

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Alistair Coe)

Anti-corruption and Integrity Commission Bill 2018

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2018

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Alistair Coe)

Anti-corruption and Integrity Commission Bill 2018

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

4 **2 Commencement**

5 This Act commences on 1 January 2019.

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

8 **3 Dictionary**

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

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

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

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

20 **4 Notes**

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

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

- 1 **5** **Offences against Act—application of Criminal Code etc**
- 2 Other legislation applies in relation to offences against this Act.
- 3 *Note 1* *Criminal Code*
- 4 The [Criminal Code](#), ch 2 applies to all offences against this Act (see
- 5 Code, pt 2.1).
- 6 The chapter sets out the general principles of criminal responsibility
- 7 (including burdens of proof and general defences), and defines terms
- 8 used for offences to which the Code applies (eg *conduct*, *intention*,
- 9 *recklessness* and *strict liability*).
- 10 *Note 2* *Penalty units*
- 11 The [Legislation Act](#), s 133 deals with the meaning of offence penalties
- 12 that are expressed in penalty units.
- 13 **6** **Objects of Act**
- 14 (1) The main object of this Act is to promote the integrity and
- 15 accountability of public administration.
- 16 (2) The main object is to be achieved particularly by—
- 17 (a) establishing the Anti-corruption and Integrity Commission as an
- 18 independent and accountable body to—
- 19 (i) investigate, expose and prevent corruption involving or
- 20 affecting public authorities and public officials; and
- 21 (ii) educate public authorities, public officials and members of
- 22 the public about corruption and its detrimental effects on
- 23 public administration and on the community; and
- 24 (iii) foster public confidence in combating corruption and in
- 25 promoting integrity and good repute in public
- 26 administration; and
- 27 (iv) provide leadership and coordination for the public sector
- 28 and parliamentary integrity frameworks; and
- 29 (b) conferring on the commission special powers to inquire into
- 30 allegations of corruption.

1 **Part 2** **Important concepts**

2 **7** **Meaning of *corrupt conduct***

3 (1) For this Act, *corrupt conduct* is conduct—

4 (a) that could—

5 (i) constitute or involve a criminal offence; or

6 (ii) constitute or involve a disciplinary offence; or

7 (iii) constitute or involve reasonable grounds for dismissing,
8 dispensing with the services of, or otherwise terminating
9 the services of, a public official; or

10 (iv) in the case of a Minister or a Member of the Legislative
11 Assembly—

12 (A) constitute or involve a substantial breach of an
13 applicable code of conduct; or

14 (B) cause a reasonable person to believe that it would
15 bring the integrity of the office of the Minister or the
16 Legislative Assembly into serious disrepute; and

17 (b) that is included in the general nature of corrupt conduct
18 mentioned in section 8.

19 (2) For subsection (1) it does not matter if—

20 (a) proceedings or action in relation to the conduct can no longer
21 be taken; or

22 (b) the conduct happened outside the Territory.

23 **Example—par (a)**

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

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

1 (3) In this section:

2 *applicable code of conduct* means—

3 (a) in relation to a Minister—a ministerial code of conduct
4 prescribed or adopted for this section by regulation; and

5 (b) in relation to a member of the Legislative Assembly (including
6 a Minister)—a code of conduct adopted for this section by
7 resolution of the Legislative Assembly.

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

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

13 **8 General nature of corrupt conduct**

14 (1) Corrupt conduct is any of the following:

15 (a) conduct by a public official that constitutes or involves the
16 dishonest or partial exercise of the official's functions;

17 (b) conduct of a public official or former public official that—

18 (i) constitutes or involves a breach of public trust; or

19 (ii) involves the misuse of information or material acquired
20 by the official in the course of performing their official
21 functions, whether or not the misuse is for the benefit of
22 the official or another person;

23 (c) conduct that adversely affects, or that could adversely affect,
24 either directly or indirectly—

25 (i) the honest or impartial exercise of functions by a public
26 official or a public authority; or

- 1 (ii) the exercise of official functions by a public official or
2 public authority and that could involve any of the
3 following matters:
- 4 (A) official misconduct (including breach of trust, fraud
5 in office, nonfeasance, misfeasance, malfeasance,
6 oppression, extortion or imposition);
- 7 (B) bribery;
- 8 (C) blackmail;
- 9 (D) obtaining or offering secret commissions;
- 10 (E) fraud;
- 11 (F) theft;
- 12 (G) perverting the course of justice;
- 13 (H) embezzlement;
- 14 (I) election bribery;
- 15 (J) election funding offences;
- 16 (K) election fraud;
- 17 (L) treating;
- 18 (M) tax evasion;
- 19 (N) revenue evasion;
- 20 (O) currency violations;
- 21 (P) illegal drug dealings;
- 22 (Q) illegal gambling;
- 23 (R) obtaining financial benefit by vice engaged in by
24 others;
- 25 (S) bankruptcy and company violations;

- 1 (T) harbouring criminals;
- 2 (U) forgery;
- 3 (V) treason or other offences against the Sovereign;
- 4 (W) homicide or violence;
- 5 (X) matters of the same or a similar nature to matters
6 mentioned in subsubparagraphs (A) to (W);
- 7 (d) conduct that impairs, or that could impair, public confidence in
8 public administration and that could involve any of the
9 following:
- 10 (i) collusive tendering;
- 11 (ii) fraud in relation to applications for licences, permits or
12 other authorities under legislation designed to—
- 13 (A) protect health and safety; or
- 14 (B) protect the environment; or
- 15 (C) facilitate the management and commercial
16 exploitation of resources;
- 17 (iii) dishonestly obtaining or assisting in obtaining, or
18 dishonestly benefiting from, the payment or application of
19 public funds for private advantage or the disposition of
20 public assets for private advantage;
- 21 (iv) defrauding the public revenue;
- 22 (v) fraudulently obtaining or retaining employment or
23 appointment as a public official;
- 24 (e) conduct (the *secondary conduct*) engaged in by a person in
25 relation to conduct mentioned in paragraphs (a) to (d) (the
26 *primary conduct*) as provided in subsection (2).

- 1 (2) For subsection (1) (e), secondary conduct is conduct that would
2 constitute an offence against the [Criminal Code](#), part 2.4 (Extensions
3 of criminal responsibility) on the basis that the primary conduct is an
4 offence, whether or not the primary conduct is in fact an offence.
- 5 (3) Conduct may amount to corrupt conduct under subsection (1)
6 regardless of whether—
- 7 (a) it happened before the commencement of that subsection; or
- 8 (b) some or all of the effects or other matters necessary to establish
9 corrupt conduct happened before the commencement of that
10 subsection; or
- 11 (c) the conduct was engaged in by, or in relation to, a person who—
- 12 (i) is no longer a public official; or
- 13 (ii) was not a public official at the time the conduct happened
14 if the conduct was in relation to the exercise of the person's
15 functions after becoming a public official (whether or not
16 the person becomes a public official).

17 **9 Meaning of *public authority***

- 18 (1) In this Act:
- 19 ***public authority*** means—
- 20 (a) a public sector entity; and
- 21 (b) a non-public sector entity to the extent the entity performs a
22 public function using property provided by a public sector
23 entity; and

1 (c) includes ACT Policing.

2 **Example—par (b)**

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

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

10 (2) In this section:

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

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

14 *public sector entity* means—

15 (a) an administrative unit; or

16 (b) a territory authority; or

17 (c) a territory-owned corporation; or

18 (d) a territory-controlled company, joint venture or trust.

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

22 **10 Meaning of *public official***

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

26 (a) a member of the Executive;

27 (b) a member of the Legislative Assembly;

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

1 **Part 3** **Dealing with corruption**

2 **Division 3.1** **Initiating commission investigation**

3 **11** **Complaints about possible corrupt conduct**

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

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

9 **12** **Duty of principal officer of public authority or Minister to**
10 **tell commission about corrupt conduct**

11 (1) This section applies to—

12 (a) the principal officer of a public authority; and

13 (b) a Minister.

14 (2) A person to whom this section applies must report a matter to the
15 commission—

16 (a) that the person suspects on reasonable grounds concerns, or
17 may concern, corrupt conduct; and

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

20 **Example**

21 The auditor-general, in conducting an audit of an administrative unit under the
22 [Auditor-General Act 1996](#), receives information that leads the auditor-general to
23 form a reasonable suspicion that corrupt conduct has occurred in the
24 administrative unit. The auditor-general must report the suspected corrupt
25 conduct to the commission.

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

- 1 (3) Despite subsection (2), the deputy commissioner of ACT Policing
2 need not report a matter in relation to a member of ACT Policing to
3 the commission if the deputy commissioner suspects the matter—
- 4 (a) concerns, or may concern, a corruption issue within the
5 meaning of the *Law Enforcement Integrity Commissioner*
6 *Act 2006* (Cwlth), section 7; and
- 7 (b) does not concern, or may not concern, corrupt conduct of a
8 public official other than a member of ACT Policing.
- 9 (4) This section has effect despite any duty of secrecy or other
10 restriction on disclosure.
- 11 (5) The commission may issue guidelines about reporting under this
12 section.
- 13 (6) The guidelines are a notifiable instrument.
- 14 *Note* A notifiable instrument must be notified under the [Legislation Act](#).
- 15 (7) A person commits an offence if the person—
- 16 (a) is required to report a matter to the commission under
17 subsection (2); and
- 18 (b) does not, as soon as practicable after forming the suspicion,
19 report the matter in accordance with any guideline issued under
20 subsection (5).
- 21 Maximum penalty: 50 penalty units, imprisonment for 6 months or
22 both.

- 1 (8) In this section:
2 *principal officer*, of a public authority, means the following:
3 (a) for an administrative unit—the director-general of the
4 administrative unit;
5 (b) for ACT Policing—the deputy commissioner with management
6 responsibility for ACT Policing;
7 (c) for the Supreme Court, Magistrates Court, Coroner’s Court or
8 the ACAT—the principal registrar appointed under the *Court*
9 *Procedures Act 2004*, section 11A;
10 (d) for the Office of the Legislative Assembly—the clerk of the
11 Legislative Assembly;
12 (e) for an officer of the Assembly—the officer;
13 (f) for a statutory office-holder and the staff assisting the statutory
14 office-holder—the statutory office-holder;
15 (g) for a territory-owned corporation or a subsidiary of a
16 territory-owned corporation—the chief executive officer of the
17 corporation or subsidiary;
18 (h) for a royal commission, board of inquiry or judicial
19 commission—the director-general of the administrative unit
20 that provides secretariat support to the royal commission,
21 board of inquiry or judicial commission;
22 (i) for any other public authority—the person prescribed by
23 regulation to be the principal officer.

24 **13 Own initiative investigations**

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

1 **14 Referral by Legislative Assembly**

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

6 **Division 3.2 Preliminary decision**

7 **15 Meaning of *corruption issue***

8 In this Act:

9 *corruption issue* means—

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

13 **16 Commission to decide on next steps**

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

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

20 **17 Commission may conduct preliminary inquiry**

- 21 (1) The commission may conduct a preliminary inquiry for the purpose
22 of making a decision under section 16.

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

11 **18 Commission may dismiss certain matters**

- 12 (1) The commission may dismiss a corruption issue for investigation or,
13 if the commission has already started an investigation, further
14 investigation if the commission considers that—
- 15 (a) for a complaint made under section 11 or a report made under
16 section 12—the complaint or report is frivolous or vexatious or
17 was not made in good faith; or
- 18 (b) the corruption issue has been, or is being, adequately dealt with
19 by a court or tribunal or has been dealt with by the
20 commission; or
- 21 (c) the corruption issue lacks substance or credibility; or
- 22 (d) the corruption issue does not relate to the functions of the
23 commission; or
- 24 (e) investigating the corruption issue would be an unreasonable
25 use of resources; or
- 26 (f) it is not in the public interest for the commission to investigate
27 the corruption issue; or

- 1 (g) for a complaint about conduct that happened after the
2 commencement of this section—the complainant had
3 knowledge of the subject matter of the complaint for more than
4 12 months and fails to give the commission a satisfactory
5 explanation for the delay in making the complaint.

