

2022

**Legislative Assembly for the
Australian Capital Territory**

Integrity Commission Amendment Bill 2022

Explanatory statement

Presented by
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INTEGRITY COMMISSION AMMENDMENT BILL 2022

This explanatory statement relates to the Integrity Commission Amendment Bill 2022 (the Bill) as presented to the Legislative Assembly. It has been prepared to assist the reader of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

BACKGROUND AND OVERVIEW

Privileges of the Assembly—freedom of speech immunity

By reason of s 24 of *Australian Capital Territory (Self-Government) Act 1988* (Cth), the Assembly, its committees and its members have, with certain minor exceptions, the same powers, privileges and immunities as the House of Representatives.

Key among the immunities of the House of Representatives is the freedom of speech.

The freedom of speech immunity arises from Article 9 of the *Bill of Rights 1688* (UK), which states that ‘... the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament’. This aspect of privilege is amplified by the *Parliamentary Privileges Act 1988* (Cth). Section 16 of that Act provides that:

... proceedings in Parliament means all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee, and, without limiting the generality of the foregoing, includes:

- (a) the giving of evidence before a House or a committee, and evidence so given;
- (b) the presentation or submission of a document to a House or a committee;
- (c) the preparation of a document for purposes of or incidental to the transacting of any such business; and
- (d) the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

In proceedings in any court of tribunal, it is not lawful for evidence to be tendered or received, questions asked, or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:

- questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
- otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or

- drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

Not all ‘words spoken’ or ‘acts done’ by Members of the Legislative Assembly are ‘proceedings in parliament’. Instead, it is only the words spoken or the acts done for the purposes of transacting the business of the Assembly that constitute proceedings, thereby receiving the protection of absolute privilege. In some cases the question as to whether or not privilege applies will turn on what has been done with an item of information or a document, or what a member intends to do with the document or information, rather than what is contained in the document or the substance of the information, or where the document or information happens to be held.

Documents or information that are unlikely to be within the scope of ‘proceedings in Parliament’ include material relating to a member’s travel or entitlements, or party-political material.

Contempt power

Conduct that is intended or likely to amount to an improper interference with the free exercise by the Assembly or committee of its authority or functions, or with the free performance by a member of the member’s duties as a member may constitute a contempt against the Assembly.

Assembly standing order 277 sets out matters that may be treated as contempts and standing order 278 sets out the criteria to be taken into account when dealing with matters of contempt.

Integrity Commission Act

Section 8 of the *Integrity Commission Act 2018* (the Act) provides among other things that, with the exception of the express statutory waiver of privilege provided for at section 178, the Act does not affect the law relating to the privileges of the Legislative Assembly or of any other Australian parliament.

Section 177 of the Act provides that a claim of parliamentary privilege made in the course of the exercise of the Commission’s functions must be dealt with by the Assembly. In accordance with section 177 of the Act and the Assembly’s power to make rules and orders pursuant to section 21 of the Self Government Act, the Assembly has passed a resolution establishing a procedure for dealing with such claims. Assembly continuing resolution 4A provides that:

- a member or former member is entitled to make claims in relation to parliamentary privilege if the Integrity Commission or a person acting under the direction of the Commission seeks to exercise a power to inspect, examine, make a record of, copy, or take possession of ‘Assembly information’ that is held by the Assembly, an Assembly committee, a member or a former member, or that is held by another person or entity on behalf of the Assembly, an Assembly committee, a member or a former member; and
- it is the right of the Assembly to determine claims of parliamentary privilege over material sought to be seized or accessed by the Integrity Commission regardless of the form of the material or the means by which the Commission seeks seizure or access.

Where claims are made that are not accepted by the Commission, an independent legal arbiter is appointed by the Speaker to assess and determine them on behalf of the Assembly.

