



## Law Enforcement Integrity Commissioner Bill 2006

Jennifer Norberry  
Law and Bills Digest Section

### Contents

Purpose. . . . .	2
Background. . . . .	2
Anti-corruption bodies in Australia. . . . .	2
Oversight bodies . . . . .	4
Main provisions. . . . .	5
Objects of the legislation . . . . .	5
Definitions . . . . .	5
The Integrity Commissioner’s functions . . . . .	6
Referring corruption issues to the Integrity Commissioner . . . . .	7
How the Integrity Commissioner deals with corruption issues . . . . .	7
General. . . . .	7
Advising particular people of decision about how to deal with a corruption issue . . . . .	8
Dealing with corruption issues on the Integrity Commissioner’s own initiative . . . . .	9
Information sharing . . . . .	10
Investigations by the Integrity Commissioner . . . . .	10

Progress reports . . . . .	10
Reporting at the end of an investigation . . . . .	10
Investigations by other Commonwealth agencies. . . . .	12
Nominated contact for investigations by other Commonwealth agencies. . . . .	12
Managing or overseeing investigations by law enforcement agencies . . . . .	12
Progress reporting by law enforcement agencies investigating corruption issues . . . . .	12
Reporting by Commonwealth government agencies at the end of an investigation. . . . .	12
Public inquiries into corruption issues. . . . .	13
Integrity Commissioner’s powers in conducting investigations and public inquiries. . . . .	13
Requiring people to give information and produce documents or things . . . . .	14
Failure to comply with a section 75 or section 76 requirement . . . . .	14
Section 149 certified information . . . . .	14
Legal privilege . . . . .	14
Self-incrimination . . . . .	14
Public interest immunity . . . . .	14
Conducting hearings . . . . .	15
Hearings for investigations and public inquiries . . . . .	15
Summons . . . . .	15
Non-disclosure notations on summonses. . . . .	16
Disclosure offences. . . . .	16
Evidence . . . . .	16
Legal representation . . . . .	17
Confidentiality directions . . . . .	17
Offences in relation to hearings . . . . .	18
Section 149 certified information . . . . .	18

Financial assistance for witnesses. . . . .	18
Hearings and self-incrimination . . . . .	18
Court orders for delivery of a witness's passport and witness's arrest . . . . .	18
Legal protections for the Commissioner, Assistant Commissioners, lawyers and witnesses at hearings. . . . .	19
Entering certain places during an investigation without a search warrant. . . . .	20
Search warrants. . . . .	20
Applying for and issuing warrants . . . . .	20
Content of warrants. . . . .	21
Warrant applications by telephone, fax, email or other electronic means . . . . .	21
Things that are authorised by warrants . . . . .	22
How warrants are executed . . . . .	22
Warrant offences. . . . .	22
Authorised officers . . . . .	23
Dealing with evidence obtained in an investigation or public inquiry . . . . .	23
Dealing with information obtained in an investigation or public inquiry . . . . .	24
Attorney-General's certificates about the release of information (section 149 certificates). . . . .	24
Dealing with ACLEI corruption issues . . . . .	25
How the Minister may deal with ACLEI corruption issue . . . . .	25
Investigation by the Integrity Commissioner. . . . .	26
Special investigations . . . . .	26
Administrative provisions . . . . .	27
The Integrity Commissioner. . . . .	27
Assistant Integrity Commissioners . . . . .	27

Australian Commission for Law Enforcement Integrity . . . . .	28
Public reporting . . . . .	28
Annual reports . . . . .	28
Annual reports that mention the Australian Crime Commission . . . . .	29
Reports on investigations and public inquiries. . . . .	29
Special reports . . . . .	29
Other information that must or may be excluded from annual reports or special reports . . . . .	30
Confidentiality requirements . . . . .	30
General obligations . . . . .	30
Exceptions to confidentiality requirements . . . . .	30
Compellability of ACLEI staff. . . . .	31
Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity . . . . .	31
Miscellaneous provisions. . . . .	32
Delegation . . . . .	32
Victimisation offences. . . . .	32
Concluding comments . . . . .	33
Jurisdiction . . . . .	33
Additional protection for informants. . . . .	34
Reporting on section 149 certificates . . . . .	34
Review of the legislation . . . . .	35
Complaints against the ACLEI. . . . .	35
Endnotes . . . . .	36

## Law Enforcement Integrity Commissioner Bill 2006

**Date introduced:** 29 March 2006

**House:** House of Representatives

**Portfolio:** Attorney-General

**Commencement:** The substantive provisions commence 6 months after Royal Assent, unless commenced earlier by Proclamation.

### Purpose

To establish an Australian Law Enforcement Integrity Commission ('ACLEI') with power to investigate and report on corruption in the Australian Federal Police ('AFP'), the Australian Crime Commission ('ACC'), the former National Crime Authority ('NCA')<sup>1</sup> and prescribed Commonwealth law enforcement agencies.

The Law Enforcement Integrity Commission Bill 2006 ('the LEIC Bill') is part of a package of three Bills. The other Bills in the package are:

- the Law Enforcement Integrity Commission (Consequential Amendments) Bill 2006 ('the Consequential Amendments Bill'), and
- the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 ('AFP Professional Standards Bill').

The Consequential Amendments Bill amends a number of Commonwealth Acts so that officers of the Australian Law Integrity Commission will have access to special investigatory powers such as telecommunications interception, surveillance devices, controlled operations and assumed identities.

### Background

#### Anti-corruption bodies in Australia

Ad hoc royal commissions have been established from time to time in the States to investigate allegations of corruption.<sup>2</sup> Additionally, a number of jurisdictions have ongoing statutory anti-corruption agencies with royal-commission powers. Agencies with statutory powers to investigate corruption and misconduct in the public sector generally have been established in New South Wales, Queensland and Western Australia. In NSW and Victoria, there are independent, specialist agencies that investigate police misconduct.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

In NSW, the functions of the Independent Commission Against Corruption include investigating, detecting and preventing corruption in the public sector, and educating the public sector and the public about corruption and its detrimental effects.<sup>3</sup> The Police Integrity Commission is responsible for detecting, preventing and investigating serious police misconduct and for managing other agencies in detecting and investigating police misconduct.<sup>4</sup>

In Queensland, the functions of the Crime and Misconduct Commission include combating organised crime, assisting the public sector to prevent crime and misconduct, investigating complaints of misconduct, undertaking research, and compiling and analysing intelligence.<sup>5</sup>

In Western Australia, the functions of the Corruption and Crime Commission of Western Australia include combating and reducing organised crime, reducing misconduct in the public sector, investigating corruption and educating public sector staff about the Commission's role and their notification responsibilities.<sup>6</sup>

In Victoria, the Director, Police Integrity is responsible for ensuring that ethical and professional standards are maintained in the Victoria Police and for ensuring that police corruption and serious misconduct is detected, investigated and prevented. The Director's powers now include own motion investigations.<sup>7</sup>

At present, there is no standing Commonwealth body with royal commission-like powers charged with investigating corruption in Commonwealth agencies. However, under the *Complaints (Australian Federal Police) Act 1981*, complaints about the AFP can be made to the Ombudsman or to the AFP's internal complaints mechanisms. The Ombudsman can take over an investigation or conduct the investigation from the beginning.

In 1996, the Australian Law Reform Commission report, *Integrity: but not by trust alone* reviewed the complaints and disciplinary processes of the AFP and NCA. Among other things the report recommended that a new body, the National Integrity and Investigations Commission, should be the external complaints and anti-corruption authority for the AFP and the NCA and should have royal-commission powers.<sup>8</sup>

On 25 May 2004, the *Australian* newspaper reported that a former Victorian drug squad detective working at the ACC was facing criminal charges.<sup>9</sup> On 14 June 2004, the ABC *Four Corners* program claimed that the ACC had been tainted by two corrupt officers seconded from NSW and Victoria.<sup>10</sup> On 16 June 2004, the Attorney-General and the Minister for Justice and Customs announced that the Commonwealth would establish an independent anti-corruption body:

While no evidence exists of systemic corruption within the Australian Crime Commission (ACC), the Australian Federal Police (AFP) or other Commonwealth law enforcement agencies, the Government has decided there should be an

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

independent body with the powers of a Royal Commission to address corruption at the Federal level should it arise.<sup>11</sup>

Justice and Customs Minister, Senator Chris Ellison, said the announcement was not connected with the *Four Corners* program:

... what brought this to light was the engagement we've had with the Victorian Government, which wants telephone intercept powers to be given to the ombudsman ... That's entirely inappropriate. ...

