2022

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Elizabeth Lee)

Integrity Commission Amendment Bill 2022 (No 2)

Contents

 Page

 [1 Name of Act 2](#_Toc116034333)

 [2 Commencement 2](#_Toc116034334)

 [3 Legislation amended 2](#_Toc116034335)

 [4 New division 3.5.4A 2](#_Toc116034336)

 [5 Dictionary, new definitions 18](#_Toc116034337)

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Integrity Commission Amendment Bill 2022 (No 2)

A Bill for

An Act to amend the [Integrity Commission Act 2018](http://www.legislation.act.gov.au/a/2018-52%22%20%5Co%20%22A2018-52)

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

1 Name of Act

This Act is the *Integrity Commission Amendment Act 2022 (No 2)*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 75 (1)).

3 Legislation amended

This Act amends the [Integrity Commission Act 2018](http://www.legislation.act.gov.au/a/2018-52).

4 New division 3.5.4A

insert

Division 3.5.4A Telecommunications warrants

Subdivision 3.5.4A.1 Preliminary

137A Definitions—div 3.5.4A

In this division:

Commonwealth Act means the [Telecommunications (Interception and Access) Act 1979](https://www.legislation.gov.au/Series/C2004A02124) (Cwlth).

Commonwealth Minister means the minister administering the Commonwealth Act.

part 2-5 warrant means a warrant under the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), part 2‑5.

possession, of a document, record or information, includes custody or control of the document, record or information.

137B Meaning of terms in Commonwealth Act

A term used in this division that is not defined under this Act or the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), dictionary, part 1, has the meaning given by the Commonwealth Act.

137C Object of div 3.5.4A

The object of this division is to enable the commission to intercept telecommunications, in accordance with the Commonwealth Act, for the investigation and exposure of corrupt conduct.

Subdivision 3.5.4A.2 Telecommunications warrant applications—role of inspector

137D Application of subdiv 3.5.4A.2

This subdivision applies if an investigator intends to apply for a part 2-5 warrant on behalf of the commission.

137E Inspector must be notified

 (1) The investigator must—

 (a) notify the inspector of an application for a part 2-5 warrant, and

 (b) comply with any other notification requirement that the inspector may direct.

 (2) If the investigator intends to make the application in writing, the investigator must give the inspector—

 (a) a copy of the written application; and

 (b) a copy of the affidavit required under the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 42 to accompany the written application.

 (3) If the investigator intends to make the application by telephone, the investigator must give the inspector the information required under the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 43 for telephone applications.

137F Full disclosure to inspector of adverse matters

The investigator must disclose to the inspector, in writing, any matter that the investigator considers adverse to the issuing of a part 2-5 warrant.

137G Inspector to be given further information

If further information is required under the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 44, to be given to an eligible Judge or nominated AAT member in connection with the application, the investigator must also give the inspector the information.

Note For the meaning of eligible Judge and nominated AAT member see the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), sch 1, cl 2.

137H Inspector entitled to appear at hearing

 (1) The inspector is entitled to appear at the hearing of an application for a part 2-5 warrant to test the validity of the application and, for that purpose at the hearing, to—

 (a) ask questions of any person giving information to the eligible Judge or nominated AAT member; and

 (b) make submissions to the eligible Judge or nominated AAT member about the following:

 (i) in relation to an application for a warrant in relation to a telecommunications service—the matters mentioned in the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 46(2) (a) to (f);

 (ii) in relation to an application for a warrant in relation to a person—the matters mentioned in the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 46A(2) (a) to (f).

 (2) The inspector may make submissions to the eligible Judge or nominated AAT member in the presence of the judge or member, or by phone, fax, email or any other way the judge or member considers reasonable.

 (3) As soon as practicable after the application is heard, the inspector must return to the investigator any documents given by the investigator to the inspector under section 137E, section 137F or section 137G in relation to the application.

Note For the meaning of eligible Judge and nominated AAT member see the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), sch 1, cl 2.

137I Privilege and secrecy requirements do not apply to disclosure

 (1) This section applies to—

 (a) an investigator; and

 (b) a person giving information under section 137H (1) (a).

 (2) A privilege, or a secrecy requirement under a territory law, does not apply to the disclosure of information or production of documents under this division.

 (3) In this section:

privilege does not include parliamentary privilege.