While it is clear enough that the Act does not abrogate the Assembly's privileges, certain features of the Act relating to the provision of information to the Commission—through, for example, examinations, preliminary inquiry notices, warrants, and information requests—potentially obscure the obligations that are imposed on the Commission, witnesses before the Commission, and others to ensure that the Assembly's procedures for making and determining parliamentary privilege claims are complied with and to avoid possible contempts being committed against the Assembly.

The lack of specific statutory provisions for handling potentially privileged material may place those who are the subject of the exercise of one or more of the Commission's information gathering powers (for instance the head of service or a director general) in a difficult position.

On one hand, refusal to provide information sought by the Commission may, in certain circumstances, be treated as a possible contempt against the Commission. On the other hand, the provision of information to the Commission relating to 'proceedings in Parliament' may enliven the Assembly's contempt power.

A statutory remedy is needed to prevent such difficulties from arising.

These are not academic concerns. Conflicts have been observed in other jurisdictions between integrity-styled commissions, legislative chambers and the Executive. Most recently, a protracted dispute between the Legislative Council of Western Australia (WA), the WA Corruption and Crime Commission (CCC), and the WA Department of Premier and Cabinet has caught the attention of parliaments across Australia.

The dispute arose in the course of the CCC seeking to access email documents of former Members of the Legislative Council that had been held on an ICT system administered by the government department. The material had not been the subject of any determination by the Legislative Council as to whether the documents, or any part of the documents, were protected by parliamentary privilege. Instead, in responding to the CCC's notices of production, the department had purported to itself determine whether or not parliamentary privilege applied to the documents, an approach that was rejected by the Legislative Council and ultimately led to litigation in the Supreme Court of Western Australia.

In *President of the Legislative Council of Western Australia v Corruption and Crime Commission* [No 2] [2-21] WASC 22, Justice Hall held that:

Whether privilege applied to any particular document was a question to be determined either by Parliament itself or by the courts or by some person authorised to do so by Parliament or a court. The recipient of the notices was not authorised to make a determination of whether parliamentary privilege applied to any of the documents for the purpose of deciding which documents were required to be delivered to the CCC. Nor could the recipient authorise another person or body to do so.

The method used to determine privilege in this case was not one in which Parliament or the courts were involved, nor was it authorised by either Parliament or a court. The question of which documents were subject to privilege was not, therefore, lawfully determined.

Accordingly, the production of the documents and the receipt of them by the CCC on the incorrect assumption that privilege had been lawfully determined should not have occurred.

To avoid similar problems emerging in the ACT jurisdiction, the Integrity Commission Amendment Bill 2022 seeks to introduce additional arrangements for the handling of potentially privileged information to guard against inadvertent breaches or possible contempts against the Assembly. It also seeks to reduce the possibility of disputes arising between the Legislative Assembly, the Commission, heads of public sector entities and others who may be regarded as holding information that is potentially protected by parliamentary privilege.

Among other matters, the Bill makes provision for ‘Assembly information’, a broad class of information into which material covered by parliamentary privilege will necessarily fall. It establishes particular arrangements for handling such information in relation to the exercise of the following powers and functions by the Commission, including:

- requests for information from heads of public sector entities;
- preliminary inquiry notices;
- search warrants; and
- examination summonses.

Importantly, the amendments in the Bill do nothing to prevent the Commission from investigating matters that arise in connection with Members of the Legislative Assembly or staff. Nor does the Bill prevent the Commission from accessing documents or things that are not covered by parliamentary privilege.

CONSULTATION ON THE PROPOSED APPROACH

In drafting the Bill, the Speaker has consulted with the Chief Minister, the Leader of the Opposition, the Leader of the ACT Greens, the Standing Committee on Administration and Procedure, the Standing Committee on Justice and Community Safety, the Inspector of the Integrity Commission, and the Integrity Commissioner.

CONSISTENCY WITH HUMAN RIGHTS

The Bill does not encroach on any rights provided for under the *Human Rights Act 2004*.

CLAUSE NOTES

Clause 1—Name of Act

This clause provides for the name of the Bill upon enactment.

Clause 2—Commencement

This clause provides that the Act will commence on the day after its notification day.