Now that caused us to examine our situation, neither the Victorian ombudsman or federal ombudsman should have those telephone intercept powers and we've said, "Well we should have an independent body with telephone intercept powers and the powers of a royal commission to oversight federal law enforcement."<sup>12</sup>

In September 2005, Minister Ellison said that the federal integrity body would initially oversee the AFP and the ACC. He also indicated that the jurisdiction of the commission would be able to be expanded by the use of regulations and referred to the following 'second-tier' agencies—the Department of Immigration, the Australian Taxation Office, the Australian Customs Service and, perhaps, Centrelink.<sup>13</sup>

## Oversight bodies

As stated earlier in this Digest, three Australian jurisdictions have standing anti-corruption commissions. Victoria has a Director, Police Integrity. In each case, statutory oversight mechanisms are also provided:

- in *NSW*, the Inspector of the Independent Commission Against Corruption audits the operations of the Commission and investigates complaints against the Commission. The Joint Parliamentary Committee on the Independent Commission Against Corruption monitors and reviews the Commission and the Inspector. The Parliamentary Joint Committee on the Ombudsman and the Police Integrity Commission monitors the work of the Police Integrity Commission and reviews its functions. The Inspector of the Police Integrity Commission can investigate complaints about the Commission and reports to Parliament.
- in *Queensland*, the Parliamentary Crime and Misconduct Committee monitors and reviews the performance of the Crime and Misconduct Commission and reports to Parliament. It also participates in the selection of Commissioners.<sup>14</sup> A Parliamentary Inspector is responsible for investigating complaints against the Crime and Misconduct Commission and also reports to the Parliamentary Committee.
- in *Western Australia*, the Joint Standing Committee on the Crime and Corruption Commission monitors the Commission's work and reports to Parliament. The Parliamentary Inspector of the Crime and Misconduct Commission audits the

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

Commission's work, investigates complaints against the Commission and makes recommendations to Parliament.

- In *Victoria*, the Special Investigations Monitor (SIM) monitors the activities of the Director, Police Integrity and the exercise of the Director's powers. The SIM reports to Parliament on the use of the Director's powers.<sup>15</sup>

## Main provisions

### Objects of the legislation

**Clause 3** provides that the objects of the legislation are to:

- facilitate the detection and investigation of corruption in law enforcement agencies
- enable criminal prosecutions and civil penalty proceedings to be brought as a result of those investigations, and
- maintain and improve the integrity of law enforcement agency staff.

### Definitions

The definitions of 'corruption issue', 'corrupt conduct', 'law enforcement agency' and 'law enforcement function' are pivotal to much of the work of the Integrity Commissioner.

The Integrity Commissioner's functions include investigating and reporting on 'corruption issues.' Special coercive powers—like requiring people to produce information or documents or give evidence—can be exercised when the Commissioner is investigating a 'corruption issue.' **Clause 7** defines 'corruption issue' as an issue of whether a current or former staff member of a 'law enforcement agency' has or may have engaged in 'corrupt conduct'; is, or may be, engaging in 'corrupt conduct'; or will, or may in the future, engage in 'corrupt conduct.'

'Corrupt conduct' is broadly defined and means conduct that involves abuse of office, conduct engaged in to pervert the course of justice or conduct that involves or is engaged in for the purpose of corruption of any other kind. It includes conduct that was engaged in before the commencement of the proposed Law Enforcement Integrity Commissioner Act 2006 (**clause 6**).

**Clause 5** defines 'law enforcement agency' to mean:

- the AFP
- the ACC
- the former NCA, or

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



- any other ‘Commonwealth government agency’ that has a ‘law enforcement function’ *and* is prescribed by regulation.

The last part of the definition has a potentially wide reach because of the broad definition of ‘law enforcement function’ (**clause 5**). ‘Law enforcement function’ means the functions of investigating whether a Commonwealth offence has been committed or civil penalty proceedings may be brought; preparing material for prosecution or bringing civil penalty proceedings; collecting, analysing or distributing information in order to assist the enforcement of Commonwealth law; or assisting in carrying out these functions.

It is noteworthy, however, that additional Commonwealth agencies with law enforcement functions will not be brought within the ambit of the Commissioner’s investigatory powers unless the Government prescribes them by regulation. For further comment, see the Concluding Comments section of this Digest.

## The Integrity Commissioner’s functions

**New Part 3** sets out the Integrity Commissioner’s functions. These include:

- investigating and reporting on ‘corruption issues’
- referring ‘corruption issues’ to ‘law enforcement agencies’ for investigation
- managing, overseeing or reviewing corruption investigations by law enforcement agencies
- at Ministerial request, conducting public inquiries into corruption issues or corruption generally in law enforcement agencies
- collecting, analysing and disseminating data about corruption in law enforcement agencies and other Commonwealth government agencies with law enforcement functions
- reporting and making recommendations to the Minister on the need for legislative or administrative action on corruption generally. These reports and recommendations can be made on the Commissioner’s own initiative or at Ministerial request (**clause 15**).

The Commissioner is charged with giving priority to serious corruption and systemic corruption (**clause 16**). ‘Serious corruption’ is corruption by law enforcement agency staff that could result in the person being charged with an offence punishable by a term of at least 12 months imprisonment (**clause 5**).<sup>16</sup> ‘Systemic corruption’ means instances of corrupt conduct that reveal a pattern of corrupt conduct in a law enforcement agency or agencies (**clause 5**).

The Commissioner can enter into written agreements with the heads of law enforcement agencies in relation to specified matters. These include the kind of issues that are significant corruption issues in relation to a particular agency and the level of detail required to notify the Commissioner of a corruption issue (**clause 17**).

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Referring corruption issues to the Integrity Commissioner

**New Part 4** sets out how corruption issues can be brought to the Commissioner's attention. These are:

- referral by the portfolio Minister
- notification by the head of a law enforcement agency, or
- referral by other people (**clauses 18, 19 and 23**, respectively).

New section 19 requires the head of a law enforcement agency to notify the Commissioner of allegations of corruption issues 'as soon as practicable' after becoming aware of them. The LEIC Bill also contains rules about what must happen when an agency head notifies the Commissioner. For instance, if an agency head notifies the Commissioner of a significant corruption issue, he or she must give the Commissioner relevant documents, stop any existing investigation into that issue and take reasonable steps to prevent loss, destruction or fabrication of evidence (**subclause 20(1)**). The law enforcement agency head must also pass on new information that comes to hand (**clause 21**).

In the case of a corruption issue that is not identified as a significant corruption issue, the head of the agency must, in general, ensure that any investigation being conducted is completed. If no investigation is underway, the agency head must, in general, investigate (**clause 20**). If the agency head decides not to investigate—for example, because the complaint is frivolous, vexatious or not bona fide—the agency head must advise the Commissioner and indicate why the decision was made (**clause 22**).

Referrals by 'other people' may be done anonymously and may be written or oral (**clause 23**).

There are special provisions for referrals by prisoners (**clause 24**). Facilities must be provided to a prisoner who wishes to refer an allegation to the Integrity Commissioner. In particular, the prisoner must be able to use a sealed envelope and have the envelope delivered 'without undue delay.'

## How the Integrity Commissioner deals with corruption issues

### General

The ways in which the Integrity Commissioner can deal with 'corruption issues' are set out in **clause 26**. He or she can:

- investigate the issue—either alone or jointly with another government agency or State or Territory integrity agency (State and Territory integrity agencies are prescribed agencies that investigate police corruption)<sup>17</sup>
- refer the issue to the law enforcement agency or the AFP and elect whether to oversee or manage the investigation, or

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- manage or oversee an investigation that is being conducted by a law enforcement agency.

The *criteria* for deciding how to deal with a corruption issue are set down in **clause 27**. They include:

- the need to ensure that the issue is fully investigated
- the rights and obligations of the law enforcement agency to investigate the issue
- the resources that are available to the Commissioner, the AFP and the law enforcement agency, and
- the need to balance the Commissioner's role in dealing with corruption issues and ensuring that the heads of law enforcement agencies take responsibility for managing their agencies.

The Bill also deals with how the Integrity Commissioner is to handle corruption issues that relate to 'secondees' from government agencies (**clause 29**). 'Secondees' are people seconded from Commonwealth, State or Territory agencies to the AFP, ACC, former NCA, or prescribed law enforcement agencies (**clause 10**).

In the case of corruption issues that relate to secondees, the Integrity Commissioner must, with some exceptions, inform the head of the person's home agency and may arrange for the head of the home agency to investigate the issue (**clauses 29 and 30**). If the secondee is from a State or Territory police force, the Integrity Commissioner may refer the matter to the relevant State or Territory integrity agency. **Subclause 29(9)** sets out the criteria that the Integrity Commissioner must use when deciding how to deal with a corruption issue involving a secondee. These criteria are similar to the criteria set out in **clause 27**.

The Commissioner may decide to take no further action in relation to a corruption issue that has been notified or referred to him. However, if the issue is a serious corruption issue the Commissioner can only decide to take no further action if satisfied that the issue is already being investigated by another agency, is frivolous or vexatious, not made in good faith or will be the subject of legal proceedings (**clause 31**).

### Advising particular people of a decision about how to deal with a corruption issue

If the Minister refers a significant corruption issue to the Integrity Commissioner, the Commissioner must advise the Minister in writing, as soon as reasonably practicable of what action he or she intends to take (**clause 33**).

Where the allegation relates to a law enforcement agency, the Commissioner must advise the head of that agency of how he or she intends to deal with the corruption issue. However, such advice need not be given if it would be likely to prejudice the investigation or action taken as a result of the investigation. In this case, the Commissioner must inform the relevant Minister (**clause 35**). Similar rules apply to advising the heads of home agencies and integrity agencies where an allegation relates to a secondee (**clause 36**).

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

The Commissioner may also advise the person to whom a corruption allegation relates of how the Commissioner intends to deal with the issue (**clause 37**).

