2019-2020

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN FEDERAL INTEGRITY COMMISSION BILL 2020

EXPLANATORY MEMORANDUM

and

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Circulated by authority of

Dr Helen Haines MP

AUSTRALIAN FEDERAL INTEGRITY COMMISSION BILL 2020

OUTLINE

The Australian Federal Integrity Commission Bill 2020 is a robust consensus bill that will strengthen public trust and confidence in the integrity of all members of the Commonwealth Parliament, its operations, the federal public sector and the federal system of government overall.

The bill establishes the Australian Federal Integrity Commission – a new independent body responsible for the implementation of a national pro-integrity framework, with an emphasis on prevention. The Australian Federal Integrity Commission will have appropriate powers of assessment, investigation and referral to enable clear, proportionate and practical responses to allegations of serious and/or systemic corruption issues at the federal level in the public interest, with comprehensive procedural fairness and whistleblower safeguards.

The bill has four component parts:

Pro Integrity

The Australian Federal Integrity Commission will lead a strong and embedded corruption prevention program for the Commonwealth public sector. It will enhance the existing Commonwealth multi-agency integrity system by leading the development of a rolling National Integrity and Anti-Corruption Action Plan, and oversee its implementation, playing a strategic coordination role across all sectors and jurisdictions. The Australian Federal Integrity Commission will appoint Assistant Commissioners to support the delivery of this component of the bill, including an Assistant Commissioner for Education, Training and Prevention, and an Assistant Commissioner for Research and Public Interest. The Assistant Commissioners will ensure the internal culture of the Commission and the statutory and non-statutory decisions it makes are rational, evidence-based, prioritise known corruption risks, and focus on the public interest.

Investigation and Inquiry

The Australian Federal Integrity Commission will have the appropriate and proportionate powers to investigate, where necessary, serious or systemic corruption issues involving or affecting the Commonwealth Government. These powers will be executed at the discretion of the Commissioner subject to a series of threshold tests and safeguards for witnesses.

The Commission will hold public hearings when satisfied it is in the public interest having regard to:

- advice provided by the Assistant Federal Integrity Commissioner for Research and Public Interest about the seriousness and/or systemic nature of the type of corruption issue
- whether evidence that may be given by a person, or a matter that may arise during the hearing (or that part of the hearing), is of a confidential nature, including journalistic sources
- whether evidence that may be given by s person, or a matter that may arise during the hearing (or that part of the hearing), relates to the confidential operations of the commission, or to the alleged or suspected commission of an offence
- any unfair prejudice to a person's reputation or unfair exposure of a person's private life that would be likely to be caused if evidence was given in public, or if a matter that may arise during the hearing (or that part of the hearing) is heard in public, including by way of simple association with the commission
- whether the person has a particular vulnerability, such as membership of a minority group
- whether the person is under the direct instruction or control of another person, such as a junior staff member and other relationships that involve significant power differentials
- and other relevant matters

All persons giving evidence before the Australian Federal Integrity Commission (or who have been summoned to give evidence) will have the right to request to give that evidence in private based on the public interest test set out above in a private pre-hearing.

The Commissioner also has a duty to impose non-disclosure obligations onto summons issued to witnesses based on the same public interest test to avoid damage to personal reputation by association. The bill also requires the Commissioner to publish a standalone report for any person or persons who are exonerated of any critical preliminary views or opinions after an investigation.

Referrals to the Commission can be made by anyone who identifies a corruption issue, with some mandatory reporting requirements. The Commissioner must decide how to deal with each referral and will be guided by statutorily definitions for frivolous or vexatious referrals. An Assistant Commissioner for Assessment, Investigations and Inquiries will support these operations.

After due process, the Commission will be empowered to make findings of fact and associated recommendations by way of public report, where appropriate. The Commission also has obligations to refer matters that involve evidence of criminality to the appropriate authorities.

The bill upholds principles of natural justice and the rule of law and does not involve the retrospective application of new laws or standards, including criminal laws, to historic conduct.

Whistleblower Protections

The Australian Federal Integrity Commission will include a Whistleblower Protection Commissioner to deliver the Commission's public advice and referral functions and partner with the Commonwealth Ombudsman and Australian Securities & Investments Commission. It will act as the whistleblower protection authority for the Commonwealth public sector and Commonwealth-regulated private and not-for-profit sectors, as recommended by the Parliamentary Joint Committee on Corporations and Financial Services.

Accountability

The Australian Federal Integrity Commission will be subject to oversight by the Parliamentary Joint Committee, assisted by a Parliamentary Inspector of the Australian Federal Integrity Commission to ensure compliance with the law, due process and standards of probity. This includes independent periodic reviews of the fiscal allocation to the Commission, and an assessment as to whether it has the funding required to fulfil its purposes under the Act. It will also be subject to judicial review by the Federal and High Courts of Australia.

The bill operates alongside the Commonwealth Parliamentary Standards Bill 2020.

Consensus Bill

The Australian Federal Integrity Commission Bill 2020 was drafted and refined as a consensus bill through a non-aligned independent political office and the comprehensive Beechworth Principles consultation process, which commenced Australia-wide in February 2020 and involved legal academics, panels of retired judges, civil society stakeholders, leading ethicists, and members of the Commonwealth Parliament from across the political spectrum through open invitation.

