

2018

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Alistair Coe)

# Anti-corruption and Integrity Commission Bill 2018

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of Act	2
2	Commencement	2
3	Dictionary	2
4	Notes	2
5	Offences against Act—application of Criminal Code etc	3
6	Objects of Act	3

	Page
<b>Part 2</b>	<b>Important concepts</b>
7	Meaning of <i>corrupt conduct</i> 5
8	General nature of corrupt conduct 6
9	Meaning of <i>public authority</i> 10
10	Meaning of <i>public official</i> 11
<b>Part 3</b>	<b>Dealing with corruption</b>
<b>Division 3.1</b>	<b>Initiating commission investigation</b>
11	Complaints about possible corrupt conduct 12
12	Duty of principal officer of public authority or Minister to tell commission about corrupt conduct 12
13	Own initiative investigations 15
14	Referral by Legislative Assembly 15
<b>Division 3.2</b>	<b>Preliminary decision</b>
15	Meaning of <i>corruption issue</i> 15
16	Commission to decide on next steps 15
17	Commission may conduct preliminary inquiry 16
18	Commission may dismiss certain matters 16
<b>Division 3.3</b>	<b>Protections for complainants and reporters</b>
19	Application—div 3.3 18
20	Immunity from liability 18
21	Protection from defamation action 19
22	Loss of protection 19
23	Liability for own conduct 20
24	Meaning of <i>detrimental action</i> 20
25	Offence—taking detrimental action 20
26	Damages for detrimental action 21
27	Injunction to prevent detrimental action etc 21
<b>Part 4</b>	<b>Investigations</b>
<b>Division 4.1</b>	<b>Powers of investigation</b>
28	Appointment of investigators 23
29	Investigation by commission 23

	Page
30	24
31	25
<b>Division 4.2</b>	<b>Compulsory examinations</b>
<b>Subdivision 4.2.1</b>	<b>Power to conduct examination</b>
32	25
33	27
<b>Subdivision 4.2.2</b>	<b>Commission’s powers on examination</b>
34	27
35	28
36	28
<b>Subdivision 4.2.3</b>	<b>Procedure for examinations</b>
37	29
38	30
39	30
40	31
41	31
42	31
43	32
44	32
<b>Division 4.3</b>	<b>Procedural matters</b>
45	32
46	33
47	35
48	35
49	36
50	37
51	37
<b>Division 4.4</b>	<b>Dealing with parliamentary privilege claims</b>
52	38
53	38
54	39
55	39

	Page
56	Investigator to consider parliamentary privilege and secure document or thing 39
57	Application to Supreme Court to determine parliamentary privilege generally 41
58	Determination of parliamentary privilege claim 41
<b>Division 4.5 Commission's powers on completion of investigation</b>	
59	Findings, opinions and recommendations 44
<b>Division 4.6 Reports</b>	
60	Reports on investigations 45
61	Public interest considerations 46
62	Delivery and tabling of reports 46
63	Confidential reports to be given to relevant committee 47
64	Content of reports 47
<b>Division 4.7 Referrals</b>	
65	Commission may refer matters 48
66	Directions to relevant authority 49
67	Report to commission 49
68	Further action by commission 50
69	Brief of evidence 51
<b>Division 4.8 Offences</b>	
70	Person failing to comply with requirement 52
71	Fail to comply with direction to give name and address 52
72	Fail to comply with presiding officer's direction 53
<b>Part 5 General information gathering powers</b>	
<b>Division 5.1 Power to enter premises</b>	
73	Power to enter premises of public authority or public official 54
74	Power to enter other premises 54
75	Production of identity card 55
76	Consent to entry 55
77	General powers on entry to premises without warrant 56
78	Direction to give name and address 57
79	Injunctions 58

	Page
<b>Division 5.2</b>	<b>Search warrants</b>
80	Definitions 59
81	Issue of search warrant 59
82	Powers under warrant 60
83	Power to seize evidence 61
84	Warrants—application made other than in person 62
85	Search warrants—announcement before entry 63
86	Details of search warrant to be given to occupier etc 64
87	Occupier entitled to be present during search etc 64
<b>Division 5.3</b>	<b>Dealing with things seized</b>
88	Receipts for things seized 66
89	Access to things seized 66
90	Return of things seized 66
91	Disposal of things seized 67
<b>Part 6</b>	<b>Anti-corruption and Integrity Commission</b>
<b>Division 6.1</b>	<b>Establishment and functions of commission</b>
92	Establishment of Anti-corruption and Integrity Commission 68
93	Functions of commission 68
94	Officer of the Legislative Assembly—commissioner 70
95	Independence 70
<b>Division 6.2</b>	<b>Appointment of commissioner</b>
96	Appointment of commissioner 71
97	Acting commissioner 72
98	Eligibility for appointment as commissioner 72
99	Term of appointment of commissioner 73
<b>Division 6.3</b>	<b>Other provisions applying to commissioner</b>
100	Oath or affirmation of office—commissioner 74
101	Declaration of interests—commissioner 74
102	Commissioner must avoid conflict of interest 75
103	Resignation—commissioner 76
104	Retirement—commissioner 76
105	Suspension—commissioner 78

	Page
106	Relevant Assembly committee to consider suspension of commissioner 79
107	Ending suspension of commissioner 80
108	Ending appointment of commissioner 82
109	Leave of absence—commissioner 83
<b>Division 6.4 Officers of commission</b>	
110	Employing staff of commission 84
111	Commission—consultants and contractors 84
112	Eligibility for appointment as officer of commission 85
113	Conflict of interest—officers of the commission 86
114	Officer of commission not subject to direction from others 87
115	Delegation by commission 87
116	Identity cards 87
<b>Part 7 Oversight of commission</b>	
<b>Division 7.1 Legislative Assembly</b>	
117	Oversight of commission by committee 89
118	Annual reports of commission 89
<b>Division 7.2 Appointment of Inspector</b>	
<b>Subdivision 7.2.1 Appointment and functions of inspector</b>	
119	Appointment of Inspector 91
120	Functions of inspector 92
121	Independence of inspector 92
122	Acting inspector 92
123	Eligibility for appointment as inspector 93
124	Term of appointment of inspector 94
125	Review of commission's performance 94
126	Comments on proposed report 95
127	Report on review 95
128	Complaints about commission 96
129	Access to commission premises and information 97
130	Further powers of inspector 97
131	Confidentiality of information 98

	Page
<b>Subdivision 7.2.2 Other provisions applying to inspector</b>	
132 Oath or affirmation of office—inspector	98
133 Declaration of interests—inspector	99
134 Inspector must avoid conflict of interest	99
135 Resignation—inspector	100
136 Retirement—inspector	100
137 Suspension of inspector—generally	102
138 Relevant Assembly committee to consider suspension of inspector	104
139 Ending suspension of inspector	105
140 Ending appointment of inspector	106
141 Leave of absence—inspector	108
<b>Division 7.3 Office of the inspector</b>	
142 Inspector’s staff	108
143 Inspector—consultants and contractors	108
144 Other arrangements for staff and facilities	109
145 Conflict of interest—inspector’s staff	109
146 Delegation by inspector	110
<b>Part 8 Information protection requirements</b>	
147 Secrecy	111
148 Evidence in criminal proceedings	113
149 Information handling guidelines	113
<b>Part 9 Cooperation and referral between commission and other entities</b>	
150 Exercise of commission powers—Assembly	114
151 Cooperation with other entities	115
152 Cooperation with commission	116
153 Public authority may refer matter to commission	116
154 Information sharing	117
155 Interjurisdictional arrangements	117
<b>Part 10 Miscellaneous</b>	
156 Protection of officials from liability	119

	Page	
157	Reputational repair protocol	119
158	Regulation-making power	120
159	Review of Act	120
<b>Part 11</b>	<b>Consequential amendments</b>	
160	Legislation amended—sch 1	121
<b>Schedule 1</b>	<b>Consequential amendments</b>	122
<b>Part 1.1</b>	<b>Corrections Management Act 2007</b>	122
<b>Part 1.2</b>	<b>Crimes (Controlled Operations) Act 2008</b>	122
<b>Part 1.3</b>	<b>Crimes (Surveillance Devices) Act 2010</b>	126
<b>Part 1.4</b>	<b>Freedom of Information Act 2016</b>	130
<b>Part 1.5</b>	<b>Information Privacy Act 2014</b>	131
<b>Part 1.6</b>	<b>Legislation Act 2001</b>	131
<b>Part 1.7</b>	<b>Public Interest Disclosure Act 2012</b>	132
<b>Dictionary</b>		133



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(As presented)

(Alistair Coe)

## **Anti-corruption and Integrity Commission Bill 2018**

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### **A Bill for**

An Act to establish the Anti-corruption and Integrity Commission, and for other purposes

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

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J2017-561

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Anti-corruption and Integrity Commission Act 2018*.

### 2 Commencement

#### Recommendation 2

This Act commences on 1 January 2019.

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

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*public sector*—see the [Public Sector Management Act 1994](#), dictionary.’ means that the term ‘public sector’ is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## 6 Objects of Act

**Recommendations 4, 29**

- (1) The main object of this Act is to promote the integrity and accountability of public administration.
- (2) The main object is to be achieved particularly by—
  - (a) establishing the Anti-corruption and Integrity Commission as an independent and accountable body to—
    - (i) investigate, expose and prevent corruption involving or affecting public authorities and public officials; and
    - (ii) educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community; and
    - (iii) foster public confidence in combating corruption and in promoting integrity and good repute in public administration; and
    - (iv) provide leadership and coordination for the public sector and parliamentary integrity frameworks; and

**Part 1** Preliminary

Section 6

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- (b) conferring on the commission special powers to inquire into allegations of corruption.

## Part 2                      Important concepts

### 7                      **Meaning of *corrupt conduct***

Recommendations 8, 11, 15 (e), 17

- (1) For this Act, *corrupt conduct* is conduct—
  - (a) that could—
    - (i) constitute or involve a criminal offence; or
    - (ii) constitute or involve a disciplinary offence; or
    - (iii) constitute or involve reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, a public official; or
    - (iv) in the case of a Minister or a Member of the Legislative Assembly—
      - (A) constitute or involve a substantial breach of an applicable code of conduct; or
      - (B) cause a reasonable person to believe that it would bring the integrity of the office of the Minister or the Legislative Assembly into serious disrepute; and
  - (b) that is included in the general nature of corrupt conduct mentioned in section 8.
- (2) For subsection (1) it does not matter if—
  - (a) proceedings or action in relation to the conduct can no longer be taken; or

(b) the conduct happened outside the Territory.

**Example—par (a)**

Action for a disciplinary offence may no longer be taken as the person who engaged in the conduct has resigned.

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

(3) In this section:

***applicable code of conduct*** means—

- (a) in relation to a Minister—a ministerial code of conduct prescribed or adopted for this section by regulation; and
- (b) in relation to a member of the Legislative Assembly (including a Minister)—a code of conduct adopted for this section by resolution of the Legislative Assembly.

***criminal offence*** means a criminal offence under the law of the Territory or under any other law relevant to the conduct in question.

***disciplinary offence*** includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

## 8 General nature of corrupt conduct

### Recommendation 17

- (1) Corrupt conduct is any of the following:
  - (a) conduct by a public official that constitutes or involves the dishonest or partial exercise of the official's functions;
  - (b) conduct of a public official or former public official that—
    - (i) constitutes or involves a breach of public trust; or

- (ii) involves the misuse of information or material acquired by the official in the course of performing their official functions, whether or not the misuse is for the benefit of the official or another person;
- (c) conduct that adversely affects, or that could adversely affect, either directly or indirectly—
  - (i) the honest or impartial exercise of functions by a public official or a public authority; or
  - (ii) the exercise of official functions by a public official or public authority and that could involve any of the following matters:
    - (A) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition);
    - (B) bribery;
    - (C) blackmail;
    - (D) obtaining or offering secret commissions;
    - (E) fraud;
    - (F) theft;
    - (G) perverting the course of justice;
    - (H) embezzlement;
    - (I) election bribery;
    - (J) election funding offences;
    - (K) election fraud;
    - (L) treating;
    - (M) tax evasion;
    - (N) revenue evasion;

- (O) currency violations;
  - (P) illegal drug dealings;
  - (Q) illegal gambling;
  - (R) obtaining financial benefit by vice engaged in by others;
  - (S) bankruptcy and company violations;
  - (T) harbouring criminals;
  - (U) forgery;
  - (V) treason or other offences against the Sovereign;
  - (W) homicide or violence;
  - (X) matters of the same or a similar nature to matters mentioned in subparagraphs (A) to (W);
- (d) conduct that impairs, or that could impair, public confidence in public administration and that could involve any of the following:
- (i) collusive tendering;
  - (ii) fraud in relation to applications for licences, permits or other authorities under legislation designed to—
    - (A) protect health and safety; or
    - (B) protect the environment; or
    - (C) facilitate the management and commercial exploitation of resources;
  - (iii) dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage;
  - (iv) defrauding the public revenue;



- (v) fraudulently obtaining or retaining employment or appointment as a public official;
  - (e) conduct (the *secondary conduct*) engaged in by a person in relation to conduct mentioned in paragraphs (a) to (d) (the *primary conduct*) as provided in subsection (2).
- (2) For subsection (1) (e), secondary conduct is conduct that would constitute an offence against the [Criminal Code](#), part 2.4 (Extensions of criminal responsibility) on the basis that the primary conduct is an offence, whether or not the primary conduct is in fact an offence.
- (3) Conduct may amount to corrupt conduct under subsection (1) regardless of whether—
- (a) it happened before the commencement of that subsection; or
  - (b) some or all of the effects or other matters necessary to establish corrupt conduct happened before the commencement of that subsection; or
  - (c) the conduct was engaged in by, or in relation to, a person who—
    - (i) is no longer a public official; or
    - (ii) was not a public official at the time the conduct happened if the conduct was in relation to the exercise of the person's functions after becoming a public official (whether or not the person becomes a public official).

## 9 Meaning of *public authority*

### Recommendation 10

(1) In this Act:

*public authority* means—

- (a) a public sector entity; and
- (b) a non-public sector entity to the extent the entity performs a public function using property provided by a public sector entity; and
- (c) includes ACT Policing.

#### Example—par (b)

Entity X is a community owned housing cooperative. The Community Services Directorate pays Entity X to provide housing services. Entity X is a public authority for this Act only to the extent that it provides housing services funded by the directorate.

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

(2) In this section:

*controlling interest*—see the [Auditor-General Act 1996](#), section 5.

*non-public sector entity* means an entity that is not a public sector entity.

*public sector entity* means—

- (a) an administrative unit; or
- (b) a territory authority; or
- (c) a territory-owned corporation; or
- (d) a territory-controlled company, joint venture or trust.

*territory-controlled company, joint venture or trust* means a company, joint venture or trust in which the Territory or a territory entity has a controlling interest.

## 10 Meaning of *public official*

Recommendations 10, 12, 14

For this Act, a *public official* is an individual who has public official functions or who is acting in a public official capacity, and includes the following:

- (a) a member of the Executive;
- (b) a member of the Legislative Assembly;
- (c) a person employed or engaged by a member of the Legislative Assembly under the *Legislative Assembly (Members' Staff) Act 1989* (whether or not in the member's capacity as an office-holder under that Act);
- (d) a judge or magistrate or any other holder of judicial office (whether or not exercising judicial, ministerial or other functions);
- (e) a public employee;
- (f) the holder of a position in relation to which a determination under the *Remuneration Tribunal Act 1995* is in force;
- (g) a member of ACT Policing;
- (h) a certifier under the *Building Act 2004*;
- (i) an individual who is, or is a member of, a public authority;
- (j) an individual employed or engaged by a public authority to provide work or services on behalf of the public authority;
- (k) the holder of any other position prescribed by regulation.