Subdivision 3.5.4A.3 Telecommunications warrants—record keeping

137J Commission must keep records connected with issue of part 2-5 warrants

The commissioner must ensure the commission keeps a written record of the following information:

 (a) each part 2-5 warrant issued to the commission;

 (b) a copy of each notification given by the commissioner, under the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 59A, to the secretary of the Commonwealth department mentioned in that section;

 (c) each approval to exercise the authority conferred by a part 2-5 warrant, given by the commissioner under the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 55 (3);

 (d) each appointment of an approving officer made by the commissioner under the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 55 (4);

 (e) a copy of each document, other than a document mentioned in section 137H (3), given to an investigator by the inspector under subdivision 3.5.4A.2;

 (f) each instrument revoking a part 2-5 warrant issued to the commission;

 (g) a copy of each certificate issued by a certifying officer under the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 61 (4);

Note For the meaning of certifying officer, see the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), s 5.

 (h) each appointment of an authorising officer made by the commissioner under the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 66 (4);

 (i) each authorisation given by the commissioner or an authorising officer under the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 66 (2).

137K Commission must keep other records connected with telecommunications interceptions

 (1) The commissioner must ensure the commission keeps a written record of the following information:

 (a) for each telephone application made by the commission for a part 2-5 warrant—particulars of the telephone application, including—

 (i) the information given to the eligible Judge or nominated AAT member on the application; and

 (ii) any further information required to be given in connection with the application;

 (b) for each application made by the commission for a part 2-5 warrant, a statement as to whether—

 (i) the application was withdrawn or refused; or

 (ii) a warrant was issued on the application;

 (c) for each part 2-5 warrant whose authority is exercised by the commission, particulars of—

 (i) the warrant; and

 (ii) the day and time each interception under the warrant began; and

 (iii) how long each interception lasted; and

 (iv) the name of the person who carried out each interception; and

 (v) for a named person warrant—each service to or from which communications have been intercepted under the warrant;

 (d) for each restricted record that has at any time been in the commission’s possession, particulars of—

 (i) if the restricted record is a record obtained by an interception under a warrant issued to the commission—the warrant; and

 (ii) each occasion when the restricted record came, whether by its making or otherwise, to be in the commission’s possession; and

 (iii) each occasion, if any, when the restricted record stopped, whether by its destruction or otherwise, being in the commission’s possession; and

 (iv) each other agency or other body, if any, from or to which, or other person, if any, from or to whom, the commission received or supplied the restricted record;

Note For the meaning of agency, named person warrant and restricted record, see the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), s 5.

 (e) particulars of each use made by the commission of lawfully intercepted information;

 (f) particulars of each communication of lawfully intercepted information by a member of staff of the commission to a person or entity other than a member of staff of the commission;

 (g) particulars of each occasion when, to the knowledge of a member of staff of the commission, lawfully intercepted information was given in evidence in a relevant proceeding in relation to the commission.

Note 1 For the meaning of lawfully intercepted information, see the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), s 5.

Note 2 Relevant proceeding means a proceeding mentioned in the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), s 6L.

 (2) The record must be made as soon as practicable after the happening of the events to which the particulars relate or the statement relates.

137L Reports to be given by commissioner to Speaker

The commissioner must give the Speaker—

 (a) within 3 months after a part 2-5 warrant issued to the commission stops being in force, a written report about—

 (i) the use made by the commission of information obtained by interceptions under the warrant; and

 (ii) the communication of that information to a person other than a member of staff of the commission; and

 (b) as soon as practicable but not later than 3 months after 30 June each year, a written report that sets out—

 (i) the information required by the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), part 2-8, division 2, to be set out in the Commonwealth Minister’s report for the year ending on that 30 June; and

 (ii) the information able to be derived from the commission’s records.

137M Copies of reports to be given by Speaker to Commonwealth Minister

The Speaker must give the Commonwealth Minister a copy of a report mentioned in section 137L (a) or (b) as soon as practicable after receiving it.

137N Keeping of restricted records by commission

The commissioner must ensure that a restricted record in the possession of the commission is kept, other than when it is being otherwise dealt with under the Commonwealth Act or this Act, in a secure place where it is not accessible to a person not entitled to deal with the record.

Note For the meaning of restricted record, see the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), s 5.

137O Destruction of restricted records by commission

 (1) Subject to section 137P, the commissioner must ensure that a restricted record in the possession of the commission is destroyed immediately if the commissioner is satisfied that the record is not likely to be required for a permitted purpose of the commission.

Note For the meaning of permitted purpose and restricted record, see the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), s 5.

 (2) For subsection (1), a permitted purpose does not include a purpose connected with an inspection of the kind, or a report on an inspection the kind, mentioned in section 137Q (1) (a).