6 **Example—satisfactory explanation**

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

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

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

- 15 (a) the nature and seriousness of the corrupt conduct alleged in the
16 corruption issue;
- 17 (b) the harm or loss arising from the corrupt conduct alleged in the
18 corruption issue;
- 19 (c) the time that has elapsed since the corrupt conduct alleged in
20 the corruption issue happened;
- 21 (d) the availability of evidence and the recollection of any
22 witnesses;
- 23 (e) the likely degree of culpability, in relation to the corrupt
24 conduct alleged in the corruption issue, of any public official;
- 25 (f) whether the corrupt conduct alleged in the corruption issue
26 could be of significant public concern;
- 27 (g) whether the corrupt conduct alleged in the corruption issue
28 may be indicative of, or may expose, entrenched or systemic
29 behaviour;
- 30 (h) any other matter the commission considers relevant.

1 **Division 3.3** **Protections for complainants and**
2 **reporters**

3 **19** **Application—div 3.3**

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

13 **20** **Immunity from liability**

- 14 (1) The making of a complaint or report to which this division applies is
15 not—
- 16 (a) a breach of confidence; or
- 17 (b) a breach of professional etiquette or ethics; or
- 18 (c) a breach of a rule of professional conduct; or
- 19 (d) if the complaint or disclosure is made in relation to a member
20 of the Legislative Assembly—a contempt of the Assembly.
- 21 (2) The person making the complaint or report does not incur civil or
22 criminal liability only because of the making of the complaint or
23 report.
- 24 (3) If the person making a complaint or report is a public official—the
25 person is not liable to administrative action (including disciplinary
26 action or dismissal) only because of the making of the complaint or
27 report.

1 **21 Protection from defamation action**

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

5 **22 Loss of protection**

6 (1) This section applies if a person makes a complaint or report to
7 which this division applies and a court is satisfied that—

8 (a) the person has given information to the commission that the
9 person knows is false or misleading; or

10 (b) the complaint or report is vexatious.

11 (2) The person forfeits the protections under this division in relation to
12 the complaint or report.

13 (3) However, a court may make an order that subsection (2) does not
14 apply if the court considers that the person's conduct mentioned in
15 subsection (1) (a)—

16 (a) has not materially prejudiced the commission's investigation of
17 the corruption issue; and

18 (b) is of a minor nature.

19 **23 Liability for own conduct**

20 (1) A person's liability for the person's own conduct is not affected by
21 the person's—

22 (a) complaint under section 11 (Complaints about possible corrupt
23 conduct); or

24 (b) report under section 12 (Duty of principal officer of public
25 authority to tell commission about corrupt conduct).

- 1 (2) In this section:
2 *liability* includes civil or criminal liability or any liability arising from
3 an administrative action (including disciplinary action or dismissal).

4 **24 Meaning of *detrimental action***

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

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

12 **25 Offence—taking detrimental action**

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

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

- 18 (2) For this Act, a retaliator *takes* detrimental action because of a
19 complaint or report to the commission under this Act, if the retaliator
20 takes, or threatens to take, detrimental action against someone else
21 because—
22 (a) a person has made, or intends to make, a complaint or report to
23 the commission under this Act; or
24 (b) the retaliator believes that a person has made, or intends to make,
25 a complaint or report to the commission under this Act.

- 1 (3) In determining whether a retaliator has taken detrimental action
2 because of a complaint or report to the commission under this Act, it
3 is sufficient if a reason mentioned in subsection (2) is a contributing
4 reason.

5 **26 Damages for detrimental action**

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

16 **27 Injunction to prevent detrimental action etc**

- 17 (1) On application, the Supreme Court may—
- 18 (a) if satisfied that a person has taken detrimental action—order
19 the person who took detrimental action to remedy the action; or
- 20 (b) if satisfied that a person is taking, or is likely to take,
21 detrimental action—grant an injunction to prevent detrimental
22 action being taken.
- 23 (2) An application may be made by—
- 24 (a) the commission; or
- 25 (b) the person who made the complaint or report; or
- 26 (c) a person against whom detrimental action has been or is likely
27 to be taken.

- 1 (3) The Supreme Court may grant an interim injunction restraining a
2 person from taking detrimental action before deciding an application
3 for an injunction under this section.

1 **Part 4 Investigations**

2 **Division 4.1 Powers of investigation**

3 **28 Appointment of investigators**

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

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

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

12 **29 Investigation by commission**

13 (1) The commission may investigate corrupt conduct alleged in a
14 corruption issue—

15 (a) the subject of a complaint under section 11; or

16 (b) reported under section 12; or

17 (c) that the commission decides under section 13 to investigate on
18 its own initiative.

19 (2) The commission must investigate an Assembly referral under
20 section 14 (Referral by Legislative Assembly).

21 (3) The commission must not conduct an investigation under
22 subsection (1) unless the commission suspects on reasonable
23 grounds that the conduct constitutes corrupt conduct.

24 (4) The commission may conduct an investigation even though—

25 (a) no particular public official or other person has been implicated
26 in the corruption issue or Assembly referral; or

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

20 **30 Power to obtain information**

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

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

- 25 (2) A notice under this section must state—
- 26 (a) the information required by the commission; and
- 27 (b) a time and date for the person to give the information to the
28 commission; and

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

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

5 **31 Power to obtain documents etc**

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

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

10 (2) A notice under this section must state—

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

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

14 **Division 4.2 Compulsory examinations**

15 **Subdivision 4.2.1 Power to conduct examination**

16 **32 Commission may conduct examination**

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

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

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

24 (b) the harm or loss arising from the corrupt conduct alleged in the
25 corruption issue or Assembly referral;

26 (c) whether the corrupt conduct alleged in the corruption issue or
27 Assembly referral could be of significant public concern;

- 1 (d) whether the corrupt conduct alleged in the corruption issue or
2 Assembly referral may be indicative of, or may expose,
3 entrenched or systemic behaviour;
- 4 (e) any other matter the commission considers relevant.
- 5 (3) Before deciding to hold an examination, the commission must—
- 6 (a) give a concerned person written notice explaining why the public
7 interest in exposing the matter outweighs the potential for
8 prejudice to the concerned person’s reputation; and
- 9 (b) give the concerned person not less than 7 days, beginning on the
10 day the notice was given, to make representations to the
11 commission about why the examination—
- 12 (i) should not be held; or
- 13 (ii) should not be held in public; or
- 14 (iii) should be held in private.
- 15 (4) Not less than 7 days before the day an examination is held, the
16 commission must—
- 17 (a) tell the inspector that the commission intends to hold the
18 examination; and
- 19 (b) provide a written report to the inspector stating the reasons the
20 commission decided to hold an examination.
- 21 (5) In this section:
- 22 ***concerned person*** means a person who is the subject of the allegation
23 of corrupt conduct alleged in a corruption issue or Assembly referral.

1 **33 Examination may be private**

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

21 **Subdivision 4.2.2 Commission’s powers on examination**

22 **34 Notice to appear**

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

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

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

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

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

9 **35 Presiding officer may compel witness**

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

13 (a) take an oath or make an affirmation;

14 (b) answer a question relevant to the examination;

15 (c) produce a stated document or other thing relevant to the
16 examination.

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

19 **36 Commission may apply for arrest warrant**

20 (1) If a person who is given a notice to appear before the commission as
21 a witness fails to appear in response to the notice, an authorised
22 officer may apply to a magistrate for a warrant to arrest the person.

23 (2) The magistrate may issue an arrest warrant only if satisfied that the
24 person—

25 (a) was given the notice to appear; and

26 (b) failed to appear before the commission in accordance with the
27 notice to appear.

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

17 **Subdivision 4.2.3 Procedure for examinations**

18 **37 Content of notice to appear**

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

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

14 **38 Right of appearance**

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

19 **39 Right of representation**

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

1 **40 Examination and cross-examination**

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

10 **41 Presiding officer for examination**

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

17 **42 Directions about people present at private examination**

- 18 (1) The presiding officer may give directions as to the people who may
- 19 be present at all or part of an examination that is held in private.
- 20 (2) The presiding officer may decide to hold part of an examination in
- 21 private if the presiding officer considers that it is in the public interest.
- 22 (3) In making a decision under subsection (2), the presiding officer must
- 23 consider the factors mentioned in section 33 (2) (Examination may
- 24 be private).
- 25 (4) A person must not be present in contravention of a direction under
- 26 subsection (1).

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

1 **43 Directions about disclosure of information**

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

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

14 **44 Reimbursement of expenses of witnesses**

15 A witness appearing before the commission is entitled to be paid by

16 the Territory the witness's expenses of attendance authorised in

17 accordance with the Supreme Court scale of costs.

18 **Division 4.3 Procedural matters**

19 **45 Evidence and procedure**

- 20 (1) In conducting an investigation, the commission—
- 21 (a) must comply with the rules of natural justice; and
- 22 (b) is not bound by the rules of evidence; and
- 23 (c) may inform itself of any matter in any way that it considers
- 24 appropriate; but

1 (d) must consider the potential subsequent use of information
2 obtained by the commission.

3 **Example—potential subsequent use**
4 prosecution of an offence

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

8 (2) The commission must exercise its functions with as little formality
9 and technicality as is possible, and, in particular, the commission
10 must accept written submissions and conduct examinations with as
11 little emphasis on an adversarial approach as is possible.

12 (3) The commission may issue procedural guidelines about the way in
13 which the commission will conduct its investigations, including
14 examinations.

15 (4) The procedural guidelines are a notifiable instrument.

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

17 **46 Privilege as regards information, documents etc**

18 (1) This section applies if the commission exercises a power (a
19 ***compulsion power***)—

20 (a) to require a person to give the commission—

21 (i) a statement of information under section 30 (Power to
22 obtain information); or

23 (ii) a document or other thing under section 31 (Power to
24 obtain documents etc); or

25 (b) to obtain a copy of a document or thing under section 77
26 (General powers on entry to premises without warrant); or

27 (c) to require a person appearing before an examination conducted
28 by the commission to—

29 (i) be sworn or make an affirmation; or

- 1 (ii) give evidence; or
- 2 (iii) produce a stated document or other thing; or
- 3 (iv) answer a question relevant to the examination.
- 4 (2) A person cannot rely on any of the following to resist the exercise of
- 5 a compulsion power:
- 6 (a) the common law privilege against self-incrimination and
- 7 exposure to the imposition of a civil penalty;
- 8 (b) the common law privilege in relation to client legal privilege;
- 9 (c) any rule under which, in proceedings in a court of law, a person
- 10 might object to a similar requirement on public interest grounds;
- 11 (d) any duty of secrecy or other restriction on disclosure applying
- 12 to a person as a public authority or public official or a former
- 13 public authority or public official;
- 14 (e) any other rule of evidence that would entitle the person to
- 15 refuse to divulge or disclose information in a court.
- 16 (3) Any information, document or other thing obtained, directly or
- 17 indirectly, because of the exercise of the compulsion power is not
- 18 admissible in evidence against the person in a civil or criminal
- 19 proceeding, other than a proceeding for—
- 20 (a) an offence in relation to the falsity or the misleading nature of
- 21 the document, other thing or answer; or
- 22 (b) an offence against the [Criminal Code](#), chapter 7 (Administration
- 23 of justice offences).

1 **47 Parliamentary privilege not affected**

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

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

9 **48 Independence of holders of judicial office**

10 (1) The commission, when exercising its functions in relation to the
11 procedures and operations of a court or in relation to the conduct of
12 a judicial officer, must have proper regard for, and proper regard for
13 the importance of preserving, the independence of judicial officers.

14 (2) If an investigation is in relation to conduct of a judicial officer, the
15 commission's authority to conduct the investigation is limited to
16 investigating corrupt conduct of a kind that, if established, would
17 warrant the judicial officer's removal from office.