## **Part 3 Dealing with corruption**

### **Division 3.1 Initiating commission investigation**

#### **11 Complaints about possible corrupt conduct**

**Recommendations 23 and 51**

Any person may make a complaint to the commission about a matter that concerns, or may concern, corrupt conduct.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

#### **12 Duty of principal officer of public authority or Minister to tell commission about corrupt conduct**

**Recommendations 26 and 27**

- (1) This section applies to—
  - (a) the principal officer of a public authority; and
  - (b) a Minister.
- (2) A person to whom this section applies must report a matter to the commission—
  - (a) that the person suspects on reasonable grounds concerns, or may concern, corrupt conduct; and

- (b) that is of relevance to, or comes to the attention of, the person in the person's capacity as a public official.

**Example**

The auditor-general, in conducting an audit of an administrative unit under the *Auditor-General Act 1996*, receives information that leads the auditor-general to form a reasonable suspicion that corrupt conduct has occurred in the administrative unit. The auditor-general must report the suspected corrupt conduct to the commission.

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

- (3) Despite subsection (2), the deputy commissioner of ACT Policing need not report a matter in relation to a member of ACT Policing to the commission if the deputy commissioner suspects the matter—
- (a) concerns, or may concern, a corruption issue within the meaning of the *Law Enforcement Integrity Commissioner Act 2006* (Cwlth), section 7; and
- (b) does not concern, or may not concern, corrupt conduct of a public official other than a member of ACT Policing.
- (4) This section has effect despite any duty of secrecy or other restriction on disclosure.
- (5) The commission may issue guidelines about reporting under this section.
- (6) The guidelines are a notifiable instrument.
- Note* A notifiable instrument must be notified under the *Legislation Act*.
- (7) A person commits an offence if the person—
- (a) is required to report a matter to the commission under subsection (2); and

- (b) does not, as soon as practicable after forming the suspicion, report the matter in accordance with any guideline issued under subsection (5).

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (8) In this section:

*principal officer*, of a public authority, means the following:

- (a) for an administrative unit—the director-general of the administrative unit;
- (b) for ACT Policing—the deputy commissioner with management responsibility for ACT Policing;
- (c) for the Supreme Court, Magistrates Court, Coroner’s Court or the ACAT—the principal registrar appointed under the *Court Procedures Act 2004*, section 11A;
- (d) for the Office of the Legislative Assembly—the clerk of the Legislative Assembly;
- (e) for an officer of the Assembly—the officer;
- (f) for a statutory office-holder and the staff assisting the statutory office-holder—the statutory office-holder;
- (g) for a territory-owned corporation or a subsidiary of a territory-owned corporation—the chief executive officer of the corporation or subsidiary;
- (h) for a royal commission, board of inquiry or judicial commission—the director-general of the administrative unit that provides secretariat support to the royal commission, board of inquiry or judicial commission;
- (i) for any other public authority—the person prescribed by regulation to be the principal officer.

**13 Own initiative investigations**

**Recommendation 31**

The commission may, on its own initiative, investigate a matter related to its functions under this Act.

**14 Referral by Legislative Assembly**

The Legislative Assembly may, by resolution, refer to the commission for investigation (an *Assembly referral*) a matter that is relevant to the functions of the commission mentioned in section 93 (Functions of the commission).

**Division 3.2 Preliminary decision**

**15 Meaning of *corruption issue***

In this Act:

*corruption issue* means—

- (a) a complaint made to the commission under section 11; or
- (b) a matter reported to the commission under section 12; or
- (c) a matter the commission decides to investigate under section 13.

**16 Commission to decide on next steps**

**Recommendations 24 and 30**

The commission must do 1 of the following in relation to a corruption issue:

- (a) dismiss the issue;
- (b) refer the issue to another entity under section 65 (Commission may refer matters);
- (c) investigate the issue under part 4 (Investigations).

## **17 Commission may conduct preliminary inquiry**

**Recommendations 22, 24 and 30**

- (1) The commission may conduct a preliminary inquiry for the purpose of making a decision under section 16.
- (2) In conducting the preliminary inquiry, the commission may exercise its powers under—
  - (a) section 30 (Power to obtain information) to require a public authority or public official to give a statement of information to the commission; and
  - (b) section 31 (Power to obtain documents etc) to require a public authority or public official to give a document or other thing to the commission.
- (3) Except as applied in subsection (2), parts 4 and 5 do not apply to, or in relation to, the preliminary inquiry.

## **18 Commission may dismiss certain matters**

**Recommendations 24, 50 and 52**

- (1) The commission may dismiss a corruption issue for investigation or, if the commission has already started an investigation, further investigation if the commission considers that—
  - (a) for a complaint made under section 11 or a report made under section 12—the complaint or report is frivolous or vexatious or was not made in good faith; or
  - (b) the corruption issue has been, or is being, adequately dealt with by a court or tribunal or has been dealt with by the commission; or
  - (c) the corruption issue lacks substance or credibility; or
  - (d) the corruption issue does not relate to the functions of the commission; or



- (e) investigating the corruption issue would be an unreasonable use of resources; or
- (f) it is not in the public interest for the commission to investigate the corruption issue; or
- (g) for a complaint about conduct that happened after the commencement of this section—the complainant had knowledge of the subject matter of the complaint for more than 12 months and fails to give the commission a satisfactory explanation for the delay in making the complaint.

**Example—satisfactory explanation**

The results of the alleged corrupt conduct did not become apparent for more than 12 months after the conduct first came to the attention of the complainant.

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

- (2) In determining the public interest under subsection (1) (f), the commission must consider the following:
  - (a) the nature and seriousness of the corrupt conduct alleged in the corruption issue;
  - (b) the harm or loss arising from the corrupt conduct alleged in the corruption issue;
  - (c) the time that has elapsed since the corrupt conduct alleged in the corruption issue happened;
  - (d) the availability of evidence and the recollection of any witnesses;
  - (e) the likely degree of culpability, in relation to the corrupt conduct alleged in the corruption issue, of any public official;
  - (f) whether the corrupt conduct alleged in the corruption issue could be of significant public concern;

- (g) whether the corrupt conduct alleged in the corruption issue may be indicative of, or may expose, entrenched or systemic behaviour;
- (h) any other matter the commission considers relevant.

### **Division 3.3 Protections for complainants and reporters**

#### **Recommendation 28**

#### **19 Application—div 3.3**

- (1) This division applies if—
  - (a) a person makes a complaint to the commission under section 11 (Complaints about possible corrupt conduct); or
  - (b) the principal officer of a public authority or a Minister makes a report to the commission under section 12 (Duty of principal officer of public authority to tell commission about corrupt conduct).
- (2) In this section:  
*principal officer*, of a public authority—see section 12 (8).

#### **20 Immunity from liability**

- (1) The making of a complaint or report to which this division applies is not—
  - (a) a breach of confidence; or
  - (b) a breach of professional etiquette or ethics; or
  - (c) a breach of a rule of professional conduct; or
  - (d) if the complaint or disclosure is made in relation to a member of the Legislative Assembly—a contempt of the Assembly.

- (2) The person making the complaint or report does not incur civil or criminal liability only because of the making of the complaint or report.
- (3) If the person making a complaint or report is a public official—the person is not liable to administrative action (including disciplinary action or dismissal) only because of the making of the complaint or report.

## **21 Protection from defamation action**

Without limiting section 20, in a proceeding for defamation, a person making a complaint or report has a defence of absolute privilege for publishing the information given to the commission.

## **22 Loss of protection**

- (1) This section applies if a person makes a complaint or report to which this division applies and a court is satisfied that—
  - (a) the person has given information to the commission that the person knows is false or misleading; or
  - (b) the complaint or report is vexatious.
- (2) The person forfeits the protections under this division in relation to the complaint or report.
- (3) However, a court may make an order that subsection (2) does not apply if the court considers that the person's conduct mentioned in subsection (1) (a)—
  - (a) has not materially prejudiced the commission's investigation of the corruption issue; and
  - (b) is of a minor nature.

**23 Liability for own conduct**

- (1) A person's liability for the person's own conduct is not affected by the person's—
- (a) complaint under section 11 (Complaints about possible corrupt conduct); or
  - (b) report under section 12 (Duty of principal officer of public authority to tell commission about corrupt conduct).
- (2) In this section:

*liability* includes civil or criminal liability or any liability arising from an administrative action (including disciplinary action or dismissal).

**24 Meaning of *detrimental action***

For this Act, *detrimental action* is action that involves—

- (a) discriminating against a person by treating, or proposing to treat, the person unfavourably in relation to the person's reputation, career, profession, employment or trade; or
- (b) harassing or intimidating a person; or
- (c) injuring a person; or
- (d) damaging a person's property.

**25 Offence—taking detrimental action**

- (1) A person commits an offence if the person (the *retaliator*) takes detrimental action because of a complaint or report to which this division applies.

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

- (2) For this Act, a retaliator *takes* detrimental action because of a complaint or report to the commission under this Act, if the retaliator takes, or threatens to take, detrimental action against someone else because—
  - (a) a person has made, or intends to make, a complaint or report to the commission under this Act; or
  - (b) the retaliator believes that a person has made, or intends to make, a complaint or report to the commission under this Act.
- (3) In determining whether a retaliator has taken detrimental action because of a complaint or report to the commission under this Act, it is sufficient if a reason mentioned in subsection (2) is a contributing reason.

## **26 Damages for detrimental action**

- (1) A person who takes detrimental action against someone else is liable in damages to anyone who suffers detriment as a result.
- (2) Detrimental action is a tort and damages may be recovered in a proceeding in a court of competent jurisdiction.
- (3) Any remedy that may be given by a court for a tort, including exemplary damages, may be given by a court in a proceeding under this section.
- (4) The right of a person to bring a proceeding for damages under this section does not affect any other right or remedy available to the person arising from detrimental action.

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

- (1) On application, the Supreme Court may—
  - (a) if satisfied that a person has taken detrimental action—order the person who took detrimental action to remedy the action; or

- (b) if satisfied that a person is taking, or is likely to take, detrimental action—grant an injunction to prevent detrimental action being taken.
- (2) An application may be made by—
    - (a) the commission; or
    - (b) the person who made the complaint or report; or
    - (c) a person against whom detrimental action has been or is likely to be taken.
  - (3) The Supreme Court may grant an interim injunction restraining a person from taking detrimental action before deciding an application for an injunction under this section.

## **Part 4**                      **Investigations**

### **Division 4.1**              **Powers of investigation**

#### **28**                      **Appointment of investigators**

The commissioner may appoint an officer of the commission as an investigator for this part.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

#### **29**                      **Investigation by commission**

##### **Recommendations 15 (f) and 29**

- (1) The commission may investigate corrupt conduct alleged in a corruption issue—
  - (a) the subject of a complaint under section 11; or
  - (b) reported under section 12; or
  - (c) that the commission decides under section 13 to investigate on its own initiative.
- (2) The commission must investigate an Assembly referral under section 14 (Referral by Legislative Assembly).
- (3) The commission must not conduct an investigation under subsection (1) unless the commission suspects on reasonable grounds that the conduct constitutes corrupt conduct.
- (4) The commission may conduct an investigation even though—
  - (a) no particular public official or other person has been implicated in the corruption issue or Assembly referral; or

- (b) a person who was a public official at the time of the alleged corrupt conduct is no longer a public official; or
  - (c) a body that was a public authority at the time of the alleged corrupt conduct is no longer a public authority or has ceased to exist as a public authority.
- (5) Also, the commission may conduct an investigation regardless of when the alleged corrupt conduct occurred.
- (6) The commission may, in considering whether to conduct or continue an investigation (other than in relation to an Assembly referral), have regard to anything it considers appropriate, including whether—
- (a) the subject matter of the investigation is too trivial; or
  - (b) the alleged conduct concerned happened too long ago to justify the investigation; or
  - (c) if the investigation was started as a result of a complaint—the complaint was frivolous, vexatious or not made in good faith.
- (7) If the commission decides not to conduct, or to discontinue, the investigation of a complaint or report made to it, the commission must inform the complainant or officer who made the report in writing of its decision and the reasons for it.

### **30 Power to obtain information**

#### **Recommendation 32**

- (1) For an investigation, the commission may, by notice in writing given to a person, require the person to give a statement of information to the commission.

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

- (2) A notice under this section must state—
- (a) the information required by the commission; and



(b) a time and date for the person to give the information to the commission; and

(c) how the information must be given to the commission.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

### **31 Power to obtain documents etc**

#### **Recommendation 32**

(1) For an investigation, the commission may, by written notice given to a person, require the person to give a document or other thing to the commission.

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

(2) A notice under this section must state—

(a) a time and date for the person to give the document or thing to the commission; and

(b) how the document or thing must be given to the commission.

## **Division 4.2 Compulsory examinations**

### **Subdivision 4.2.1 Power to conduct examination**

#### **32 Commission may conduct examination**

##### **Recommendation 53**

(1) For an investigation, the commission may, if it is satisfied that it is in the public interest to do so, conduct an examination in relation to a corruption issue or Assembly referral.

(2) In determining the public interest under subsection (1), the commission must consider the following:

(a) the nature and seriousness of the corrupt conduct alleged in the corruption issue or Assembly referral;

- (b) the harm or loss arising from the corrupt conduct alleged in the corruption issue or Assembly referral;
  - (c) whether the corrupt conduct alleged in the corruption issue or Assembly referral could be of significant public concern;
  - (d) whether the corrupt conduct alleged in the corruption issue or Assembly referral may be indicative of, or may expose, entrenched or systemic behaviour;
  - (e) any other matter the commission considers relevant.
- (3) Before deciding to hold an examination, the commission must—
- (a) give a concerned person written notice explaining why the public interest in exposing the matter outweighs the potential for prejudice to the concerned person’s reputation; and
  - (b) give the concerned person not less than 7 days, beginning on the day the notice was given, to make representations to the commission about why the examination—
    - (i) should not be held; or
    - (ii) should not be held in public; or
    - (iii) should be held in private.
- (4) Not less than 7 days before the day an examination is held, the commission must—
- (a) tell the inspector that the commission intends to hold the examination; and
  - (b) provide a written report to the inspector stating the reasons the commission decided to hold an examination.
- (5) In this section:

***concerned person*** means a person who is the subject of the allegation of corrupt conduct alleged in a corruption issue or Assembly referral.

### 33 Examination may be private

Recommendations 54, 55, 56

- (1) An examination under section 32 must be conducted in public unless the commission decides it is in the public interest to hold the examination in private.
- (2) Without limiting the factors that it may take into account in deciding whether it is in the public interest to conduct an examination in private, the commission must consider the following:
  - (a) the benefit of exposing to the public, and making the public aware of, corrupt conduct;
  - (b) the seriousness of the allegation or complaint being investigated;
  - (c) any risk of undue prejudice to a concerned person's reputation (including prejudice that might arise from not holding an inquiry);
  - (d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of a concerned person;
  - (e) any representations of a concerned person in response to a notice under section 32 (3).
- (3) In this section:  
*concerned person*—see section 32 (5).

#### Subdivision 4.2.2 Commission's powers on examination

### 34 Notice to appear

- (1) The commission may, by written notice given to a person (a *notice to appear*), require the person to appear before the commission at an examination, at a stated time and place, to do either or both of the following:
  - (a) give evidence;

- (b) produce a stated document or other thing relevant to the examination.

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

- (2) A person is taken to have complied with a notice to appear under subsection (1) (b) if the person gives the document or other thing to the commission before the date stated in the notice to appear for its production.

*Note* It is an offence to fail to comply with a notice to appear (see s 70).

