFIC;
- 12 (f) to inquire into any question in connection with the
13 committee's duties that is referred to it by either House of the
14 Parliament, and to report to that House on that question;
- 15 (g) to request the Parliamentary Inspector to undertake an
16 independent audit of AFIC's budget and finances every 3
17 years for the purposes of the committee advising as to
18 whether:
- 19 (i) AFIC has sufficient resources to perform all of its
20 functions and discharge its objectives under this Act to
21 the fullest extent possible; or
22 (ii) AFIC's budget should be increased to allow AFIC to
23 perform all of its functions and discharge its objectives
24 under this Act to the fullest extent possible.
- 25 (2) Subsection (1) does not authorise the committee:
- 26 (a) to investigate a corruption issue; or
27 (b) to reconsider the Federal Integrity Commissioner's decisions
28 or recommendations in relation to a particular corruption
29 issue.

30 *Law Enforcement Integrity Commissioner*

- 31 (3) The committee has the following duties in relation to the Law
32 Enforcement Integrity Commissioner:
- 33 (a) to monitor and review the Law Enforcement Integrity
34 Commissioner's performance of law enforcement integrity
35 commissioner functions;

Section 250

- 1 (b) to report to both Houses of the Parliament, with such
2 comments as it thinks fit, on any matter:
- 3 (i) connected with the performance of the law enforcement
4 integrity commissioner functions; or
- 5 (ii) relating to the Australian Commission for Law
6 Enforcement Integrity;
- 7 that the committee considers should be directed to the
8 attention of Parliament;
- 9 (c) to examine:
- 10 (i) each annual report prepared by the Law Enforcement
11 Integrity Commissioner under section 201 of the *Law*
12 *Enforcement Integrity Commissioner Act 2006*; and
- 13 (ii) any special report prepared by the Law Enforcement
14 Integrity Commissioner under section 204 of the *Law*
15 *Enforcement Integrity Commissioner Act 2006*;
- 16 and report to the Parliament on any matter appearing in, or
17 arising out of, any such annual report or special report;
- 18 (d) to examine trends and changes in:
- 19 (i) law enforcement in so far as they relate to corruption;
20 and
- 21 (ii) corruption generally in, or the integrity of staff members
22 of, Commonwealth agencies with a law enforcement
23 function;
- 24 and report to both Houses of the Parliament on any change
25 that the committee thinks desirable:
- 26 (iii) to the law enforcement integrity commissioner functions
27 or the powers of the Law Enforcement Integrity
28 Commissioner; or
- 29 (iv) to the procedures followed by the Law Enforcement
30 Integrity Commissioner; or
- 31 (v) to the structure of the Australian Commission for Law
32 Enforcement Integrity;
- 33 (e) to inquire into any question in connection with the
34 committee's duties that is referred to it by either House of the
35 Parliament, and to report to that House upon that question.
- 36 (4) Subsection (3) does not authorise the committee:

Section 251

- 1 (a) to investigate a corruption issue (as defined in section 7 of
2 the *Law Enforcement Integrity Commissioner Act 2006*) or an
3 ACLEI corruption issue; or
4 (b) to reconsider the Law Enforcement Integrity Commissioner's
5 decisions or recommendations in relation to a particular
6 corruption issue (as defined in section 7 of the *Law*
7 *Enforcement Integrity Commissioner Act 2006*) or an ACLEI
8 corruption issue; or
9 (c) to reconsider a special investigator's decisions or
10 recommendations in relation to an ACLEI corruption issue.

11 *Assistant Commissioners, CEO and Parliamentary Inspector*

- 12 (5) The committee has the duty to consider the proposed
13 recommendation for an appointment of an Assistant
14 Commissioner, the CEO or the Parliamentary Inspector, in
15 accordance with section 251.

16 **251 Committee may approve or reject recommendation for** 17 **appointment**

18 *Federal Integrity Commissioner and Assistant Commissioners*

- 19 (1) If the Minister refers a proposed recommendation for an
20 appointment of the Federal Integrity Commissioner or an Assistant
21 Commissioner to the committee for approval, the committee must:
22 (a) approve or reject the proposed recommendation within 10
23 sitting days after receiving it; or
24 (b) notify the Minister in accordance with subsection (2).

25 Note: See sections 191 and 210.

- 26 (2) The committee may notify the Minister within 10 sitting days after
27 receiving a proposed recommendation that it needs more time to
28 consider the proposed recommendation. If the committee does so,
29 the committee must approve or reject the proposed
30 recommendation within 20 sitting days after receiving it.

Section 251*CEO*

- 1
- 2 (3) If AFIC refers a proposed recommendation for an appointment of
- 3 the CEO to the committee for approval, the committee must:
- 4 (a) approve or reject the proposed recommendation within 10
- 5 sitting days after receiving it; or
- 6 (b) notify AFIC in accordance with subsection (4).