Clause 3—Legislation amended

This clause provides that the Bill amends the *Integrity Commission Act 2018*

Clause 4—Confidentiality notices—content **New section 80 (3)**

This clause inserts new section 80 (3), which provides that section 80 (2), concerning the Commission’s power to decide that certain kinds of permitted disclosures must be prohibited, does not apply to the following permitted disclosures:

- a disclosure mentioned in proposed new section 81 (ea) (i.e. a disclosure that is reasonably necessary to allow a claim of parliamentary privilege to be made or to be dealt with by the Legislative Assembly);
- a disclosure authorised or required under new sections 90A or 147A.

The provisions recognise the necessity for certain information to be communicated in order for any claims relating to parliamentary privilege to be made and dealt with.

Clause 5—Meaning of permitted disclosure of restricted information—pt 3.2 **Section 81, definition of permitted disclosure, new paragraph (ea)**

This clause inserts new paragraph (ea) at section 81, which provides that it is a permitted disclosure of information to disclose restricted information to the extent that it is reasonably necessary to allow a claim of parliamentary privilege to be made or dealt with by the Legislative Assembly.

The provision recognises that it is necessary for certain information to be disclosed in for any claims relating to parliamentary privilege to be made and dealt with.

Clause 6—New section 85A

This clause inserts a new section 85A, which provides that *Assembly information*—

a) means information—

(i) created for or by, or received by—

- (A) a committee of the Legislative Assembly; or
- (B) the Office of the Legislative Assembly; or
- (C) a current or former member of the Legislative Assembly in the course of their parliamentary duties; or

(ii) otherwise created for or by, or received by, the Legislative Assembly ...

Metadata (data about data) is also included in the definition of Assembly information.

The term ‘Assembly information’ is drawn in sufficiently broad and operationalisable terms so as to establish an information class into which privileged material will necessarily fall. Importantly however, not all information falling within that class is information that will be the subject of parliamentary privilege.

The intention is to provide a clear means by which the Commission, witnesses, heads of public sector entities and their delegates, and others are able to readily identify material falling into the class and, having established that certain information falls within the class, ensure that the particular requirements provided for in the Bill are then adhered to.

It recognises that the application of parliamentary privilege will often hinge on fine points of law and the given facts that apply to information that has been sought. It also acknowledges that neither the Commission, nor those responding to requests, inquiry notices, or warrants are themselves permitted to determine whether or not privileged material is at issue.

Clause 7—Request for information from head of public sector entity

Section 89 (1)

This clause amends the section and provides that:

- the Commission is able to ask the head of a public sector entity to give information (other than Assembly information) that is held by that entity to the Commission and may ask the Speaker to give the Commission Assembly information that is held by a public sector entity;
- the Commission may only ask for information that is relevant to the preliminary inquiry; and
- if the Speaker has received a request by the Commission relating to a current or former member, the Speaker must give a copy of the request to the member/former member.

Along with proposed new section 89A (see clause 10), the provisions assist in addressing a problem that potentially arises under the existing provisions of the Act whereby it is possible for the Commission to request the provision of potentially protected information from the head of a public sector entity in the public service (such as the Head of Service, their delegate, or a director-general) on the basis that the person is regarded as ‘holding’ the information. As an example, a request could be made of the Head of Service for a member’s emails or other digital documents that were stored on an ICT system under the administrative control of the Head of Service.

In such a case, the prospect of a contempt of the Assembly arises were the information to be provided to the Commission otherwise than in accordance with relevant standing orders and resolutions of the Assembly or where it was later found that the information was covered by parliamentary privilege.

The proposed amendments provide that the Commission may ask the head of a public sector entity for information (other than Assembly information) held by the entity. The Commission may ask the Speaker for Assembly information held by a public sector entity.

If the Speaker receives a request from the Commission about a current or former member pursuant to section 89, the Speaker must give the member/former member a copy of the request. It would then be open to the member to make a claim in relation to parliamentary privilege in line with relevant Assembly resolutions and orders (for example, continuing resolution 4A).