A person who has referred a matter to the Integrity Commissioner under **clause 23** and who elects to be kept informed of action must also be advised in writing as soon as reasonably practicable of what action the Commissioner intends to take (**clauses 25 and 34**). However, the person need not be advised if the Commissioner is satisfied that to do so is likely to prejudice the investigation of the corruption issue or action as a result of that investigation.

### Dealing with corruption issues on the Integrity Commissioner's own initiative

In addition to being empowered to deal with corruption issues that are referred or notified, the Commissioner can also deal with corruption issues on his or her own initiative (**clause 38**).

If the corruption issue relates to a *law enforcement agency*, the Commissioner must advise the agency head in writing as soon as reasonably practicable (**clause 39**). An exception to this obligation exists if the Commissioner considers that advising the agency head is likely to prejudice the investigation of the corruption issue or any action taken as a result of the investigation. In such a case, the Commissioner must advise the Minister of the decision and the reasons for it.

If the corruption issue relates to a *secondee* who is employed by a *government agency*, the Commissioner must advise the head of the person's home agency of his or her decision to investigate the issue or arrange for the head of the home agency to investigate the issue (**clause 40**).

If the corruption issue relates to a *secondee* whose home agency is a *State or Territory police force*, the Commissioner must also advise the head of any relevant State or Territory integrity agency of how he or she proposes to deal with the matter (**clause 40**).

An *exception to the obligations* in **clause 40** is where advising the head of the home agency or the integrity agency would be likely to prejudice the investigation or any action taken as a result of the investigation (**subclause 40(5)**). However, in such a case, the Commissioner must inform the relevant Minister and give reasons for the decision (**subclause 40(6)**).

The Commissioner may also advise the person who is the subject of a corruption allegation of his decision to investigate or refer the allegation to a State or Territory police force or integrity agency (**clause 41**).

**Clause 42** allows the Commissioner to reconsider how a corruption issue should be dealt with.

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Information sharing

If the Commissioner has decided to refer a corruption issue to a law enforcement agency, the AFP, a Commonwealth government agency, a State or Territory government agency or a State or Territory integrity agency, the Commissioner must give the head of that agency relevant information or documents (**clauses 43 and 44**).

Under **clause 70**, the Commissioner has a continuing obligation to pass on information relevant to the investigation.

## Investigations by the Integrity Commissioner

**New Part 6** applies if the Commissioner investigates a corruption issue (alone or jointly) (**clause 47**).

**Clause 48** provides that the Commissioner can conduct an investigation in the manner he or she thinks fit. However, he or she has a number of obligations under **new Part 6**. These are summarised below.

### Progress reports

Where a corruption allegation has been referred by the Minister or notified by the head of a law enforcement agency, the Commissioner must keep those people informed of progress of the investigation (**subclauses 52(1) and (2)**).

In the case of a section 23 referral (ie by a person other than the Minister or a law enforcement agency head) the Commissioner need only keep the person informed of progress if the person has elected to be kept informed (**clause 52**).

If the corruption issue relates to a secondee who is an employee of a government agency, the head of the home agency or the head of the relevant integrity agency, must be kept informed of progress (**clause 53**).

### Reporting at the end of an investigation

In general, the Commissioner cannot include an opinion or finding that is critical of a government agency or person in a report unless the agency head or the person has first been given a copy of the opinion or finding and an opportunity to respond (**clause 51**).

**Clause 54** requires the Commissioner to prepare a report once an investigation is completed. The report must set out findings, the evidence on which the findings are based, any action that the Commissioner proposes to take, any recommendations and the reasons for them.

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

The Commissioner *must* exclude ‘*section 149 certified information*’ from the report if public hearings were held during the course of the investigation. Clause 149 enables the Attorney-General to certify that the disclosure of certain information or documents would be contrary to the public interest on certain grounds. These grounds are listed in **subclause 149(2)** and are described later in this Digest.

The Commissioner *may* exclude ‘*sensitive information*’ or section 149 certified information that the Commissioner thinks it desirable to exclude. The expression, ‘sensitive information’ has a wide reach. It includes information the disclosure of which could prejudice Australia’s security, defence or international relations or relations between the Commonwealth and States; information that would disclose certain deliberations of Commonwealth, State and Territory Executive Governments; information that could reveal a confidential source of information in relation to the enforcement of the criminal law; and information that could endanger public or individual safety (**clause 5**).

In deciding whether to exclude information from the report, the Commissioner must seek an appropriate balance between the public interest that would be served by including the information and the prejudicial consequences that might result (subsequently referred to as the ‘appropriate balance’ test in this Digest).

If the Commissioner excludes information, it must be put in a supplementary report that also sets out the reason for the exclusion (**clause 54**).

The Commissioner must:

- give the Commonwealth Minister the report and any supplementary report (**subclause 55(1)**), and
- give copies of the report to the head of the relevant law enforcement agency, home agency or integrity agency. However, section 149 certified information must be excluded from these reports if the disclosure would contravene the certificate that has been issued. Copies of all or part of any supplementary report may also be provided to the heads of these agencies (**subclauses 55(2)-(5)**)

The Commissioner may require the head of a law enforcement agency to advise him or her of any follow-up action that is proposed in response to recommendations made in the report. If the Commissioner is not satisfied with the response, he or she can refer the matter to the relevant portfolio Minister. The Commissioner may also advise Parliament’s two Presiding Officers ‘for presentation’ to Parliament (**clause 57**). However, there seems to be no requirement that material given to the Presiding Officers must be tabled within any particular timeframe.

Last, the Commissioner may advise the person who was investigated of the outcome of the investigation but must not disclose any section 149 certified information and may decide not to disclose sensitive information that is desirable in the circumstances to exclude (**clause 59**).

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Investigations by other Commonwealth agencies

### Nominated contact for investigations by other Commonwealth agencies

If the Commissioner has decided to deal with a corruption issue by referring it to a law enforcement agency for investigation or by managing or overseeing that investigation, then either the head of the agency or a person nominated by the head of the agency is the contact for the investigation (**clause 60 and subclause 5(1)**).

### Managing or overseeing investigations by law enforcement agencies

**Clauses 61 and 62** explain the difference between managing and overseeing an investigation conducted by a law enforcement agency.

If the Commissioner *manages* an investigation carried out by a law enforcement agency, the Commissioner must give the nominated contact for the investigation *detailed guidance* about the planning and carrying out of the investigation. The agency head must ensure that these guidelines are adhered to and that staff cooperate with the Integrity Commissioner (**clause 61**).

*Overseeing* an investigation means that the Commissioner gives *general guidance* about carrying out the investigation. The agency head must ensure that the agency follows that general guidance (**clause 62**).

### Progress reporting by law enforcement agencies investigating corruption issues

The Commissioner may require progress reports and periodic reports from law enforcement agencies that are investigating a corruption issue (**clauses 63 and 64**). The head of a law enforcement agency that is investigating a corruption issue must also keep the Minister informed of progress. Where the issue was referred by another person under **clause 23**, the agency head must also keep that person informed of progress if the person elects to be kept informed (**clause 65**).

### Reporting by Commonwealth government agencies at the end of an investigation

Reporting obligations extend to all Commonwealth government agencies not just to law enforcement agencies.

When an investigation conducted by a Commonwealth agency is completed, the head of the agency must prepare a report setting out findings, the evidence on which the findings were based, any action that is proposed and the reasons for that action. A copy of the report must be given to the Integrity Commissioner. If the investigation has been carried

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

out by the AFP and relates to another law enforcement agency, a copy of the report must be given to the head of the law enforcement agency (**clause 66**).

The Commissioner can make comments or recommendations in relation to the report or the investigation that preceded it. The head of the agency must respond to the Commissioner's request. If the Commissioner is not satisfied with the response, the Commissioner may refer the matter to the responsible Minister and may also send a copy of the material to Parliament's two presiding officers 'for presentation' to each chamber. Section 149 certified material must be excluded from material sent to the two Presiding Officers. Once again, there appears to be no requirement that the material given to the Presiding Officers must be tabled within any particular timeframe. Where it is desirable to do so, 'sensitive information' can also be excluded (**clause 67**). In deciding whether to exclude sensitive information, the appropriate balance test is applied.

There are similar obligations on advising the person who referred the corruption issue of the outcome of the investigation (**clauses 68 and 69**).

## Public inquiries into corruption issues

**Clause 71** provides that the Minister may ask the Integrity Commissioner to conduct a public inquiry into a particular corruption issue or issues, issues about corruption generally in law enforcement agencies, or issues about the integrity of staff members of law enforcement agencies. The Commissioner must call for submissions (**clause 72**).

After conducting a public inquiry, the Commissioner must produce a report setting out findings, the evidence on which the findings are based, action that the Commissioner proposes to take under **new Part 10**, any recommendations and the reasons for those recommendations. Section 149 certified information must be excluded from the report. The Commissioner may also exclude information that is 'sensitive information' where it is desirable to do so, subject to the appropriate balance test. If the Commissioner excludes information, this information must be included in a supplementary report (**clause 73**). The report and supplementary report must be given to the Minister. The Minister must table a copy of the report in Parliament but need not table the supplementary report (**clauses 74 and 203**).