18 (3) However, subsection (2) does not apply to an investigation that is in
19 relation to conduct of a judicial officer—

20 (a) other than in the judicial officer's capacity as a judicial officer;
21 and

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

24 **Examples—decision-making body**

- 25 • a governing body
26 • a board of management

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

- 1 (4) To the extent an investigation is in relation to conduct of a judicial
2 officer, the investigation must be conducted in accordance with
3 appropriate conditions and procedures agreed by the commissioner
4 and the judicial council from time to time.
- 5 (5) An examination in relation to the conduct of a judicial officer must
6 be conducted by the commissioner.
- 7 (6) In this section:
- 8 *judicial council* means the judicial council established under the
9 *Judicial Commissions Act 1994*, section 5A.
- 10 *judicial officer*—see the *Judicial Commissions Act 1994*, dictionary.

11 **49 Concurrent court proceedings**

- 12 (1) The commission may do any of the following in relation to a matter
13 that is the subject of a proceeding before a court or tribunal:
- 14 (a) commence, continue, discontinue or complete an investigation;
15 (b) provide a report in relation to an investigation;
16 (c) do anything necessary or convenient for paragraphs (a) and (b).
- 17 (2) If the proceedings mentioned in subsection (1) are proceedings for
18 an indictable offence, the commission must, to the extent that the
19 commission considers it necessary to ensure that an accused
20 person's right to a fair trial is not prejudiced—
- 21 (a) if practicable—conduct the investigation in private during the
22 currency of the proceedings; and
- 23 (b) give directions under section 42 (Directions about people
24 present at private examination) having effect during the
25 currency of the proceedings; and
- 26 (c) defer making a report to the Legislative Assembly during the
27 currency of the proceedings.

- 1 (3) Subsection (2) does not apply if—
2 (a) the committal hearing has not commenced; or
3 (b) the offence is dealt with summarily.

4 **50 Application of Criminal Code, ch 7**

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

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

10 **51 Contempt of commission**

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

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

16 **Division 4.4 Dealing with parliamentary privilege**
17 **claims**

18 **52 Application—div 4.4**

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

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

1 **53** **Definitions—div 4.4**

2 In this division:

3 *claimant* means—

4 (a) the Legislative Assembly; or

5 (b) a member of the Legislative Assembly; or

6 (c) a committee of the Legislative Assembly.

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

8 (a) a person nominated by the claimant; or

9 (b) in the absence of a nomination—the clerk of the Legislative
10 Assembly.

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

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

16 **54** **Notice of potentially privileged material**

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

- 1 **55** **Process for dealing with claim of parliamentary privilege**
- 2 An investigator who wishes to inspect, copy or seize a document or
3 thing over which parliamentary privilege is claimed must—
- 4 (a) if there is a memorandum of understanding under section 150
5 (Exercise of commission powers—Assembly)—deal with the
6 document or thing in accordance with any procedure stated in
7 the memorandum for determining a claim of parliamentary
8 privilege; and
- 9 (b) if there is no memorandum in effect, or the claim cannot be
10 resolved in accordance with the memorandum—deal with the
11 document or thing in accordance with section 56.
- 12 **56** **Investigator to consider parliamentary privilege and**
13 **secure document or thing**
- 14 (1) This section applies if a claim of parliamentary privilege is made in
15 relation to a document or thing.
- 16 (2) The investigator must consider the claim of parliamentary privilege
17 and either—
- 18 (a) stop exercising the power in relation to the document or thing
19 over which the claim of parliamentary privilege is made; or
- 20 (b) if the investigator believes on reasonable grounds the item may
21 not be the subject of parliamentary privilege—require the
22 claimant or claimant’s representative to immediately seal the
23 document or thing in an envelope, or otherwise secure the item
24 if it cannot be sealed in an envelope, and give the secured item
25 to the investigator.
- 26 (3) The investigator—
- 27 (a) must not inspect the document or thing in considering the claim
28 of parliamentary privilege; but

- 1 (b) if the document or thing is in electronic form and able to be
2 copied without disclosing any part of the document or thing to
3 the investigator or another person not entitled to view it—may
4 copy the document or thing.
- 5 (4) If the investigator requires the claimant or claimant’s representative
6 to give the secured item to the investigator under subsection (2) (b),
7 the officer must—
- 8 (a) as soon as reasonably practicable—
- 9 (i) notify the commission; and
- 10 (ii) give the secured document or thing to a proper officer to
11 be held in safe custody; and
- 12 (b) give the claimant or claimant’s representative a reasonable
13 opportunity to accompany the investigator in giving the item to
14 the proper officer.
- 15 (5) A person must not interfere with a secured item before delivery to
16 the proper officer.

17 **57 Application to Supreme Court to determine parliamentary**
18 **privilege generally**

- 19 (1) The commission may apply to the Supreme Court for a
20 determination on—
- 21 (a) whether a secured item given to the proper officer under
22 section 56 (4) (b) is the subject of parliamentary privilege; or
- 23 (b) whether evidence that the commission has, or seeks to obtain,
24 in order to carry out its functions is the subject of
25 parliamentary privilege.
- 26 (2) If an application under subsection (1) (a) is not made within 7 days
27 after the day the secured item is given to the proper officer under
28 section 56 (4) (b), the proper officer must give the item to the clerk
29 of the Legislative Assembly.

1 (3) The clerk of the Legislative Assembly is entitled to appear and be
2 heard on the hearing of an application under this section.

3 **58 Determination of parliamentary privilege claim**

4 (1) On an application under section 57, the Supreme Court must
5 determine whether the secured item or other evidence is the subject
6 of parliamentary privilege in whole or part.

7 (2) For making a determination, the court and any other person
8 authorised by the court may—

9 (a) open the sealed envelope or otherwise access the secured item
10 or other evidence; and

11 (b) inspect the secured item or other evidence.

12 (3) If the court determines that the whole of the secured item or other
13 evidence is the subject of parliamentary privilege, the court must
14 order that the item or other evidence be returned to the claimant or
15 claimant's representative.

16 (4) If the court determines that the whole of the secured item or other
17 evidence is not the subject of parliamentary privilege, the court must
18 order that the item or other evidence be given to the commission.

19 (5) If the court determines that part of the secured item or other
20 evidence is the subject of privilege (the *privileged part*) and part is
21 not (the *non-privileged part*)—

22 (a) if the secured item or other evidence is able to be divided into
23 the privileged part and the non-privileged part—the court must
24 divide the item or other evidence and order that the privileged
25 part be returned to the claimant or claimant's representative
26 and the non-privileged part be given to the commission; or

- 1 (b) if paragraph (a) does not apply but the court considers it
2 possible to produce a copy of the secured item or other
3 evidence from which the privileged part has been removed—
- 4 (i) the court must make orders the court considers
5 appropriate for production of the copy; and
- 6 (ii) the court must order that the copy be given to the
7 commission and the item or other evidence be returned to
8 the claimant or claimant's representative; or
- 9 (c) in any other case—the court must order that the secured item
10 or other evidence be returned to the claimant or claimant's
11 representative.
- 12 (6) Except as provided in subsection (2), a person must not open a
13 sealed envelope containing the secured item or other evidence, or
14 otherwise have access to the item or other evidence, before—
- 15 (a) the court determines the claim of privilege; or
- 16 (b) the item or other evidence is returned to the claimant or
17 claimant's representative.
- 18 (7) A person commits an offence if—
- 19 (a) the person intentionally engages in conduct; and
- 20 (b) the conduct results in a contravention of subsection (6); and
- 21 (c) the person is reckless in relation to the result.
- 22 Maximum penalty: 100 penalty units, imprisonment for 1 year or
23 both.

1 **Division 4.5 Commission's powers on completion**
2 **of investigation**

3 **59 Findings, opinions and recommendations**

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

12 **Example—findings**

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

14 **Example—opinions**

- 15 1 that the advice of the director of public prosecutions should be sought
16 in relation to the commencement of proceedings against a person for
17 criminal offences
- 18 2 that a public authority should consider taking other action against a
19 person

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

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

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

15 **Division 4.6 Reports**

16 **60 Reports on investigations**

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

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

4 **61 Public interest considerations**

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

16 **62 Delivery and tabling of reports**

- 17 (1) This section applies to a report under section 60 that is not a
18 confidential report.
19 (2) If the Legislative Assembly is sitting when the commission has
20 finished the report—
21 (a) the commission must give the report to the Speaker; and
22 (b) the Speaker must present the report to the Legislative
23 Assembly on the next sitting day.
24 (3) If the Legislative Assembly is not sitting when the commission has
25 finished the report—
26 (a) the commission must give the report, and a copy for each
27 member of the Legislative Assembly, to the Speaker; and

- 1 (b) the report is taken for all purposes to have been presented to
2 the Legislative Assembly on the day the commission gives it to
3 the Speaker (the *report day*); and
- 4 (c) publication of the report is taken to have been ordered by the
5 Legislative Assembly on the report day; and
- 6 (d) the Speaker must arrange for a copy of the report to be given to
7 each member of the Legislative Assembly on the report day; and
- 8 (e) the Speaker may give directions for the printing and
9 circulation, and in relation to the publication, of the report; and
- 10 (f) despite paragraph (b), the Speaker must present the report to
11 the Legislative Assembly on the next sitting day.
- 12 (4) The commission may give a copy of the report to a Minister or a
13 public authority if, in the commission's opinion, the Minister or
14 public authority has a special interest in the report.

15 **63 Confidential reports to be given to relevant committee**

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

18 **64 Content of reports**

19 A report under section 60 may include—

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

1 **Division 4.7 Referrals**

2 **65 Commission may refer matters**

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

5 **Examples—relevant authority**

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

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

- 13 (2) The commission may give the relevant authority any information the
14 commission has obtained in relation to the matter, including
15 information obtained during any investigation under this part or
16 part 5.
- 17 (3) The commission must not refer a matter to a relevant authority under
18 subsection (1) unless the commission has—
- 19 (a) consulted the relevant authority; and
20 (b) considered any views of the relevant authority about the referral.
- 21 (4) The commission must tell the relevant authority if the information
22 given to the relevant authority under this section is protected
23 information.

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

25 **66 Directions to relevant authority**

- 26 (1) The commission may give directions to a relevant authority in
27 relation to the referral, including directions as to—
28 (a) how the relevant authority is to deal with the matter; and

1 (b) reporting requirements of the relevant authority in relation to
2 the matter.

3 (2) However, the commission cannot give a direction mentioned in
4 subsection (1) to the Speaker or a judicial officer.

5 (3) A relevant authority is not obliged to comply with a direction of the
6 commission to the extent that compliance is beyond the power, or
7 incompatible with the functions, of the relevant authority.

8 **67 Report to commission**

9 (1) This section applies if the commission directs a relevant authority to
10 give the commission a report under section 66.

11 (2) A relevant authority must give the commission a report—

12 (a) as required by the commission; and

13 (b) within the time period required by the commission.

14 **68 Further action by commission**

15 (1) This section applies if the commission is not satisfied that a relevant
16 authority has taken appropriate action in relation to a matter referred
17 to the relevant authority under section 65 (Commission may refer
18 matters).

19 (2) The commission must give the relevant authority written notice—

20 (a) stating the grounds for the commission's dissatisfaction with
21 the authority's action in relation to the matter; and

22 (b) inviting the authority to respond to the grounds of the
23 commission's dissatisfaction within a stated period of time that
24 is not less than 21 days after the day the commission gives the
25 notice to the relevant authority.