It will remain open to the Speaker not to comply with a request made under section 89 if the Speaker advises the Commission of there being a reasonable excuse for not doing so. It would be a

reasonable excuse for non-compliance where a request for information, by its terms, sought material that was potentially the subject of parliamentary privilege.

Clause 8—Section 89 (2), new note

This clause inserts the following note:

Note The head of a public sector entity other than the Speaker must not give Assembly information to the Commission unless authorised by the Speaker (see s 89A).

The note serves as a reminder that the Speaker's authorisation is required prior to any Assembly information being given to the Commission by the head of a public sector entity pursuant to section 89. See sections 127 (1), (4) and (5) of the *Legislation Act 2001* for the legal status of notes.

In the event that a request under the section is made to the Speaker for Assembly information pertaining to a current or former member and no claim or privilege is made, it would be open to the Speaker to request that the head of a public sector entity holding that information provide it to the Commission.

As the servant of the Assembly, the Speaker would only authorise the release of information in manner consistent with orders and resolutions of the Assembly.

See also clause 10.

Clause 9—Section 89, new note

This clause inserts the following two notes:

Note 1 This Act does not affect the law relating to the privileges of the Legislative Assembly (see s 7).

The note serves as a reminder that, as a matter of law, nothing in the Act (with the exception of section 178) in any way abrogates or otherwise affects the powers, privileges and immunities of the Assembly, its committees or its members and that it is for the Assembly to deal with any claims of parliamentary privilege that arise in the course of the Commission exercising its powers.

All provisions of the Act must be read with this in mind and no contrary implication, necessary or otherwise, is taken to arise in respect of the privileges of the Assembly.

Note 2 A claim of parliamentary privilege must be dealt with by the Legislative Assembly (see s 177).

The note directs attention to requirements that apply in relation to dealing with claims of parliamentary privilege.

See sections 127 (1), (4) and (5) of the *Legislation Act 2001* for the legal status of notes.

Clause 10—New section 89A

This clause inserts provisions relating to dealing with requests for Assembly information.

The new section applies if the head of a public sector entity (other than the Speaker) has been asked by the Commission to give information under section 89 of the Act (i.e. pursuant to the Commission's power to request information); and the head of the entity considers that all or part of the information requested is Assembly information.

Where the section applies, a head of a public sector entity must:

- a) not give the Commission the information;
- b) give the Speaker a copy of the request;
- c) tell the Commission that they have given the Speaker a copy of the request; and
- d) deal with the request in accordance with section 89, to the extent that it does not relate to Assembly information.

Under proposed new section 89A(2)(e), where the Speaker authorises the head of a public sector entity to release Assembly information that has been requested by the Commission, the head of the entity must provide it. Such an authorisation might be given, for example, where no claim or parliamentary privilege has been made or where a claim has been rejected in accordance with the procedures established by the Assembly (for example, under continuing resolution 4A). As a servant of the Assembly, the Speaker would only authorise the provision of such information in a manner consistent with the orders and resolutions of the Assembly.

Under proposed new section 89A(3), on being given a copy of the request, the Speaker must deal with the request, to the extent that it relates to Assembly information in accordance with section 89 (as amended by clause 7). That is, the Speaker must provide a copy of the request to the relevant current or former member, thereby giving the member/former member the opportunity to make any claims in relation to parliamentary privilege. If a claim is made, it would then be dealt with in accordance with the relevant orders and resolutions of the Assembly (for example, under continuing resolution 4A).

By reason of section 89 (3), the Speaker and any other head of a public sector entity need not comply with a request of the Commission under section 89 where the head advises the Commission of a reasonable excuse for not doing so. It would be a reasonable excuse for non-compliance if a request for information, by its terms, sought material that was potentially the subject of parliamentary privilege.

This clause inserts the following two notes:

Note 1 This Act does not affect the law relating to the privileges of the Legislative Assembly (see s 7).