137P Commonwealth Minister and inspector may inspect restricted record before destruction

The commissioner must not allow a restricted record to be destroyed under section 137O unless—

 (a) the commissioner has received written notice under the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 79, from the secretary of the Commonwealth department mentioned in that section, that the entry in the General Register relating to the part 2-5 warrant under which the restricted record was obtained has been inspected by the Commonwealth Minister; and

 (b) the commissioner has—

 (i) notified the inspector that the commissioner intends to destroy the record; and

 (ii) given the inspector an opportunity to inspect the record.

Note For the meaning of General Register and restricted record, see the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), s 5.

Subdivision 3.5.4A.4 Telecommunication warrant records—inspection

137Q Inspector functions

 (1) The inspector must—

 (a) inspect the commission’s records as required under section 137R to determine the extent of compliance with sections 137J to 137L and 137N to 137P; and

 (b) report in writing to the Speaker about the results of the inspections.

Note A provision of a law that gives an entity a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 196).

 (2) However, if the inspector has carried out a function under subdivision 3.5.4A.2 in relation to a particular application by an investigator for a part 2-5 warrant, the inspector must—

 (a) not carry out the inspection of the commission’s records relating to the application for the purpose mentioned in subsection (1) (a); but

 (b) delegate the inspector’s functions under this section to a person (an assistant inspector) for the purpose of carrying out the inspection of the commission’s records relating to the application.

 (3) An assistant inspector carrying out the inspector’s function under a delegation under subsection (2) (b) is, for the purpose of the inspection, taken—

 (a) not to be acting under a delegation of the inspector; but

 (b) to be the inspector.

 (4) An assistant inspector must, if asked by a person affected by the exercise of the inspector’s functions by the assistant inspector under this subdivision, produce the instrument of delegation, or a copy of the instrument, for the person’s inspection.

137R Regular inspection of commission records

 (1) The inspector must inspect the commission’s records at least once before the end of the financial year in which the commission is declared to be an agency under the Commonwealth Act to find out the extent of compliance with sections 137J to 137L and 137N since the commencement of this subdivision.

Note For the meaning of agency, see the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), s 5.

 (2) After the financial year mentioned in subsection (1), the inspector must inspect the commission’s records at least twice each financial year to find out the extent to which the members of staff of the commission have complied with sections 137J to 137L and 137N to 137P since the inspector last inspected the commission’s records under this subdivision.

 (3) The inspector may at any time inspect the commission’s records to find out the extent to which the members of staff of the commission have complied with sections 137J to 137L and 137N to 137P during any period.

137S Inspection reports to Speaker

 (1) The inspector must, as soon as practicable, but not later than 3 months after the end of each financial year, report to the Speaker in writing about the results of an inspection under section 137R.

 (2) The inspector must include in the report for a financial year—

 (a) a summary of the inspections conducted in the financial year under section 137R; and

 (b) particulars of any deficiencies identified which adversely affect the integrity of the telecommunications interception regime established by the Commonwealth Act; and

 (c) particulars of the remedial action, if any, taken or proposed to be taken to address those deficiencies.

Note In complying with this section, the inspector remains bound by the obligations imposed by the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), s 63, relating to disclosure of intercepted information or interception warrant information.

 (3) The inspector may report to the Speaker in writing at any time about the results of an inspection under this subdivision and must do so if requested by the Speaker.

 (4) The inspector must give the information in a report mentioned in subsection (1) or (3), other than information mentioned in the [Commonwealth Act](https://www.legislation.gov.au/Series/C2004A02124), section 63, to—

 (a) the commissioner; and

 (b) the relevant Assembly committee.

137T Reports on other contraventions

 (1) If as a result of an inspection carried out under this subdivision the inspector considers that a member of staff of the commission has contravened the Commonwealth Act, or that the commissioner has contravened section 137L or section 137P, the inspector may include a report on the contravention in a report to the Speaker under section 137S.

 (2) However, before reporting the contravention, the inspector must—

 (a) give the commissioner an opportunity to make comments in writing on the contravention; and

 (b) include the commissioner’s comments, if any, in the report.

137U Conduct of inspection

 (1) For the purpose of carrying out an inspection of the commission’s records under this subdivision, the inspector—

 (a) may enter the premises occupied by the commission at any reasonable time; and

 (b) has full and free access to the records of the commission and may copy any record or part of any record of the commission at any reasonable time; and

 (c) may require a member of staff of the commission to give the inspector any information or document that the inspector considers relevant to the inspection and that is in the member’s possession, or to which the member has access.

 (2) The commissioner must ensure that members of staff of the commission give the inspector any assistance the inspector reasonably requires to carry out an inspection under this subdivision.