7 Note: See section 219.

- 8 (4) The committee may notify AFIC within 10 sitting days after
- 9 receiving a proposed recommendation that it needs more time to
- 10 consider the proposed recommendation. If the committee does so,
- 11 the committee must approve or reject the proposed
- 12 recommendation within 20 sitting days after receiving it.

Parliamentary Inspector

- 13
- 14 (5) If the Presiding Officers refers a proposed recommendation for an
- 15 appointment of the Parliamentary Inspector to the committee for
- 16 approval, the committee must:
- 17 (a) approve or reject the proposed recommendation within 10
- 18 sitting days after receiving it; or
- 19 (b) notify the Presiding Officers in accordance with
- 20 subsection (6).

21 Note: See section 266.

- 22 (6) The committee may notify the Presiding Officers within 10 sitting
- 23 days after receiving a proposed recommendation that it needs more
- 24 time to consider the proposed recommendation. If the committee
- 25 does so, the committee must approve or reject the proposed
- 26 recommendation within 20 sitting days after receiving it.

Making of decision

- 27
- 28 (7) The decision to approve or reject a proposed recommendation must
- 29 be:
- 30 (a) by majority of the members of the committee for the time
- 31 being holding office; and

Section 252

- 1 (b) the majority must include at least 2 members of each of the
2 Government and the Opposition.
- 3 (8) If the committee does not make a decision on a proposed
4 recommendation by the required time, the committee is taken, at
5 that time, to have approved the proposal.
- 6 (9) The committee must notify the Minister, the Commission of the
7 Presiding Officers (as the case may be) of its decision in relation to
8 a proposed recommendation as soon as practicable after making
9 the decision.
- 10 (10) A notification under this section must be in writing.
- 11 (11) The committee must report to both Houses of the Parliament on its
12 decision in relation to a proposed recommendation.

252 Disclosure to committee by Federal Integrity Commissioner

- 14 (1) Subject to subsection (2), the Federal Integrity Commissioner:
15 (a) must comply with a request by the committee to give the
16 committee information in relation to:
17 (i) an investigation of a corruption issue; or
18 (ii) a public inquiry;
19 that the Federal Integrity Commissioner has conducted or is
20 conducting; and
21 (b) must when requested by the committee, and may at such
22 other times as the Federal Integrity Commissioner thinks
23 appropriate, inform the committee concerning the general
24 performance of the federal integrity commissioner functions.
- 25 (2) The Federal Integrity Commissioner may decide not to comply
26 with the request if the Federal Integrity Commissioner is satisfied
27 that:
28 (a) the information is sensitive information; and
29 (b) the public interest that would be served by giving the
30 information to the committee is outweighed by the
31 prejudicial consequences that might result from giving the
32 information to the committee.

Section 253

- 1 (3) If the Federal Integrity Commissioner does not give information to
2 the committee because of subsection (2), the committee may refer
3 the request to the Minister.
- 4 (4) If the committee refers the request to the Minister, the Minister:
5 (a) must determine in writing whether:
6 (i) the information is sensitive information; and
7 (ii) if it is, whether the public interest that would be served
8 by giving the information to the committee is
9 outweighed by the prejudicial consequences that might
10 result from giving the information to the committee; and
11 (b) must provide copies of that determination to the Federal
12 Integrity Commissioner and the committee; and
13 (c) must not disclose the Minister's reasons for determining the
14 question referred to in subparagraph (a)(ii) in the way stated
15 in the determination.
- 16 (5) A determination made by the Minister under subsection (4) is not a
17 legislative instrument.
- 18 (6) If the Minister determines that:
19 (a) the information is not sensitive information; or
20 (b) the information is sensitive information but the prejudicial
21 consequences that might result from giving the information
22 to the committee do not outweigh the public interest that
23 would be served by giving the information to the committee;
24 the Federal Integrity Commissioner must give the information to
25 the committee.

26 **253 Parliamentary Joint Committee—Whistleblower Protection**
27 **Commissioner**

28 Sections 250 to 252 apply to the duties and powers of the
29 Parliamentary Joint Committee as if a reference to the Federal
30 Integrity Commissioner were a reference to the Whistleblower
31 Protection Commissioner, a reference to a federal integrity
32 commissioner function were a reference to a whistleblower
33 protection commissioner function, and a reference to corruption or

Section 254

1 corruption issues were a reference to whistleblower protection
2 issues.