### 35 Presiding officer may compel witness

The presiding officer at an examination may require a witness appearing at an examination to give evidence to do 1 or more of the following:

- (a) take an oath or make an affirmation;
- (b) answer a question relevant to the examination;
- (c) produce a stated document or other thing relevant to the examination.

*Note* *Oath* includes affirmation and *take* an oath includes make an affirmation (see [Legislation Act](#), dict, pt 1).

### 36 Commission may apply for arrest warrant

#### Recommendation 33 (b)

- (1) If a person who is given a notice to appear before the commission as a witness fails to appear in response to the notice, an authorised officer may apply to a magistrate for a warrant to arrest the person.
- (2) The magistrate may issue an arrest warrant only if satisfied that the person—
  - (a) was given the notice to appear; and
  - (b) failed to appear before the commission in accordance with the notice to appear.

- (3) A warrant under this section authorises—
    - (a) apprehension of the person; and
    - (b) the bringing of the person before the commission; and
    - (c) the detention of the person in custody until the person is released by order of the commission.
  - (4) A warrant may be executed by—
    - (a) a police officer; or
    - (b) a member of the police service or force of a State; or
    - (c) the person to whom it is directed.
- Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).
- (5) The person executing a warrant may, with such assistance and by such force as is necessary and reasonable, enter any premises for the purpose of executing the warrant.
  - (6) The apprehension of a witness under this section does not relieve the witness of any liability incurred by the witness's noncompliance with the notice to appear.

### **Subdivision 4.2.3 Procedure for examinations**

#### **37 Content of notice to appear**

**Recommendations 33 (a), 57**

- (1) A notice to appear under section 34 must state—
  - (a) the time and place the person must appear before the commission; and
  - (b) the document or thing (if any) the person is required to produce to the commission; and
  - (c) the nature of the matter about which the person will be questioned; and

- (d) that failure to comply with the notice to appear may be an offence and penalties may apply; and
  - (e) whether the commission intends to hold the examination in public or in private; and
  - (f) that the person is entitled to seek legal advice in relation to the notice to appear and the examination; and
  - (g) that the person has a right to legal representation at an examination.
- (2) However, the commission need not provide information mentioned in subsection (1) (c) if the commission considers on reasonable grounds that this would be likely to prejudice the conduct of the investigation to which the notice to appear relates or would be contrary to the public interest.

### **38 Right of appearance**

#### **Recommendation 57**

A person who is substantially and directly interested in a matter that is the subject of an examination or part of an examination by the commission is entitled to appear at the examination or part of the examination.

### **39 Right of representation**

#### **Recommendation 57**

- (1) This section applies to a person who is—
- (a) required to appear before the commission to give evidence at an examination; or
  - (b) mentioned in section 38.
- (2) The person has a right to be represented by a legal practitioner at the examination.

## **40 Examination and cross-examination**

### **Recommendation 57**

- (1) This section applies to—
  - (a) a legal practitioner appointed by the commission to assist it; and
  - (b) a person to whom section 39 applies; and
  - (c) a legal practitioner authorised to represent a person mentioned in paragraph (b).
- (2) The person may, with the leave of the commission, examine or cross-examine any witness on any matter that the commission considers relevant.

## **41 Presiding officer for examination**

- (1) The commission may appoint an officer of the commission to preside at an examination (the *presiding officer*).
- (2) The presiding officer must be a person who is eligible to be appointed as the commissioner under section 98.
- (3) The presiding officer at an examination must announce the general scope and purpose of the inquiry.

## **42 Directions about people present at private examination**

- (1) The presiding officer may give directions as to the people who may be present at all or part of an examination that is held in private.
- (2) The presiding officer may decide to hold part of an examination in private if the presiding officer considers that it is in the public interest.
- (3) In making a decision under subsection (2), the presiding officer must consider the factors mentioned in section 33 (2) (Examination may be private).

- (4) A person must not be present in contravention of a direction under subsection (1).

*Note* It is an offence to contravene a direction (see s 72).

#### **43 Directions about disclosure of information**

- (1) The presiding officer may give directions prohibiting or restricting—
- (a) the publication of evidence given at an examination (whether in public or private) or of matters contained in documents lodged with, or received in evidence by, the commission; or
  - (b) the disclosure to some or all of the people present at an examination of evidence given before, or the contents of a document lodged with or received in evidence by, the commission.
- (2) In making a decision under subsection (1), the presiding officer must consider the factors mentioned in section 33 (2) (Examination may be private).

*Note* It is an offence to contravene a direction (see s 72).

#### **44 Reimbursement of expenses of witnesses**

A witness appearing before the commission is entitled to be paid by the Territory the witness's expenses of attendance authorised in accordance with the Supreme Court scale of costs.

### **Division 4.3 Procedural matters**

#### **45 Evidence and procedure**

*Recommendations 35, 47, 57*

- (1) In conducting an investigation, the commission—
- (a) must comply with the rules of natural justice; and
  - (b) is not bound by the rules of evidence; and



- (c) may inform itself of any matter in any way that it considers appropriate; but
- (d) must consider the potential subsequent use of information obtained by the commission.

**Example—potential subsequent use**

prosecution of an offence

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

- (2) The commission must exercise its functions with as little formality and technicality as is possible, and, in particular, the commission must accept written submissions and conduct examinations with as little emphasis on an adversarial approach as is possible.
- (3) The commission may issue procedural guidelines about the way in which the commission will conduct its investigations, including examinations.
- (4) The procedural guidelines are a notifiable instrument.

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

## **46 Privilege as regards information, documents etc**

**Recommendation 33 (f) and 34**

- (1) This section applies if the commission exercises a power (a *compulsion power*)—
  - (a) to require a person to give the commission—
    - (i) a statement of information under section 30 (Power to obtain information); or
    - (ii) a document or other thing under section 31 (Power to obtain documents etc); or
  - (b) to obtain a copy of a document or thing under section 77 (General powers on entry to premises without warrant); or

- (c) to require a person appearing before an examination conducted by the commission to—
  - (i) be sworn or make an affirmation; or
  - (ii) give evidence; or
  - (iii) produce a stated document or other thing; or
  - (iv) answer a question relevant to the examination.
- (2) A person cannot rely on any of the following to resist the exercise of a compulsion power:
  - (a) the common law privilege against self-incrimination and exposure to the imposition of a civil penalty;
  - (b) the common law privilege in relation to client legal privilege;
  - (c) any rule under which, in proceedings in a court of law, a person might object to a similar requirement on public interest grounds;
  - (d) any duty of secrecy or other restriction on disclosure applying to a person as a public authority or public official or a former public authority or public official;
  - (e) any other rule of evidence that would entitle the person to refuse to divulge or disclose information in a court.
- (3) Any information, document or other thing obtained, directly or indirectly, because of the exercise of the compulsion power is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
  - (a) an offence in relation to the falsity or the misleading nature of the document, other thing or answer; or
  - (b) an offence against the [Criminal Code](#), chapter 7 (Administration of justice offences).

**47 Parliamentary privilege not affected**

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

The commission must not exercise a compulsion power in a way that is inconsistent with the powers, privileges and immunities of the Legislative Assembly or its members or committees.

*Note* Until such time as the Assembly makes its own laws in relation to its powers, privileges and immunities the powers, privileges and immunities are the same as apply to the House of Representatives (see [Self-Government Act](#), s 24).

**48 Independence of holders of judicial office**

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

- (1) The commission, when exercising its functions in relation to the procedures and operations of a court or in relation to the conduct of a judicial officer, must have proper regard for, and proper regard for the importance of preserving, the independence of judicial officers.
- (2) If an investigation is in relation to conduct of a judicial officer, the commission's authority to conduct the investigation is limited to investigating corrupt conduct of a kind that, if established, would warrant the judicial officer's removal from office.
- (3) However, subsection (2) does not apply to an investigation that is in relation to conduct of a judicial officer—
  - (a) other than in the judicial officer's capacity as a judicial officer;  
and

- (b) as a member or representative of a decision-making body in a public authority.

**Examples—decision-making body**

- a governing body
- a board of management

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

- (4) To the extent an investigation is in relation to conduct of a judicial officer, the investigation must be conducted in accordance with appropriate conditions and procedures agreed by the commissioner and the judicial council from time to time.
- (5) An examination in relation to the conduct of a judicial officer must be conducted by the commissioner.
- (6) In this section:

*judicial council* means the judicial council established under the [Judicial Commissions Act 1994](#), section 5A.

*judicial officer*—see the [Judicial Commissions Act 1994](#), dictionary.

## 49 Concurrent court proceedings

**Recommendation 33 (g)**

- (1) The commission may do any of the following in relation to a matter that is the subject of a proceeding before a court or tribunal:
- (a) commence, continue, discontinue or complete an investigation;
  - (b) provide a report in relation to an investigation;
  - (c) do anything necessary or convenient for paragraphs (a) and (b).

- (2) If the proceedings mentioned in subsection (1) are proceedings for an indictable offence, the commission must, to the extent that the commission considers it necessary to ensure that an accused person's right to a fair trial is not prejudiced—
- (a) if practicable—conduct the investigation in private during the currency of the proceedings; and
  - (b) give directions under section 42 (Directions about people present at private examination) having effect during the currency of the proceedings; and
  - (c) defer making a report to the Legislative Assembly during the currency of the proceedings.
- (3) Subsection (2) does not apply if—
- (a) the committal hearing has not commenced; or
  - (b) the offence is dealt with summarily.

## **50 Application of Criminal Code, ch 7**

An examination conducted by the commission is a legal proceeding for the [Criminal Code](#), chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to commission proceedings.

## **51 Contempt of commission**

**Recommendations 43, 44**

A person commits an offence if the person does something in the face, or within the hearing, of the commission that would be contempt of court if the commission were a court of record.

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

## Division 4.4 Dealing with parliamentary privilege claims

### 52 Application—div 4.4

This division applies if, in the course of conducting a preliminary inquiry or investigation under this Act, the Legislative Assembly or a member or committee of the Legislative Assembly claims parliamentary privilege in relation to—

- (a) a document or thing that a person is required to give the commission for an investigation; or
- (b) information or evidence that the person is required to give the commission at an examination.

### 53 Definitions—div 4.4

In this division:

*claimant* means—

- (a) the Legislative Assembly; or
- (b) a member of the Legislative Assembly; or
- (c) a committee of the Legislative Assembly.

*claimant's representative*, for a claimant, means—

- (a) a person nominated by the claimant; or
- (b) in the absence of a nomination—the clerk of the Legislative Assembly.

*proper officer*, in relation to the performance of a function under this division, means an officer of the Supreme Court appointed by a judge for that purpose.

*secured item* means a document or thing sealed in an envelope, or otherwise secured, under section 56 (2) (b).

**54 Notice of potentially privileged material**

An investigator who intends to inspect, copy or seize a document or thing that the investigator considers likely to be the subject of parliamentary privilege must give reasonable notice to the clerk of the Legislative Assembly of the investigator's intention.

**55 Process for dealing with claim of parliamentary privilege**

An investigator who wishes to inspect, copy or seize a document or thing over which parliamentary privilege is claimed must—

- (a) if there is a memorandum of understanding under section 150 (Exercise of commission powers—Assembly)—deal with the document or thing in accordance with any procedure stated in the memorandum for determining a claim of parliamentary privilege; and
- (b) if there is no memorandum in effect, or the claim cannot be resolved in accordance with the memorandum—deal with the document or thing in accordance with section 56.

**56 Investigator to consider parliamentary privilege and secure document or thing**

**Recommendation 15 (a), (c) and (d)**

- (1) This section applies if a claim of parliamentary privilege is made in relation to a document or thing.
- (2) The investigator must consider the claim of parliamentary privilege and either—
  - (a) stop exercising the power in relation to the document or thing over which the claim of parliamentary privilege is made; or

- (b) if the investigator believes on reasonable grounds the item may not be the subject of parliamentary privilege—require the claimant or claimant’s representative to immediately seal the document or thing in an envelope, or otherwise secure the item if it cannot be sealed in an envelope, and give the secured item to the investigator.
- (3) The investigator—
  - (a) must not inspect the document or thing in considering the claim of parliamentary privilege; but
  - (b) if the document or thing is in electronic form and able to be copied without disclosing any part of the document or thing to the investigator or another person not entitled to view it—may copy the document or thing.
- (4) If the investigator requires the claimant or claimant’s representative to give the secured item to the investigator under subsection (2) (b), the officer must—
  - (a) as soon as reasonably practicable—
    - (i) notify the commission; and
    - (ii) give the secured document or thing to a proper officer to be held in safe custody; and
  - (b) give the claimant or claimant’s representative a reasonable opportunity to accompany the investigator in giving the item to the proper officer.
- (5) A person must not interfere with a secured item before delivery to the proper officer.



**57 Application to Supreme Court to determine parliamentary privilege generally**

**Recommendation 15 (d)**

- (1) The commission may apply to the Supreme Court for a determination on—
  - (a) whether a secured item given to the proper officer under section 56 (4) (b) is the subject of parliamentary privilege; or
  - (b) whether evidence that the commission has, or seeks to obtain, in order to carry out its functions is the subject of parliamentary privilege.
- (2) If an application under subsection (1) (a) is not made within 7 days after the day the secured item is given to the proper officer under section 56 (4) (b), the proper officer must give the item to the clerk of the Legislative Assembly.
- (3) The clerk of the Legislative Assembly is entitled to appear and be heard on the hearing of an application under this section.

**58 Determination of parliamentary privilege claim**

**Recommendation 15 (d)**

- (1) On an application under section 57, the Supreme Court must determine whether the secured item or other evidence is the subject of parliamentary privilege in whole or part.
- (2) For making a determination, the court and any other person authorised by the court may—
  - (a) open the sealed envelope or otherwise access the secured item or other evidence; and
  - (b) inspect the secured item or other evidence.

- (3) If the court determines that the whole of the secured item or other evidence is the subject of parliamentary privilege, the court must order that the item or other evidence be returned to the claimant or claimant's representative.
- (4) If the court determines that the whole of the secured item or other evidence is not the subject of parliamentary privilege, the court must order that the item or other evidence be given to the commission.
- (5) If the court determines that part of the secured item or other evidence is the subject of privilege (the *privileged part*) and part is not (the *non-privileged part*)—
  - (a) if the secured item or other evidence is able to be divided into the privileged part and the non-privileged part—the court must divide the item or other evidence and order that the privileged part be returned to the claimant or claimant's representative and the non-privileged part be given to the commission; or
  - (b) if paragraph (a) does not apply but the court considers it possible to produce a copy of the secured item or other evidence from which the privileged part has been removed—
    - (i) the court must make orders the court considers appropriate for production of the copy; and
    - (ii) the court must order that the copy be given to the commission and the item or other evidence be returned to the claimant or claimant's representative; or
  - (c) in any other case—the court must order that the secured item or other evidence be returned to the claimant or claimant's representative.
- (6) Except as provided in subsection (2), a person must not open a sealed envelope containing the secured item or other evidence, or otherwise have access to the item or other evidence, before—
  - (a) the court determines the claim of privilege; or

- (b) the item or other evidence is returned to the claimant or claimant's representative.
- (7) A person commits an offence if—
- (a) the person intentionally engages in conduct; and
  - (b) the conduct results in a contravention of subsection (6); and
  - (c) the person is reckless in relation to the result.

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

## Division 4.5 Commission's powers on completion of investigation

### 59 Findings, opinions and recommendations

Recommendations 38, 39, 41

- (1) On completing an investigation, the commission may—
  - (a) make a finding or form an opinion in relation to the matters investigated, regardless of whether the finding or opinion relates to corrupt conduct; and
  - (b) if the commission considers that a person should take action in relation to a finding or opinion or as a result of the investigation—make a recommendation that the person take action.