## Integrity Commissioner's powers in conducting investigations and public inquiries

The Bill enables the Commissioner to exercise coercive powers when conducting investigations, public inquiries and hearings.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



## Requiring people to give information and produce documents or things

For the purposes of investigating a corruption issue, the Integrity Commissioner's powers include:

- requiring persons, including staff of law enforcement agencies, to provide information, documents or things (**clauses 75 and 76**)
- retaining documents or things that are produced in response to section 75 or 76 requests while it is necessary to do so for the purposes of the investigation (**clause 77**).

## Failure to comply with a section 75 or section 76 requirement

It is an offence to fail to comply with a request made under section 75 or 76. The penalty is 2 years imprisonment (**clause 78**).

## Section 149 certified information

A person must not comply with a section 75 or section 76 requirement if the information of document contains section 149 certified information and the disclosure would contravene the section 149 certificate (**subclause 150(2)**).

## Legal privilege

A lawyer may refuse to give information, documents or things to the Commissioner if the information or document contains a privileged communication (**clause 79**). Privilege will not attach if the person to whom or by whom the communication was made consents to the information or document being provided. Further, if a lawyer claims the privilege and there is no waiver, the Commissioner can require the lawyer to provide the name and address of the person by whom or to whom the communication was made.

## Self-incrimination

A person is not excused from complying with a section 75 or section 76 requirement on the ground of self-incrimination (**clause 80**). Use immunity applies to the information, documents or things if a person claims that they might be incriminated either before producing the information etc or in a written statement that accompanies the information etc.<sup>18</sup> With certain exceptions, this immunity protects the person from criminal prosecution or proceedings for the imposition or recovery of a penalty.

## Public interest immunity

Nor is a person excused from complying with a section 75 or section 76 requirement on the grounds that to do so would:

- disclose legal advice given to a Minister or a Commonwealth government agency

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- disclose a communication between the officer of a Commonwealth government agency and another person that is protected by legal professional privilege, or
- breach a secrecy provision—other than a ‘taxation secrecy provision’ or a ‘law enforcement secrecy provision’ (**subclause 80(5)**).<sup>19</sup>

The Bill protects people required to provide information or documents who would otherwise commit an offence by doing so (**subclause 80(7) and clause 81**). Clause 81 also protects such people indirectly via the application of Part III of the *Crimes Act 1914* (Cwlth). Part III contains offences such as intimidating and deceiving a witness or preventing a witness appearing.

## Conducting hearings

### Hearings for investigations and public inquiries

When investigating a corruption issue or conducting a public inquiry, the Commissioner may hold hearings (**subclause 82(1)**).

*Hearings for investigations* conducted by the Integrity Commissioner may be held in public or in private (**subclause 82(3)**). Matters that must be taken into account by the Commissioner in deciding whether to hold a such a hearing in public include whether evidence that may arise is confidential or relates to the commission of an offence; any unfair prejudice to a person’s reputation that might occur if the hearing is held in public; and the public interest in having a public hearing (**subclause 82(4)**).

*Hearings for public inquiries* must be held in public but parts of hearings can be held in closed session (**subclause 82(5)**).

Additionally, some evidence must be given in private and witnesses may request that their evidence be given in closed session (see ‘Evidence’ below).

## Summons

The Commissioner can summon a person to attend a hearing to give evidence or produce documents or things (**clause 83**).

In the case of a hearing held in order to investigate a corruption issue, a summons requiring a person to give evidence must ‘so far as is reasonably practicable’, set out the general nature of the matters that the person will be questioned about. However, this requirement does not apply if the Commissioner thinks it would prejudice the investigation (**subclause 83(5)**).

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

### Non-disclosure notations on summonses

A non-disclosure notation on a summons is a notation prohibiting the disclosure of information about the summons or any official matter connected with the summons. Non-disclosure notations can only be made where a hearing is to be held in private.

The Commissioner *must* include a non-disclosure notation on the summons if satisfied that failure to do so *would reasonably be expected to prejudice*:

- a person's safety or reputation
- the fair trial of a person
- the investigation to which the hearing relates or another corruption investigation or any action taken as a result of such an investigation.

The Commissioner *may* include a non-disclosure notation if satisfied that failure to do so *would prejudice* the same matters listed above or if failure to do so would otherwise be contrary to the public interest (**clause 91**).

A summons that includes a non-disclosure notation must be accompanied by a statement setting out the rights and obligations found in **clause 92** (disclosure offences and defences).

### Disclosure offences

**Clause 92** contains disclosure offences. It is an offence to disclose information about a summons or any official matter connected with a summons if the summons is subject to non-disclosure notation, the notation has not been cancelled and a period of five years since the summons was issued has not expired (**subclause 92(1)**). The penalty is imprisonment for 12 months.

**Subclause 92(1)** provides a defence if the disclosure is permitted by the notation. Other defences relate to disclosures by or to particular classes of person eg disclosures made to a lawyer in order to obtain legal advice or disclosures made to a legal aid officer in order to obtain financial assistance under the Act. Secondary disclosure offences are also created (**subclauses 92(3)-(5)**).

### Evidence

The Commissioner may require a witness at a hearing to take an oath or make an affirmation (**clause 87**).

Subject to the Commissioner's decision, the following persons can examine or cross-examine any witness on any matter that the Commissioner considers relevant:

- counsel assisting the Commissioner

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- a person summoned or authorised to appear before the Commissioner
- any legal practitioner representing a person at a hearing (**clause 88**).

The Integrity Commissioner may take evidence outside Australia (**clause 84**).

**Clause 82** contains general rules about when hearings must be held in public and in private. Additionally, **clause 89** prescribes certain evidence that *must* be given in private—that is, evidence that would:

- disclose legal advice given to a Minister or Commonwealth government agency
- disclose communications between the officer of a Commonwealth government agency and another person or body that is protected by legal professional privilege
- breach a secrecy provision other than a taxation secrecy provision or a law enforcement secrecy provision.

Further, a person giving evidence at a public hearing may request that their evidence be given in private because it relates to the financial position of any person or because taking the evidence in public would be unfairly prejudicial to their interests. If considered appropriate, the Commissioner can decide that the evidence will be given in private session (**subclauses 89(2) and (3)**).

### Legal representation

A person giving evidence at a hearing may be represented by a lawyer. In special circumstances and with the consent of the Commissioner, a person who is not giving evidence may be represented by a lawyer at a hearing (**clause 85**). The Integrity Commissioner must allow a person who is giving evidence to be legally represented when evidence is being given (**subclause 86(2)**).

### Confidentiality directions

**Clause 90** empowers the Commissioner to prohibit or restrict publication of:

- evidence given at a hearing
- the contents of documents produced at a hearing
- information that may enable a witness at a hearing to be identified
- the fact that a particular person has given or may give evidence at a hearing.

It is an offence punishable by 12 months imprisonment to contravene such a direction (**subclause 90(6)**).

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Offences in relation to hearings

The Bill creates a number of offences in relation to hearings:

- failure to attend a hearing as required by a summons (penalty: 12 months imprisonment) (**subclause 93(1)**)
- failure to be sworn or make an affirmation as required at a hearing (penalty: 2 years imprisonment) (**subclause 93(2)**)
- failure to produce a document or thing as required at a hearing (penalty: 2 years imprisonment) (**subclause 93(4)**), and
- contempt (penalty: 6 months imprisonment) (**clause 94**). Contempt includes insulting the Integrity Commissioner, creating a disturbance in or near a place where the person knows a hearing is being held, and interrupting a hearing.

## Section 149 certified information

However, a person must not comply with a requirement to produce information or documents at a hearing if the information or document contains section 149 certified information and to do so would contravene a section 149 certificate (**subclause 150(3)**).

## Financial assistance for witnesses

A person who is summoned to appear as a witness is entitled to travelling and other allowances as are prescribed by regulation (**subclause 83(6)**). Further, a person who is summoned to attend a hearing may apply to the Attorney-General for legal and financial assistance (**clause 103**).

## Hearings and self-incrimination

The self-incrimination provisions in relation to hearings in **clause 96** mirror those in **clause 80**, which relates to providing information, documents or things to the Integrity Commissioner.

## Court orders for delivery of a witness's passport and witness's arrest

The Integrity Commissioner can apply to the Federal Court for an order that a person *deliver his or her passport* to the Integrity Commissioner. Such an application can be made where a person has been summoned to attend a hearing or has appeared at a hearing and there are reasonable grounds to believe that the person may be able to provide relevant evidence, documents or things and there are reasonable grounds for suspecting that the person intends to leave Australia and has a passport in their possession (**clause 97**).

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

A person who is the subject of a **clause 97** application must appear in Court and show cause why their passport should not be delivered up to the Integrity Commissioner. It is an offence to leave Australia when required to appear before the Federal Court (penalty: 2 years imprisonment). The Federal Court may order a person to surrender any passport in their possession and authorise the Commissioner to keep it for not more than a month. Extensions can be granted but the total period during which the passport can be retained by the Commissioner cannot exceed 3 months (**clause 98**).