3 **254 Disclosure to committee by Law Enforcement Integrity**
4 **Commissioner**

5 (1) Subject to subsections (2) and (3), the Law Enforcement Integrity
6 Commissioner:

7 (a) must comply with a request by the committee to give the
8 committee information in relation to:

9 (i) an investigation of a corruption issue (as defined in
10 section 7 of the *Law Enforcement Integrity*
11 *Commissioner Act 2006*); or

12 (ii) a public inquiry under Part 8 of the *Law Enforcement*
13 *Integrity Commissioner Act 2006*;

14 that the Law Enforcement Integrity Commissioner has
15 conducted or is conducting; and

16 (b) must when requested by the committee, and may at such
17 other times as the Law Enforcement Integrity Commissioner
18 thinks appropriate, inform the committee concerning the
19 general performance of the law enforcement integrity
20 commissioner functions.

21 (2) The Law Enforcement Integrity Commissioner must not comply
22 with the request if:

23 (a) the information is section 149 certified information; and

24 (b) the disclosure of the information to the committee would
25 contravene the certificate issued under section 149 of the *Law*
26 *Enforcement Integrity Commissioner Act 2006*.

27 (3) The Law Enforcement Integrity Commissioner may decide not to
28 comply with the request if the Law Enforcement Integrity
29 Commissioner is satisfied that:

30 (a) the information is sensitive information; and

31 (b) the public interest that would be served by giving the
32 information to the committee is outweighed by the
33 prejudicial consequences that might result from giving the
34 information to the committee.

Section 255

- 1 (4) If the Law Enforcement Integrity Commissioner does not give
2 information to the committee because of subsection (3), the
3 committee may refer the request to the Minister.
- 4 (5) If the committee refers the request to the Minister, the Minister:
5 (a) must determine in writing whether:
6 (i) the information is sensitive information; and
7 (ii) if it is, whether the public interest that would be served
8 by giving the information to the committee is
9 outweighed by the prejudicial consequences that might
10 result from giving the information to the committee; and
11 (b) must provide copies of that determination to the Law
12 Enforcement Integrity Commissioner and the committee; and
13 (c) must not disclose the Minister's reasons for determining the
14 question referred to in subparagraph (a)(ii) in the way stated
15 in the determination.
- 16 (6) A determination made by the Minister under subsection (5) is not a
17 legislative instrument.
- 18 (7) If the Minister determines that:
19 (a) the information is not sensitive information; or
20 (b) the information is sensitive information but the prejudicial
21 consequences that might result from giving the information
22 to the committee do not outweigh the public interest that
23 would be served by giving the information to the committee;
24 the Law Enforcement Integrity Commissioner must give the
25 information to the committee.

255 Disclosure to committee by Minister

- 26
27 (1) Subject to subsections (2) and (3), the Minister must comply with a
28 request by the committee to give the committee information in
29 relation to an investigation of an ACLEI corruption issue that a
30 special investigator has conducted or is conducting.
- 31 (2) The Minister must not comply with the request if:
32 (a) the information is section 149 certified information; and

Section 256

- 1 (b) the disclosure of the information to the committee would
2 contravene the certificate issued under section 149 of the *Law*
3 *Enforcement Integrity Commissioner Act 2006*.
- 4 (3) The Minister may decide not to comply with the request if the
5 Minister is satisfied that:
- 6 (a) the information is sensitive information; and
7 (b) the public interest that would be served by giving the
8 information to the committee is outweighed by the
9 prejudicial consequences that might result from giving the
10 information to the committee.

11 **256 Ombudsman to brief committee about controlled operations**

- 12 (1) At least once in each year the Ombudsman must provide a briefing
13 to the committee about the Law Enforcement Integrity
14 Commissioner's involvement in controlled operations under
15 Part IAB of the *Crimes Act 1914* during the preceding 12 months.
- 16 (2) For the purposes of receiving a briefing from the Ombudsman
17 under subsection (1), the committee must meet in private.

1 **Part 12—Parliamentary Inspector of the Australian**
2 **Federal Integrity Commission**

3 **Division 1—Establishment and functions and powers of the**
4 **Parliamentary Inspector of the Australian**
5 **Federal Integrity Commission**

6 **257 Parliamentary Inspector of the Australian Federal Integrity**
7 **Commission**

- 8 (1) There is to be a Parliamentary Inspector of the Australian Federal
9 Integrity Commission.
- 10 (2) The Parliamentary Inspector of the Australian Federal Integrity
11 Commission is an independent officer of the Parliament.