**Example—findings**

that a person has engaged, is engaged or is about to engage in corrupt conduct

**Example—opinions**

- 1 that the advice of the director of public prosecutions should be sought in relation to the commencement of proceedings against a person for criminal offences
- 2 that a public authority should consider taking other action against a person

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

- (2) The commission is not restricted in its findings, opinions or recommendations except as provided in this section.
- (3) The commission must not—
  - (a) make a finding or form an opinion that a named person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence; or

- (b) make a recommendation, or form an opinion, that a named person be prosecuted for a criminal offence or disciplinary offence.
- (4) The commission does not make a finding or form an opinion mentioned in subsection (3) merely because the commission makes a finding or forms an opinion that a person has engaged, is engaging or is about to engage in—
  - (a) corrupt conduct (whether or not the particular corrupt conduct is stated); or
  - (b) stated conduct (being conduct that constitutes or involves, or could constitute or involve, corrupt conduct).
- (5) In this section:
  - criminal offence*—see section 7 (3).
  - disciplinary offence*—see section 7 (3).

## Division 4.6            Reports

### 60            Reports on investigations

#### Recommendations 48 (a), (c) and (d)

- (1) The commission—
  - (a) must prepare a report on completion of an investigation in relation to—
    - (i) a corruption issue; and
    - (ii) an Assembly referral; and
  - (b) must prepare a report if the relevant Assembly committee requests a report on a particular investigation; and
  - (c) may prepare a report in relation to a matter before the investigation is completed.

- (2) However, the commission need not prepare a report under subsection (1) (a) (i) if, in the opinion of the commission, this would be contrary to the public interest.

## **61            Public interest considerations**

### **Recommendations 48 (c) and (d), 49**

- (1) When preparing a report under section 60, the commission must consider whether all or part of the report must be kept confidential (a *confidential report*) because—
- (a) there are public interest considerations against disclosure; and
  - (b) those considerations outweigh the public interest in favour of disclosure.
- (2) There is a public interest against disclosure if disclosure of information could reasonably have any of the following effects:
- (a) compromise an ongoing investigation;
  - (b) place an individual in danger;
  - (c) prejudice an upcoming judicial proceeding.

## **62            Delivery and tabling of reports**

### **Recommendation 48 (a)**

- (1) This section applies to a report under section 60 that is not a confidential report.
- (2) If the Legislative Assembly is sitting when the commission has finished the report—
- (a) the commission must give the report to the Speaker; and
  - (b) the Speaker must present the report to the Legislative Assembly on the next sitting day.

- (3) If the Legislative Assembly is not sitting when the commission has finished the report—
- (a) the commission must give the report, and a copy for each member of the Legislative Assembly, to the Speaker; and
  - (b) the report is taken for all purposes to have been presented to the Legislative Assembly on the day the commission gives it to the Speaker (the *report day*); and
  - (c) publication of the report is taken to have been ordered by the Legislative Assembly on the report day; and
  - (d) the Speaker must arrange for a copy of the report to be given to each member of the Legislative Assembly on the report day; and
  - (e) the Speaker may give directions for the printing and circulation, and in relation to the publication, of the report; and
  - (f) despite paragraph (b), the Speaker must present the report to the Legislative Assembly on the next sitting day.
- (4) The commission may give a copy of the report to a Minister or a public authority if, in the commission's opinion, the Minister or public authority has a special interest in the report.

### **63 Confidential reports to be given to relevant committee**

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

The commission must give a copy of a confidential report to the presiding member of the relevant Assembly committee.

### **64 Content of reports**

#### **Recommendation 48 (a)**

A report under section 60 may include—

- (a) statements about any of the commission's findings, opinions and recommendations; and

- (b) statements about the commission's reasons for any of its findings, opinions and recommendations; and
- (c) other matters arising in the course of the performance of the commission's functions that the commission considers to be in the public interest to disclose.

## Division 4.7 Referrals

### 65 Commission may refer matters

Recommendations 13 (a), 24, 30 (d), 45

- (1) The commission may at any time refer a matter to another person or body (the *relevant authority*) for investigation or other action.

**Examples—relevant authority**

- auditor-general
- a non-public sector entity that is a public authority under s 9
- the Integrity Commissioner under the *Law Enforcement Integrity Commissioner Act 2006* (Cwlth), s 14

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

- (2) The commission may give the relevant authority any information the commission has obtained in relation to the matter, including information obtained during any investigation under this part or part 5.
- (3) The commission must not refer a matter to a relevant authority under subsection (1) unless the commission has—
  - (a) consulted the relevant authority; and
  - (b) considered any views of the relevant authority about the referral.



- (4) The commission must tell the relevant authority if the information given to the relevant authority under this section is protected information.

*Note* Part 8 sets out obligations in relation to protected information.

## **66 Directions to relevant authority**

**Recommendations 15 (a) and (b) and 30 (e), (f) and (g)**

- (1) The commission may give directions to a relevant authority in relation to the referral, including directions as to—
- (a) how the relevant authority is to deal with the matter; and
  - (b) reporting requirements of the relevant authority in relation to the matter.
- (2) However, the commission cannot give a direction mentioned in subsection (1) to the Speaker or a judicial officer.
- (3) A relevant authority is not obliged to comply with a direction of the commission to the extent that compliance is beyond the power, or incompatible with the functions, of the relevant authority.

## **67 Report to commission**

**Recommendations 30 (e) and 42**

- (1) This section applies if the commission directs a relevant authority to give the commission a report under section 66.
- (2) A relevant authority must give the commission a report—
- (a) as required by the commission; and
  - (b) within the time period required by the commission.

## **68 Further action by commission**

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

- (1) This section applies if the commission is not satisfied that a relevant authority has taken appropriate action in relation to a matter referred to the relevant authority under section 65 (Commission may refer matters).
- (2) The commission must give the relevant authority written notice—
  - (a) stating the grounds for the commission’s dissatisfaction with the authority’s action in relation to the matter; and
  - (b) inviting the authority to respond to the grounds of the commission’s dissatisfaction within a stated period of time that is not less than 21 days after the day the commission gives the notice to the relevant authority.
- (3) The commission must consider any comments received from the relevant authority and, if the commission is still not satisfied that the relevant authority has taken appropriate action, may give a report to the relevant Minister for the authority.
- (4) A report under subsection (3) must—
  - (a) state the matter the commission has referred to the relevant authority; and
  - (b) state the grounds for the commission’s dissatisfaction with the authority’s action in relation to the matter; and
  - (c) include a copy of the comments (if any) received from the relevant authority; and
  - (d) include any additional comments from the commission; and
  - (e) invite the Minister to comment on the report within 21 days after the day the commission gives the report to the Minister.

- (5) If, after considering any comments received from the relevant Minister, the commission is still not satisfied with the response to the matter, the commission may make a report under section 60 (Reports on investigations).
- (6) In this section:  
*relevant Minister* means the Minister responsible for the public authority.

## **69 Brief of evidence**

### **Recommendation 45**

Following an investigation, the commission may provide a brief of evidence—

- (a) to a law enforcement agency to investigate, or prosecute a person for, an offence; or
- (b) to a public authority or public officer to investigate, or take, disciplinary action against a public officer.

## Division 4.8 Offences

### 70 Person failing to comply with requirement

A person commits an offence if the person—

- (a) is required to do something under—
  - (i) section 30 (Power to obtain information); or
  - (ii) section 31 (Power to obtain documents etc); or
  - (iii) section 34 (Notice to appear); or
  - (iv) section 35 (Presiding officer may compel witness); or
  - (v) section 77 (General powers on entry to premises without warrant); and
- (b) fails to comply with the requirement.

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

### 71 Fail to comply with direction to give name and address

(1) A person commits an offence if the person—

- (a) is subject to a direction under section 78 (Direction to give name and address); and
- (b) fails to comply with the direction.

Maximum penalty: 5 penalty units.

*Note* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

(2) An offence against this section is a strict liability offence.

- (3) This section does not apply to a person if—
- (a) the person asked the authorised officer to produce the officer’s identity card; and
  - (b) the officer did not produce the officer’s identity card.
- (4) This section does not apply to a person if the authorised officer did not, before giving the direction, warn the person that failure to comply with the direction is an offence.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see [Criminal Code](#), s 58).

## **72 Fail to comply with presiding officer’s direction**

A person commits an offence if—

- (a) the presiding officer at an examination gives a direction—
  - (i) under section 42 (Directions about people present at private examination); or
  - (ii) under section 43 (Directions about disclosure of information); and
- (b) the person fails to comply with the direction.

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

## **Part 5** General information gathering powers

### **Division 5.1** Power to enter premises

#### **73** Power to enter premises of public authority or public official

- (1) For an investigation, an investigator may at any time enter and remain on premises occupied or used by—
  - (a) a public authority; or
  - (b) a public official in that capacity.
- (2) However, subsection (1) does not permit an investigator to enter or remain on—
  - (a) any part of the premises that are residential premises; or
  - (b) any premises that are not solely occupied or used by a public authority mentioned in section 9 (1) (b) (Meaning of *public authority*).

#### **74** Power to enter other premises

- (1) This section applies if an investigator believes on reasonable grounds that there is anything that may be evidence of corrupt conduct on premises other than premises mentioned in section 73.
- (2) An investigator may—
  - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
  - (b) at any time when the premises are open for business, enter the premises; or
  - (c) at any time, enter premises with the occupier's consent; or

- (d) enter premises in accordance with a search warrant; or
  - (e) at any time, enter premises if the investigator believes on reasonable grounds that the circumstances are so serious and urgent that immediate entry to the premises without the authority of a search warrant is necessary.
- (3) However, subsection (2) (a) and (b) do not authorise entry into a part of premises that is being used only for residential purposes.
  - (4) An investigator may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
  - (5) To remove any doubt, an investigator may enter premises under subsection (2) without payment of an entry fee or other charge.
  - (6) In this section:

*at any reasonable time* includes at any time when the public is entitled to use the premises, or when the premises are open to or used by the public (whether or not on payment of money).

## **75 Production of identity card**

An investigator must not remain at premises entered under this part if the investigator does not produce the investigator's identity card when asked by the occupier.

## **76 Consent to entry**

- (1) When seeking the consent of an occupier of premises to enter premises under section 74 (2) (c), an investigator must—
  - (a) produce the investigator's identity card; and
  - (b) tell the occupier—
    - (i) the purpose of the entry; and

- (ii) that anything found and seized under this part may be used in evidence in court; and
  - (iii) that consent may be refused.
- (2) If the occupier consents, the investigator must ask the occupier to sign a written acknowledgment (an *acknowledgment of consent*)—
  - (a) that the occupier was told—
    - (i) the purpose of the entry; and
    - (ii) that anything found and seized under this part may be used in evidence in court; and
    - (iii) that consent may be refused; and
  - (b) that the occupier consented to the entry; and
  - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the investigator must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the investigator under this part if—
  - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
  - (b) an acknowledgment of consent is not produced in evidence; and
  - (c) it is not proved that the occupier consented to the entry.

## **77 General powers on entry to premises without warrant**

- (1) An investigator who enters premises under section 73 or section 74 may do 1 or more of the following in relation to the premises or anything at the premises:
  - (a) inspect the premises; and
  - (b) inspect any document or other thing in or on the premises; and



- (c) take copies of, or extracts from, any document in or on the premises; and
  - (d) require any person in or on the premises to give the investigator reasonable assistance to enable the investigator to exercise powers under this section; and
  - (e) ask questions of any person in or on the premises where the investigator considers it reasonable to enable the investigator to exercise powers under this section.
- (2) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (e).

## **78 Direction to give name and address**

- (1) This section applies if an investigator believes on reasonable grounds that a person may be able to assist in an investigation under this Act.
- (2) The investigator may direct the person to give the investigator, immediately, any of the following personal details:
  - (a) the person's full name;
  - (b) the person's home address.

*Note* Power to make the direction includes power to amend or repeal the direction (see [Legislation Act](#), s 46).

- (3) The person may ask the investigator to produce the investigator's identity card for inspection by the person.
- (4) If the investigator believes on reasonable grounds that a personal detail given by a person in response to a direction under subsection (2) is false or misleading, the investigator may direct the person to produce evidence immediately of the correctness of the detail.

- (5) If an investigator gives a direction under this section to a person, the investigator must tell the person that it is an offence if the person fails to comply with the direction.

*Note* It is an offence to fail to comply with a direction under this section (see s 71).

## **79 Injunctions**

- (1) This section applies if the commission reasonably believes—
- (a) a person (whether or not a public authority or public official) has engaged, is engaging, or proposes to engage, in conduct; and
  - (b) that the conduct is the subject of, or affects the subject of, an investigation or proposed investigation by the commission.
- (2) The commission may apply to the Supreme Court for an injunction.
- (3) On application under subsection (2), the Supreme Court may grant an injunction—
- (a) restraining the person from engaging in the conduct—
    - (i) if satisfied that the person has engaged in conduct of that kind, whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
    - (ii) if it appears to the court that, if an injunction is not granted, it is likely the person will engage in conduct of that kind whether or not the person has previously engaged in conduct of that kind; and
  - (b) if satisfied that it is desirable to do so—requiring the person to do anything.
- (4) The Supreme Court may only grant an injunction if satisfied that—
- (a) the conduct sought to be restrained is likely to impede the conduct of the investigation or proposed investigation; or

- (b) it is necessary to restrain the conduct to prevent irreparable harm being done because of corrupt conduct or suspected corrupt conduct.
- (5) The Supreme Court must not require the commission, as a condition for granting an injunction, to give any undertaking as to damages.

## **Division 5.2                      Search warrants**

### **80                      Definitions**

In this Act:

*authorised officer* means—

- (a) the commissioner; or
- (b) an investigator authorised by the commissioner for this division;  
or
- (c) a police officer.

*premises* includes land, structure, vehicle or boat.

### **81                      Issue of search warrant**

**Recommendations 32, 33 (b)**

- (1) An authorised officer may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
- (a) there is a particular thing or activity connected with a matter that the commission is investigating; and
  - (b) the thing or activity—
    - (i) is, or is being engaged in, at the premises; or
    - (ii) may be, or may be engaged in, at the premises within the next 14 days.
- (5) The warrant must—
- (a) state the purpose for which the warrant is issued; and
  - (b) state particular hours during which the entry is authorised or state that entry is authorised at any time of the day or night; and
  - (c) include a description of the kind of things in relation to which the powers under the warrant may be exercised; and
  - (d) state the date, not later than 1 month after the day of the warrant's issue, the warrant ends.

## **82 Powers under warrant**

### **Recommendation 32**

A warrant issued under this part authorises a police officer, or any other authorised officer named in the warrant, with such assistance and by such force as is necessary and reasonable to—

- (a) enter the premises stated in the warrant; and
- (b) search the premises; and
- (c) inspect any document or other thing in or on the premises; and
- (d) take copies of, or extracts from, any document in or on the premises; and

- (e) seize anything at the premises if—
  - (i) the officer is satisfied on reasonable grounds that the thing is connected with a matter that is being investigated under this Act; and
  - (ii) seizure of the thing is consistent with the purpose of the warrant; and
- (f) require any person in or on the premises to give the officer reasonable assistance to enable the officer to exercise powers under this section; and
- (g) ask questions of any person in or on the premises where the officer considers it reasonable to enable the officer to exercise powers under this section.

### **83 Power to seize evidence**

- (1) An authorised officer who enters premises with a warrant under this division may seize the evidence for which the warrant was issued.
- (2) An authorised officer may seize any document or thing at the premises if the authorised officer is satisfied on reasonable grounds that—
  - (a) the document or thing is evidence that would be admissible in the prosecution of a person for an indictable offence against a law of the Territory, the Commonwealth, or a State; and
  - (b) the seizure is necessary to prevent the thing being concealed, lost or destroyed.
- (3) Having seized a thing, an authorised officer may—
  - (a) move the thing from the premises where it was seized (the *place of seizure*) to another place; or
  - (b) leave the thing at the place of seizure but restrict access to it.