An 'authorised officer' can also apply to the Federal Court or a State or Territory Supreme Court for an *arrest warrant* if the authorised officer has reasonable grounds to believe that:

- the person has been ordered to surrender their passport and is likely to leave Australia in order to avoid giving evidence at a Commission hearing
- the person has been summoned and is likely to abscond, or
- the person has committed an offence against subsection 93(1) (failing to attend a hearing) or is likely to do so.

If the judge is satisfied that on reasonable grounds that any of the above grounds are met, he or she may issue an arrest warrant (**clause 100**). The person executing the warrant need not have a copy of the warrant in their possession at the time it is executed. With exceptions, he or she must tell the person about the substance of the reason for their arrest without having to do this 'in language of a precise or technical nature' (**subclauses 100 (5)-(7)**).

An arrested person may be bailed, detained or released by order of a judge of the Federal Court or a State or Territory Supreme Court (**clause 101**).

#### Legal protections for the Commissioner, Assistant Commissioners, lawyers and witnesses at hearings

In exercising their power to hold hearings, the Integrity Commissioner and Assistant Integrity Commissioners have the same protections and immunities as High Court judges. Lawyers assisting the Commission or representing a person at a hearing have the same protection and immunity as barristers.

A person who gives evidence or produces documents or things at a hearing or makes a submission to a public inquiry has the same protection as a witness in High Court proceedings (**clause 104**).

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Entering certain places during an investigation without a search warrant

For the purposes of investigating a ‘corruption issue’, **clause 105** empowers the Commissioner or an authorised officer to enter places occupied by ‘law enforcement agencies’ without a warrant, inspect and copy documents kept at the premises, and remove documents (in order to copy them). Things can be seized if they are relevant to an indictable offence or if seizure is necessary to prevent concealment, loss or destruction.

There are exceptions to this power of entry, search and seizure. Without the approval of the responsible Minister, the power cannot be exercised in relation to:

- a Commonwealth place that is declared to be a prohibited place on the ground that ‘information with respect thereto, or damage thereto, would be useful to an enemy or to a foreign power’<sup>20</sup>
- prohibited places or restricted areas under the *Defence (Special Undertakings) Act 1952* ‘Special defence undertakings’ are works carried out for the defence of the Commonwealth (**subclause 105(3)**).

The Attorney-General can also prevent entry or make entry subject to conditions if satisfied that conducting an investigation at a place ‘might prejudice the security or defence of the Commonwealth’ (**subclause 105(4)**). A declaration made under **subclause 105(4)** is not a legislative instrument. In other words, it need not be registered or tabled in Parliament and cannot be disallowed.

## Search warrants

### Applying for and issuing warrants

New Division 4 of Part 9 enables a variety of warrants to be sought by ‘authorised officers’ and issued by ‘issuing officers’:

- *warrants to search premises (investigation warrants)*. An authorised officer can apply for these warrants if he or she has reasonable grounds for suspecting that there is, or will be, evidential material on the premises *and* that if a person is summoned to produce evidential material it might be concealed, lost or destroyed
- *warrants to search premises (offence warrants)*. An authorised officer can apply for these warrants if he or she suspects on reasonable grounds that there is, or will be, evidential material on the premises
- *warrants to search persons (investigation warrants)*. An authorised officer can apply for investigation warrant to search a person if he or she suspects on reasonable grounds that a person has, or will have, evidential material in their possession *and* that if the person was summoned to produce the material it might be concealed, lost or destroyed

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- *warrants to search persons (offence warrants)*. An authorised officer can apply for an offence warrant to carry out an ordinary or frisk search of a person if he or she suspects on reasonable grounds that the person has, or will have, evidential material in their possession.

The person applying for the warrant must give the issuing officer information on oath or affirmation to support the application and must also advise if any previous application has been made for a search warrant under any Commonwealth law in relation to the same person or premises (**clause 108**).

In order to issue a search warrant, the issuing officer must be satisfied that there are reasonable grounds for the authorising officer's suspicions.

'Issuing officers' for investigation warrants are Federal Court judges or judges of State or Territory courts. Magistrates are 'issuing officers' for offence warrants. In order to avoid any potential separation of powers problems, the functions conferred on issuing officers are conferred with their consent and in a personal capacity (**subclause 109(8)**).

## Content of warrants

**Subclause 110(1)** sets out the general contents of a section 109 warrant. If the warrant is an investigation warrant it must state the corruption issue or public inquiry to which it relates. Similarly, an offence warrant must state the offence to which it relates. The warrant must also describe the premises or person to which it relates, the kind of evidential material being sought, the name of the executing officer, the time at which the warrant expires and when the warrant may be executed.

Warrants expire no later than the end of the seventh day after the day they are issued (**subclause 110(2)**).

Additional requirements are specified for warrants that relate to premises and persons. For instance, if the warrant relates to a person it must specify the kind of personal search (ordinary or frisk) that is authorised. Warrants cannot authorise strip searches or searches of body cavities (**clause 114**).

## Warrant applications by telephone, fax, email or other electronic means

Warrant applications may be made by telephone, fax, email or other electronic means in urgent circumstances or if an application in person would 'frustrate the effective execution of the warrant' (**subclause 111(1)**). In order to issue such a warrant, the issuing officer must also be satisfied that one of these circumstances exists. Warrants issued as a result of such an application expire at the end of the 48<sup>th</sup> hour after being issued (**new paragraph 111(4)(b)**).

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



## Things that are authorised by warrants

Things that are authorised by search warrants relating to premises include entering the premises, taking fingerprints and samples, searching for and seizing evidential material of the kind specified in the warrant, and seizing other things (**clause 112**).

In the case of a warrant authorising a personal search, the executing officer can search the person, things found in their possession and any aircraft, vehicle or vessel that the person operated or occupied within 24 hours before the search began. Such a warrant also enables things to be seized (**clause 113**).

## How warrants are executed

In general, an executing officer must first announce that he or she is authorised to enter premises and provide an opportunity for entry to be permitted. However, it is not necessary to comply with this requirement if the officer believes on reasonable grounds that immediate entry is required to ensure personal safety or ensure that the execution of the warrant is not frustrated (**clause 116**).

‘Necessary and reasonable force’ can be used against persons and things in executing the warrant (**clause 117**).

## Warrant offences

Five warrant offences are created by the Bill:

- making false statements in warrants (**clause 132**)
- stating incorrect names in telephone warrants (**clause 133**)
- unauthorised form of warrant (**clause 134**)
- executing an unauthorised form of warrant (**clause 135**), and
- giving an unexecuted form of warrant (**clause 136**).

All offences carry a penalty of two years imprisonment.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

## Authorised officers

**Clause 140** provides that the Integrity Commissioner can appoint the following people as authorised officers:

- *staff of the Australian Commission for Law Enforcement Integrity* who have suitable qualifications or experience, *or* who are AFP members *or* who are members of State or Territory police forces, *or*
- *AFP members.*

In order to appoint people from agencies other than the ACLEI, the Commissioner must have the consent of the agency head.

Authorised officers must carry an identity card with them at all times when exercising their powers. The identity card must contain a recent photograph and must be in the form prescribed by regulation. Authorised officers cannot exercise their powers in relation to persons or premises without producing their identity card, if required to do so by the occupier of premises etc (**subclauses 141(4) and (5)**).

It is an offence for a former authorised officer who has been issued with an identity card to fail to return the card to the Integrity Commissioner (**subclause 141(6)**). The penalty is 1 penalty unit (\$110).

## Dealing with evidence obtained in an investigation or public inquiry

If the Integrity Commissioner obtains evidence of a Commonwealth offence or a breach of Commonwealth law while investigating a corruption issue or conducting a public inquiry, the Commissioner must give the evidence to the AFP or other relevant Commonwealth authority (**subclause 142(1)**). **New subsection 142(2)** places similar obligations on the Commissioner in relation to breaches of State or Territory law.

Obligations are also placed on the Commissioner if he or she obtains evidence that would be admissible in confiscation proceedings under Commonwealth, State or Territory law (**clause 143**).

**Clause 144** obliges the Integrity Commissioner to consult with the heads of relevant law enforcement agencies, home agencies, and integrity agencies before taking action under **clauses 142 or 143**. The Commissioner must also notify the heads of relevant agencies if he or she takes action under **clauses 142 or 143**.

In specified circumstances, the Commissioner must also bring evidence of any breach of duty or misconduct by staff of a law enforcement agency to the attention of the head of the law enforcement agency. Similarly, evidence of breach of duty or misconduct by a secondee to a law enforcement agency must be brought to the attention of the head of the

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

seconded's home agency or the head of an integrity agency for the particular State or Territory (**clause 146**).

If, while conducting an investigation or public inquiry, the Commissioner obtains evidence suggesting that a person was wrongly convicted of a Commonwealth, State or Territory offence, the Commissioner must bring this evidence to the relevant Minister (**clause 147**).

## Dealing with information obtained in an investigation or public inquiry

Obligations similar to those in **clause 142** are imposed on the Commissioner in relation to information obtained while conducting an investigation or public inquiry (**clause 148**).