12 **258 Functions of the Parliamentary Inspector**

- 13 (1) The functions of the Parliamentary Inspector are, as required by the
14 Parliamentary Joint Committee, to do the following:
- 15 (a) inspect records kept by AFIC, including operational files and
16 accompanying documentary material, for the purpose of
17 forming an opinion as to whether:
- 18 (i) AFIC has exercised power in an appropriate way;
19 (ii) required authorisations for the exercise of power have
20 been obtained;
21 (iii) any practice or procedural guidelines set by AFIC are
22 adequate, having regard to risk;
23 (iv) any practice or procedural guidelines set by AFIC have
24 been strictly complied with;
- 25 (b) investigate complaints made against, or concerns expressed
26 about, the conduct or activities of AFIC or its staff;
- 27 (c) audit AFIC's systems of governance and risk management
28 relating to control of information, including relating to the
29 protection of whistleblowers and human sources;

Section 259

- 1 (d) review alleged incidences of possible unauthorised disclosure
2 of information or other material that, under an enactment, is
3 confidential;
- 4 (e) review information given by AFIC to the Parliamentary Joint
5 Committee to verify its accuracy and completeness,
6 particularly in relation to an operational matter;
- 7 (f) report, and make recommendations, to the Parliamentary
8 Joint Committee on the results of performing the functions
9 mentioned in paragraphs (a) to (e).
- 10 (2) A requirement under subsection (1) is effective only if it is
11 requested or authorised in terms of reference jointly issued by the
12 co-Chairs of the Parliamentary Joint Committee.
- 13 (3) The Parliamentary Inspector also has such other functions as are
14 conferred on the Parliamentary Inspector by this Act or any other
15 law of the Commonwealth.

259 Matters arising from a conduct investigation

- 16
- 17 (1) This section applies if the Parliamentary Inspector investigates a
18 matter relating to the conduct of a person.
- 19 (2) The Parliamentary Inspector may seek the assistance of the AFP or
20 a police service of a State of Territory to assist in the investigation
21 of a criminal offence.
- 22 (3) If, from information obtained in conducting the investigation, the
23 Parliamentary Inspector decides that prosecution proceedings for
24 an offence should be considered, the Parliamentary Inspector may
25 give information or evidence gathered about the matter to the
26 Director of Public Prosecutions, or other appropriate prosecuting
27 authority, for the purposes of any prosecution proceedings the
28 director or other authority considers warranted.

**260 Report on conduct investigations conducted by Parliamentary
Inspector**

- (1) If the matter involved conduct of a staff member of AFIC, the Parliamentary Inspector may produce a report relating to the information or evidence gathered, and may include:
- (a) for conduct of the Federal Integrity Commissioner, a Commissioner, an Assistant Commissioner or the CEO—a recommendation to the Minister or the Parliamentary Joint Committee that the Minister or Parliamentary Joint Committee consider whether disciplinary action should be taken against that staff member; or
 - (b) for conduct of another staff member of AFIC—a recommendation to the CEO that the CEO consider whether disciplinary action should be taken against the staff member.
- (2) The Parliamentary Inspector must not include in a report under subsection (1):
- (a) any statement that a person has engaged, is engaging or is about to engage in conduct that constitutes a criminal offence or disciplinary breach; or
 - (b) any opinion or recommendation that a person should be prosecuted for a criminal offence or be the subject of disciplinary action or further disciplinary action.
- (3) The Parliamentary Joint Committee or the Minister, as the case may be, may table the report, or an extract from the report if, and only if:
- (a) the Parliamentary Joint Committee or Minister is satisfied of the following:
 - (i) the report relates to a case of serious corrupt conduct or systemic corrupt conduct;
 - (ii) tabling the report or extract is in the public interest; and
 - (b) if the tabling of the report or extract would disclose information adverse to a person, the person has been afforded procedural fairness for the disclosure.

Section 261

1 **261 Parliamentary Inspector cannot be required to disclose**
2 **particular information**

3 The Parliamentary Inspector cannot be required by the
4 Parliamentary Joint Committee to disclose to the Committee
5 information relating to a conduct investigation conducted by the
6 Parliamentary Inspector.

1 **Division 2—Audits, investigations, reviews and reports**

2 **262 Process for conducting an audit, investigation or review**

3 An audit, inspection, investigation or review conducted by the
4 Parliamentary Inspector is to be conducted in accordance with the
5 process prescribed by the regulations.

6 **263 Contents of reports on results of performance of functions**

7 A report by the Parliamentary Inspector on the performance of a
8 function referred to in subsection 258(1) must be prepared in
9 accordance with the requirements prescribed by the regulations.

10 **264 Parliamentary Inspector may require information etc.**

11 For the purposes of performing his or her functions, the
12 Parliamentary Inspector may exercise any of the powers of the
13 Federal Integrity Commissioner, as prescribed by the regulations.

14 **265 Privilege against self-incrimination**

15 A person required by notice or summons to produce information to
16 the Parliamentary Inspector enjoys the same privileges and
17 immunities, and holds the same obligations and responsibilities, as
18 if the person were subject to a notice or summons issued by the
19 Federal Integrity Commissioner.