- (4) A person commits an offence if the person—
- (a) interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (3); and
  - (b) does not have an authorised officer’s approval to interfere with the thing.

Maximum penalty: 50 penalty units.

*Note* Division 5.3 (Dealing with things seized) applies to a thing seized under this section.

## **84 Warrants—application made other than in person**

- (1) An authorised officer may apply for a warrant by phone, email, radio or other form of communication if the authorised officer considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised officer may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately email a copy to the authorised officer if it is practicable to do so.
- (5) If it is not practicable to email a copy to the authorised officer—
  - (a) the magistrate must tell the officer—
    - (i) the terms of the warrant; and
    - (ii) the date and time the warrant was issued; and

- (b) the authorised officer must complete a form of warrant (the *warrant form*) and write on it—
  - (i) the magistrate’s name; and
  - (ii) the date and time the magistrate issued the warrant; and
  - (iii) the warrant’s terms.
- (6) The emailed copy of the warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the authorised officer’s powers under this part.
- (7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised officer completed a warrant form—the completed warrant form.
- (8) On receiving the documents under subsection (7), the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by the authorised officer was not authorised by a warrant under this section if—
  - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

**85 Search warrants—announcement before entry**

- (1) An authorised officer must, before anyone enters premises under a search warrant—
  - (a) announce that the officer is authorised to enter the premises; and

- (b) give anyone at the premises an opportunity to allow entry to the premises; and
  - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—show the person the officer’s identity card.
- (2) The authorised officer is not required to comply with subsection (1) if the officer believes on reasonable grounds that immediate entry to the premises is required to ensure—
- (a) the safety of anyone (including the officer or any person assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

**86 Details of search warrant to be given to occupier etc**

If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the authorised officer or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person in relation to the warrant.

**87 Occupier entitled to be present during search etc**

- (1) If the occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
  - (a) to do so would impede the search; or



- (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

## Division 5.3 Dealing with things seized

### 88 Receipts for things seized

- (1) As soon as practicable after an authorised officer seizes a thing under section 83 (Power to seize evidence), the authorised officer must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a reasonably secure way and in a conspicuous position.

### 89 Access to things seized

A person who would, apart from the seizure, be entitled to a thing seized under section 83 (Power to seize evidence) may—

- (a) inspect the thing; and
- (b) if the thing is a document—take extracts from, or make copies of, the document.

### 90 Return of things seized

- (1) A thing seized under section 83 (Power to seize evidence) must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
  - (a) on conclusion of its investigation, the commission does not recommend that a prosecution for an offence relating to the thing be instituted; or
  - (b) the court does not find the offence proved in a prosecution for an offence relating to the thing.
- (2) A thing seized under this division is forfeited to the Territory if a court—
  - (a) finds an offence relating to the thing to be proved; and
  - (b) orders the forfeiture.

- (3) If subsection (2) (a) applies, but a court does not order forfeiture of the thing seized, the Territory must return the thing to its owner or pay reasonable compensation to the owner in relation to the loss of the thing.

**91 Disposal of things seized**

- (1) An inspector may dispose of a thing seized under section 83 (Power to seize evidence) if the commission has—
- (a) taken reasonable steps under section 90 to return the thing to the person from whom it was seized; and
  - (b) been unable to locate the person, despite making reasonable efforts, or the person has refused to take possession of the thing.
- (2) The commission may dispose of the thing in any way that the commission considers appropriate.

## **Part 6**                      **Anti-corruption and Integrity Commission**

### **Division 6.1**              **Establishment and functions of commission**

#### **92**                      **Establishment of Anti-corruption and Integrity Commission**

**Recommendations 1 and 9**

- (1) The Anti-corruption and Integrity Commission is established.
- (2) The commission consists of the commissioner.

#### **93**                      **Functions of commission**

**Recommendations 5, 6, 7, 18, 29**

- (1) The functions of the commission are—
  - (a) investigating—
    - (i) corruption issues; and
    - (ii) matters referred to the commission by the Legislative Assembly; and
    - (iii) matters involving serious or systemic corruption; and
  - (b) referring suspected instances of criminality or wrongdoing to the appropriate authority for further investigation and action; and
  - (c) preventing corruption, including by—
    - (i) providing education about corrupt practices; and
    - (ii) researching corrupt practices; and
    - (iii) mitigating the risks of corruption; and
  - (d) publishing information about investigations conducted by the commission, including lessons learned; and

- (e) fostering public confidence in, and giving leadership to, the parliament and public sector.
- (2) Without limiting the ways the commission may perform its functions in relation to preventing corrupt conduct, the commission may—
- (a) take such steps as the commission considers necessary to uphold, promote and ensure adherence to standards of conduct, propriety and ethics in public authorities; and
  - (b) review and make recommendations about practices, procedures and standards in relation to conduct, propriety and ethics in public authorities and to evaluate their application within those authorities; and
  - (c) provide advice to public officers and the public about standards of conduct, propriety and ethics in public authorities; and
  - (d) provide advice to the Legislative Assembly about the parliamentary integrity framework; and
  - (e) consult with, and provide assistance to, public authorities in relation to the development and implementation of codes of conduct relevant to those authorities; and
  - (f) evaluate the adequacy of systems and procedures in public authorities for ensuring compliance with relevant codes of conduct; and
  - (g) develop and coordinate education and training programs for public authorities in relation to ethical conduct; and
  - (h) enter into contracts, agreements and partnerships with other entities to support its educative, preventative and advisory functions; and
  - (i) undertake research into matters related to ethical conduct and investigatory processes; and

- (j) prepare information and material and provide educative resources to increase awareness of ethical conduct in the community.

## **94 Officer of the Legislative Assembly—commissioner**

**Recommendations 58, 59, 60 (d), 64**

- (1) The commissioner is an officer of the Legislative Assembly.
- (2) The functions, powers, rights, immunities and obligations of the commissioner are as stated in this Act and any other law in force in the ACT.

*Note* A law in force in the ACT includes a territory law and a Commonwealth law.

- (3) There are no implied functions, powers, rights, immunities or obligations arising from the commissioner being an officer of the Legislative Assembly.
- (4) The powers of the Legislative Assembly to act in relation to the commissioner are as stated in this Act and any other law in force in the ACT.

- (5) In subsection (4):

***Legislative Assembly*** includes—

- (a) the members of the Legislative Assembly; and
- (b) the committees of the Legislative Assembly.
- (6) There are no implied powers of the Legislative Assembly arising from the commissioner being an officer of the Legislative Assembly.

## **95 Independence**

**Recommendation 60 (b)**

Subject to this Act and any other territory law the commission has complete discretion in the exercise of the commission's functions.

## **Division 6.2                      Appointment of commissioner**

### **96                      Appointment of commissioner**

#### **Recommendations 60 and 62**

- (1) The Speaker must, on behalf of the Territory, appoint a person as the Anti-corruption and Integrity Commissioner (the *commissioner*).
- (2) The appointment must be made—
  - (a) in consultation with—
    - (i) the Chief Minister; and
    - (ii) the Leader of the Opposition; and
    - (iii) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and
    - (iv) the presiding member of the relevant Assembly committee; and
  - (b) in accordance with an open and accountable selection process.
- (3) The Speaker must not appoint a person as commissioner unless—
  - (a) the Speaker is satisfied that the person has extensive knowledge of, and experience in, integrity and accountability in public administration; and
  - (b) the appointment is agreed by a resolution passed by at least a  $\frac{2}{3}$  majority of the members of the Legislative Assembly.
- (4) The commissioner is appointed on the terms (if any) in relation to matters not provided for by this part or a determination under the *Remuneration Tribunal Act 1995* that are prescribed by the management standards under the *Public Sector Management Act 1994*.

## **97 Acting commissioner**

### **Recommendation 62**

- (1) Before the Speaker appoints a person to act as commissioner, the Speaker must consult with the presiding member of the relevant Assembly committee about the proposed appointment.
- (2) However, for a period of leave of absence approved by the Speaker under section 109 (Leave of absence—commissioner), the commissioner may appoint a person to act as commissioner after consulting with the Speaker.
- (3) The following provisions do not apply in relation to a person appointed to act as commissioner:
  - (a) section 96 (2) (b);
  - (b) section 96 (3) (b);
  - (c) section 98 (2) (b).

*Note* An appointee acting in a position has all the functions (including authorities, duties and powers) of the occupant of the position (in this case the commissioner)—see the [Legislation Act](#), s 220.

## **98 Eligibility for appointment as commissioner**

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

- (1) The Speaker may appoint a person as the commissioner only if the person has been—
  - (a) a judge of the Supreme Court; or
  - (b) a judge of the Supreme Court of a State; or
  - (c) a judge of the Federal Court; or
  - (d) a justice of the High Court; or
  - (e) a lawyer for at least 10 years.

*Note* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).



- (2) The Speaker must not appoint a person as the commissioner if the person is or has been—
- (a) a member of—
    - (i) the Legislative Assembly; or
    - (ii) the Parliament of the Commonwealth; or
    - (iii) the legislature of a State; or
  - (b) a public employee in the 10 years immediately before the day of the proposed appointment; or
  - (c) a member of—
    - (i) a registered party; or
    - (ii) a political party registered under a law of the Commonwealth or a State; or
    - (iii) a political party.
- (3) In this section:
- public employee* includes a person appointed or employed under the [Public Service Act 1999](#) (Cwlth).

## **99 Term of appointment of commissioner**

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

- (1) The commissioner must be appointed for not longer than 7 years.
- (2) A person who has been appointed as commissioner is not eligible for reappointment.

## Division 6.3 Other provisions applying to commissioner

### 100 Oath or affirmation of office—commissioner

**Recommendation 59 (b)**

Before a person is appointed as commissioner, the person must take an oath of office, or make an affirmation of office, before the Speaker.

*Note* For the form of the oath and affirmation of office, see the *Oaths and Affirmations Act 1984*, s 6 and sch 1.

### 101 Declaration of interests—commissioner

**Recommendation 59 (b)**

- (1) The commissioner must give a written statement of the commissioner's financial and personal interests (a *declaration of interests*) to the Speaker within 7 days after—
  - (a) the day the commissioner is appointed; and
  - (b) the first day of each financial year; and
  - (c) the day there is a change in the interest.
- (2) The Speaker must make the declaration of interests available on the Legislative Assembly's website either—
  - (a) in full; or
  - (b) if the Speaker believes on reasonable grounds that information in the declaration would be inappropriate to disclose—without disclosing the information.

## **102 Commissioner must avoid conflict of interest**

### **Recommendation 59 (b) and 61**

- (1) The commissioner must not—
  - (a) have paid employment other than exercising the commissioner's functions; or
  - (b) engage in any unpaid activity that is inconsistent with the commissioner's functions.
- (2) If the commissioner has a financial or other personal interest that conflicts or may conflict, or may be perceived to conflict with the commissioner's functions (a *conflict of interest*), the commissioner must disclose, in writing, to the Speaker the nature of the interest and the conflict or potential conflict.

*Note* If a provision of a law requires something to be done but does not provide a time for doing the thing, the thing must or may be done as soon as possible and as often as needed (see [Legislation Act](#), s 151B).
- (3) The commissioner must not take any part in considering a matter in relation to which the conflict of interest has arisen except—
  - (a) with the written approval of the Speaker; and
  - (b) in accordance with any conditions included in the Speaker's approval.
- (4) This section does not apply in relation to a conflict of interest or potential conflict of interest while the commissioner remains unaware of the conflict or potential conflict, but in any proceeding against the commissioner, the commissioner has the burden of proving that the commissioner was not, at the material time, aware of the conflict or potential conflict.

**103 Resignation—commissioner**

**Recommendation 59 (b)**

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

**104 Retirement—commissioner**

**Recommendation 59 (b)**

- (1) The Speaker may retire the commissioner on the ground of physical or mental incapacity if—
  - (a) the incapacity substantially affects the exercise of the commissioner’s functions; and
  - (b) the commissioner consents to the retirement.
- (2) If the Speaker is considering retiring the commissioner under this section, the Speaker may ask 1 or more of the following for advice about the proposed retirement:
  - (a) the Chief Minister;
  - (b) the Leader of the Opposition;
  - (c) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party;
  - (d) the presiding member of the relevant Assembly committee.
- (3) However, the commissioner must not be retired on the ground of invalidity unless—
  - (a) if the commissioner is an eligible employee for the *Superannuation Act 1976* (Cwlth)—
    - (i) the commissioner is under the commissioner’s maximum retiring age within the meaning of that Act; and

- (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under that Act, section 54C for the commissioner; or
  - (b) if the commissioner is a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—
    - (i) the commissioner is under 60 years old; and
    - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under that Act, section 13 for the commissioner; or
  - (c) if the commissioner is an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—
    - (i) the commissioner is under 60 years old; and
    - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under that Act, section 43 for the commissioner.
- (4) In this section:
- invalidity*** means—
- (a) for an eligible employee for the *Superannuation Act 1976* (Cwlth)—invalidity under that Act; or
  - (b) for a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—invalidity under that Act; or
  - (c) for an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—invalidity under that Act.

***physical or mental incapacity*** includes invalidity.

## **105 Suspension—commissioner**

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

- (1) The Speaker may suspend the commissioner on the grounds of—
- (a) misbehaviour; or
  - (b) failure to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the commissioner’s functions; or
  - (c) physical or mental incapacity, if the incapacity substantially affects the exercise of the commissioner’s functions.

*Note* Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see [Legislation Act](#), s 180).

- (2) If the Speaker is considering suspending the commissioner, the Speaker may ask 1 or more of the following for advice about the proposed suspension:
- (a) the Chief Minister;
  - (b) the Leader of the Opposition;
  - (c) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party;
  - (d) the presiding member of the relevant Assembly committee;
  - (e) the public sector standards commissioner;
  - (f) anyone else the Speaker considers appropriate.

- (3) If the Speaker suspends the commissioner, the Speaker must give the commissioner written notice of the suspension and a copy of a statement of the reasons for the suspension.

*Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (4) The suspension takes effect when the notice and statement are given to the commissioner under subsection (3).
- (5) The commissioner may be suspended only under this section.
- (6) The commissioner is entitled to be paid salary and allowances while suspended.

## **106 Relevant Assembly committee to consider suspension of commissioner**

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

- (1) If the Speaker suspends the commissioner, the Speaker must give written notice of the suspension and a copy of the statement of the reasons for the suspension to each member of the relevant Assembly committee not later than the next business day, or if the committee has not been established, the next business day after the day the committee is established.
- (2) The relevant Assembly committee must meet in relation to the commissioner's suspension—
- (a) not later than 3 business days after the day the committee is given written notice of the suspension (the *notice day*); and
  - (b) at subsequent intervals of not longer than 30 days while the commissioner is suspended (a *regular meeting*).
- (3) The relevant Assembly committee must give the commissioner written notice that a regular meeting will be held at least 3 business days before the day the meeting is to be held.

- (4) The commissioner may make an oral or written submission (or both) to the committee about the commissioner's suspension.
- (5) The relevant Assembly committee may also invite the following to make a submission in relation to the suspension of the commissioner:
  - (a) the Chief Minister;
  - (b) the Leader of the Opposition;
  - (c) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party.
- (6) At each regular meeting, the relevant Assembly committee must review the commissioner's suspension and may at any time pass a resolution about the suspension, including a resolution—
  - (a) recommending to the Speaker that the Speaker end the suspension; or
  - (b) to make a statement to the Legislative Assembly recommending that the Speaker end the commissioner's appointment.