- 1 (3) The commission must consider any comments received from the
2 relevant authority and, if the commission is still not satisfied that the
3 relevant authority has taken appropriate action, may give a report to
4 the relevant Minister for the authority.
- 5 (4) A report under subsection (3) must—
- 6 (a) state the matter the commission has referred to the relevant
7 authority; and
- 8 (b) state the grounds for the commission’s dissatisfaction with the
9 authority’s action in relation to the matter; and
- 10 (c) include a copy of the comments (if any) received from the
11 relevant authority; and
- 12 (d) include any additional comments from the commission; and
- 13 (e) invite the Minister to comment on the report within 21 days
14 after the day the commission gives the report to the Minister.
- 15 (5) If, after considering any comments received from the relevant
16 Minister, the commission is still not satisfied with the response to the
17 matter, the commission may make a report under section 60 (Reports
18 on investigations).
- 19 (6) In this section:
- 20 *relevant Minister* means the Minister responsible for the public
21 authority.

22 **69 Brief of evidence**

- 23 Following an investigation, the commission may provide a brief of
24 evidence—
- 25 (a) to a law enforcement agency to investigate, or prosecute a
26 person for, an offence; or
- 27 (b) to a public authority or public officer to investigate, or take,
28 disciplinary action against a public officer.

1 **Division 4.8** **Offences**

2 **70** **Person failing to comply with requirement**

3 A person commits an offence if the person—

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

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

14 **71** **Fail to comply with direction to give name and address**

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

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

19 Maximum penalty: 5 penalty units.

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

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

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

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

10 **72 Fail to comply with presiding officer’s direction**

- 11 A person commits an offence if—
12 (a) the presiding officer at an examination gives a direction—
13 (i) under section 42 (Directions about people present at
14 private examination); or
15 (ii) under section 43 (Directions about disclosure of
16 information); and
17 (b) the person fails to comply with the direction.

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

1 **Part 5** **General information gathering**
2 **powers**

3 **Division 5.1** **Power to enter premises**

4 **73** **Power to enter premises of public authority or public**
5 **official**

6 (1) For an investigation, an investigator may at any time enter and
7 remain on premises occupied or used by—

8 (a) a public authority; or

9 (b) a public official in that capacity.

10 (2) However, subsection (1) does not permit an investigator to enter or
11 remain on—

12 (a) any part of the premises that are residential premises; or

13 (b) any premises that are not solely occupied or used by a public
14 authority mentioned in section 9 (1) (b) (Meaning of *public*
15 *authority*).

16 **74** **Power to enter other premises**

17 (1) This section applies if an investigator believes on reasonable grounds
18 that there is anything that may be evidence of corrupt conduct on
19 premises other than premises mentioned in section 73.

20 (2) An investigator may—

21 (a) at any reasonable time, enter premises that the public is entitled
22 to use or that are open to the public (whether or not on payment
23 of money); or

24 (b) at any time when the premises are open for business, enter the
25 premises; or

26 (c) at any time, enter premises with the occupier's consent; or

- 1 (d) enter premises in accordance with a search warrant; or
2 (e) at any time, enter premises if the investigator believes on
3 reasonable grounds that the circumstances are so serious and
4 urgent that immediate entry to the premises without the
5 authority of a search warrant is necessary.
- 6 (3) However, subsection (2) (a) and (b) do not authorise entry into a
7 part of premises that is being used only for residential purposes.
- 8 (4) An investigator may, without the consent of the occupier of
9 premises, enter land around the premises to ask for consent to enter
10 the premises.
- 11 (5) To remove any doubt, an investigator may enter premises under
12 subsection (2) without payment of an entry fee or other charge.
- 13 (6) In this section:
- 14 *at any reasonable time* includes at any time when the public is
15 entitled to use the premises, or when the premises are open to or
16 used by the public (whether or not on payment of money).

17 **75 Production of identity card**

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

21 **76 Consent to entry**

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

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

21 **77 General powers on entry to premises without warrant**

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

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

11 **78 Direction to give name and address**

- 12 (1) This section applies if an investigator believes on reasonable grounds
13 that a person may be able to assist in an investigation under this Act.
- 14 (2) The investigator may direct the person to give the investigator,
15 immediately, any of the following personal details:
- 16 (a) the person's full name;
- 17 (b) the person's home address.
- 18 *Note* Power to make the direction includes power to amend or repeal the
19 direction (see [Legislation Act](#), s 46).
- 20 (3) The person may ask the investigator to produce the investigator's
21 identity card for inspection by the person.
- 22 (4) If the investigator believes on reasonable grounds that a personal
23 detail given by a person in response to a direction under
24 subsection (2) is false or misleading, the investigator may direct the
25 person to produce evidence immediately of the correctness of the
26 detail.

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

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

6 **79 Injunctions**

7 (1) This section applies if the commission reasonably believes—
8 (a) a person (whether or not a public authority or public official) has
9 engaged, is engaging, or proposes to engage, in conduct; and
10 (b) that the conduct is the subject of, or affects the subject of, an
11 investigation or proposed investigation by the commission.

12 (2) The commission may apply to the Supreme Court for an injunction.

13 (3) On application under subsection (2), the Supreme Court may grant an
14 injunction—

15 (a) restraining the person from engaging in the conduct—
16 (i) if satisfied that the person has engaged in conduct of that
17 kind, whether or not it appears to the court that the person
18 intends to engage again, or to continue to engage, in
19 conduct of that kind; or
20 (ii) if it appears to the court that, if an injunction is not
21 granted, it is likely the person will engage in conduct of
22 that kind whether or not the person has previously engaged
23 in conduct of that kind; and

24 (b) if satisfied that it is desirable to do so—requiring the person to
25 do anything.

26 (4) The Supreme Court may only grant an injunction if satisfied that—

27 (a) the conduct sought to be restrained is likely to impede the
28 conduct of the investigation or proposed investigation; or

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

6 **Division 5.2 Search warrants**

7 **80 Definitions**

8 In this Act:

9 *authorised officer* means—

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

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

15 **81 Issue of search warrant**

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

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

17 **82 Powers under warrant**

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

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

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

13 **83 Power to seize evidence**

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

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

7 Maximum penalty: 50 penalty units.

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

10 **84 Warrants—application made other than in person**

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

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

23 **85 Search warrants—announcement before entry**

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

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

12 **86 Details of search warrant to be given to occupier etc**

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

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

20 **87 Occupier entitled to be present during search etc**

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

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

1 **Division 5.3** **Dealing with things seized**

2 **88** **Receipts for things seized**

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

9 **89** **Access to things seized**

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

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

15 **90** **Return of things seized**

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

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

5 **91 Disposal of things seized**

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

1 **Part 6** **Anti-corruption and Integrity**
2 **Commission**

3 **Division 6.1** **Establishment and functions of**
4 **commission**

5 **92** **Establishment of Anti-corruption and Integrity**
6 **Commission**

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

9 **93** **Functions of commission**

- 10 (1) The functions of the commission are—
11 (a) investigating—
12 (i) corruption issues; and
13 (ii) matters referred to the commission by the Legislative
14 Assembly; and
15 (iii) matters involving serious or systemic corruption; and
16 (b) referring suspected instances of criminality or wrongdoing to the
17 appropriate authority for further investigation and action; and
18 (c) preventing corruption, including by—
19 (i) providing education about corrupt practices; and
20 (ii) researching corrupt practices; and
21 (iii) mitigating the risks of corruption; and
22 (d) publishing information about investigations conducted by the
23 commission, including lessons learned; and
24 (e) fostering public confidence in, and giving leadership to, the
25 parliament and public sector.

- 1 (2) Without limiting the ways the commission may perform its functions
2 in relation to preventing corrupt conduct, the commission may—
- 3 (a) take such steps as the commission considers necessary to
4 uphold, promote and ensure adherence to standards of conduct,
5 propriety and ethics in public authorities; and
- 6 (b) review and make recommendations about practices, procedures
7 and standards in relation to conduct, propriety and ethics in
8 public authorities and to evaluate their application within those
9 authorities; and
- 10 (c) provide advice to public officers and the public about standards
11 of conduct, propriety and ethics in public authorities; and
- 12 (d) provide advice to the Legislative Assembly about the
13 parliamentary integrity framework; and
- 14 (e) consult with, and provide assistance to, public authorities in
15 relation to the development and implementation of codes of
16 conduct relevant to those authorities; and
- 17 (f) evaluate the adequacy of systems and procedures in public
18 authorities for ensuring compliance with relevant codes of
19 conduct; and
- 20 (g) develop and coordinate education and training programs for
21 public authorities in relation to ethical conduct; and
- 22 (h) enter into contracts, agreements and partnerships with other
23 entities to support its educative, preventative and advisory
24 functions; and
- 25 (i) undertake research into matters related to ethical conduct and
26 investigatory processes; and
- 27 (j) prepare information and material and provide educative
28 resources to increase awareness of ethical conduct in the
29 community.

1 **94 Officer of the Legislative Assembly—commissioner**

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

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

- 8 (3) There are no implied functions, powers, rights, immunities or
9 obligations arising from the commissioner being an officer of the
10 Legislative Assembly.

- 11 (4) The powers of the Legislative Assembly to act in relation to the
12 commissioner are as stated in this Act and any other law in force in
13 the ACT.

- 14 (5) In subsection (4):

15 *Legislative Assembly* includes—

- 16 (a) the members of the Legislative Assembly; and
17 (b) the committees of the Legislative Assembly.

- 18 (6) There are no implied powers of the Legislative Assembly arising
19 from the commissioner being an officer of the Legislative Assembly.

20 **95 Independence**

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

1 **Division 6.2 Appointment of commissioner**

2 **96 Appointment of commissioner**

- 3 (1) The Speaker must, on behalf of the Territory, appoint a person as the
4 Anti-corruption and Integrity Commissioner (the *commissioner*).
- 5 (2) The appointment must be made—
- 6 (a) in consultation with—
- 7 (i) the Chief Minister; and
- 8 (ii) the Leader of the Opposition; and
- 9 (iii) the leader (however described) of a registered party (other
10 than the party to which the Chief Minister or Leader of
11 the Opposition belongs) if at least 2 members of the
12 Legislative Assembly are members of the party; and
- 13 (iv) the presiding member of the relevant Assembly committee;
14 and
- 15 (b) in accordance with an open and accountable selection process.
- 16 (3) The Speaker must not appoint a person as commissioner unless—
- 17 (a) the Speaker is satisfied that the person has extensive knowledge
18 of, and experience in, integrity and accountability in public
19 administration; and
- 20 (b) the appointment is agreed by a resolution passed by at least a
21 $\frac{2}{3}$ majority of the members of the Legislative Assembly.
- 22 (4) The commissioner is appointed on the terms (if any) in relation to
23 matters not provided for by this part or a determination under the
24 *Remuneration Tribunal Act 1995* that are prescribed by the
25 management standards under the *Public Sector Management*
26 *Act 1994*.

1 **97 Acting commissioner**

2 (1) Before the Speaker appoints a person to act as commissioner, the
3 Speaker must consult with the presiding member of the relevant
4 Assembly committee about the proposed appointment.

5 (2) However, for a period of leave of absence approved by the Speaker
6 under section 109 (Leave of absence—commissioner), the
7 commissioner may appoint a person to act as commissioner after
8 consulting with the Speaker.

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

11 (a) section 96 (2) (b);

12 (b) section 96 (3) (b);

13 (c) section 98 (2) (b).

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

17 **98 Eligibility for appointment as commissioner**

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

20 (a) a judge of the Supreme Court; or

21 (b) a judge of the Supreme Court of a State; or

22 (c) a judge of the Federal Court; or

23 (d) a justice of the High Court; or

24 (e) a lawyer for at least 10 years.

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

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

17 **99 Term of appointment of commissioner**

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

1 **Division 6.3** **Other provisions applying to**
2 **commissioner**

3 **100 Oath or affirmation of office—commissioner**

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

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

8 **101 Declaration of interests—commissioner**

9 (1) The commissioner must give a written statement of the
10 commissioner's financial and personal interests (a *declaration of*
11 *interests*) to the Speaker within 7 days after—

12 (a) the day the commissioner is appointed; and

13 (b) the first day of each financial year; and

14 (c) the day there is a change in the interest.