The note serves as a reminder that, as a matter of law, nothing (with the exception of section 178) in the Act in any way abrogates or otherwise affects the powers, privileges and immunities of the Assembly, its committees or its members and that it is for the Assembly to deal with any claims of parliamentary privilege that arise in the course of the Commission exercising its powers.

All provisions of the Act must be read with this in mind and no contrary implication, necessary or otherwise, is taken to arise in respect of the privileges of the Assembly.

Note 2 A claim of parliamentary privilege must be dealt with by the Legislative Assembly (see s 177).

The note directs attention to requirements that apply in relation to dealing with claims of parliamentary privilege.

See sections 127 (1), (4) and (5) of the *Legislation Act 2001* for the legal status of notes.

Clause 11—Power to issue preliminary inquiry notice Section 90 (1), new note

This clause inserts a new note as follows:

Note 2 A person (other than a current or former Member of the Legislative Assembly) must not produce a document or thing containing Assembly information to the Commission unless authorised by the Speaker (see s 90A).

The note directs attention to provisions in the proposed new section 90A.

See sections 127 (1), (4) and (5) of the *Legislation Act 2001* for the legal status of notes.

Clause 12—New section 90A

This clause inserts new section 90A relating to dealing with a preliminary inquiry notice for Assembly information.

Proposed new section 90A applies if a person (other than a current or former Member of the Legislative Assembly) has been issued with a preliminary inquiry notice and the person considers that the notice requires the production of a document or other thing containing Assembly information.

A person (including the head of a public sector entity or their delegate), other than a current or former member, must not produce a document or thing containing Assembly information to the Commission in response to a preliminary inquiry notice.

In addition, a person in these circumstances must:

- give the Speaker a copy of the preliminary inquiry;
- tell the Commission that they have given the Speaker the notice;
- comply with the notice to the extent that it does not relate to Assembly information; and
- if the Speaker authorises the person to produce the document or thing to the Commission—produce the document or thing to the Commission.

Where information relates to a current or former member, the Speaker (having been given a copy of the notice by the person to whom the notice was directed) is required to give a copy of the notice to the member/former member, thereby allowing the member/former member to make a claim in

relation to parliamentary privilege (noting that there is nothing preventing the Commission from issuing a preliminary inquiry notice directly to a current or former member and in these circumstances the member/former member is also entitled to make a claim in relation to parliamentary privilege).

Where claims relating to parliamentary privilege are advanced, they are to be determined in accordance with s 177 of the Act and relevant orders and resolutions of the Assembly (for example, continuing resolution 4A of the Assembly).

This clause inserts the following two notes:

Note 1 This Act does not affect the law relating to the privileges of the Legislative Assembly (see s 7).

The note serves as a reminder that, as a matter of law, nothing (with the exception of section 178) in the Act in any way abrogates or otherwise affects the powers, privileges and immunities of the Assembly, its committees or its members and that it is for the Assembly to deal with any claims of parliamentary privilege that arise in the course of the Commission exercising its powers.

All provisions of the Act must be read with this in mind and no contrary implication, necessary or otherwise, is taken to arise in respect of the privileges of the Assembly.

Note 2 A claim of parliamentary privilege must be dealt with by the Legislative Assembly (see s 177).

The note directs attention to requirements that apply in relation to dealing with claims of parliamentary privilege.

See sections 127 (1), (4) and (5) of the *Legislation Act 2001* for the legal status of notes.

Clause 13—Preliminary inquiry notice—content **Section 91 (2) (b) (va)**

This clause introduces the requirement that a preliminary inquiry notice issued by the Commission must be accompanied by a statement that the person (other than a current or former member) in receipt of the notice must deal with it in accordance with section 90A if the document or other thing required to be produced contains Assembly information.

The requirement ensures that recipients of such notices are made aware of their obligations in relation to Assembly information by way of the notice itself.

Clause 14—General power on entry to premises **Section 120, new notes**

This clause inserts the following two notes:

Note 2 This Act does not affect the law relating to the privileges of the Legislative Assembly (see s 7).