## **107 Ending suspension of commissioner**

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

- (1) If the Speaker does not comply with section 106 (1), the suspension ends at the end of the notice day.
- (2) If the relevant Assembly committee fails to hold a meeting as required under section 106 (2), the suspension ends on the day after the last day when the meeting could have been held.



- (3) If the relevant Assembly committee makes a recommendation mentioned in section 106 (6) (a) and the Speaker does not end the suspension within 1 business day after the day the recommendation is made—
- (a) the committee may at any time resolve to make a statement to the Legislative Assembly recommending that the suspension be ended; and
  - (b) if the committee makes a statement mentioned in paragraph (a) and—
    - (i) the Legislative Assembly resolves to end the suspension by resolution passed by at least a  $\frac{2}{3}$  majority of the members of the Legislative Assembly—the suspension ends on the passing of the resolution; or
    - (ii) the Legislative Assembly does not deal with the statement within 3 sitting days—the suspension ends at the end of the 3rd sitting day.
- (4) If the relevant Assembly committee makes a statement mentioned in section 106 (6) (b)—
- (a) the Legislative Assembly may resolve to require the Speaker to end the commissioner’s appointment; but
  - (b) if the Legislative Assembly does not, within 3 sitting days, pass a resolution mentioned in paragraph (a)—the suspension ends at the end of the 3rd sitting day.
- (5) If the Speaker ends the commissioner’s suspension, the Speaker must give written notice of the ending of the suspension and a copy of a statement of the reasons for ending the suspension to the commissioner and the relevant Assembly committee.

*Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (6) In this section:  
*notice day*—see section 106 (2) (a).

## **108 Ending appointment of commissioner**

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

- (1) The Speaker must end the commissioner's appointment if—
- (a) the Legislative Assembly—
    - (i) passes a resolution under section 107 (4) (a); or
    - (ii) otherwise resolves to require the Speaker to end the commissioner's appointment—
      - (A) for misbehaviour; or
      - (B) for physical or mental incapacity, if the incapacity substantially affects the exercise of the commissioner's functions; or
  - (b) the commissioner becomes bankrupt or personally insolvent; or
  - (c) the commissioner is found guilty of an offence involving corrupt conduct.
- (2) For a resolution mentioned in subsection (1) (a) (ii)—
- (a) at least 7 days before the day the motion to which the resolution relates is first debated in the Legislative Assembly—
    - (i) the Assembly must be given the notice of the motion and a statement of reasons for the motion; and
    - (ii) the Speaker must—
      - (A) give the commissioner a copy of the notice and the statement of reasons; and

- (B) tell the commissioner that a written submission about the motion may be made to the Speaker not later than 3 days after the day the commissioner is given the notice; and
- (b) the Speaker must give any written submission to the Legislative Assembly before the day the motion is first debated in the Legislative Assembly.
- Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.
- (3) The Speaker may end the commissioner's appointment if the commissioner is absent from duty, except on leave granted by the Speaker, for 14 consecutive days or for 28 days in any 12 months.
- (4) The commissioner's appointment may be ended by the Speaker only under this section or section 104 (Retirement—commissioner).

## **109 Leave of absence—commissioner**

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

- (1) The Speaker may approve leave of absence for the commissioner on the conditions about remuneration and otherwise that the Speaker decides.
- (2) Before making a decision under subsection (1), the Speaker must consult—
- (a) the Chief Minister; and
  - (b) the Leader of the Opposition; and
  - (c) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party.

## Division 6.4 Officers of commission

### 110 Employing staff of commission

**Recommendation 71 and 74 (a)**

- (1) The commissioner may, on behalf of the Territory, employ the staff the commissioner considers necessary to enable the commission to exercise its functions.
- (2) The commission's staff must be employed under the *Public Sector Management Act 1994*.
- (3) The commissioner must not employ a person under this section if the person is, or has been in the 10 years immediately before the day of the proposed appointment, a member of the Australian Federal Police.

### 111 Commission—consultants and contractors

**Recommendations 70 and 71**

- (1) The commissioner may, on behalf of the Territory, engage the consultants and contractors the commissioner considers necessary to enable the commission to exercise its functions.

**Example**

The commissioner may purchase a specialised investigative service from the New South Wales Independent Commission Against Corruption.

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

- (2) However, the commissioner must not enter into a contract of employment under this section.

## **112 Eligibility for appointment as officer of commission**

**Recommendations 73 and 74 (b) and (c)**

- (1) The commissioner must not employ or engage a person as an officer of the commission if the person—
  - (a) is or has been a member of—
    - (i) a registered party; or
    - (ii) a political party registered under a law of the Commonwealth or a State; or
    - (iii) a political party; or
  - (b) does not have an appropriate security clearance.

*Note* **State** includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

- (2) Also, the commissioner must not employ or engage a person as a senior officer of the commission—
  - (a) if the person is or has, in the 10 years immediately before the day of the proposed appointment, been a public servant; and
  - (b) other than on a fixed term contract of not more than 7 years duration.
- (3) In this section:

**senior officer** means an officer of the commission who has an employment classification of senior officer grade C or above, or an equivalent classification.

## 113 Conflict of interest—officers of the commission

### Recommendation 74 (a)

- (1) An officer of the commission must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the person's functions under this Act.
- (2) If an officer has a financial or other personal interest that conflicts or may conflict, or may be perceived to conflict with the officer's functions (a *conflict of interest*), the officer must disclose, in writing, to the commissioner the nature of the interest and the conflict or potential conflict.

*Note* If a provision of a law requires something to be done but does not provide a time for doing the thing, the thing must or may be done as soon as possible and as often as needed (see [Legislation Act](#), s 151B).

- (3) An officer who has a conflict of interest must not take part, or take any further part, in the commission's consideration of the matter in relation to which the conflict has arisen except—
  - (a) with the written approval of the commissioner; and
  - (b) in accordance with any conditions included in the commissioner's approval.
- (4) This section does not apply in relation to a conflict of interest or potential conflict of interest while the officer remains unaware of the conflict or potential conflict, but in any proceeding against the officer, the officer has the burden of proving that the officer was not, at the material time, aware of the conflict or potential conflict.
- (5) The duties under this section in relation to a conflict of interest are in addition to duties in relation to them under any other law in force in the ACT.

*Note* The commission's staff are subject to the public sector standards including requirements in relation to avoiding or managing a conflict of interest (see [Public Sector Management Act 1994](#), div 2.1 and div 8.2).

**114 Officer of commission not subject to direction from others**

**Recommendation 72**

An officer of the commission is not subject to direction from anyone other than the following people in relation to the exercise of the commission's functions:

- (a) the commissioner;
- (b) another officer of the commission authorised by the commissioner to give directions.

**115 Delegation by commission**

The commission may delegate the commission's functions under this Act or another territory law to an officer of the commission.

*Note* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

**116 Identity cards**

- (1) The commissioner must give an identity card to an officer of the commission who is an investigator stating the person's name and that the person is an investigator.
- (2) The identity card must show—
  - (a) a recent photograph of the investigator; and
  - (b) the card's date of issue and expiry; and
  - (c) anything else prescribed by regulation.
- (3) A person commits an offence if the person—
  - (a) stops being an investigator; and

- (b) does not return the person's identity card to the commissioner as soon as practicable (but not later than 7 days) after the day the person stops being an investigator.

Maximum penalty: 1 penalty unit.

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

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (5) (see [Criminal Code](#), s 58).



## **Part 7**                      **Oversight of commission**

**Recommendations 65, 66, 67**

### **Division 7.1**                      **Legislative Assembly**

#### **117**                      **Oversight of commission by committee**

**Recommendations 59 (a) and 65**

- (1) The relevant Assembly committee may monitor, and report to the Legislative Assembly on, the performance and functions of the commission.
- (2) The relevant Assembly committee may also report to the Legislative Assembly as it considers necessary in relation to the committee's review of a report provided by the commission under division 4.6 (Reports).

*Note*      The relevant Assembly committee must also be consulted in preparing annual appropriations for the commission—see the *Financial Management Act 1996*, s 20AB and s 20AC.

#### **118**                      **Annual reports of commission**

**Recommendation 68**

- (1) The commissioner's annual report under the *Annual Reports (Government Agencies) Act 2004* must include the following for the reporting year:
  - (a) a description of the matters that were referred to the commission;
  - (b) a description of the matters investigated by the commission;
  - (c) the following details in relation to matters investigated by the commission:
    - (i) the time interval between the lodging of each complaint and the commission deciding to investigate the complaint;

- (ii) the number of complaints for which an investigation was commenced by the commission but not finalised;
- (iii) the average time taken to deal with complaints and the actual time taken to investigate any matter in relation to which a report is made;
- (iv) the number of examinations conducted;
- (v) the number of days spent conducting examinations;
- (vi) the time interval between the completion of each examination and reporting on the matter;
- (d) the number of complaints dismissed by the commission and the reasons for the dismissal;
- (e) the number of matters referred by the commission under division 4.7 and the relevant authorities to which the matters were referred;
- (f) recommendations for changes to a law of the Territory, or for administrative action, that the commission considers should be made as a result of the exercise of its functions;
- (g) the general nature and extent of any information furnished under this Act by the commission to a law enforcement agency;
- (h) the number of search warrants issued under this Act.

*Note* The commissioner, as an officer of the Assembly, is required to prepare an officer of the Assembly annual report under the *Annual Reports (Government Agencies) Act 2004*, section 7A.

- (2) In this section:

**reporting year**—see the *Annual Reports (Government Agencies) Act 2004*, dictionary.

## **Division 7.2            Appointment of Inspector**

### **Subdivision 7.2.1    Appointment and functions of inspector**

#### **119            Appointment of Inspector**

*Recommendations 66, 67*

- (1) The Speaker must, on behalf of the Territory, appoint a person as Inspector of the Anti-corruption and Integrity Commission (the *inspector*) on a part-time basis.
- (2) The appointment must be made—
  - (a) in consultation with—
    - (i) the Chief Minister; and
    - (ii) the Leader of the Opposition; and
    - (iii) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and
    - (iv) the presiding member of the relevant Assembly committee; and
  - (b) in accordance with an open and accountable selection process.
- (3) The Speaker must not appoint a person as inspector unless—
  - (a) the Speaker is satisfied that the person has extensive knowledge of, and experience in, integrity and accountability in public administration; and
  - (b) the appointment is agreed by a resolution passed by at least a  $\frac{2}{3}$  majority of the members of the Legislative Assembly.

- (4) The inspector is appointed on the terms (if any) in relation to matters not provided for by this part or a determination under the *Remuneration Tribunal Act 1995* that are prescribed by the management standards under the *Public Sector Management Act 1994*.

## **120 Functions of inspector**

**Recommendations 65 (b) and (c), 66**

The functions of the inspector are—

- (a) examining and reviewing the commission's performance and reporting on it to the Speaker; and
- (b) receiving and dealing with complaints about the commission or officers of the commission; and
- (c) making recommendations to the commission or a public authority about practices or procedures in relation to the exercise of functions under this Act; and
- (d) exercising other functions given to the inspector under this Act or another territory law.

## **121 Independence of inspector**

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

## **122 Acting inspector**

**Recommendation 67**

- (1) Before the Speaker appoints a person to act as inspector, the Speaker must consult with the presiding member of the relevant Assembly committee about the proposed appointment.
- (2) However, for a period of leave of absence approved by the Speaker under section 141 (Leave of absence—inspector), the inspector may appoint a person to act as inspector after consulting with the Speaker.

(3) The following provisions do not apply in relation to a person appointed to act as inspector:

- (a) section 119 (2) (b);
- (b) section 119 (3) (b);
- (c) section 123 (2) (b).

*Note* An appointee acting in a position has all the functions (including authorities, duties and powers) of the occupant of the position (in this case the inspector)—see the [Legislation Act](#), s 220.

## **123 Eligibility for appointment as inspector**

### **Recommendation 67**

(1) The Speaker may appoint a person as the inspector only if the person has been—

- (a) a judge of the Supreme Court; or
- (b) a judge of the Supreme Court of a State; or
- (c) a judge of the Federal Court; or
- (d) a justice of the High Court; or
- (e) a lawyer for at least 10 years.

*Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

(2) The Speaker must not appoint a person as the inspector if the person—

- (a) is or has been a member of—
  - (i) the Legislative Assembly; or
  - (ii) the Parliament of the Commonwealth; or
  - (iii) the legislature of a State; or
- (b) is or has, in the 10 years immediately before the day of the proposed appointment, been a public employee; or

- (c) is or has been a member of—
  - (i) a registered party; or
  - (ii) a political party registered under a law of the Commonwealth or a State; or
  - (iii) a political party.
- (3) In this section:  
*public employee* includes a person appointed or employed under the *Public Service Act 1999* (Cwlth).

## **124 Term of appointment of inspector**

### **Recommendation 67**

- (1) The inspector must be appointed for not longer than 7 years.
- (2) A person who has been appointed inspector is not eligible for reappointment.

## **125 Review of commission's performance**

### **Recommendations 65 (c) and 66 (b)**

- (1) The inspector must examine and review the performance of the commission for the financial year.
- (2) In exercising the function under subsection (1), the inspector must consider—
  - (a) whether the commission and officers of the commission have acted within power and in compliance with this Act and other territory laws; and
  - (b) whether the commission has implemented any previous recommendations made by the inspector; and
  - (c) any other matters the inspector considers relevant.

**126**      **Comments on proposed report**

- (1) This section applies if the inspector is preparing a report under section 127.
- (2) The inspector must give the commission—
  - (a) a copy of the proposed report; and
  - (b) a written notice stating that the commission may give written comments about the proposed report to the inspector before the end of—
    - (i) 14 days after the day the notice is given to the commission; or
    - (ii) a longer period stated in the notice.
- (3) If the inspector receives comments under this section, the inspector must consider the comments in preparing the final report.

- (4) In this section:

*proposed report* means a draft version of a report.

**127**      **Report on review**

- (1) The inspector must prepare a report about a review under section 125 as soon as practicable but not later than 3 months after the end of the financial year to which the review relates.
- (2) The report must include the substance of any comments received by the inspector under section 126 (3).
- (3) If the Legislative Assembly is sitting when the inspector has finished the report—
  - (a) the inspector must give the report to the Speaker; and
  - (b) the Speaker must present the report to the Legislative Assembly on the next sitting day.

- (4) If the Legislative Assembly is not sitting when the inspector has finished the report—
- (a) the inspector must give the report, and a copy for each member of the Legislative Assembly, to the Speaker; and
  - (b) the report is taken for all purposes to have been presented to the Legislative Assembly on the day the inspector gives it to the Speaker (the *report day*); and
  - (c) publication of the report is taken to have been ordered by the Legislative Assembly on the report day; and
  - (d) the Speaker must arrange for a copy of the report to be given to each member of the Legislative Assembly on the report day; and
  - (e) the Speaker may give directions for the printing and circulation, and in relation to the publication, of the report; and
  - (f) despite paragraph (b), the Speaker must present the report to the Legislative Assembly on the next sitting day.

## **128 Complaints about commission**

- (1) A person may make a complaint about the commission or an officer of the commission to—
- (a) the commission; or
  - (b) the inspector.
- (2) If the commission receives a complaint, the commission must notify the inspector within 14 days.
- (3) The inspector may deal with a complaint in any manner the inspector considers appropriate.



**129 Access to commission premises and information**

- (1) For a review or in dealing with a complaint, the inspector has full and free access to commission premises and anything in the possession or control of the commission.
- (2) The commission and officers of the commission must give the inspector all reasonable assistance the inspector requires for a review or dealing with a complaint.