1 **Division 3—Administrative provisions relating to the**
2 **Parliamentary Inspector**

3 **266 Appointment of Parliamentary Inspector**

- 4 (1) The Parliamentary Inspector is to be appointed by the Presiding
5 Officers by written instrument.
- 6 (2) A person must not be appointed as the Parliamentary Inspector
7 unless the person:
8 (a) is or has been a Judge of the Federal Court or the Supreme
9 Court of a State or Territory; or
10 (b) is qualified for appointment as such a Judge.
- 11 (3) Before the Presiding Officers appoint a person as the Parliamentary
12 Inspector:
13 (a) the Presiding Officers must refer the proposed
14 recommendation for the appointment to the Parliamentary
15 Joint Committee under section 251; and
16 (b) either:
17 (i) the period that the committee has under that section to
18 consider the proposed recommendation has ended
19 without the committee rejecting the proposed
20 recommendation; or
21 (ii) the committee notifies the Presiding Officers that it has
22 decided to approve the proposed recommendation.
- 23 (4) Subject to section 267, a person may be proposed for appointment
24 on more than one occasion.
- 25 (5) In this section and sections 250 and 251, *appointment* includes
26 re-appointment.
- 27 (6) The Presiding Officers may, for the purpose of appointing to the
28 office of the Federal Integrity Commissioner a person who is the
29 holder of a judicial office of a State or Territory, enter into such
30 arrangement with the Governor of that State or the Administrator
31 of that Territory, as the case may be, as is necessary to secure that
32 person's services.

- 1 (7) An arrangement under subsection (6) may provide for the
2 Commonwealth to reimburse a State or Territory with respect to
3 the services of the person to whom the arrangement relates.

4 **267 General terms and conditions of appointment**

- 5 (1) The Parliamentary Inspector holds office for the period specified in
6 the instrument of appointment. The period must not exceed 5 years.
7 The sum of the periods for which the Parliamentary Inspector holds
8 office must not exceed 10 years.
- 9 (2) The Parliamentary Inspector may be appointed on a full-time or
10 part-time basis.
- 11 (3) The Parliamentary Inspector holds office on the terms and
12 conditions (if any), in relation to matters not covered by this Act,
13 that are determined by the Presiding Officers.

14 **268 Other paid work**

- 15 (1) If the Parliamentary Inspector is appointed on a full-time basis, the
16 Parliamentary Inspector must not engage in paid work outside the
17 duties of the Parliamentary Inspector office without the Presiding
18 Officers' approval.
- 19 (2) If the Parliamentary Inspector is appointed on a part-time basis, the
20 Parliamentary Inspector must not engage in any paid work that
21 conflicts or may conflict with the proper performance of the
22 Parliamentary Inspector's duties.

23 **269 Remuneration**

- 24 (1) The Parliamentary Inspector is to be paid the remuneration that is
25 determined by the Remuneration Tribunal. If no determination of
26 that remuneration by the Tribunal is in operation, the Parliamentary
27 Inspector is to be paid the remuneration that is prescribed by the
28 regulations.
- 29 (2) The Parliamentary Inspector is to be paid the allowances that are
30 prescribed by the regulations.

Section 270

- 1 (3) Subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973*
2 do not apply in relation to the office of the Parliamentary Inspector.

3 Note: The effect of this subsection is that remuneration or allowances of the
4 Parliamentary Inspector will be paid out of money appropriated by an
5 Act other than the *Remuneration Tribunal Act 1973*.

- 6 (4) This section has effect subject to the *Remuneration Tribunal Act*
7 *1973* (except as provided by subsection (3)).

8 **270 Leave of absence**

9 (1) If the Parliamentary Inspector is appointed on a full-time basis, the
10 Parliamentary Inspector has the recreation leave entitlements that
11 are determined by the Remuneration Tribunal.

12 (2) If the Parliamentary Inspector is appointed on a full-time basis, the
13 Presiding Officers may grant the Parliamentary Inspector leave of
14 absence, other than recreation leave, on the terms and conditions as
15 to remuneration or otherwise that the Presiding Officers determine.

16 **271 Resignation**

17 (1) The Parliamentary Inspector may resign the Parliamentary
18 Inspector's appointment by giving the Presiding Officers a written
19 resignation.

20 (2) The resignation takes effect on the day it is received by the
21 Presiding Officers or, if a later day is specified in the resignation,
22 on that later day.

23 **272 Termination of appointment**

24 (1) The Presiding Officers may terminate the appointment of the
25 Parliamentary Inspector:
26 (a) for misbehaviour; or
27 (b) if the Parliamentary Inspector is unable to perform the duties
28 of the Parliamentary Inspector's office because of physical or
29 mental incapacity.