The note serves as a reminder that, as a matter of law, nothing (with the exception of section 178) in the Act in any way abrogates or otherwise affects the powers, privileges and immunities of the Assembly, its committees or its members and that it is for the Assembly to deal with any claims of parliamentary privilege that arise in the course of the Commission exercising its powers.

All provisions of the Act must be read with this in mind and no contrary implication, necessary or otherwise, is taken to arise in respect of the privileges of the Assembly.

Note 3 A claim of parliamentary privilege must be dealt with by the Legislative Assembly (see s 177).

The note directs attention to requirements that apply in relation to dealing with claims of parliamentary privilege.

See sections 127 (1), (4) and (5) of the *Legislation Act 2001* for the legal status of notes.

15—Warrants—generally **Section 122, new note**

This clause inserts the following note:

This Act does not affect the law relating to the privileges of the Legislative Assembly (see s 7).

The note serves as a reminder that, as a matter of law, nothing (with the exception of section 178) in the Act in any way abrogates or otherwise affects the powers, privileges and immunities of the Assembly, its committees or its members and that it is for the Assembly to deal with any claims of parliamentary privilege that arise in the course of the Commission exercising its powers.

All provisions of the Act must be read with this in mind and no contrary implication, necessary or otherwise, is taken to arise in respect of the privileges of the Assembly.

See sections 127 (1), (4) and (5) of the *Legislation Act 2001* for the legal status of notes.

Clause 16—Search warrants—claiming privilege **Section 127 (4), note**

This clause inserts the following note:

For the claim of parliamentary privilege relating to the execution of a search warrant, see s 130A.

The note directs attention to proposed new section 130A, which sets out how the execution of a search warrant must proceed where there is a claim of parliamentary privilege.

See sections 127 (1), (4) and (5) of the *Legislation Act 2001* for the legal status of notes.

Clause 17—New section 130A and section 130B

This clause inserts new sections 130A and 130B.

The provisions operate so that a current or former member, faced with the execution of a search warrant, has the opportunity to make a claim in relation to parliamentary privilege. Upon such a claim having been made, the investigator executing the warrant must either stop exercising the power in relation to the document or thing over which the claim has been made or require that the claimant secure the document or thing and give it to the investigator.

The investigator must not inspect the document or thing.

If the investigator requires the claimant to secure the document or thing, the investigator is then required to notify the Commissioner about the claim and to give the secured document or thing to the Clerk of the Legislative Assembly for safe keeping. This ensures that an appropriate chain of custody is maintained.

Provisions are also included at proposed new s 130B(3) so that the Deputy Clerk can assume custody of the contested material in the event that the Clerk is unavailable.

Procedures for assessing and determining claims of parliamentary privilege would then take effect (for example, continuing resolution 4A).

This clause inserts the following two notes:

Note 1 This Act does not affect the law relating to the privileges of the Legislative Assembly (see s 7).

The note serves as a reminder that, as a matter of law, nothing (with the exception of section 178) in the Act in any way abrogates or otherwise affects the powers, privileges and immunities of the Assembly, its committees or its members and that it is for the Assembly to deal with any claims of parliamentary privilege that arise in the course of the Commission exercising its powers.

All provisions of the Act must be read with this in mind and no contrary implication, necessary or otherwise, is taken to arise in respect of the privileges of the Assembly.

Note 2 A claim of parliamentary privilege must be dealt with by the Legislative Assembly (see s 177).

The note directs attention to requirements that apply in relation to dealing with claims of parliamentary privilege.

See sections 127 (1), (4) and (5) of the *Legislation Act 2001* for the legal status of notes.

Clause 18—Power to issue examination summons Section 147 (1), new notes

This clause inserts the following two notes:

Note 1 This Act does not affect the law relating to the privileges of the Legislative Assembly (see s 7).