## Attorney-General's certificates about the release of information (section 149 certificates)

The Attorney-General may specify that the disclosure of information or a document would be contrary to the public interest on one or more of the grounds specified in **subclause 149(2)**. These grounds are that the disclosure would:

- prejudice the Commonwealth's security, defence or international relations
- involve the disclosure or communications between a Commonwealth Minister and a State or Territory Minister and would prejudice relations between the Commonwealth and a State or Territory
- involve the disclosure of Cabinet deliberations or decisions or the deliberations or advice of the Federal Executive Council
- prejudice the conduct of a current investigation into criminal activity or the contravention of a civil penalty provision
- reveal the existence or identity of a confidential source of information in relation to the enforcement of Australian or foreign criminal law or a civil penalty provision
- prejudice the effectiveness of the operational methods or investigative practices of agencies responsible for the enforcement of Australian or foreign criminal law or a civil penalty provision
- prejudice the proper performance of the ACC's functions, or
- endanger human life or safety.

Issuing a section 149 certificate has a number of important consequences. It prevents a disclosure that would otherwise be authorised or required by the LEIC Bill, if that disclosure would contravene the section 149 certificate:

- disclosures by law enforcement agency heads to the Commissioner (**subclause 150(1)**)

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- requirements to produce documents or things to the Commissioner or at hearings (**subclauses 150(2) & (3)**)
- disclosures by the head of a law enforcement agency to another government agency (**clauses 151**)
- disclosures by the Commissioner to the head of a government agency or a special investigator investigating alleged ACLEI corruption (**clause 152**)
- disclosures by the Commissioner to the proposed Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (**subclause 216(2)**).

Section 149 certified information must be excluded from the Commissioner's reports where public hearings were held during the course of an investigation and must not be included in reports of investigations that are sent to the heads of law enforcement agencies, home agencies or integrity agencies, if to do so would contravene the certificate (**clause 55**). Additionally, the Commissioner's annual reports and special reports cannot include section 149 certified information (**clause 206**).

## Dealing with ACLEI corruption issues

How the Minister may deal with ACLEI corruption issue

The expression, *ACLEI corruption issue*, is an issue whether a current or former ACLEI staff member has engaged or is engaging in corrupt conduct or may in the future engage in corrupt conduct (**clause 8**).

**Clause 153** requires the Integrity Commissioner to notify the Minister if he or she becomes aware of a corruption issue that relates to current or former ACLEI staff. Similarly, if ACLEI staff become aware of a corruption issue that relates to the Integrity Commissioner, they must notify the Minister. Other persons may also refer ACLEI corruption issues to the Minister (**clause 154**) and may elect to be kept informed of the action being taken (**clause 155**).

If the Minister is notified of, or becomes aware of an ACLEI corruption issue, the Minister may:

- refer the issue to the Commissioner for investigation
- authorise a person to conduct a special investigation, or
- decide to take no further action (**clause 156**).

If a special investigator is appointed, then the Integrity Commissioner must pass on any relevant information or documents that are in his or her possession.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

A special investigator must be a lawyer of at least 5 years standing (**clause 157**). The Minister may also appoint legal counsel to assist the special investigator (**clause 158**).

### Investigation by the Integrity Commissioner

In general, **clause 160** applies **new Parts 6, 9 and 10** to investigations of ACLEI corruption issues carried out by the Integrity Commissioner. Part 6 relates to investigations by the Commissioner, Part 9 relates to the Commissioner's powers when conducting an investigation or public. Part 10 deals with evidence obtained in an investigation or public inquiry.

### Special investigations

When the Minister appoints a special investigator to investigate an ACLEI corruption issue, **clause 167** applies Parts 6, 9 and 10 of the legislation to those investigations. In general, this means that the special investigator can exercise the same powers as the Integrity Commissioner.

The special investigator must keep the Minister informed of the investigation's progress. Similarly, if a person has referred the allegation to the Minister and elects to be kept informed, the special investigator must also keep that person informed of progress (**clause 168**).

When the investigation is finished, the special investigator must prepare a report setting out findings, the evidence on which the findings are based, any recommendations and the reasons for them (**subclauses 160(1) and (2)**). The report must be given to the Minister and the Integrity Commissioner. The special investigator must also, in general, advise the person who referred the ACLEI corruption issue and anyone whose conduct is investigated of the outcome of the investigation (**clauses 172 and 173**). There are some exceptions to the obligations in **clauses 172 and 173**—for instance, if to do so is likely to prejudice the investigation of the corruption issue. Information may be excluded from the advice if it is sensitive information and it is desirable not to include it. Information must be excluded if it is section 149 certified information.

The special investigator's report cannot contain section 149 certified information if public hearings were held during the investigation. Nor can it contain sensitive information or section 149 certified information that it is desirable to exclude. In making this latter assessment, the special investigator must apply the 'appropriate balance' test.

If information is excluded from a report, it must be included a supplementary report for the Minister and the Integrity Commissioner.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

**Clause 171** enables the Minister to direct the Integrity Commissioner to consider whether anyone named in the report should be dismissed or have disciplinary action taken against them (**subclause 170(7)**).

Finally, **clause 174** creates offences that apply if the Commissioner or ACLEI staff fail to appropriately report ACLEI corruption issues about which they are aware. The penalty is 6 months imprisonment.

## Administrative provisions

### The Integrity Commissioner

The Commissioner is appointed by the Governor-General (on the advice of the Government). He or she must be a judge (of the Federal Court or a State or Territory Supreme Court) or a lawyer of at least 5 years standing. The Commissioner cannot be appointed for more than 5 years, although there is no bar to re-appointment. The appointment is a full-time appointment.

Remuneration and leave entitlements are determined by the Remuneration Tribunal. The Commissioner cannot engage in other paid employment without the Minister's consent.

The Governor-General (acting on the advice of the Government):

- may terminate the Commissioner's appointment on the grounds of misbehaviour or physical or mental incapacity
- must terminate the Commissioner's appointment if the Commissioner becomes bankrupt, is absent from duty for specified periods without leave, engages in outside paid employment without the Minister's consent or fails to disclose any interests that could conflict with the proper performance of his or her functions (**clauses 183 and 184**).

### Assistant Integrity Commissioners

Eligibility for appointment, period of appointment, remuneration provisions mirror those for the Integrity Commissioner (**clauses 185 and 188**).

Assistant Integrity Commissioners can be appointed on a full-time or part-time basis. However, an Assistant Integrity Commissioner who is a judge must be appointed on a full-time basis.

Remuneration for Assistant Integrity Commissioners will either be set by the Remuneration Tribunal or prescribed by regulation.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

Full-time Assistant Integrity Commissioners cannot engage in outside paid employment without the Minister's consent. Part-time Assistant Integrity Commissioners cannot engage in outside paid employment that the Minister considers could conflict with the proper performance of their duties (**clause 190**).

The appointment of Assistant Integrity Commissioners can be terminated in the following ways:

- for misbehaviour or physical or mental incapacity
- bankruptcy
- failure to comply with the disclosure of interests provision in new section 194
- absence from duty for specified periods without leave
- engaging in outside paid employment without the Minister's consent (**clause 193**).

### Australian Commission for Law Enforcement Integrity

**Clause 195** establishes the Australian Commission for Law Enforcement Integrity (ACLEI), a body consisting of the Commissioner, Assistant Commissioners and staff. Staff are employed under the *Public Service Act 1999*.

The Integrity Commissioner is empowered to engage consultants, appoint legal counsel, and employee secondees (**clauses 198, 200 and 199**, respectively). Secondees may be drawn from the AFP; State, Territory or foreign police forces; Commonwealth government agencies; or State, Territory or foreign integrity agencies.

### Public reporting

#### Annual reports

The Integrity Commissioner must give an annual report to the Minister for presentation to Parliament. The contents of annual reports are specified in **subclause 201(2)**. They include:

- prescribed particulars of corruption issues that have been notified to, referred to, dealt with, investigated or referred on by the Integrity Commissioner
- prescribed particulars of ACLEI corruption issues investigated during the year
- a description of investigations that raise significant issues or developments in law enforcement
- a description of patterns or trends, and the nature and scope of corruption in law enforcement agencies and other Commonwealth agencies that have law enforcement functions

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- recommendations for changes to Commonwealth laws or administrative practices
- prosecutions or confiscation proceedings that have resulted from the Commissioner's investigations, and
- details of court proceedings (including judicial review applications) involving the Integrity Commissioner.

### Annual reports that mention the Australian Crime Commission

A copy of any annual report that mentions the Australian Crime Commission must be given to the Inter-Governmental Committee that monitors the ACC's work and performance and oversees its strategic directions.<sup>21</sup> Any written comments made by the Inter-Governmental Committee must be tabled in Parliament by the Minister within 15 sitting days of the Minister receiving the comments (**clause 202**).

### Reports on investigations and public inquiries

Reports on investigations and public inquiries must be presented to the Minister and tabled by the Minister within 15 sitting days of being received (**clause 203**).

However, before such reports are tabled the Minister must remove any information that would, in his or her view:

- endanger human life or safety
- prejudice proceedings brought as a result of a corruption investigation, public inquiry or an investigation that the Commissioner manages or oversees, or
- compromise operational activities or methodologies of the ACLEI or a 'law enforcement agency.'

### Special reports

The Commissioner can also provide occasional reports to the Minister on the Commissioner's operations or 'any matter relating to, or arising in connection with' the performance of the Commissioner's functions or powers. The Minister must table such a report in Parliament within 15 sitting days of receiving it (**subclauses 204(1)-(2)**).