The *Beechworth Principles* articulate a set of five agreed characteristics upon which to establish an Australian Federal Integrity Commission. The five *Beechworth Principles* are:

1. Broad Jurisdiction
   All persons involved in federal public service must be subject to independent scrutiny

2. Common Rules
   All persons must be held to a single standard of behaviour

3. Appropriate Powers
   Empowered to fulfil its purpose with protections against arbitrary use of coercive powers

4. Fair Hearings
   Investigations and inquiries should be conducted openly when in the public interest

5. Public Accountability
   The body must remain accountable to the public, not political interests

The *Beechworth Principles* consultation process and the Australian Federal Integrity Commission Bill 2020 is rooted in more than a decade of prior consultation, policy development and evaluations of legislative best-practice, including, but not limited to:

- The series of prior bills presented to and scrutinised in the Commonwealth Parliament, including the National Integrity Commission Bill 2010, the National Integrity Commission Bill 2012, the National Integrity Commission Bill 2013, the National Integrity Commission Bill 2017, the National Integrity Commission Bill 2018, the National Integrity Commission Bill 2018 (No. 2), and the National Integrity Commission Bill 2019.

- The Report of the Senate Select Committee on a Federal Integrity Commission (2017) which included a five-part national consultation across New South Wales, Queensland, Victoria and the Australian Capital Territory through a comprehensive inquiry, including its recommendations which were considered and incorporated into the drafting of this bill.

- The refinement of options presented by Transparency International Australia and Griffith University led Australian Research Council Linkage Project, Strengthening Australia's National Integrity System: Priorities for Reform (2016-2019).

- The recommendations of the Australia Institute's National Integrity Committee, the Centre for Public Integrity and the Accountability Roundtable, and publications from other peak stakeholders including the Commonwealth Parliamentary Association's Recommended Benchmarks for Codes of Conduct for Members of Parliament (2015).

- The operating provisions of the Law Enforcement Integrity Commissioner Act 2006 and evaluations of the Australian Commission for Law Enforcement Integrity (ACLEI), upon which this bill draws – particularly Parts 4 through 6.

- The obligations upon national governments under the *UN Convention Against Corruption, OECD Convention on Foreign Bribery* and the OECD Guidelines for Multinational Enterprises, and the implications of the membership of the Australian Government to the Open Government Partnership.

FINANCIAL IMPACT

This bill complies with the financial initiative rules for private members bills.

Special commencement clauses have been inserted throughout the bill to accommodate financial initiative rules for private members. Under these provisions, sections of the Commonwealth Parliamentary Standards Act 2020 that require appropriated funds would not commence until the day after the day on which the Consolidated Revenue Fund is appropriated under an Act to the Department in which this Act is administered for payment for the purposes of the Australian Federal Integrity Commission.

Similar provisions are included in the Commonwealth Parliamentary Standards Bill 2020.

The Parliamentary Budget Office published an official costing for the Australian Federal Integrity Commission and Commonwealth Parliamentary Standards Commissioner on 16 October 2020. The staffing and specified operating costs for the two new agencies is expected to decrease the fiscal and underlying cash balances by $187.3 million over the 2020-21 Budget forward estimates.

The official costing is available here.

NOTES ON CLAUSES

Part 1—Preliminary

Clause 1: Short title

The Act may be cited as the *Australian Federal Integrity Commission Act 2020*.

Clause 2: Commencement

This clause states that sections 1 and 2, and anything in the Act not specified in the table, will commence on the day the Act receives Royal Assent.

Sections 3 through 285 will commence the day after the day on which the Consolidated Revenue Fund is appropriated under an Act to the Department in which this Act is administered for payment to the Australian Federal Integrity Commission.

Schedule 1 will commence at the same time as the provisions covered by table item 2.

Clause 3: Simplified outline of this Act

This clause provides a simplified outline of the Act

Clause 4: Objects of Act

The principal aim of the bill is to promote and improve the integrity and accountability of Commonwealth public administration in a sound evidence-based manner.

Clause 5: Saving of powers, privileges and immunities

This clause provides that the bill does not affect the powers, privileges and immunities of each House of Parliament, and of the members and committees of each House, except as expressly provided otherwise in this Act.

Clause 6: Act binds the Crown

This clause provides that this Act binds the Crown in right of the Commonwealth.

Clause 7: Application of Act

This clause provides that the Australian Federal Integrity Commission will have jurisdiction within and outside Australia and every external Territory.

Clause 8: Definitions

This clause defines terms and expressions used throughout the bill in order to avoid doubt and clarify the intended meaning of each word for the specific purposes of the bill.

This includes non-exhaustive instructive definitions of *vexatious* and *frivolous* referrals to assist the Commissioner and Assistant Commissioners make statutory determinations in a defensible and expedient manner.

When used throughout the Act, the term *frivolous* includes but is not limited to allegations or referrals that are trivial in nature and have no serious purpose or value; or are so meritless that further investigation would be a waste of time or cost. The term *vexatious* includes but is not limited to allegations or referrals that are solely focused on the harassment, frustration or the bringing of undue financial burden upon an individual or organisation; or are unduly repetitive, burdensome, and unwarranted when compared to their merits.