15 (2) The Speaker must make the declaration of interests available on the
16 Legislative Assembly's website either—

17 (a) in full; or

18 (b) if the Speaker believes on reasonable grounds that information
19 in the declaration would be inappropriate to disclose—without
20 disclosing the information.

21 **102 Commissioner must avoid conflict of interest**

22 (1) The commissioner must not—

23 (a) have paid employment other than exercising the commissioner's
24 functions; or

25 (b) engage in any unpaid activity that is inconsistent with the
26 commissioner's functions.

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

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

- 9 (3) The commissioner must not take any part in considering a matter in
10 relation to which the conflict of interest has arisen except—

- 11 (a) with the written approval of the Speaker; and
12 (b) in accordance with any conditions included in the Speaker's
13 approval.

- 14 (4) This section does not apply in relation to a conflict of interest or
15 potential conflict of interest while the commissioner remains unaware
16 of the conflict or potential conflict, but in any proceeding against the
17 commissioner, the commissioner has the burden of proving that the
18 commissioner was not, at the material time, aware of the conflict or
19 potential conflict.

20 **103 Resignation—commissioner**

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

23 **104 Retirement—commissioner**

- 24 (1) The Speaker may retire the commissioner on the ground of physical
25 or mental incapacity if—

- 26 (a) the incapacity substantially affects the exercise of the
27 commissioner's functions; and
28 (b) the commissioner consents to the retirement.

- 1 (2) If the Speaker is considering retiring the commissioner under this
2 section, the Speaker may ask 1 or more of the following for advice
3 about the proposed retirement:
- 4 (a) the Chief Minister;
- 5 (b) the Leader of the Opposition;
- 6 (c) the leader (however described) of a registered party (other than
7 the party to which the Chief Minister or Leader of the
8 Opposition belongs) if at least 2 members of the Legislative
9 Assembly are members of the party;
- 10 (d) the presiding member of the relevant Assembly committee.
- 11 (3) However, the commissioner must not be retired on the ground of
12 invalidity unless—
- 13 (a) if the commissioner is an eligible employee for the
14 *Superannuation Act 1976* (Cwlth)—
- 15 (i) the commissioner is under the commissioner’s maximum
16 retiring age within the meaning of that Act; and
- 17 (ii) a certificate has been given by the Commonwealth
18 Superannuation Board of Trustees No 2 under that Act,
19 section 54C for the commissioner; or
- 20 (b) if the commissioner is a member of the superannuation scheme
21 established under the *Superannuation Act 1990* (Cwlth)—
- 22 (i) the commissioner is under 60 years old; and
- 23 (ii) a certificate has been given by the Commonwealth
24 Superannuation Board of Trustees No 1 under that Act,
25 section 13 for the commissioner; or
- 26 (c) if the commissioner is an ordinary employer-sponsored member
27 of PSSAP within the meaning of the *Superannuation Act 2005*
28 (Cwlth)—
- 29 (i) the commissioner is under 60 years old; and

1 (ii) a certificate has been given by the Commonwealth
2 Superannuation Board of Trustees No 1 under that Act,
3 section 43 for the commissioner.

4 (4) In this section:

5 *invalidity* means—

6 (a) for an eligible employee for the *Superannuation Act 1976*
7 (Cwlth)—invalidity under that Act; or

8 (b) for a member of the superannuation scheme established under
9 the *Superannuation Act 1990* (Cwlth)—invalidity under that
10 Act; or

11 (c) for an ordinary employer-sponsored member of PSSAP within
12 the meaning of the *Superannuation Act 2005* (Cwlth)—
13 invalidity under that Act.

14 *physical or mental incapacity* includes invalidity.

15 **105 Suspension—commissioner**

16 (1) The Speaker may suspend the commissioner on the grounds of—

17 (a) misbehaviour; or

18 (b) failure to take all reasonable steps to avoid being placed in a
19 position where a conflict of interest arises during the exercise of
20 the commissioner's functions; or

21 (c) physical or mental incapacity, if the incapacity substantially
22 affects the exercise of the commissioner's functions.

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

- 1 (2) If the Speaker is considering suspending the commissioner, the
2 Speaker may ask 1 or more of the following for advice about the
3 proposed suspension:
- 4 (a) the Chief Minister;
- 5 (b) the Leader of the Opposition;
- 6 (c) the leader (however described) of a registered party (other than
7 the party to which the Chief Minister or Leader of the
8 Opposition belongs) if at least 2 members of the Legislative
9 Assembly are members of the party;
- 10 (d) the presiding member of the relevant Assembly committee;
- 11 (e) the public sector standards commissioner;
- 12 (f) anyone else the Speaker considers appropriate.
- 13 (3) If the Speaker suspends the commissioner, the Speaker must give
14 the commissioner written notice of the suspension and a copy of a
15 statement of the reasons for the suspension.
- 16 *Note* For what must be included in a statement of reasons, see the [Legislation](#)
17 [Act](#), s 179.
- 18 (4) The suspension takes effect when the notice and statement are given
19 to the commissioner under subsection (3).
- 20 (5) The commissioner may be suspended only under this section.
- 21 (6) The commissioner is entitled to be paid salary and allowances while
22 suspended.

- 1 **106 Relevant Assembly committee to consider suspension of**
2 **commissioner**
- 3 (1) If the Speaker suspends the commissioner, the Speaker must give
4 written notice of the suspension and a copy of the statement of the
5 reasons for the suspension to each member of the relevant Assembly
6 committee not later than the next business day, or if the committee
7 has not been established, the next business day after the day the
8 committee is established.
- 9 (2) The relevant Assembly committee must meet in relation to the
10 commissioner's suspension—
- 11 (a) not later than 3 business days after the day the committee is
12 given written notice of the suspension (the *notice day*); and
- 13 (b) at subsequent intervals of not longer than 30 days while the
14 commissioner is suspended (a *regular meeting*).
- 15 (3) The relevant Assembly committee must give the commissioner
16 written notice that a regular meeting will be held at least 3 business
17 days before the day the meeting is to be held.
- 18 (4) The commissioner may make an oral or written submission (or both)
19 to the committee about the commissioner's suspension.
- 20 (5) The relevant Assembly committee may also invite the following to
21 make a submission in relation to the suspension of the commissioner:
- 22 (a) the Chief Minister;
- 23 (b) the Leader of the Opposition;
- 24 (c) the leader (however described) of a registered party (other than
25 the party to which the Chief Minister or Leader of the
26 Opposition belongs) if at least 2 members of the Legislative
27 Assembly are members of the party.

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

8 **107 Ending suspension of commissioner**

- 9 (1) If the Speaker does not comply with section 106 (1), the suspension
10 ends at the end of the notice day.
11 (2) If the relevant Assembly committee fails to hold a meeting as
12 required under section 106 (2), the suspension ends on the day after
13 the last day when the meeting could have been held.
14 (3) If the relevant Assembly committee makes a recommendation
15 mentioned in section 106 (6) (a) and the Speaker does not end the
16 suspension within 1 business day after the day the recommendation
17 is made—
18 (a) the committee may at any time resolve to make a statement to
19 the Legislative Assembly recommending that the suspension be
20 ended; and
21 (b) if the committee makes a statement mentioned in paragraph (a)
22 and—
23 (i) the Legislative Assembly resolves to end the suspension by
24 resolution passed by at least a $\frac{2}{3}$ majority of the members of
25 the Legislative Assembly—the suspension ends on the
26 passing of the resolution; or
27 (ii) the Legislative Assembly does not deal with the statement
28 within 3 sitting days—the suspension ends at the end of the
29 3rd sitting day.

- 1 (4) If the relevant Assembly committee makes a statement mentioned in
2 section 106 (6) (b)—
- 3 (a) the Legislative Assembly may resolve to require the Speaker to
4 end the commissioner’s appointment; but
- 5 (b) if the Legislative Assembly does not, within 3 sitting days, pass
6 a resolution mentioned in paragraph (a)—the suspension ends at
7 the end of the 3rd sitting day.
- 8 (5) If the Speaker ends the commissioner’s suspension, the Speaker
9 must give written notice of the ending of the suspension and a copy
10 of a statement of the reasons for ending the suspension to the
11 commissioner and the relevant Assembly committee.

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

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

16 **108 Ending appointment of commissioner**

- 17 (1) The Speaker must end the commissioner’s appointment if—
- 18 (a) the Legislative Assembly—
- 19 (i) passes a resolution under section 107 (4) (a); or
- 20 (ii) otherwise resolves to require the Speaker to end the
21 commissioner’s appointment—
- 22 (A) for misbehaviour; or
- 23 (B) for physical or mental incapacity, if the incapacity
24 substantially affects the exercise of the
25 commissioner’s functions; or
- 26 (b) the commissioner becomes bankrupt or personally insolvent; or
- 27 (c) the commissioner is found guilty of an offence involving corrupt
28 conduct.

- 1 (2) For a resolution mentioned in subsection (1) (a) (ii)—
- 2 (a) at least 7 days before the day the motion to which the resolution
- 3 relates is first debated in the Legislative Assembly—
- 4 (i) the Assembly must be given the notice of the motion and
- 5 a statement of reasons for the motion; and
- 6 (ii) the Speaker must—
- 7 (A) give the commissioner a copy of the notice and the
- 8 statement of reasons; and
- 9 (B) tell the commissioner that a written submission about
- 10 the motion may be made to the Speaker not later than
- 11 3 days after the day the commissioner is given the
- 12 notice; and
- 13 (b) the Speaker must give any written submission to the Legislative
- 14 Assembly before the day the motion is first debated in the
- 15 Legislative Assembly.
- 16 *Note* For what must be included in a statement of reasons, see the [Legislation](#)
- 17 [Act](#), s 179.
- 18 (3) The Speaker may end the commissioner’s appointment if the
- 19 commissioner is absent from duty, except on leave granted by the
- 20 Speaker, for 14 consecutive days or for 28 days in any 12 months.
- 21 (4) The commissioner’s appointment may be ended by the Speaker only
- 22 under this section or section 104 (Retirement—commissioner).

23 **109 Leave of absence—commissioner**

- 24 (1) The Speaker may approve leave of absence for the commissioner on
- 25 the conditions about remuneration and otherwise that the Speaker
- 26 decides.
- 27 (2) Before making a decision under subsection (1), the Speaker must
- 28 consult—
- 29 (a) the Chief Minister; and

- 1 (b) the Leader of the Opposition; and
2 (c) the leader (however described) of a registered party (other than
3 the party to which the Chief Minister or Leader of the
4 Opposition belongs) if at least 2 members of the Legislative
5 Assembly are members of the party.

6 **Division 6.4 Officers of commission**

7 **110 Employing staff of commission**

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

16 **111 Commission—consultants and contractors**

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

20 **Example**

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

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

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

1 **112 Eligibility for appointment as officer of commission**

2 (1) The commissioner must not employ or engage a person as an officer
3 of the commission if the person—

4 (a) is or has been a member of—

5 (i) a registered party; or

6 (ii) a political party registered under a law of the
7 Commonwealth or a State; or

8 (iii) a political party; or

9 (b) does not have an appropriate security clearance.

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

11 (2) Also, the commissioner must not employ or engage a person as a
12 senior officer of the commission—

13 (a) if the person is or has, in the 10 years immediately before the
14 day of the proposed appointment, been a public servant; and

15 (b) other than on a fixed term contract of not more than 7 years
16 duration.

17 (3) In this section:

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

1 **113 Conflict of interest—officers of the commission**

2 (1) An officer of the commission must take all reasonable steps to avoid
3 being placed in a position where a conflict of interest arises during
4 the exercise of the person’s functions under this Act.

5 (2) If an officer has a financial or other personal interest that conflicts or
6 may conflict, or may be perceived to conflict with the officer’s
7 functions (a *conflict of interest*), the officer must disclose, in writing,
8 to the commissioner the nature of the interest and the conflict or
9 potential conflict.