However, before including anything in such a report that is critical of a government agency or person, the Commissioner must advise the government agency or person and give them a reasonable opportunity to appear and make submissions (**subclauses 204(3)-(8)**).

Similarly, if a special report relates to the ACC, the Commissioner must give a copy to the Inter-Governmental Committee. The Minister must table any written comments made by the Inter-Governmental Committee within 15 sitting days of receiving them (**clause 205**).

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



## Other information that must or may be excluded from annual reports or special reports

Annual reports and special reports:

- must not include section 149 certified information
- the Commissioner may exclude information if satisfied that is ‘sensitive information’ and ‘it is desirable in the circumstances to exclude the information.’ In making this decision the Commissioner must seek to achieve ‘an appropriate balance’ between the public interest and prejudicial consequences.

## Confidentiality requirements

### General obligations

In general, staffers and former staffers of the ACLEI must not record, divulge or communicate information they have acquired in the course of their duties. If a corruption issue is being jointly investigated by the Integrity Commissioner and a government agency, any information a staffer obtains in the course of participating in the joint investigation is also subject to the confidentiality requirements.

A person who breaches the confidentiality requirements is subject to a penalty of imprisonment for 12 months or 50 penalty units (\$5500), or both.

### Exceptions to confidentiality requirements

The general confidentiality obligations do not prevent:

- a person from making a record of, or divulging or communicating information if this is done for the purposes of a corruption investigation or for LEIC Act purposes
- information being communicated if the Act requires or permits the Commissioner to communicate the information
- the Commissioner disclosing information to a Commonwealth, State or Territory Ombudsman, the head of a law enforcement agency, the head of a State or Territory police force, the head of a State or Territory integrity agency or the head of another government agency
- a disclosure required by another Commonwealth law
- the Commissioner disclosing information to a particular person if the Commissioner is satisfied that it is necessary to do so to protect the person’s life or physical safety (**clause 208**).

With the exception of section 149 certified information, the Commissioner can also make disclosures in the public interest (**clause 209**). In making a decision to make a ‘public interest’ disclosure the Commissioner must use the ‘appropriate balance’ test. Further, if

#### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

such information includes a finding or opinion that, *expressly or impliedly*, is critical of a government agency or person, the agency or person must first be notified and given a reasonable opportunity to appear before the Commissioner and make submissions (**clause 210**).

### Compellability of ACLEI staff

In general, current or former ACLEI staffers are not compellable in court, tribunal or other proceedings to disclose information or produce documents acquired because they are or have been an ACLEI staffer (**subclause 211(1)-(2)**).

This provision does not apply to a proceeding if the Integrity Commissioner, a delegate or a person authorised under the LEIC Act is a party to proceedings in their official capacity or the proceeding is a prosecution, civil penalty proceeding or confiscation proceeding brought as a result of a corruption investigation that the Commissioner has conducted or overseen or is a public inquiry conducted under the LEIC Act (**subclause 211(3)**).

### Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

Oversight of the ACLEI is to be provided by a new parliamentary committee—to be called the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity (**clause 213**). This committee will be a separate committee to the committee established to oversee the Australian Crime Commission.<sup>22</sup> The committee will consist of 10 members—five appointed by the Senate and five by the House of Representatives. Certain parliamentarians are ineligible for appointment—Ministers, the President of the Senate, the Speaker of the House of Representatives, the Deputy President and Chair of Committees of the Senate, and the Chair of Committees of the House of Representatives.

The duties of the parliamentary joint committee are set out in **clause 215**. They include:

- monitoring, reviewing and reporting on the Commissioner's performance, and on any matter relating to the ACLEI
- examining the Commissioner's annual and special reports
- examining and reporting on trends in corruption in Commonwealth government agencies, and changes to the Commissioner's functions, powers or procedures, and
- inquiring into any question connected with the Commissioner's duties that is referred by either House of Parliament.

In general, the Commissioner must comply with a committee request for information. However, the Commissioner must not comply if the information is section 149 certified information and the disclosure would contravene the certificate. Further, the Commissioner may decide not to comply if the information is 'sensitive information' and

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

the public interest that would be served by disclosing the information is outweighed by the prejudicial consequences that might result. In such a situation, the committee may refer the request to the Minister. The Minister must then determine whether the information is ‘sensitive information’ and whether the public interest in disclosing it is outweighed by the prejudicial consequences that might result from disclosure. Such a determination is not a legislative instrument (**clause 216**).

**Clause 217** provides that the Minister must give information to the committee about the investigation of an ACLEI corruption issue when the committee requests it. However:

- the Minister must not comply if the information is section 149 certified information
- the Minister may decide not to comply if satisfied that the information is ‘sensitive information’ and the public interest in disclosing the information is outweighed by the prejudicial consequences that might result.

**Clause 218** requires the Ombudsman to brief the committee at least once a year about the Integrity Commissioner’s involvement in controlled operations.

## Miscellaneous provisions

### Delegation

**Clause 219** enables the Integrity Commissioner to delegate in writing functions or powers to Assistant Integrity Commissioners and ACLEI SES or acting SES level staff (**subclauses 219(1) and (3)**).

However:

- the power to hold a hearing in order to conduct a public inquiry cannot be delegated to an Assistant Integrity Commissioner or SES or acting SES level ACLEI staff, and
- the Commissioner’s powers to obtain information, documents and things; conduct hearings and enter law enforcement agency premises without a warrant cannot be delegated to SES or acting SES level ACLEI staff (**subclauses 219(2) and (4)**).

### Victimisation offences

It is an offence to threaten to victimise a person because that person:

- has or may refer a corruption allegation to the Commissioner
- has or may refer an ACLEI corruption issue to the Minister
- has or may notify the Integrity Commissioner of an ACLEI corruption issue
- has or may give information to the Integrity Commissioner or a special investigator

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

- has produced or may produce a document or thing to the Integrity Commissioner or a special investigator (**subclause 220(1)**).

Victimisation offences attract a maximum penalty of 2 years imprisonment. A threat may be express or implied, conditional unconditional.

## Concluding comments

On 30 March 2006, the Senate referred the LEIC Bill, the Consequential Amendments Bill and the AFP Professional Standards Bill to the Senate Legal and Constitutional Legislation Committee for inquiry and report. The Committee reported on 11 May 2006. Some of its recommendations are described below.

## Jurisdiction

The Senate Committee heard evidence that the Commissioner's jurisdiction should encompass more law enforcement agencies or be extended to corruption in the Commonwealth public sector generally. At present, the Commissioner's jurisdiction is effectively limited to two Commonwealth law enforcement agencies—the AFP and the ACC. Other law enforcement agencies can be prescribed by regulation. As Dr AJ Brown from Griffith University pointed out in his submission to the Senate Committee, the Integrity Commissioner's current restricted jurisdiction will mean that corruption investigations relating to other government agencies will continue to be carried out by the AFP, the Commonwealth Ombudsman and costly, ad hoc royal commissions.

While most investigations into breaches of Commonwealth law are carried out by the AFP, the decision to initiate investigative action usually rests with the administering department or agency. If the department or agency has an investigative arm, the investigation is usually carried out 'in-house'.<sup>23</sup>

Commonwealth agencies with 'law enforcement functions' (as defined in the Bill) may thus include the Australian Customs Service, the Australian Taxation Office, the Commonwealth Director of Public Prosecutions, the Department of Immigration and Multicultural Affairs, AUSTRAC, the Australian Competition and Consumer Commission, the Australian Securities and Investments Commission, Centrelink, and the Department of Employment and Workplace Relations.<sup>24</sup>

Proposed limitations on the Commissioner's jurisdiction mean that it will be the Executive Government that is responsible for deciding which of its own agencies are subject to the Commissioner's jurisdiction.<sup>25</sup> It means that decisions in unprescribed agencies with law enforcement functions about whether or not to initiate, and in some cases carry out, investigative action will be outside the Commissioner's jurisdiction. It will also mean that

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

‘non-criminal’ corruption and serious misconduct occurring in unprescribed agencies will be outside the Commissioner’s jurisdiction.<sup>26</sup>

The Senate Committee:

- recommended that changes to the Commissioner’s jurisdiction be by way of primary legislation rather than by regulation (recommendation 1).
- considered that a Commonwealth integrity agency with general jurisdiction is needed and that ‘consideration should also be given to developing such a commission in the longer term.’<sup>27</sup>

ALP members of the Committee considered that the ‘ACLEI should be given a “broad mandate to uncover maladministration or corruption wherever found.”’<sup>28</sup> Australian Democrat members proposed that the ‘... Integrity Commission should be given general jurisdiction to investigate all Commonwealth agencies with law enforcement functions ...’<sup>29</sup>

## Additional protection for informants

The Senate Committee commented:

It is essential that the informants to ACLEI must be adequately protected. Such informants may face considerable personal risk in revealing information about corrupt conduct and failure to ensure the person giving information is protected from retribution, becomes a disincentive to such people and thereby defeats the purpose of the LEIC Bill.’<sup>30</sup>

The Committee recommended that the Commissioner be empowered to make arrangements to ‘protect an informant whose safety may be prejudiced or who may be subject to intimidation or harassment’ (recommendation 4). A provision along these lines is found in section 51 of the *Police Integrity Act 1996* (NSW).