30 (2) The Presiding Officers may terminate the appointment of the
31 Parliamentary Inspector if any of the following apply:

- 1 (a) the Parliamentary Inspector:
2 (i) becomes bankrupt; or
3 (ii) applies to take the benefit of any law for the relief of
4 bankrupt or insolvent debtors; or
5 (iii) compounds with the Parliamentary Inspector's
6 creditors; or
7 (iv) makes an assignment of the Parliamentary Inspector's
8 remuneration for the benefit of the Parliamentary
9 Inspector's creditors;
- 10 (b) if the Parliamentary Inspector is appointed on a full-time
11 basis:
12 (i) the Parliamentary Inspector engages, except with
13 Presiding Officers' approval, in paid work outside the
14 duties of the Parliamentary Inspector's office; or
15 (ii) the Parliamentary Inspector is absent, except on leave of
16 absence, for 14 consecutive days or for 28 days in any
17 12 months;
- 18 (c) if the Parliamentary Inspector is appointed on a part-time
19 basis—the Parliamentary Inspector engages in paid work that
20 conflicts or may conflict with the proper performance of the
21 Parliamentary Inspector's duties;
- 22 (d) the Parliamentary Inspector Adviser fails, without reasonable
23 excuse, to comply with section 274.

24 **273 Acting appointments**

- 25 (1) The Presiding Officers may, by written instrument, appoint a
26 person to act as the Parliamentary Inspector:
27 (a) during a vacancy in the office of the Parliamentary Inspector
28 (whether or not an appointment has previously been made to
29 the office); or
30 (b) during any period, or during all periods, when the
31 Parliamentary Inspector:
32 (i) is absent from duty or from Australia; or
33 (ii) is, for any reason, unable to perform the duties of the
34 office.

Section 274

- 1 (2) The Presiding Officers must not appoint the Federal Integrity
2 Commissioner, the Law Enforcement Integrity Commissioner, the
3 Whistleblowing Protection Commissioner, an Assistant
4 Commissioner, an Assistant Law Enforcement Integrity
5 Commissioner, the Parliamentary Standards Commissioner, the
6 Parliamentary Integrity Adviser or another staff member of AFIC
7 to act as the Parliamentary Inspector.

8 **274 Disclosure of interests**

- 9 (1) The Parliamentary Inspector must give written notice to the
10 Presiding Officers of all interests, pecuniary or otherwise, that the
11 Parliamentary Inspector has or acquires and that conflict or could
12 conflict with the proper performance of the Parliamentary
13 Inspector's functions.
- 14 (2) A notice given under subsection (1) must be published on AFIC's
15 website.

16 **275 Assistance to Parliamentary Inspector**

- 17 (1) The Parliamentary Inspector may seek assistance from the
18 Presiding Officers to support the performance of the Parliamentary
19 Inspector's functions.
- 20 (2) The assistance may include the following:
21 (a) the provision of information;
22 (b) the provision of advice;
23 (c) the making available of resources, staff, consulting services
24 and facilities.
- 25 (3) Any other Department, agency or authority of the Commonwealth
26 (other than the National Integrity Commission) may also assist the
27 Parliamentary Inspector in the performance of the Parliamentary
28 Inspector's functions.

Part 13—Miscellaneous**276 Offence of victimisation**

- (1) A person commits an offence if the person causes, or threatens to cause, detriment to another person (the *victim*) on the ground that the victim, or any other person:
- (a) has referred, or may refer, to the Federal Integrity Commissioner an allegation, or information, that raises a corruption issue; or
 - (b) has given, or may give, information to the Federal Integrity Commissioner; or
 - (c) has produced, or may produce, a document or thing to the Federal Integrity Commissioner.

Penalty: Imprisonment for 2 years.

- (2) For the purpose of subsection (1), a threat may be:
- (a) express or implied; or
 - (b) conditional or unconditional.
- (3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

277 Legal and financial assistance in relation to applications for administrative review

- (1) A person may apply to the Attorney-General for assistance in respect of the person's application, or proposed application, to the Federal Court or the Federal Circuit Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act.
- (2) The Attorney-General may, if the Attorney-General is satisfied that:
- (a) it would involve substantial hardship to the person to refuse the application; or

Section 278

- 1 (b) the circumstances of the case are of such a special nature that
2 the application should be granted;
3 authorise the Commonwealth to provide the person with legal or
4 financial assistance, determined by the Attorney-General, in
5 respect of the person's application to the Federal Court or the
6 Federal Circuit Court, as the case may be.
- 7 (3) Legal or financial assistance may be given:
8 (a) unconditionally; or
9 (b) subject to such conditions as the Attorney-General
10 determines.
- 11 (4) An instrument that determines the conditions on which legal or
12 financial assistance may be given is not a legislative instrument.