**130 Further powers of inspector**

- (1) On completion of, or at any time during, a review or dealing with a complaint, the inspector may—
  - (a) refer a matter to a law enforcement agency for investigation or prosecution; or
  - (b) refer a matter to the commission or a public authority for investigation and disciplinary action against a public official for which the commission or public authority is responsible; or
  - (c) make recommendations to the commission or a public authority about practices or procedures in relation to the performance of functions under this Act.
- (2) The inspector may recommend to the Speaker that an acting commissioner be appointed under section 97 to investigate the conduct of the commissioner or an officer of the commission if—
  - (a) a complaint raises allegations of corrupt conduct of the commissioner or an officer of the commission; or
  - (b) the inspector becomes aware (in a review or in dealing with a complaint or otherwise) of information that, if true, would tend to show corrupt conduct of the commissioner or an officer of the commission.

- (3) If the inspector is of the opinion that a matter needs to be brought to the attention of the Speaker sooner than the next report under section 127 is due, the inspector may make a report to the Speaker.
- (4) The inspector may request the Speaker table the report in the Legislative Assembly.
- (5) If the inspector requests a report be tabled in the Legislative Assembly, the Speaker must table the report in the Legislative Assembly within 6 sitting days after the Speaker receives the report.

### **131 Confidentiality of information**

- (1) In a report about a review, a report made under section 130 or in dealing with a complaint, the inspector may disclose information obtained in the exercise of the inspector's functions only to the extent the inspector considers the disclosure necessary for the effective exercise of the inspector's functions.
- (2) In determining whether to disclose information, the inspector must consider the effect of disclosure on—
  - (a) any preliminary inquiries, investigations or referrals under this Act; and
  - (b) potential criminal proceedings; and
  - (c) the safety and wellbeing of any individual; and
  - (d) the effect of disclosure on an individual's reputation.

### **Subdivision 7.2.2 Other provisions applying to inspector**

#### **132 Oath or affirmation of office—inspector**

**Recommendation 67**

Before a person is appointed as inspector, the person must take an oath of office, or make an affirmation of office, before the Speaker.

*Note* For the form of the oath and affirmation of office, see the *Oaths and Affirmations Act 1984*, s 6 and sch 1.

### **133 Declaration of interests—inspector**

#### **Recommendation 67**

- (1) The inspector must give a written statement of the inspector's personal and financial interests (a *declaration of interests*) to the Speaker within 7 days after—
  - (a) the day the inspector is appointed; and
  - (b) the first day of each financial year; and
  - (c) the day there is a change in the interest.
- (2) The Speaker must make the declaration of interests available on the Legislative Assembly's website either—
  - (a) in full; or
  - (b) if the Speaker believes on reasonable grounds that information in the declaration would be inappropriate to disclose—without disclosing the information.

### **134 Inspector must avoid conflict of interest**

#### **Recommendation 67**

- (1) The inspector must not—
  - (a) have paid employment that is inconsistent with the inspector's functions; or
  - (b) engage in any unpaid activity that is inconsistent with the inspector's functions.
- (2) The inspector must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the inspector's functions.

- (3) If the inspector has a financial or other personal interest that conflicts or may conflict, or may be perceived to conflict with the inspector's functions (a *conflict of interest*), the inspector must disclose, in writing, to the Speaker the nature of the interest and the conflict or potential conflict.

*Note* If a provision of a law requires something to be done but does not provide a time for doing the thing, the thing must or may be done as soon as possible and as often as needed (see [Legislation Act](#), s 151B).

- (4) The inspector must not take any part in considering a matter in relation to which the conflict of interest has arisen except—
- (a) with the written approval of the Speaker; and
  - (b) in accordance with any conditions included in the Speaker's approval.
- (5) This section does not apply in relation to a conflict of interest or potential conflict of interest while the inspector remains unaware of the conflict or potential conflict, but in any proceeding against the inspector, the inspector has the burden of proving that the inspector was not, at the material time, aware of the conflict or potential conflict.

### **135 Resignation—inspector**

#### **Recommendation 67**

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

### **136 Retirement—inspector**

#### **Recommendation 67**

- (1) The Speaker may retire the inspector on the ground of physical or mental incapacity if—
- (a) the incapacity substantially affects the exercise of the inspector's functions; and

- (b) the inspector consents to the retirement.
- (2) If the Speaker is considering retiring the inspector under this section, the Speaker may ask 1 or more of the following for advice about the proposed retirement:
- (a) the Chief Minister;
  - (b) the Leader of the Opposition;
  - (c) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party;
  - (d) the presiding member of the relevant Assembly committee.
- (3) However, the inspector must not be retired on the ground of invalidity unless—
- (a) if the inspector is an eligible employee for the *Superannuation Act 1976* (Cwlth)—
    - (i) the inspector is under the inspector’s maximum retiring age within the meaning of that Act; and
    - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under that Act, section 54C for the inspector; or
  - (b) if the inspector is a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—
    - (i) the inspector is under 60 years old; and
    - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under that Act, section 13 for the inspector; or

- (c) if the inspector is an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—
  - (i) the inspector is under 60 years old; and
  - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under that Act, section 43 for the inspector.
- (4) In this section:
  - invalidity* means—
    - (a) for an eligible employee for the *Superannuation Act 1976* (Cwlth)—invalidity under that Act; or
    - (b) for a member of the superannuation scheme established under the *Superannuation Act 1990* (Cwlth)—invalidity under that Act; or
    - (c) for an ordinary employer-sponsored member of PSSAP within the meaning of the *Superannuation Act 2005* (Cwlth)—invalidity under that Act.

*physical or mental incapacity* includes invalidity.

## 137 Suspension of inspector—generally

### Recommendation 67

- (1) The Speaker may suspend the inspector on any of the following grounds:
  - (a) misbehaviour;
  - (b) failure to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the inspector's functions;

- (c) physical or mental incapacity, if the incapacity substantially affects the exercise of the inspector's functions.

*Note* Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see [Legislation Act](#), s 180).

- (2) If the Speaker is considering suspending the inspector, the Speaker may ask 1 or more of the following for advice about the proposed suspension:

- (a) the Chief Minister;
- (b) the Leader of the Opposition;
- (c) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party;
- (d) the presiding member of the relevant Assembly committee;
- (e) the public sector standards commissioner;
- (f) anyone else the Speaker considers appropriate.

- (3) If the Speaker suspends the inspector, the Speaker must give the inspector written notice of the suspension and a copy of a statement of the reasons for the suspension.

*Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (4) The suspension takes effect when the notice and statement are given to the inspector under subsection (3).
- (5) The inspector may be suspended only under this section.
- (6) The inspector is entitled to be paid salary and allowances while suspended.

**138 Relevant Assembly committee to consider suspension of inspector**

**Recommendation 67**

- (1) If the Speaker suspends the inspector, the Speaker must give written notice of the suspension and a copy of the statement of the reasons for the suspension to each member of the relevant Assembly committee not later than the next business day, or if the committee has not been established, the next business day after the day the committee is established.
- (2) The relevant Assembly committee must meet in relation to the inspector's suspension—
  - (a) not later than 3 business days after the day the committee is given written notice of the suspension (the *notice day*); and
  - (b) at subsequent intervals of not longer than 30 days while the inspector is suspended (a *regular meeting*).
- (3) The relevant Assembly committee must give the inspector written notice that a regular meeting will be held at least 3 business days before the day the meeting is to be held.
- (4) The inspector may make an oral or written submission (or both) to the committee about the inspector's suspension.
- (5) The relevant Assembly committee may also invite the following to make a submission in relation to the suspension of the inspector:
  - (a) the Chief Minister;
  - (b) the Leader of the Opposition;
  - (c) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party.



- (6) At each regular meeting, the relevant Assembly committee must review the inspector's suspension and may at any time pass a resolution about the suspension, including a resolution—
  - (a) recommending to the Speaker that the Speaker end the suspension; or
  - (b) to make a statement to the Legislative Assembly recommending that the Speaker end the inspector's appointment.

### **139 Ending suspension of inspector**

#### **Recommendation 67**

- (1) If the Speaker does not comply with section 138 (1), the suspension ends at the end of the notice day.
- (2) If the relevant Assembly committee fails to hold a meeting as required under section 138 (2), the suspension ends on the day after the last day when the meeting could have been held.
- (3) If the relevant Assembly committee makes a recommendation mentioned in section 138 (6) (a) and the Speaker does not end the suspension within 1 business day after the day the recommendation is made—
  - (a) the committee may at any time resolve to make a statement to the Legislative Assembly recommending that the suspension be ended; and
  - (b) if the committee makes a statement mentioned in paragraph (a) and—
    - (i) the Legislative Assembly resolves to end the suspension by resolution passed by at least a  $\frac{2}{3}$  majority of the members of the Legislative Assembly—the suspension ends on the passing of the resolution; or
    - (ii) the Legislative Assembly does not deal with the statement within 3 sitting days—the suspension ends at the end of the 3rd sitting day.

- (4) If the relevant Assembly committee makes a statement mentioned in section 138 (6) (b)—
- (a) the Legislative Assembly may resolve to require the Speaker to end the inspector’s appointment; but
  - (b) if the Legislative Assembly does not, within 3 sitting days, pass a resolution mentioned in paragraph (a)—the suspension ends at the end of the 3rd sitting day.
- (5) If the Speaker ends the inspector’s suspension, the Speaker must give written notice of the ending of the suspension and a copy of a statement of the reasons for ending the suspension to the inspector and the relevant Assembly committee.

*Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (6) In this section:  
*notice day*—see section 138 (2) (a).

## 140 Ending appointment of inspector

### Recommendation 67

- (1) The Speaker must end the inspector’s appointment if—
- (a) the Legislative Assembly—
    - (i) passes a resolution under section 139 (4) (a); or
    - (ii) otherwise resolves to require the Speaker to end the inspector’s appointment—
      - (A) for misbehaviour; or
      - (B) for physical or mental incapacity, if the incapacity substantially affects the exercise of the inspector’s functions; or
  - (b) the inspector becomes bankrupt or personally insolvent; or

- (c) the inspector is found guilty of conduct that is corrupt conduct.
  - (2) For a resolution mentioned in subsection (1) (a) (ii)—
    - (a) at least 7 days before the day the motion to which the resolution relates is first debated in the Legislative Assembly—
      - (i) the Assembly must be given the notice of the motion and a statement of reasons for the motion; and
      - (ii) the Speaker must—
        - (A) give the inspector a copy of the notice and the statement of reasons; and
        - (B) tell the inspector that a written submission about the motion may be made to the Speaker not later than 3 days after the day the inspector is given the notice; and
    - (b) the Speaker must give any written submission to the Legislative Assembly before the day the motion is first debated in the Legislative Assembly.
- Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.
- (3) The Speaker may end the inspector's appointment if the inspector is absent from duty, except on leave granted by the Speaker, for 14 consecutive days or for 28 days in any 12 months.
  - (4) The inspector's appointment may be ended by the Speaker only under this section or section 136 (Retirement—inspector).

## 141 Leave of absence—inspector

### Recommendation 67

- (1) The Speaker may, after consulting the relevant Assembly committee, approve leave of absence for the inspector on the conditions about remuneration and otherwise that the Speaker decides.
- (2) Before making a decision under subsection (1), the Speaker must consult—
  - (a) the Chief Minister; and
  - (b) the Leader of the Opposition; and
  - (c) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party.

## Division 7.3 Office of the inspector

### 142 Inspector's staff

- (1) The inspector may employ staff on behalf of the Territory.
- (2) The inspector's staff must be employed under the *Public Sector Management Act 1994*.

*Note* The *Public Sector Management Act 1994*, div 8.2 applies to the inspector in relation to the employment of staff (see *Public Sector Management Act 1994*, s 152).

### 143 Inspector—consultants and contractors

- (1) The inspector may, on behalf of the Territory, engage a consultant or contractor to assist in the exercise of any function of the inspector.
- (2) A consultant or contractor may be engaged on terms decided by the inspector.

- (3) However, this section does not give the inspector a power to enter into a contract of employment with a contractor.

#### **144 Other arrangements for staff and facilities**

The inspector may arrange with the head of service to use the services of a public servant or territory facilities.

*Note* The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see [Public Sector Management Act 1994](#), s 18).

#### **145 Conflict of interest—inspector’s staff**

- (1) This section applies to a person (an *inspector’s staff member*) who is—
- (a) employed under section 142; or
  - (b) engaged under section 143.
- (2) An inspector’s staff member must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member’s functions under this Act.
- (3) If an inspector’s staff member has a financial or other personal interest that conflicts or may conflict, or may be perceived to conflict with the member’s functions (a *conflict of interest*), the member must disclose, in writing, to the inspector the nature of the interest and the conflict or potential conflict.

*Note* If a provision of a law requires something to be done but does not provide a time for doing the thing, the thing must or may be done as soon as possible and as often as needed (see [Legislation Act](#), s 151B).

- (4) An inspector’s staff member who has a conflict of interest must not take part, or take any further part, in the consideration of the matter in relation to which the conflict has arisen except—
- (a) with the written approval of the inspector; and

- (b) in accordance with any conditions included in the inspector's approval.
- (5) This section does not apply in relation to a conflict of interest or potential conflict of interest while the inspector's staff member remains unaware of the conflict or potential conflict, but in any proceeding against the member, the member has the burden of proving that the member was not, at the material time, aware of the conflict or potential conflict.
- (6) The duties under this section in relation to a conflict of interest are in addition to duties in relation to them under any other law in force in the ACT.

*Note* Staff employed under section 142 are subject to the public sector standards including requirements in relation to avoiding or managing a conflict of interest (see [Public Sector Management Act 1994](#), div 2.1 and div 8.2).

## **146 Delegation by inspector**

The inspector may delegate the inspector's functions under this Act to—

- (a) a member of staff mentioned in section 142 (Inspector's staff);  
or
- (b) a person engaged by the inspector under section 143.

*Note* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

## Part 8 Information protection requirements

### 147 Secrecy

Recommendations 25, 33 (e) and 74 (d)

- (1) In this section:

*court* includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

*divulge* includes communicate.

*person to whom this section applies* means a person who—

- (a) is or has been—
  - (i) the commissioner; or
  - (ii) an officer of the commission; or
- (b) exercises, or has exercised, a function under this Act.

*produce* includes allow access to.

*protected information* means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

- (2) A person to whom this section applies commits an offence if—

- (a) the person—
  - (i) makes a record of protected information about someone else; and
  - (ii) is reckless about whether the information is protected information about someone else; or

- (b) the person—
  - (i) does something that divulges protected information about someone else; and
  - (ii) is reckless about whether—
    - (A) the information is protected information about someone else; and
    - (B) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the record is made, or the information is divulged—
  - (a) under this Act or another territory law; or
  - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.
- (4) Subsection (2) does not apply to the divulging of protected information about someone with the person's consent.
- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.



**148 Evidence in criminal proceedings**

- (1) The section applies if—
  - (a) a person is prosecuted for an offence; and
  - (b) the court before which the person is prosecuted considers it desirable that particular evidence given to the commission that a person is otherwise prohibited by this Act from disclosing be made available to—
    - (i) the defendant; or
    - (ii) a legal practitioner representing the defendant; or
    - (iii) the prosecutor.
- (2) After giving the commission a reasonable opportunity to appear and make representations concerning the matter, the court may order that the commission make the evidence available to the court.
- (3) The court may then make the evidence available to the defendant, the defendant's legal practitioner or the prosecutor, if the court has examined the evidence and is satisfied that the interests of justice so require.

**149 Information handling guidelines****Recommendation 76**

- (1) The commission must develop guidelines for handling information obtained by the commission in performing its functions under this Act (*information handling guidelines*).
- (2) The commission must consult with the information privacy commission in developing the information handling guidelines.
- (3) The commissioner must ensure that the information handling guidelines are published on the commission's website.

*Note* The commission is exempt from the *Information Privacy Act 2014*—see the *Information Privacy Act 2014*, s 24.