## Reporting on section 149 certificates

The grounds on which the Minister can issue section 149 certificates are very wide. Their effect is to prevent certified information being disclosed to or by the Integrity Commissioner—for instance, during the course of an investigation or hearing, in a report to Parliament or from disclosure to the proposed parliamentary oversight committee.

In its submission to the Senate Committee, the Police Federation of Australia recommended that a reporting process apply when the Minister issues a section 149 certificate to ensure openness and accountability. However, the Attorney-General’s

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

Department took the view that providing more *detailed* reasons for issuing a certificate would be counter-productive.<sup>31</sup>

The Senate Committee accepted the arguments against providing detailed reasons but concluded that:

... it remains important for the transparency of the overall system that certain information is available to the Parliament on the operation of the proposed system. It should be possible, without prejudicing security, to publish a report that includes, for example, the number of times clause 149 certificates have been issued by the Minister; the number of documents exempted by the certificate, and from which agency the information derives. Such generalised information would give an indication of the extent to which the power is being used and the amounts of information being excluded from the Commissioner's inquiries.<sup>32</sup>

The Committee recommended that the Bill be amended to 'require the Minister to provide a report to Parliament on the proposed section 149 certificates he or she has provided in the previous financial year (recommendation 9).'<sup>33</sup>

## Review of the legislation

The Senate Committee noted that the ACLEI will be a significant development in the 'Commonwealth's overall integrity framework.' It also remarked that '... there are several significant aspects of the Commission's jurisdiction, powers, proceedings and relationships that need to be resolved over the first couple of years of operation.' It drew attention to section 61A of the *Australian Crime Commission Act 2002*. Section 61A provides for an independent review of that Act to be established as soon as practicable after 1 January 2006 and to report to the Minister. The report must be tabled in Parliament.

The Committee recommended that the LEIC Bill be amended '... to provide for a review three years from the date of commencement of the Act' (recommendation 11).

## Complaints against the ACLEI<sup>34</sup>

Parliament may wish to compare the LEIC Bill's provisions for dealing with complaints against the ACLEI with mechanisms for complaints against other standing anti-corruption commissions in Australia.

The LEIC Bill gives the Minister the power to make decisions about how and whether ACLEI corruption issues are to be investigated.<sup>35</sup> The Minister may decide to refer an ACLEI corruption issue to the Integrity Commissioner for investigation, to appoint an ad hoc special investigator or take no action. An ACLEI corruption issue cannot be referred to the Integrity Commissioner if it relates to the conduct of a current ACLEI staffer employed under the *Public Service Act 1999*.

### **Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

In other jurisdictions, bodies that are specialist, independent and permanent are established to receive and investigate complaints made against anti-corruption commissions. In Queensland, the Parliamentary Crime and Misconduct Commissioner ('PCMC') is an independent statutory authority whose functions include investigating complaints against or concerns about the Crime and Misconduct Commission or a commission officer. The PCMC is independent from the Crime and Misconduct Commission and is not part of the Executive Government. The PCMC is an officer of the Parliament.

In New South Wales, one of the principal functions of the Inspector of the Independent Commission Against Corruption is to deal with complaints of ICAC abuse of power, impropriety, misconduct and maladministration. The position of Inspector is created under the *Independent Commission Against Corruption Act 1988* (NSW). The Inspector's functions can be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint or in response to a reference from the Joint Parliamentary Committee on the Independent Commission Against Corruption, any public authority or public official.

## Endnotes

---

1. The Australian Crime Commission commenced operations on 1 January 2003. It replaced the National Crime Authority.
2. For example, in Queensland the Commission of Inquiry into Alleged Illegal Activities and Associated Police Misconduct (the Fitzgerald Royal Commission); the NSW Royal Commission into the Police (Wood Royal Commission); and the Western Australian Police Royal Commission.
3. <http://www.icac.nsw.gov.au> The Commission is established under the *Independent Commission Against Corruption Act 1988* (NSW).
4. <http://www.pic.nsw.gov.au> The Police Integrity Commission is established under the *Police Integrity Commission Act 1996* (NSW).
5. <http://www.cmc.qld.gov.au> The Crime and Misconduct Commission is established under the *Crime and Misconduct Act 2001* (Qld).
6. <http://www.ccc.wa.gov.au> The Commission is established under the *Corruption and Crime Commission Act 2003* (WA).
7. Office of Police Integrity Annual Report, 30 June 2005 at: <http://www.opi.vic.gov.au/OPI2005AnnualReport.pdf> The functions of the Director, Police Integrity are set out in the *Police Regulation Act 1958* (Vic).
8. Australian Law Reform Commission, *Integrity: but not by trust alone. AFP & NCA complaints and disciplinary systems*, Report No. 82, 1996. The report can be found at: <http://www.austlii.edu.au/au/other/alrc/publications/reports/82/ALRC82.html>

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

9. 'Corruption fears infect crime body', *Australian*, 25 May 2004.
10. ABC Four Corners, 'Corruption Inc', 14 June 2004 (Reporter: Chris Masters). The transcript can be accessed at: <http://www.abc.net.au/4corners/content/2004/s1131829.htm>
11. Attorney-General, Minister for Justice and Customs, 'Commonwealth to set up independent national anti-corruption body', *Joint Media Release*, 16 June 2004. Further information about the events preceding the announcement can be found in AJ Brown, 'Federal anti-corruption policy takes a new turn ... but which way? Issues and options for a Commonwealth integrity agency,' (2005) 16 *Public Law Review*, pp. 93-8.
12. ABC, *The 7:30 Report*, 'Ellison denies corruption U-turn', 16 June 2004. Transcript at: <http://www.abc.net.au/7.30/content/2004/s1133508.htm>
13. 'Greater role for new graft watchdog', *Australian*, 20 September 2005.
14. See [www.parliament.qld.gov.au](http://www.parliament.qld.gov.au)
15. See *Major Crime (Special Investigations Monitor) Act 2004* (Vic).
16. Note that where a Commonwealth offence is punishable only by imprisonment, then unless the contrary intention appears a court can impose a fine or a fine and imprisonment, instead of imprisonment. Fines are calculated by converting the term of imprisonment to months and multiplying by five. This number becomes the number of penalty units that are imposed (see section 4B, *Crimes Act 1914*).
17. Clause 5.
18. 'Use immunity' means that a person's compelled evidence cannot be used in any future prosecution against them. However, they do not have 'derivative use immunity.' This means that any evidence *derived* from answers they are compelled to give or documents they are compelled to provide can be used to prosecute them.
19. A 'taxation secrecy provision' is a secrecy provision in a taxation law within the meaning of the *Taxation Administration Act 1953* (**clause 5**). A 'law enforcement secrecy provision' means the following provisions and anything done under them: Part IV of the *Financial Transactions Reports Act 1988*, section 45 of the *Surveillance Devices Act 2004*, and sections 63 and 133 of the *Telecommunications (Interception) Act 1979*.
20. Paragraph 80(c), *Crimes Act*.
21. The Inter-Governmental Committee consists of the Commonwealth Minister for Justice and Customs and Ministers from each State and Territory.
22. The Parliamentary Joint Committee on the Australian Crime Commission oversees the Australian Crime Commission.
23. See Commonwealth Director of Public Prosecutions, *Prosecution Policy of the Commonwealth* at: <http://www.cdpp.gov.au/Prosecutions/Policy/>
24. A variety of other agencies may also fall within the definition of agencies with law enforcement functions. These agencies might include the Australian National Parks and Wildlife Service, the Australian Pesticides and Veterinary Medicines Authority, the Department of Veterans Affairs, Medicare Australia, the Australian Electoral Commission,

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*



the Australian Quarantine Inspection Service, the Therapeutic Goods Administration and the Australian Institute of Criminology.

25. By prescribing or unprescribing an agency, subject to Senate disallowance.
26. See Senate Legal and Constitutional Legislation Committee, *Committee Hansard*, Dr AJ Brown, Evidence, 27 April 2006.
27. Senate Legal and Constitutional Legislation Committee, *Provisions of the Law Enforcement Integrity Commissioner Bill 2006, Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006, Law Enforcement (Professional Standards and Related Measures) Bill 2006*, May 2006, p. 28. The report can be accessed at:  
[http://www.aph.gov.au/senate/committee/legcon\\_ctte/aclei/report/index.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/aclei/report/index.htm)
28. *ibid.*, Additional Comments by the Australian Labor Party, para., 1.2.
29. *ibid.*, Minority Report by the Australian Democrats, para., 1.6.
30. *ibid.*, p. 32.
31. *ibid.*, see pp. 40–41.
32. *ibid.*, p. 41.
33. *ibid.*
34. This issue was not the subject of recommendations by the Senate Committee.
35. Complaints can also be made to the Commonwealth Ombudsman.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*

---

© Copyright Commonwealth of Australia 2006

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this publication may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent of the Department of Parliamentary Services, other than by senators and members of the Australian Parliament in the course of their official duties.

This brief has been prepared to support the work of the Australian Parliament using information available at the time of production. The views expressed do not reflect an official position of the Parliamentary Library, nor do they constitute professional legal opinion.

---

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2476.

**Warning:**

*This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.*

*This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.*