The note serves as a reminder that, as a matter of law, nothing (with the exception of section 178) in the Act in any way abrogates or otherwise affects the powers, privileges and immunities of the Assembly, its committees or its members and that it is for the Assembly to deal with any claims of parliamentary privilege that arise in the course of the Commission exercising its powers.

All provisions of the Act must be read with this in mind and no contrary implication, necessary or otherwise, is taken to arise in respect of the privileges of the Assembly.

Note 2 A claim of parliamentary privilege must be dealt with by the Legislative Assembly (see s 177).

The note directs attention to requirements that apply in relation to dealing with claims of parliamentary privilege.

See sections 127 (1), (4) and (5) of the *Legislation Act 2001* for the legal status of notes.

Clause 19—New section 147A

This clause inserts new section 147A which applies if a person (other than a current or former Member of the Assembly) has been issued an examination summons; and considers that the summons requires the giving of evidence, or the production of a document or other thing, containing Assembly information.

In these circumstances, the person must—

- not give the evidence, or produce the document or thing, to the Commission; and
- give the Speaker a copy of the examination summons; and
- tell the Commission that they have given the Speaker a copy of the summons; and
- comply with the examination summons, to the extent that it does not relate to Assembly information.

If the Speaker authorises the person to give the evidence, or produce the document or thing, to the Commission, person must give the evidence, or produce the document or thing, to the Commission. As a servant of the Assembly, the Speaker would only authorise the provision of such information in a manner that was consistent with relevant Assembly orders and resolutions (for example, continuing resolution 4A).

Clause 20—Examination summons—content **New section 148 (3) (b) (xia)**

This clause inserts new section 148 (3) (b) (xia) which provides that an examination summons must be accompanied by a statement that the person to whom the summons is directed must deal with the summons in accordance with s 147A if—

- the evidence required to be given, or document or other thing required to be produced, contains Assembly information; and

- the person is not a current or former Member of the Legislative Assembly.

The requirement ensures that recipients of examination summonses are made aware of their obligations in relation to Assembly information by way of the summons itself.

Clause 21—New section 158A

Inserts new section 158A which applies if:

- (a) a person (other than a current or former member of the Legislative Assembly) appears before the Commission under an examination summons; and
- (b) the Commission becomes aware, at any time during the examination, that the evidence given, or the document or other thing produced, by the person contains Assembly information.

In such circumstances, the Commission must immediately:

- (a) stop dealing with the evidence, or the document or other thing; and
- (b) secure the following (the secured evidence) by sealing in an envelope or otherwise:
 - (i) any video recordings, transcripts or notes created of the evidence;
 - (ii) the document or other thing produced; and
- (c) give the secured evidence to the Clerk of the Legislative Assembly to be held in safe custody

The Clerk would then advise the Speaker that the Clerk was in receipt of such material and the Speaker would advise any affected member.

It would then be open to current or former members to make any claims in relation to parliamentary privilege. Where no claim is advanced in respect of the material, and consistent with relevant resolutions and orders (for example, continuing resolution 4A), the evidence, document or thing would be provided to the Commission. Similarly, where a claim by a member or former member was advanced but not substantiated in accordance with relevant orders and resolutions of the Assembly (for example, continuing resolution 4A), then the evidence, document or thing would be provided to the Commission.

Provisions are included at proposed new s 158A(3) so that the Deputy Clerk can assume custody of the contested material in the event that the Clerk unavailable.

Clause 22—Public sector entity may disclose information to Commission **New section 195 (2)**

Inserts new section 195 (2) which provides that the head of public sector must not disclose any Assembly information held by the public sector entity to the Commission unless the Speaker has authorised the disclosure. This would prevent, for instance, the Head of Service, from providing information relating to a member or an Assembly committee that was held on an ICT system administered by the regular public service without the Speaker's authorisation.

As a servant of the Assembly, the Speaker would only authorise the disclosure of such information in a manner that was consistent with relevant Assembly orders and resolutions (for example, continuing resolution 4A).

Clause 23—Dictionary, new definition of *Assembly information*

Inserts definition of Assembly information as being that provided for in new section 85A.