**151 Cooperation with other entities****Recommendation 23 (c), 30 (a) and (b)**

- (1) The commission must ensure that the commission's functions are exercised in a way that does not delay or unnecessarily duplicate the exercise of functions by the following entities:
  - (a) a person exercising a function under—
    - (i) the *Auditor-General Act 1996*; or
    - (ii) the *Ombudsman Act 1989*;
  - (b) the public sector standards commissioner;
  - (c) a police officer investigating a fraud or other criminal matter.
- (2) The commission may enter into an arrangement with an entity mentioned in subsection (1) to assist in—
  - (a) avoiding delay and unnecessary duplication of statutory functions; or
  - (b) efficiently managing the interaction of the statutory functions of the parties to the arrangement.

**Example—arrangement**

an arrangement with the auditor-general to conduct an audit of the role of statutory office-holders, including their governance and administrative arrangements and compliance with legislation

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

**152 Cooperation with commission****Recommendation 30 (a) and (b)**

- (1) This section applies if a public authority deals with a matter that involves corrupt conduct or potential corrupt conduct.
- (2) The public authority must—
  - (a) consult with the commission about the matter; and
  - (b) ensure that the authority's functions are exercised in a way that does not delay or unnecessarily duplicate the exercise of functions by the commission.
- (3) The public authority may enter into an arrangement with the commission to assist in—
  - (a) avoiding delay and unnecessary duplication of statutory functions; or
  - (b) efficiently managing the interaction of the statutory functions of the parties to the arrangement.
- (4) In this section:  
*matter* includes a part of a matter.

**153 Public authority may refer matter to commission****Recommendation 23 (b), (c) and (d), 30 (b)**

- (1) This section applies if a public authority reasonably believes that a matter can be more appropriately dealt with by the commission.
- (2) The public authority may decide not to deal with the matter and to refer the matter, together with any relevant documents or information in the authority's possession or control, to the commission.
- (3) The public authority may enter into an arrangement with the commission about the referral of a matter under this section.

- (4) Nothing in this section requires the commission to deal with the referred matter.
- (5) In this section:  
*matter* includes a part of a matter.

## **154 Information sharing**

**Recommendations 13 (d) and 30 (c)**

- (1) A public authority may disclose to the commission relevant information held by the authority to the extent that it is reasonably necessary for this part.
- (2) The commission may disclose to a public authority relevant information held by the commission to the extent that it is reasonably necessary for this part.
- (3) The commission and a public authority may enter into an information sharing protocol for this section.

## **155 Interjurisdictional arrangements**

**Recommendations 13 (a), (b) and (c), 15 (f), 30 (a), 36 and 37**

- (1) The commissioner or the Minister may enter into an agreement with the relevant head of a Commonwealth or State integrity entity in relation to—
  - (a) the exercise on a joint basis of any of the commission's functions; or
  - (b) the exercise by the commission, on behalf of an integrity entity, of any of the integrity entity's functions; or
  - (c) the exercise by an integrity entity, on behalf of the Territory, of any of the commission's functions.

*Note* *State* includes the Northern Territory (see [Legislation Act](#), dict, pt 1).

(2) An agreement may contain the incidental or supplementary provisions that the commissioner or Minister and the relevant head of the integrity agency consider necessary.

(3) An agreement is a notifiable instrument.

*Note 1* A notifiable instrument must be notified under the [Legislation Act](#).

*Note 2* The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see [Legislation Act](#), s 46).

(4) In this section:

*integrity entity* means—

- (a) the Australian Federal Police; or
- (b) the Integrity Commissioner under the [Law Enforcement Integrity Commissioner Act 2006](#) (Cwlth), section 14; or
- (c) an entity established by a law of another jurisdiction that has functions substantially corresponding with the commission's functions.

*relevant head*, in relation to an integrity entity, means the person with authority to enter into a memorandum under this section on behalf of the integrity entity.

## Part 10                      Miscellaneous

### 156            Protection of officials from liability

- (1) In this section:
- official* means—
- (a) a commissioner; or
  - (b) an officer of the commission; or
  - (c) a person who exercises a function under this Act.
- (2) An official, or anyone engaging in conduct under the direction of an official, is not personally liable for anything done or omitted to be done honestly and without recklessness—
- (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (3) Any civil liability that would, apart from subsection (2), attach to an official attaches instead to the Territory.

### 157            Reputational repair protocol

#### Recommendation 40

- (1) The commission must develop a protocol to deal with reputational damage suffered by a person—
- (a) who the commission has publicly named as having engaged in corrupt conduct in a report tabled in the Legislative Assembly under section 62 (Delivery and tabling of reports); and
  - (b) who has subsequently been cleared of any wrongdoing (whether by a court or otherwise).
- (2) The commission must develop guidelines for use of the protocol under subsection (1).

- (3) The guidelines are a notifiable instrument.

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

### **158 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation may create offences and fix maximum penalties of not more than 30 penalty units for the offences.
- (3) The Executive must consult with the commission and the relevant Assembly committee before making a regulation under this Act.
- (4) Subject to any disallowance or amendment under the [Legislation Act](#), chapter 7, a regulation under this Act commences—
- (a) if there is a motion to disallow the regulation and the motion is negated by the Legislative Assembly—on the day after the day the motion is negated; or
  - (b) on the day after the 6th sitting day after the day it is presented to the Legislative Assembly under that chapter; or
  - (c) if the regulation provides for a later date or time of commencement—on that date or at that time.

### **159 Review of Act**

#### **Recommendation 69**

- (1) The Minister must review the operation of this Act as soon as practicable after the end of every 5th year of its operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 3 months after the day the review is started.



## **Part 11**                      **Consequential amendments**

### **160**      **Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

## Schedule 1 Consequential amendments

(see s 160 )

### Part 1.1 Corrections Management Act 2007

#### [1.1] Section 217A (2), definition of *court*

*after*

ACAT

*insert*

and the Anti-corruption and Integrity Commission

#### [1.2] Dictionary, new definition of *Anti-corruption and Integrity Commission*

*insert*

*Anti-corruption and Integrity Commission*—see the *Anti-corruption and Integrity Commission Act 2018*, section 92.

### Part 1.2 Crimes (Controlled Operations) Act 2008

Recommendation 33 (d)

#### [1.3] Section 9 (4) (b)

*after*

criminal activity

*insert*

or corrupt conduct

**[1.4] Section 10 (2) (a)**

*substitute*

- (a) a relevant offence or corrupt conduct has been, is being or is likely to be committed or engaged in; and

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

*after*

criminal activity

*insert*

or corrupt conduct

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

*substitute*

- (g) the operation will not be conducted in a way that a person is likely to be induced to—
- (i) commit an offence against a law of any jurisdiction or the Commonwealth that the person would not otherwise have committed; or
  - (ii) engage in corrupt conduct that the person would not otherwise have engaged in; and

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

*after*

(including the suspected relevant offences)

*insert*

or corrupt conduct

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

*substitute*

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

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

*after*

criminal activities

*insert*

or corrupt conduct

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

*insert*

- (c) in relation to the Anti-corruption and Integrity Commission—an office of the Anti-corruption and Integrity Commission that is prescribed by regulation.

**[1.11] Dictionary, new definition of *Anti-corruption and Integrity Commission***

*insert*

***Anti-corruption and Integrity Commission***—see the *Anti-corruption and Integrity Commission Act 2018*, section 92.

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

*insert*

- (c) in relation to the Anti-corruption and Integrity Commission—  
the anti-corruption and integrity commissioner.

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

*substitute*

- (a) is conducted, or is intended to be conducted, for the purpose of obtaining evidence—
- (i) that may lead to the prosecution of a person for a relevant offence; or
  - (ii) of corrupt conduct; and

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

*insert*

*corrupt conduct*—see the *Anti-corruption and Integrity Commission Act 2018*, section 7.

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

*insert*

- (c) the Anti-corruption and Integrity Commission.

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

*insert*

- (iii) an officer of the Anti-corruption and Integrity Commission; and

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

*substitute*

*suspect* means a person reasonably suspected of—

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

**Part 1.3 Crimes (Surveillance Devices)  
Act 2010**

Recommendations 32 (c) and 33 (b) and (c)

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

*after*

criminal investigations

*insert*

and investigations by the Anti-corruption and Integrity Commission

**[1.19] New section 11 (1A)**

*insert*

- (1A) A law enforcement officer who is investigating a matter under the *Anti-corruption and Integrity Commission Act 2018* (or another person on the officer's behalf) may apply for the issue of a surveillance device warrant if the law enforcement officer suspects or believes on reasonable grounds that—
  - (a) a person has been, is, or is likely to be involved in corrupt conduct being investigated by the Anti-corruption and Integrity Commission; and

- (b) an investigation into that corrupt conduct is being, will be or is likely to be conducted in the ACT, in the ACT and in 1 or more participating jurisdictions or in 1 or more participating jurisdictions; and
- (c) the use of a surveillance device in the ACT, in the ACT and in 1 or more participating jurisdictions or in 1 or more participating jurisdictions is or will be necessary in the course of that investigation for the purpose of enabling evidence or information to be obtained of corrupt conduct.

**[1.20] Section 13 (2) (a)**

*after*

alleged offence

*insert*

or corrupt conduct

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

*after*

alleged offence

*insert*

or corrupt conduct

**[1.22] Sections 18 (2) and (4)**

*omit*

for the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender

**[1.23] New section 18 (5)**

*insert*

(5) In this section:

*no longer necessary*, in relation to a warrant, means—

- (a) for a warrant issued in relation to an Anti-corruption and Integrity Commission investigation—no longer necessary for the purpose of the investigation into corrupt conduct; and
- (b) for any other warrant—no longer necessary for the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender.

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

*omit*

or Royal Commission

*insert*

, Royal Commission or the Anti-corruption and Integrity Commission

**[1.25] Section 41 (2) (d)**

*substitute*

- (d) if the warrant was issued in relation to a relevant offence—the relevant offence; and
- (da) if the warrant was issued in relation to an investigation into corrupt conduct—the corrupt conduct; and



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

*insert*

- (c) in relation to the Anti-corruption and Integrity Commission—an office of the Anti-corruption and Integrity Commission that is prescribed by regulation.

**[1.27] Dictionary, new definition of *Anti-corruption and Integrity Commission***

*insert*

*Anti-corruption and Integrity Commission*—see the *Anti-corruption and Integrity Commission Act 2018*, section 92.

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

*insert*

- (c) in relation to the Anti-corruption and Integrity Commission—the anti-corruption and integrity commissioner.

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

*insert*

*corrupt conduct*—see the *Anti-corruption and Integrity Commission Act 2018*, section 7.

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

*insert*

- (c) the Anti-corruption and Integrity Commission.

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

*insert*

- (iii) an officer of the Anti-corruption and Integrity Commission; and

**[1.32] Dictionary, definition of *relevant proceeding*, new paragraph (l)**

*insert*

- (l) an examination of the Anti-corruption and Integrity Commission.

## **Part 1.4 Freedom of Information Act 2016**

Recommendation 77

**[1.33] Schedule 1, item 1.1 (b), new example**

*before example 1, insert*

- 1A Anti-corruption and Integrity Commission under the *Anti-corruption and Integrity Commission Act 2018*

**[1.34] Schedule 1, item 1.3, new subsection (1A)**

*insert*

- (1A) Information that is protected information under the *Anti-corruption and Integrity Commission Act 2018*, section 147.

## **Part 1.5 Information Privacy Act 2014**

### **Recommendation 75**

#### **[1.35] Section 24, new paragraph (da)**

*insert*

- (da) the Anti-corruption and Integrity Commission established under the *Anti-corruption and Integrity Commission Act 2018*;

## **Part 1.6 Legislation Act 2001**

#### **[1.36] Dictionary, part 1, new definition of *anti-corruption and integrity commissioner***

*insert*

*anti-corruption and integrity commissioner* means the Anti-corruption and Integrity Commissioner under the *Anti-corruption and Integrity Commission Act 2018*.

#### **[1.37] Dictionary, part 1, definition of *officer of the Assembly*, new paragraph (aa)**

*before paragraph (a), insert*

- (aa) the anti-corruption and integrity commissioner; or

## Part 1.7                      Public Interest Disclosure Act 2012

### Recommendation 78

#### [1.38]    New sections 48 and 49

*insert*

#### **48            Review of Act by 1 July 2020**

- (1) The Minister must commission an independent review of the operation of this Act during the 18 month period after this section commences.
- (2) The Minister must present the final report of the review to the Legislative Assembly within 3 months after the end of that 18 month period.
- (3) The review must include consideration of—
  - (a) the relationship between this Act and the *Anti-corruption and Integrity Commission Act 2018*; and
  - (b) the suitability of the disclosure arrangements under this Act; and
  - (c) any other relevant matter.
- (4) This section expires on 1 January 2021.

#### **49            Review of Act**

- (1) The Minister must review the operation of this Act as soon as practicable after the end of every 5th year of its operation commencing on 1 July 2020.
- (2) The Minister must present a report of the review to the Legislative Assembly within 3 months after the day the review is started.

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## Dictionary

(see s 3)

**Recommendations 19 (serious corruption, systemic corruption), 59 (relevant Assembly committee)**

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- administrative unit
- bankrupt or personally insolvent
- body
- clerk
- Commonwealth
- Coroner's Court
- entity
- Executive
- Federal Court
- High Court
- judge
- law of the Territory
- legal practitioner
- magistrate
- Magistrates Court
- Minister (see s 162)
- police officer
- public employee
- public sector body
- public sector member
- public sector standards commissioner
- Speaker
- State
- summary offence
- Supreme Court

- territory authority
- territory instrumentality
- territory-owned corporation.

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

**Assembly referral**—see section 14.

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

**authorised officer**—see section 80.

**claimant**, for division 4.4 (Dealing with parliamentary privilege claims)—see section 53.

**claimant's representative**, for division 4.4 (Dealing with parliamentary privilege claims)—see section 53.

**commission** means the Anti-corruption and Integrity Commission established under section 92.

**commissioner** means the Anti-corruption and Integrity Commissioner appointed under section 96.

**compulsion power**—see section 46 (1).

**confidential report**—see section 61 (1).

**corrupt conduct**—see section 7.

**corruption issue**—see section 15.

**deputy commissioner**, in relation to ACT Policing—means a Deputy Commissioner of Police appointed under the *Australian Federal Police Act 1979* (Cwlth), section 17.

**detrimental action**—see section 24.

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**examination** means an examination conducted by the commission under division 4.2.

**inspector** means the Inspector of the Anti-corruption and Integrity Commission appointed under section 119.

**investigation** means an investigation conducted by the commission under part 4.

**investigator** means—

- (a) the commissioner; or
- (b) an officer of the commission authorised by the commissioner to exercise powers under section 28.

**notice to appear**—see section 34.

**officer** of the commission means—

- (a) a member of staff of the commission employed under section 110; or
- (b) a consultant or contractor engaged under section 111.

**political party**—see the *Electoral Act 1992*, dictionary.

**premises**—see section 80.

**presiding officer**—see section 41.

**proper officer**, for division 4.4 (Dealing with parliamentary privilege claims)—see section 53.

**public authority**—see section 9.

**public official**—see section 10.

**public sector**—see the *Public Sector Management Act 1994*, dictionary.

**registered party**—see the *Electoral Act 1992*, dictionary.

***relevant Assembly committee*** means the committee of the Legislative Assembly whose functions include the examination of matters related to corruption and integrity in public administration.

***relevant authority***—see section 65.

***secured item***, for division 4.4 (Dealing with parliamentary privilege claims)—see section 53.

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

***systemic corruption*** means instances of corrupt conduct (which may or may not constitute serious corruption) that reveal a pattern of corrupt conduct in a public authority.

***takes***, detrimental action—see section 25 (2).



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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2018.

**2 Notification**

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

**3 Republications of amended laws**

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

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