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

13 (3) An officer who has a conflict of interest must not take part, or take
14 any further part, in the commission’s consideration of the matter in
15 relation to which the conflict has arisen except—

16 (a) with the written approval of the commissioner; and

17 (b) in accordance with any conditions included in the
18 commissioner’s approval.

19 (4) This section does not apply in relation to a conflict of interest or
20 potential conflict of interest while the officer remains unaware of the
21 conflict or potential conflict, but in any proceeding against the officer,
22 the officer has the burden of proving that the officer was not, at the
23 material time, aware of the conflict or potential conflict.

24 (5) The duties under this section in relation to a conflict of interest are in
25 addition to duties in relation to them under any other law in force in
26 the ACT.

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

1 **114** **Officer of commission not subject to direction from**
2 **others**

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

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

9 **115** **Delegation by commission**

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

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

14 **116** **Identity cards**

15 (1) The commissioner must give an identity card to an officer of the
16 commission who is an investigator stating the person's name and
17 that the person is an investigator.

18 (2) The identity card must show—

- 19 (a) a recent photograph of the investigator; and
20 (b) the card's date of issue and expiry; and
21 (c) anything else prescribed by regulation.

22 (3) A person commits an offence if the person—

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

27 Maximum penalty: 1 penalty unit.

- 1 (4) An offence against this section is a strict liability offence.
- 2 (5) Subsection (3) does not apply to a person if the person's identity
3 card has been—
- 4 (a) lost or stolen; or
- 5 (b) destroyed by someone else.
- 6 *Note* The defendant has an evidential burden in relation to the matters
7 mentioned in s (5) (see [Criminal Code](#), s 58).

1 **Part 7** **Oversight of commission**

2 **Division 7.1** **Legislative Assembly**

3 **117** **Oversight of commission by committee**

4 (1) The relevant Assembly committee may monitor, and report to the
5 Legislative Assembly on, the performance and functions of the
6 commission.

7 (2) The relevant Assembly committee may also report to the Legislative
8 Assembly as it considers necessary in relation to the committee's
9 review of a report provided by the commission under division 4.6
10 (Reports).

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

14 **118** **Annual reports of commission**

15 (1) The commissioner's annual report under the *Annual Reports*
16 *(Government Agencies) Act 2004* must include the following for the
17 reporting year:

18 (a) a description of the matters that were referred to the
19 commission;

20 (b) a description of the matters investigated by the commission;

21 (c) the following details in relation to matters investigated by the
22 commission:

23 (i) the time interval between the lodging of each complaint
24 and the commission deciding to investigate the complaint;

25 (ii) the number of complaints for which an investigation was
26 commenced by the commission but not finalised;

- 1 (iii) the average time taken to deal with complaints and the
2 actual time taken to investigate any matter in relation to
3 which a report is made;
- 4 (iv) the number of examinations conducted;
- 5 (v) the number of days spent conducting examinations;
- 6 (vi) the time interval between the completion of each
7 examination and reporting on the matter;
- 8 (d) the number of complaints dismissed by the commission and the
9 reasons for the dismissal;
- 10 (e) the number of matters referred by the commission under
11 division 4.7 and the relevant authorities to which the matters
12 were referred;
- 13 (f) recommendations for changes to a law of the Territory, or for
14 administrative action, that the commission considers should be
15 made as a result of the exercise of its functions;
- 16 (g) the general nature and extent of any information furnished
17 under this Act by the commission to a law enforcement agency;
- 18 (h) the number of search warrants issued under this Act.

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

22 (2) In this section:

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

1 **Division 7.2** **Appointment of Inspector**

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

3 **119** **Appointment of Inspector**

4 (1) The Speaker must, on behalf of the Territory, appoint a person as
5 Inspector of the Anti-corruption and Integrity Commission (the
6 *inspector*) on a part-time basis.

7 (2) The appointment must be made—

8 (a) in consultation with—

9 (i) the Chief Minister; and

10 (ii) the Leader of the Opposition; and

11 (iii) the leader (however described) of a registered party (other
12 than the party to which the Chief Minister or Leader of
13 the Opposition belongs) if at least 2 members of the
14 Legislative Assembly are members of the party; and

15 (iv) the presiding member of the relevant Assembly committee;
16 and

17 (b) in accordance with an open and accountable selection process.

18 (3) The Speaker must not appoint a person as inspector unless—

19 (a) the Speaker is satisfied that the person has extensive knowledge
20 of, and experience in, integrity and accountability in public
21 administration; and

22 (b) the appointment is agreed by a resolution passed by at least a
23 $\frac{2}{3}$ majority of the members of the Legislative Assembly.

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

6 **120 Functions of inspector**

7 The functions of the inspector are—

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

17 **121 Independence of inspector**

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

20 **122 Acting inspector**

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

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

3 (a) section 119 (2) (b);

4 (b) section 119 (3) (b);

5 (c) section 123 (2) (b).

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

9 **123 Eligibility for appointment as inspector**

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

12 (a) a judge of the Supreme Court; or

13 (b) a judge of the Supreme Court of a State; or

14 (c) a judge of the Federal Court; or

15 (d) a justice of the High Court; or

16 (e) a lawyer for at least 10 years.

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

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

20 (a) is or has been a member of—

21 (i) the Legislative Assembly; or

22 (ii) the Parliament of the Commonwealth; or

23 (iii) the legislature of a State; or

24 (b) is or has, in the 10 years immediately before the day of the
25 proposed appointment, been a public employee; or

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

9 **124 Term of appointment of inspector**

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

13 **125 Review of commission's performance**

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

- 1 **126** **Comments on proposed report**
- 2 (1) This section applies if the inspector is preparing a report under
- 3 section 127.
- 4 (2) The inspector must give the commission—
- 5 (a) a copy of the proposed report; and
- 6 (b) a written notice stating that the commission may give written
- 7 comments about the proposed report to the inspector before the
- 8 end of—
- 9 (i) 14 days after the day the notice is given to the commission;
- 10 or
- 11 (ii) a longer period stated in the notice.
- 12 (3) If the inspector receives comments under this section, the inspector
- 13 must consider the comments in preparing the final report.
- 14 (4) In this section:
- 15 *proposed report* means a draft version of a report.

- 16 **127** **Report on review**
- 17 (1) The inspector must prepare a report about a review under section 125
- 18 as soon as practicable but not later than 3 months after the end of the
- 19 financial year to which the review relates.
- 20 (2) The report must include the substance of any comments received by
- 21 the inspector under section 126 (3).
- 22 (3) If the Legislative Assembly is sitting when the inspector has finished
- 23 the report—
- 24 (a) the inspector must give the report to the Speaker; and
- 25 (b) the Speaker must present the report to the Legislative Assembly
- 26 on the next sitting day.

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

16 **128 Complaints about commission**

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

1 **129 Access to commission premises and information**

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

8 **130 Further powers of inspector**

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

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

9 **131 Confidentiality of information**

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

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

23 **132 Oath or affirmation of office—inspector**

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

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

1 **133 Declaration of interests—inspector**

2 (1) The inspector must give a written statement of the inspector's
3 personal and financial interests (a *declaration of interests*) to the
4 Speaker within 7 days after—

- 5 (a) the day the inspector is appointed; and
6 (b) the first day of each financial year; and
7 (c) the day there is a change in the interest.

8 (2) The Speaker must make the declaration of interests available on the
9 Legislative Assembly's website either—

- 10 (a) in full; or
11 (b) if the Speaker believes on reasonable grounds that information
12 in the declaration would be inappropriate to disclose—without
13 disclosing the information.

14 **134 Inspector must avoid conflict of interest**

15 (1) The inspector must not—

- 16 (a) have paid employment that is inconsistent with the inspector's
17 functions; or
18 (b) engage in any unpaid activity that is inconsistent with the
19 inspector's functions.

20 (2) The inspector must take all reasonable steps to avoid being placed in
21 a position where a conflict of interest arises during the exercise of the
22 inspector's functions.

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

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

9 (4) The inspector must not take any part in considering a matter in
10 relation to which the conflict of interest has arisen except—

11 (a) with the written approval of the Speaker; and

12 (b) in accordance with any conditions included in the Speaker's
13 approval.

14 (5) This section does not apply in relation to a conflict of interest or
15 potential conflict of interest while the inspector remains unaware of
16 the conflict or potential conflict, but in any proceeding against the
17 inspector, the inspector has the burden of proving that the inspector
18 was not, at the material time, aware of the conflict or potential
19 conflict.

20 **135 Resignation—inspector**

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

23 **136 Retirement—inspector**

24 (1) The Speaker may retire the inspector on the ground of physical or
25 mental incapacity if—

26 (a) the incapacity substantially affects the exercise of the
27 inspector's functions; and

28 (b) the inspector consents to the retirement.

- 1 (2) If the Speaker is considering retiring the inspector under this section,
2 the Speaker may ask 1 or more of the following for advice about the
3 proposed retirement:
- 4 (a) the Chief Minister;
- 5 (b) the Leader of the Opposition;
- 6 (c) the leader (however described) of a registered party (other than
7 the party to which the Chief Minister or Leader of the
8 Opposition belongs) if at least 2 members of the Legislative
9 Assembly are members of the party;
- 10 (d) the presiding member of the relevant Assembly committee.
- 11 (3) However, the inspector must not be retired on the ground of invalidity
12 unless—
- 13 (a) if the inspector is an eligible employee for the *Superannuation*
14 *Act 1976* (Cwlth)—
- 15 (i) the inspector is under the inspector’s maximum retiring age
16 within the meaning of that Act; and
- 17 (ii) a certificate has been given by the Commonwealth
18 Superannuation Board of Trustees No 2 under that Act,
19 section 54C for the inspector; or
- 20 (b) if the inspector is a member of the superannuation scheme
21 established under the *Superannuation Act 1990* (Cwlth)—
- 22 (i) the inspector is under 60 years old; and
- 23 (ii) a certificate has been given by the Commonwealth
24 Superannuation Board of Trustees No 1 under that Act,
25 section 13 for the inspector; or
- 26 (c) if the inspector is an ordinary employer-sponsored member of
27 PSSAP within the meaning of the *Superannuation Act 2005*
28 (Cwlth)—
- 29 (i) the inspector is under 60 years old; and

1 (ii) a certificate has been given by the Commonwealth
2 Superannuation Board of Trustees No 1 under that Act,
3 section 43 for the inspector.

4 (4) In this section:

5 *invalidity* means—

6 (a) for an eligible employee for the *Superannuation Act 1976*
7 (Cwlth)—invalidity under that Act; or

8 (b) for a member of the superannuation scheme established under
9 the *Superannuation Act 1990* (Cwlth)—invalidity under that
10 Act; or

11 (c) for an ordinary employer-sponsored member of PSSAP within
12 the meaning of the *Superannuation Act 2005* (Cwlth)—
13 invalidity under that Act.

14 *physical or mental incapacity* includes invalidity.

15 **137 Suspension of inspector—generally**

16 (1) The Speaker may suspend the inspector on any of the following
17 grounds:

18 (a) misbehaviour;

19 (b) failure to take all reasonable steps to avoid being placed in a
20 position where a conflict of interest arises during the exercise of
21 the inspector’s functions;

22 (c) physical or mental incapacity, if the incapacity substantially
23 affects the exercise of the inspector’s functions.

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

- 1 (2) If the Speaker is considering suspending the inspector, the Speaker
2 may ask 1 or more of the following for advice about the proposed
3 suspension:
- 4 (a) the Chief Minister;
- 5 (b) the Leader of the Opposition;
- 6 (c) the leader (however described) of a registered party (other than
7 the party to which the Chief Minister or Leader of the
8 Opposition belongs) if at least 2 members of the Legislative
9 Assembly are members of the party;
- 10 (d) the presiding member of the relevant Assembly committee;
- 11 (e) the public sector standards commissioner;
- 12 (f) anyone else the Speaker considers appropriate.
- 13 (3) If the Speaker suspends the inspector, the Speaker must give the
14 inspector written notice of the suspension and a copy of a statement
15 of the reasons for the suspension.
- 16 *Note* For what must be included in a statement of reasons, see the [Legislation](#)
17 Act, s 179.
- 18 (4) The suspension takes effect when the notice and statement are given
19 to the inspector under subsection (3).
- 20 (5) The inspector may be suspended only under this section.
- 21 (6) The inspector is entitled to be paid salary and allowances while
22 suspended.