 (3) Despite any other territory law, and whether or not the commissioner has required information under section 137V, the commissioner or a member of staff of the commission is not prevented from—

 (a) giving information to the inspector, whether orally or in writing and whether or not in answer to a question; or

 (b) giving the inspector access to a record of the commission.

Note The inspector may disclose information to certain entities if it is relevant to the exercise of the entity’s functions and the inspector considers it appropriate (see s 274).

 (4) In this section:

premises includes—

 (a) any land; and

 (b) any building, structure, vehicle or place.

137V Power to require information etc

 (1) If the inspector believes on reasonable grounds that a member of staff of the commission may be able to give information relevant to an inspection under this subdivision, the inspector may, by written notice given to the member, require the member to do either or both of the following:

 (a) give, or allow access to, a document;

 (b) attend before the inspector to answer questions relevant to the inspection.

 (2) If the inspector believes on reasonable grounds that a member of staff of the commission may be able to give information relevant to an inspection under this subdivision but the inspector does not know the identity of the member, the inspector may, by written notice given to the commissioner, require the commissioner or a member of the staff of the commission nominated by the commissioner to attend before the inspector to answer questions relevant to the inspection.

 (3) A notice under this section must—

 (a) state how, and the time within which, the person given the notice must comply with the requirement; and

 (b) taking into account all the circumstances, include only reasonable requirements.

137W Privilege against self‑incrimination and exposure to civil penalty do not apply

 (1) This section applies if a person is required by a notice under section 137V to give information or answer questions.

 (2) The person cannot refuse to give information or answer questions on any of the following grounds:

 (a) the common law privileges against self‑incrimination and exposure to the imposition of a civil penalty;

 (b) a requirement under another territory law;

 (c) the public interest.

Note The [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 171 deals with client legal privilege.

 (3) However, any information or document obtained directly or indirectly because of the giving of the information, or any answer to a question, is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—

 (a) an offence in relation to the falsity or the misleading nature of the information, document or answer; or

 (b) an offence against the [Criminal Code](http://www.legislation.act.gov.au/a/2002-51), chapter 7 (Administration of justice offences); or

 (c) an offence against section 137X.

137X Failure to comply with inspection requirement

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

 (a) is required by a notice under section 137V to give information or answer questions; and

 (b) fails to comply with the requirement.

Maximum penalty: 50 penalty units.

Note 1 The [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 170 and s 171 deal with the application of the privilege against self‑incrimination and client legal privilege. See also this Act, s 270.

Note 2 Giving false or misleading information is an offence against the [Criminal Code](http://www.legislation.act.gov.au/a/2002-51), s 338.

 (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](http://www.legislation.act.gov.au/a/2002-51), s 58).

137Y Exchange of information between inspector and Commonwealth ombudsman

 (1) The inspector may give the Commonwealth ombudsman information obtained by the inspector under this division if the inspector is satisfied that giving the information is relevant to the performance of the Commonwealth ombudsman's functions under the Commonwealth Act.

 (2) If the inspector is the ombudsman, and the Commonwealth ombudsman is the ombudsman, the information may be used by the Commonwealth ombudsman if it is relevant to the performance of the Commonwealth ombudsman's functions under the Commonwealth Act.

Subdivision 3.5.4A.5 Miscellaneous

137Z Copies of reports for Commonwealth Minister

As soon as practicable after a report is given to the Speaker under section 137S, the Speaker must give the Commonwealth Minister a copy of the report.

137ZA Offence—disclose information received under div 3.5.4A

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

 (a) receives or obtains information or a record because of the administration of this division; and

 (b) discloses the information.

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

 (2) Subsection (1) does not apply if the disclosure was made—

 (a) under the Commonwealth Act; or

 (b) in the performance of the person’s functions under this Act; or

 (c) to assist the inspector in exercising the inspector’s functions under subdivision 3.5.4A.2 or subdivision 3.5.4A.4.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](http://www.legislation.act.gov.au/a/2002-51), s 58).

 (3) In this section—

disclose, in relation to any information or record, includes communicate to another person, make use of, make a record of, or give in evidence in a proceeding.

5 Dictionary, new definitions

insert

Commonwealth Act, for division 3.5.4A (Telecommunications warrants)—see section 137A.

Commonwealth Minister, for division 3.5.4A (Telecommunications warrants)—see section 137A.

part 2-5 warrant, for division 3.5.4A (Telecommunications warrants)—see section 137A.

possession, for division 3.5.4A (Telecommunications warrants)—see section 137A.

Endnotes

1 Presentation speech

 Presentation speech made in the Legislative Assembly on 20 October 2022.

2 Notification

 Notified under the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14) on 2022.

3 Republications of amended laws

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

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