13 **278 Immunity from civil proceedings**

- 14 (1) A staff member of AFIC is not liable to civil proceedings in
15 relation to an act done, or omitted to be done, in good faith, in the
16 performance or purported performance, or exercise or purported
17 exercise, of the staff member's functions, powers or duties under,
18 or in relation to, this Act.
- 19 (2) A person whom the Federal Integrity Commissioner requests, in
20 writing, to assist a staff member of AFIC is not liable to civil
21 proceedings in relation to an act done, or omitted to be done, in
22 good faith for the purpose of assisting the staff member.
- 23 (3) If:
24 (a) information or evidence has been given to the Federal
25 Integrity Commissioner; or
26 (b) a document or thing has been produced to the Federal
27 Integrity Commissioner;
28 a person is not liable to an action, suit or proceeding in respect of
29 loss, damage or injury of any kind suffered by another person by
30 reason only that the information or evidence was given or the
31 document or thing was produced.

279 Immunities from certain State and Territory laws

The Federal Integrity Commissioner, an Assistant Commissioner or any other staff member of AFIC is not required under, or by reason of, a law of a State or Territory:

- (a) to obtain or have a licence or permission for doing any act or thing in the exercise of the person's powers or the performance of the person's duties as the Federal Integrity Commissioner, an Assistant Commissioner or the other staff member of AFIC; or
- (b) to register any vehicle, vessel, animal or article belonging to the Commonwealth.

280 Miscellaneous—Whistleblower Protection Commissioner

Sections 276 to 279 apply to the Whistleblower Protection Commissioner as if a reference to the Federal Integrity Commissioner were a reference to the Whistleblower Protection Commissioner, and a reference to corruption or corruption issues were a reference to whistleblower protection issues.

281 Review relating to the Law Enforcement Integrity Commissioner etc.

- (1) It is the intention of Parliament that the functions conferred on the Law Enforcement Integrity Commissioner under section 15 of the *Law Enforcement Integrity Commissioner Act 2006* are transferred to AFIC.
- (2) The Minister must cause to be undertaken a review of the preferred legislative options to:
 - (a) transfer the functions conferred on the Law Enforcement Integrity Commissioner under section 15 of the *Law Enforcement Integrity Commissioner Act 2006* to AFIC; and
 - (b) update the provisions of this Act (whether included in this Act before the review or to be included as recommended by the review) relating to search warrants, to align with contemporary legislative approaches relating to search warrants; and

Section 282

- 1 (c) ensure alignment between the treatment of matters relating to
2 whistleblowers in this Act and the *Public Interest Disclosure*
3 *Act 2013*.
- 4 (3) The review must commence no sooner than 18 months after the
5 commencement of this section but no later than 24 months after
6 that commencement.
- 7 (4) The Minister must ensure that public consultation is undertaken in
8 connection with the undertaking of the review.
- 9 (5) The Minister must cause to be prepared a written report of the
10 review.
- 11 (6) The report must be completed within 6 months after the review is
12 completed.
- 13 (7) The Minister must cause a copy of the report to be laid before each
14 House of the Parliament within 15 sitting days of that House after
15 the day on which the Minister receives the report.

16 **282 Review relating to judicial integrity**

- 17 (1) It is the intention of Parliament that there be a robust system of
18 integrity oversight for Commonwealth judicial officers consistent
19 with section 72 of the Constitution.
- 20 (2) The Minister must cause to be undertaken a review of the preferred
21 legislative options for establishing a body or bodies to ensure such
22 oversight.
- 23 (3) The review must commence no sooner than 18 months after the
24 commencement of this section but no later than 24 months after
25 that commencement.
- 26 (4) For the purposes of subsection (2), the review must consider (but is
27 not limited to) the following options:
28 (a) including judicial officers within the scope of this Act;
29 (b) creating a new body with similar powers to the National
30 Integrity Commission but for judicial officers.

- 1 (5) The Minister must ensure that public consultation is undertaken in
2 connection with the undertaking of the review.
- 3 (6) The review must take into account the advice of the Chief Justice
4 or Chief Judge of each federal court.
- 5 (7) The Minister must cause to be prepared a written report of the
6 review.
- 7 (8) The report must be completed within 6 months after the review is
8 completed.
- 9 (9) The Minister must cause a copy of the report to be laid before each
10 House of the Parliament within 15 sitting days of that House after
11 the day on which the Minister receives the report.

12 **283 Review of operation of Act**

13 *Undertaking the review*

- 14 (1) The Minister must cause an independent review to be undertaken
15 of the first 3 years of the operation of this Act.

16 *Report to Minister*

- 17 (2) The persons undertaking the review must give the Minister a
18 written report of the review within 6 months after the end of the
19 3-year period.

20 *Submissions*

- 21 (3) The review must include an opportunity for:
22 (a) persons who are, or have been, staff members of AFIC; and
23 (b) members of the public;
24 to make written submissions on the operation of this Act.