- 1 **138 Relevant Assembly committee to consider suspension of**
2 **inspector**
- 3 (1) If the Speaker suspends the inspector, the Speaker must give written
4 notice of the suspension and a copy of the statement of the reasons
5 for the suspension to each member of the relevant Assembly
6 committee not later than the next business day, or if the committee
7 has not been established, the next business day after the day the
8 committee is established.
- 9 (2) The relevant Assembly committee must meet in relation to the
10 inspector's suspension—
- 11 (a) not later than 3 business days after the day the committee is
12 given written notice of the suspension (the *notice day*); and
- 13 (b) at subsequent intervals of not longer than 30 days while the
14 inspector is suspended (a *regular meeting*).
- 15 (3) The relevant Assembly committee must give the inspector written
16 notice that a regular meeting will be held at least 3 business days
17 before the day the meeting is to be held.
- 18 (4) The inspector may make an oral or written submission (or both) to the
19 committee about the inspector's suspension.
- 20 (5) The relevant Assembly committee may also invite the following to
21 make a submission in relation to the suspension of the inspector:
- 22 (a) the Chief Minister;
- 23 (b) the Leader of the Opposition;
- 24 (c) the leader (however described) of a registered party (other than
25 the party to which the Chief Minister or Leader of the
26 Opposition belongs) if at least 2 members of the Legislative
27 Assembly are members of the party.

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

8 **139 Ending suspension of inspector**

- 9 (1) If the Speaker does not comply with section 138 (1), the suspension
10 ends at the end of the notice day.
11 (2) If the relevant Assembly committee fails to hold a meeting as required
12 under section 138 (2), the suspension ends on the day after the last day
13 when the meeting could have been held.
14 (3) If the relevant Assembly committee makes a recommendation
15 mentioned in section 138 (6) (a) and the Speaker does not end the
16 suspension within 1 business day after the day the recommendation
17 is made—
18 (a) the committee may at any time resolve to make a statement to
19 the Legislative Assembly recommending that the suspension be
20 ended; and
21 (b) if the committee makes a statement mentioned in paragraph (a)
22 and—
23 (i) the Legislative Assembly resolves to end the suspension by
24 resolution passed by at least a $\frac{2}{3}$ majority of the members of
25 the Legislative Assembly—the suspension ends on the
26 passing of the resolution; or
27 (ii) the Legislative Assembly does not deal with the statement
28 within 3 sitting days—the suspension ends at the end of the
29 3rd sitting day.

- 1 (4) If the relevant Assembly committee makes a statement mentioned in
2 section 138 (6) (b)—
- 3 (a) the Legislative Assembly may resolve to require the Speaker to
4 end the inspector’s appointment; but
- 5 (b) if the Legislative Assembly does not, within 3 sitting days, pass
6 a resolution mentioned in paragraph (a)—the suspension ends at
7 the end of the 3rd sitting day.
- 8 (5) If the Speaker ends the inspector’s suspension, the Speaker must
9 give written notice of the ending of the suspension and a copy of a
10 statement of the reasons for ending the suspension to the inspector
11 and the relevant Assembly committee.
- 12 *Note* For what must be included in a statement of reasons, see the [Legislation](#)
13 [Act](#), s 179.
- 14 (6) In this section:
15 *notice day*—see section 138 (2) (a).

16 **140 Ending appointment of inspector**

- 17 (1) The Speaker must end the inspector’s appointment if—
- 18 (a) the Legislative Assembly—
- 19 (i) passes a resolution under section 139 (4) (a); or
- 20 (ii) otherwise resolves to require the Speaker to end the
21 inspector’s appointment—
- 22 (A) for misbehaviour; or
- 23 (B) for physical or mental incapacity, if the incapacity
24 substantially affects the exercise of the inspector’s
25 functions; or
- 26 (b) the inspector becomes bankrupt or personally insolvent; or
- 27 (c) the inspector is found guilty of conduct that is corrupt conduct.

- 1 (2) For a resolution mentioned in subsection (1) (a) (ii)—
- 2 (a) at least 7 days before the day the motion to which the
- 3 resolution relates is first debated in the Legislative Assembly—
- 4 (i) the Assembly must be given the notice of the motion and
- 5 a statement of reasons for the motion; and
- 6 (ii) the Speaker must—
- 7 (A) give the inspector a copy of the notice and the
- 8 statement of reasons; and
- 9 (B) tell the inspector that a written submission about the
- 10 motion may be made to the Speaker not later than
- 11 3 days after the day the inspector is given the notice;
- 12 and
- 13 (b) the Speaker must give any written submission to the Legislative
- 14 Assembly before the day the motion is first debated in the
- 15 Legislative Assembly.
- 16 *Note* For what must be included in a statement of reasons, see the [Legislation](#)
- 17 [Act](#), s 179.
- 18 (3) The Speaker may end the inspector's appointment if the inspector is
- 19 absent from duty, except on leave granted by the Speaker, for
- 20 14 consecutive days or for 28 days in any 12 months.
- 21 (4) The inspector's appointment may be ended by the Speaker only under
- 22 this section or section 136 (Retirement—inspector).

23 **141 Leave of absence—inspector**

- 24 (1) The Speaker may, after consulting the relevant Assembly committee,
- 25 approve leave of absence for the inspector on the conditions about
- 26 remuneration and otherwise that the Speaker decides.
- 27 (2) Before making a decision under subsection (1), the Speaker must
- 28 consult—
- 29 (a) the Chief Minister; and

- 1 (b) the Leader of the Opposition; and
2 (c) the leader (however described) of a registered party (other than
3 the party to which the Chief Minister or Leader of the
4 Opposition belongs) if at least 2 members of the Legislative
5 Assembly are members of the party.

6 **Division 7.3 Office of the inspector**

7 **142 Inspector's staff**

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

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

14 **143 Inspector—consultants and contractors**

- 15 (1) The inspector may, on behalf of the Territory, engage a consultant or
16 contractor to assist in the exercise of any function of the inspector.
17 (2) A consultant or contractor may be engaged on terms decided by the
18 inspector.
19 (3) However, this section does not give the inspector a power to enter
20 into a contract of employment with a contractor.

21 **144 Other arrangements for staff and facilities**

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

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

1 **145 Conflict of interest—inspector’s staff**

2 (1) This section applies to a person (an *inspector’s staff member*) who
3 is—

4 (a) employed under section 142; or

5 (b) engaged under section 143.

6 (2) An inspector’s staff member must take all reasonable steps to avoid
7 being placed in a position where a conflict of interest arises during
8 the exercise of the member’s functions under this Act.

9 (3) If an inspector’s staff member has a financial or other personal
10 interest that conflicts or may conflict, or may be perceived to conflict
11 with the member’s functions (a *conflict of interest*), the member
12 must disclose, in writing, to the inspector the nature of the interest
13 and the conflict or potential conflict.

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

17 (4) An inspector’s staff member who has a conflict of interest must not
18 take part, or take any further part, in the consideration of the matter
19 in relation to which the conflict has arisen except—

20 (a) with the written approval of the inspector; and

21 (b) in accordance with any conditions included in the inspector’s
22 approval.

23 (5) This section does not apply in relation to a conflict of interest or
24 potential conflict of interest while the inspector’s staff member
25 remains unaware of the conflict or potential conflict, but in any
26 proceeding against the member, the member has the burden of
27 proving that the member was not, at the material time, aware of the
28 conflict or potential conflict.

1 (6) The duties under this section in relation to a conflict of interest are in
2 addition to duties in relation to them under any other law in force in
3 the ACT.

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

8 **146 Delegation by inspector**

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

11 (a) a member of staff mentioned in section 142 (Inspector's staff);
12 or

13 (b) a person engaged by the inspector under section 143.

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

1 **Part 8** **Information protection**
2 **requirements**

3 **147** **Secrecy**

4 (1) In this section:

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

7 *divulge* includes communicate.

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

9 (a) is or has been—

10 (i) the commissioner; or

11 (ii) an officer of the commission; or

12 (b) exercises, or has exercised, a function under this Act.

13 *produce* includes allow access to.

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

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

19 (a) the person—

20 (i) makes a record of protected information about someone
21 else; and

22 (ii) is reckless about whether the information is protected
23 information about someone else; or

- 1 (b) the person—
- 2 (i) does something that divulges protected information about
- 3 someone else; and
- 4 (ii) is reckless about whether—
- 5 (A) the information is protected information about
- 6 someone else; and
- 7 (B) doing the thing would result in the information being
- 8 divulged to someone else.
- 9 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 10 both.
- 11 (3) Subsection (2) does not apply if the record is made, or the information
- 12 is divulged—
- 13 (a) under this Act or another territory law; or
- 14 (b) in relation to the exercise of a function, as a person to whom this
- 15 section applies, under this Act or another territory law.
- 16 (4) Subsection (2) does not apply to the divulging of protected
- 17 information about someone with the person's consent.
- 18 (5) A person to whom this section applies need not divulge protected
- 19 information to a court, or produce a document containing protected
- 20 information to a court, unless it is necessary to do so for this Act or
- 21 another territory law.

22 **148 Evidence in criminal proceedings**

- 23 (1) The section applies if—
- 24 (a) a person is prosecuted for an offence; and

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

15 **149 Information handling guidelines**

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

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

1 **151 Cooperation with other entities**

2 (1) The commission must ensure that the commission's functions are
3 exercised in a way that does not delay or unnecessarily duplicate the
4 exercise of functions by the following entities:

5 (a) a person exercising a function under—

6 (i) the *Auditor-General Act 1996*; or

7 (ii) the *Ombudsman Act 1989*;

8 (b) the public sector standards commissioner;

9 (c) a police officer investigating a fraud or other criminal matter.

10 (2) The commission may enter into an arrangement with an entity
11 mentioned in subsection (1) to assist in—

12 (a) avoiding delay and unnecessary duplication of statutory
13 functions; or

14 (b) efficiently managing the interaction of the statutory functions of
15 the parties to the arrangement.

16 **Example—arrangement**

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

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

23 **152 Cooperation with commission**

24 (1) This section applies if a public authority deals with a matter that
25 involves corrupt conduct or potential corrupt conduct.

26 (2) The public authority must—

27 (a) consult with the commission about the matter; and

- 1 (b) ensure that the authority's functions are exercised in a way that
2 does not delay or unnecessarily duplicate the exercise of
3 functions by the commission.
- 4 (3) The public authority may enter into an arrangement with the
5 commission to assist in—
- 6 (a) avoiding delay and unnecessary duplication of statutory
7 functions; or
- 8 (b) efficiently managing the interaction of the statutory functions
9 of the parties to the arrangement.
- 10 (4) In this section:
11 *matter* includes a part of a matter.
- 12 **153 Public authority may refer matter to commission**
- 13 (1) This section applies if a public authority reasonably believes that a
14 matter can be more appropriately dealt with by the commission.
- 15 (2) The public authority may decide not to deal with the matter and to
16 refer the matter, together with any relevant documents or information
17 in the authority's possession or control, to the commission.
- 18 (3) The public authority may enter into an arrangement with the
19 commission about the referral of a matter under this section.
- 20 (4) Nothing in this section requires the commission to deal with the
21 referred matter.
- 22 (5) In this section:
23 *matter* includes a part of a matter.

1 **154 Information sharing**

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

10 **155 Interjurisdictional arrangements**

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

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

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

- 24 (3) An agreement is a notifiable instrument.

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

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

- 1 (4) In this section:
- 2 ***integrity entity*** means—
- 3 (a) the Australian Federal Police; or
- 4 (b) the Integrity Commissioner under the *Law Enforcement*
- 5 *Integrity Commissioner Act 2006* (Cwlth), section 14; or
- 6 (c) an entity established by a law of another jurisdiction that has
- 7 functions substantially corresponding with the commission’s
- 8 functions.
- 9 ***relevant head***, in relation to an integrity entity, means the person with
- 10 authority to enter into a memorandum under this section on behalf of
- 11 the integrity entity.

1 **Part 10** **Miscellaneous**

2 **156** **Protection of officials from liability**

3 (1) In this section:

4 *official* means—

5 (a) a commissioner; or

6 (b) an officer of the commission; or

7 (c) a person who exercises a function under this Act.

8 (2) An official, or anyone engaging in conduct under the direction of an
9 official, is not personally liable for anything done or omitted to be
10 done honestly and without recklessness—

11 (a) in the exercise of a function under this Act; or

12 (b) in the reasonable belief that the conduct was in the exercise of a
13 function under this Act.

14 (3) Any civil liability that would, apart from subsection (2), attach to an
15 official attaches instead to the Territory.

16 **157** **Reputational repair protocol**

17 (1) The commission must develop a protocol to deal with reputational
18 damage suffered by a person—

19 (a) who the commission has publicly named as having engaged in
20 corrupt conduct in a report tabled in the Legislative Assembly
21 under section 62 (Delivery and tabling of reports); and

22 (b) who has subsequently been cleared of any wrongdoing (whether
23 by a court or otherwise).

24 (2) The commission must develop guidelines for use of the protocol
25 under subsection (1).

1 (3) The guidelines are a notifiable instrument.

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

3 **158 Regulation-making power**

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

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

7 (2) A regulation may create offences and fix maximum penalties of not
8 more than 30 penalty units for the offences.

9 (3) The Executive must consult with the commission and the relevant
10 Assembly committee before making a regulation under this Act.

11 (4) Subject to any disallowance or amendment under the
12 [Legislation Act](#), chapter 7, a regulation under this Act commences—

13 (a) if there is a motion to disallow the regulation and the motion is
14 negated by the Legislative Assembly—on the day after the day
15 the motion is negated; or

16 (b) on the day after the 6th sitting day after the day it is presented to
17 the Legislative Assembly under that chapter; or

18 (c) if the regulation provides for a later date or time of
19 commencement—on that date or at that time.

20 **159 Review of Act**

21 (1) The Minister must review the operation of this Act as soon as
22 practicable after the end of every 5th year of its operation.

23 (2) The Minister must present a report of the review to the Legislative
24 Assembly within 3 months after the day the review is started.

1 **Part 11** **Consequential amendments**

2 **160** **Legislation amended—sch 1**

3 This Act amends the legislation mentioned in schedule 1.

1 **Schedule 1 Consequential amendments**

2 (see s 160)

3 **Part 1.1 Corrections Management**
4 **Act 2007**

5 **[1.1] Section 217A (2), definition of *court***

6 *after*

7 ACAT

8 *insert*

9 and the Anti-corruption and Integrity Commission

10 **[1.2] Dictionary, new definition of *Anti-corruption and Integrity***
11 ***Commission***

12 *insert*

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

15 **Part 1.2 Crimes (Controlled Operations)**
16 **Act 2008**

17 **[1.3] Section 9 (4) (b)**

18 *after*

19 criminal activity

20 *insert*

21 or corrupt conduct

1 **[1.4] Section 10 (2) (a)**

2 *substitute*

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

5 **[1.5] Section 10 (2) (c)**

6 *after*

7 criminal activity

8 *insert*

9 or corrupt conduct

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

11 *substitute*

12 (g) the operation will not be conducted in a way that a person is
13 likely to be induced to—

14 (i) commit an offence against a law of any jurisdiction or the
15 Commonwealth that the person would not otherwise have
16 committed; or

17 (ii) engage in corrupt conduct that the person would not
18 otherwise have engaged in; and

19 **[1.7] Section 11 (3) (f)**

20 *after*

21 (including the suspected relevant offences)

22 *insert*

23 or corrupt conduct

1 **[1.8] Section 19 (2) (b)**

2 *substitute*

3 (b) the conduct does not involve the participant intentionally
4 inducing a person to—

5 (i) commit an offence under a law of any jurisdiction or the
6 Commonwealth that the person would not otherwise have
7 committed; or

8 (ii) engage in corrupt conduct that the person would not
9 otherwise have engaged in; and

10 **[1.9] Section 28 (2) (c)**

11 *after*

12 criminal activities

13 *insert*

14 or corrupt conduct

15 **[1.10] Section 33 (3), definition of *senior officer*, new**
16 **paragraph (c)**

17 *insert*

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

21 **[1.11] Dictionary, new definition of *Anti-corruption and Integrity***
22 ***Commission***

23 *insert*

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

1 **[1.12] Dictionary, definition of *chief officer*, new paragraph (c)**

2 *insert*

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

5 **[1.13] Dictionary, definition of *controlled operation*,**
6 **paragraph (a)**

7 *substitute*

8 (a) is conducted, or is intended to be conducted, for the purpose of
9 obtaining evidence—

10 (i) that may lead to the prosecution of a person for a relevant
11 offence; or

12 (ii) of corrupt conduct; and

13 **[1.14] Dictionary, new definition of *corrupt conduct***

14 *insert*

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

17 **[1.15] Dictionary, definition of *law enforcement agency*, new**
18 **paragraph (c)**

19 *insert*

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

21 **[1.16] Dictionary, definition of *law enforcement officer*, new**
22 **paragraph (a) (iii)**

23 *insert*

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

1 **[1.17] Dictionary, definition of *suspect***

2 *substitute*

3 *suspect* means a person reasonably suspected of—

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

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

10 **[1.18] Section 6 (a)**

11 *after*

12 criminal investigations

13 *insert*

14 and investigations by the Anti-corruption and Integrity Commission

15 **[1.19] New section 11 (1A)**

16 *insert*

17 (1A) A law enforcement officer who is investigating a matter under the
18 *Anti-corruption and Integrity Commission Act 2018* (or another
19 person on the officer's behalf) may apply for the issue of a
20 surveillance device warrant if the law enforcement officer suspects or
21 believes on reasonable grounds that—

- 22 (a) a person has been, is, or is likely to be involved in corrupt
23 conduct being investigated by the Anti-corruption and Integrity
24 Commission; and

1 (b) an investigation into that corrupt conduct is being, will be or is
2 likely to be conducted in the ACT, in the ACT and in 1 or
3 more participating jurisdictions or in 1 or more participating
4 jurisdictions; and

5 (c) the use of a surveillance device in the ACT, in the ACT and in
6 1 or more participating jurisdictions or in 1 or more
7 participating jurisdictions is or will be necessary in the course
8 of that investigation for the purpose of enabling evidence or
9 information to be obtained of corrupt conduct.

10 **[1.20] Section 13 (2) (a)**

11 *after*
12 alleged offence
13 *insert*
14 or corrupt conduct

15 **[1.21] Section 14 (1) (b) (ii)**

16 *after*
17 alleged offence
18 *insert*
19 or corrupt conduct

20 **[1.22] Sections 18 (2) and (4)**

21 *omit*
22 for the purpose of enabling evidence to be obtained of the commission
23 of the relevant offence or the identity or location of the offender

- 1 **[1.23] New section 18 (5)**
- 2 *insert*
- 3 (5) In this section:
- 4 *no longer necessary*, in relation to a warrant, means—
- 5 (a) for a warrant issued in relation to an Anti-corruption and
6 Integrity Commission investigation—no longer necessary for
7 the purpose of the investigation into corrupt conduct; and
- 8 (b) for any other warrant—no longer necessary for the purpose of
9 enabling evidence to be obtained of the commission of the
10 relevant offence or the identity or location of the offender.
- 11 **[1.24] Section 36 (7), definition of *proceeding***
- 12 *omit*
- 13 or Royal Commission
- 14 *insert*
- 15 , Royal Commission or the Anti-corruption and Integrity Commission
- 16 **[1.25] Section 41 (2) (d)**
- 17 *substitute*
- 18 (d) if the warrant was issued in relation to a relevant offence—the
19 relevant offence; and
- 20 (da) if the warrant was issued in relation to an investigation into
21 corrupt conduct—the corrupt conduct; and

1 **[1.26] Section 44 (3), definition of *senior officer*, new**
2 **paragraph (c)**

3 *insert*

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

7 **[1.27] Dictionary, new definition of *Anti-corruption and Integrity***
8 ***Commission***

9 *insert*

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

12 **[1.28] Dictionary, definition of *chief officer*, new paragraph (c)**

13 *insert*

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

16 **[1.29] Dictionary, new definition of *corrupt conduct***

17 *insert*

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

20 **[1.30] Dictionary, definition of *law enforcement agency*, new**
21 **paragraph (c)**

22 *insert*

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

1 **[1.31] Dictionary, definition of *law enforcement officer*, new**
2 **paragraph (a) (iii)**

3 *insert*

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

6
7 **[1.32] Dictionary, definition of *relevant proceeding*, new**
8 **paragraph (l)**

9 *insert*

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

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

13 **[1.33] Schedule 1, item 1.1 (b), new example**

14 *before example 1, insert*

15 1A Anti-corruption and Integrity Commission under the *Anti-corruption and*
16 *Integrity Commission Act 2018*

17 **[1.34] Schedule 1, item 1.3, new subsection (1A)**

18 *insert*

19 (1A) Information that is protected information under the *Anti-corruption*
20 *and Integrity Commission Act 2018*, section 147.

1 **Part 1.5 Information Privacy Act 2014**

2 **[1.35] Section 24, new paragraph (da)**

3 *insert*

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

6 **Part 1.6 Legislation Act 2001**

7 **[1.36] Dictionary, part 1, new definition of *anti-corruption and***
8 ***integrity commissioner***

9 *insert*

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

13 **[1.37] Dictionary, part 1, definition of *officer of the Assembly,***
14 **new paragraph (aa)**

15 *before paragraph (a), insert*

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

1 **Part 1.7** **Public Interest Disclosure**
2 **Act 2012**

3 **[1.38] New sections 48 and 49**

4 *insert*

5 **48 Review of Act by 1 July 2020**

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

18 **49 Review of Act**

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

Dictionary

(see s 3)

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

- 1 • territory instrumentality
- 2 • territory-owned corporation.
- 3

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

8 ***Assembly referral***—see section 14.

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

12 ***authorised officer***—see section 80.

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

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

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

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

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

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

23 ***corrupt conduct***—see section 7.

24 ***corruption issue***—see section 15.

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

28 ***detrimental action***—see section 24.

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

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

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

7 **investigator** means—

8 (a) the commissioner; or

9 (b) an officer of the commission authorised by the commissioner to
10 exercise powers under section 28.

11 **notice to appear**—see section 34.

12 **officer** of the commission means—

13 (a) a member of staff of the commission employed under
14 section 110; or

15 (b) a consultant or contractor engaged under section 111.

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

17 **premises**—see section 80.

18 **presiding officer**—see section 41.

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

21 **public authority**—see section 9.

22 **public official**—see section 10.

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

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

- 1 **relevant Assembly committee** means the committee of the Legislative
2 Assembly whose functions include the examination of matters related
3 to corruption and integrity in public administration.
- 4 **relevant authority**—see section 65.
- 5 **secured item**, for division 4.4 (Dealing with parliamentary privilege
6 claims)—see section 53.
- 7 **serious corruption** means corrupt conduct that is likely to threaten
8 public confidence in the integrity of public administration.
- 9 **systemic corruption** means instances of corrupt conduct (which may
10 or may not constitute serious corruption) that reveal a pattern of
11 corrupt conduct in a public authority.
- 12 **takes**, detrimental action—see section 25 (2).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 6 June 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.

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