25 *Assistance*

- 26 (4) The Federal Integrity Commissioner and staff members of AFIC
27 must, if requested to do so by the persons undertaking the review,
28 assist them in:

Section 284

- 1 (a) conducting the review; and
2 (b) preparing the written report.

3 *Tabling of report*

- 4 (5) The Minister must cause a copy of the report of the review to be
5 tabled in each House of the Parliament within 15 sitting days of
6 that House after the Minister receives the report.

7 *Section not to apply if review conducted by Parliamentary*
8 *committee*

- 9 (6) However, this section does not apply if a committee of one or both
10 Houses of the Parliament (including the Parliamentary Joint
11 Committee) has reviewed the operation of this Act, or started such
12 a review, before the end of the 3-year period.

13 *Definition*

- 14 (7) In this section:

15 *independent review* means a review undertaken by a person or
16 persons who, in the Minister's opinion, possess appropriate
17 qualifications to undertake the review.

18 **284 Schedules**

19 Legislation that is specified in a Schedule to this Act is amended or
20 repealed as set out in the applicable items in the Schedule
21 concerned, and any other item in a Schedule to this Act has effect
22 according to its terms.

23 **285 Regulations**

- 24 (1) The Governor-General may make regulations prescribing matters:
25 (a) required or permitted by this Act to be prescribed; or
26 (b) necessary or convenient to be prescribed for carrying out or
27 giving effect to this Act.

Section 285

- 1 (2) The regulations may require that information or reports that are
2 required to be given under prescribed provisions are also to be
3 given to prescribed persons in specified circumstances.

1
2

Schedule 1—Amendments

3

Law Enforcement Integrity Commissioner Act 2006

4

1 After subsection 177(2)

5

Insert:

6

- (2A) Subject to subsection (2), the Minister may appoint the Federal Integrity Commissioner to act as the Integrity Commissioner for the purposes of paragraph (1)(a) or (b).

7

8

9

2 At the end of Division 1 of Part 13

10

Add:

11

184 Federal Integrity Commissioner may give directions to the Integrity Commissioner

12

13

- (1) The Federal Integrity Commissioner may give written directions to the Integrity Commissioner about the performance of Integrity Commissioner's functions or the exercise of the Integrity Commissioner's powers.

14

15

16

17

- (2) The Integrity Commissioner must comply with a direction under subsection (1).

18

19

- (3) Subsection (2) does not apply to the extent that:

20

- (a) compliance with the direction would be inconsistent with the Integrity Commissioner's performance of functions or exercise of powers under the *Public Governance, Performance and Accountability Act 2013* in relation to the ACLEI; or

21

22

23

24

25

- (b) the direction relates to the Integrity Commissioner's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to ACLEI.

26

27

28

- (3) A direction under subsection (1) is not a legislative instrument.

29

3 Subsection 197(1)

30

Omit "(1)".

4 Subsection 197(2)

Repeal the subsection.

5 Part 14

Repeal the Part.

Ombudsman Act 1976**6 After subsection 6(15)**

Insert:

(15A) If the Ombudsman forms the opinion:

- (a) that a complaint involves an allegation, or information, that raises a corruption issue; and
- (b) that the allegation or information could have been referred to the Federal Integrity Commissioner under Part 4 of the *Australian Federal Integrity Commission Act 2020* and could be more conveniently or effectively dealt with by the Federal Integrity Commissioner;

the Ombudsman may decide not to investigate the complaint, or not to investigate the complaint further, as the case may be, and to refer the allegation or information to the Federal Integrity Commissioner.

(15B) If the Ombudsman makes a decision under subsection (15A), the Ombudsman must:

- (a) refer the allegation, or information, that raises the corruption issue to the Federal Integrity Commissioner as soon as is reasonably practicable; and
- (b) give the Federal Integrity Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Ombudsman; and
- (c) as soon as is reasonably practicable, give the complainant written notice that the complaint has been transferred to the Federal Integrity Commissioner.

(15C) In subsections (15A) and (15B):

corruption issue has the same meaning as in the *Australian Federal Integrity Commission Act 2020*.

1 *Federal Integrity Commissioner* has the same meaning as in the
2 *Australian Federal Integrity Commission Act 2020*.

3 ***Public Interest Disclosure Act 2013***

4 **7 Subsection 29(1) (table item 3)**

5 Repeal the item, substitute:

6

3 Conduct that:

- (a) raises a corruption issue (in the meaning of the *Australian Federal Integrity Commission Act 2020*); or
 - (b) involves, or is engaged in for the purpose of, corruption of any other kind; or
 - (c) perverts, or is engaged in for the purpose of perverting, or attempting to pervert, the course of justice.
-

3A Conduct that constitutes a substantial breach of the code of conduct in the *Commonwealth Parliamentary Standards Act 2020*.

7