Clause 9: Meaning of *corrupt conduct*

This clause defines the meaning of corrupt conduct for the purposes of this Act.

For the purposes of education, research, prevention and other non-investigatory functions outside Parts 4 through 8 of the Act, the definition of corrupt conduct is purposely broad.

For the purposes of investigations and inquiries specified throughout Parts 4 through 8 of the Act, the definition of corrupt conduct is substantially narrower and contained to conduct that could constitute or involve a criminal offence or conduct giving rise to a civil liability, a disciplinary offence, reasonable grounds for dismissal, or a substantial breach of an applicable code of conduct (as specified in clause 8) at the time at which it occurred. The practical application of this definition is focussed again in Parts 4 through 8 of the Act when the Federal Integrity Commissioner must also demonstrate the nature of the broad corruption issue at hand is serious and/or systemic in nature based on research evidence, and that the pursuit of that particular investigation or inquiry is not the result of a vexatious or frivolous referral or claim.

Subsection 3 clarifies that conduct may amount to corrupt conduct under this clause if it occurred before the commencement of this subsection, and that it immaterial whether some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials. To put it beyond doubt, a note clarifies that this subsection does not require the retrospective application of new laws or codes of conduct. All conduct will be assessed against the law, policies, practices and standards that applied at the time the conduct occurred.

The practical application of this subclause is further restricted again in Parts 4 through 8 which prevent the Federal Integrity Commissioner from pursuing an inquiry into a corruption issue that occurred prior to the commencement of the Act unless the Federal Integrity Commissioner can demonstrate that an inquiry into that particular corruption issue would assist in the prevention of a contemporary or future serious and/or systemic corruption issues or risk, and that view is based on research evidence.

Clause 10: Meaning of *corruption issue*

This clause defines the meaning of corruption issues for the purposes of this Act.

Part 2—The Australian Federal Integrity Commission

Division 1—Establishment

Clause 11: Establishment

This clause establishes the Australian Federal Integrity Commission as a statutory agency with the Federal Integrity Commissioner as its head.

The Australian Federal Integrity Commission consists of the Federal Integrity Commissioner, the Assistant Federal Integrity Commissioner for Research and Public Interest, the Assistant Federal Integrity Commissioner for Assessment, Investigations and Inquiries, the Assistant Federal Integrity Commissioner for Education, Training and Prevention, the Law Enforcement Integrity Commissioner, the Whistleblower Protection Commissioner, any other Assistant Federal Integrity Commissioners, and any Assistant Law Enforcement Integrity Commissioners.

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*). The Commission is a listed entity; and the CEO is the accountable authority of the Commission. The Clause also outlines the persons who are officials of the Commission and the purposes of the Commission.

Division 2—Functions and powers of the Federal Integrity Commissioner and others

Clause 12: Definition of *federal integrity commissioner functions*

This clause defines the broad suite of the ***federal integrity commissioner functions*** which have an intentional pro-integrity focus.

This bill is distinct from previous iterations in that this clause now also includes a function to undertake and procure quality evidence-driven research into the incidence and risk of corruption in Australia, its causes and antecedents, and methods of prevention, for the primary but not sole purpose of providing a sound evidence base for the work of the Australian Federal Integrity Commission and its decisions, including those noted in the explanatory text for Clause 9 above.

This clause also stipulates, to avoid doubt, that when investigating and conducting public inquiries into corruption issues arising before the commencement of this section, the Federal Integrity Commissioner must apply and consider the laws and policies that were in force at the time the corruption issue arose, and that in no way is the Federal Integrity Commissioner empowered to retrospectively apply new laws or codes of conduct that did not exist at the time.

Clause 13: Definition of *law enforcement integrity commissioner functions*

This clause defines the ***law enforcement integrity commissioner functions*** as those functions conferred on the Law Enforcement Integrity Commissioner under section 15 of the *Law Enforcement Integrity Commissioner Act 2006*; and any other function conferred by this Act or another Act (or an instrument under this Act or another Act) on the Law Enforcement Integrity Commissioner.

Clause 14: Definition of *whistleblower protection commissioner functions*

This clause defines the ***whistleblower protection commissioner*** functions. This includes providing advice, assistance, guidance and support relating to the making and referral of disclosures of wrongdoing as defined by this Act.

The Whistleblower Protection Commissioner will ensure appropriate support and protection is provided to persons who make disclosures of wrongdoing and to investigate and report on issues of reprisal, detrimental action, or failures to prevent detrimental action, arising or resulting from disclosures of wrongdoing.

The Whistleblower Protection Commissioner will also provide legal advice, representation or other practical support, as appropriate, to persons who make disclosures of wrongdoing and who are, or may become, a party to proceedings in a court or to a matter before an industrial, civil or administrative body, under any law, if the Whistleblower Protection Commissioner considers that representing the person will promote compliance with whistleblower protection responsibilities. This includes commencing proceedings in a court, or to make applications to an industrial, civil or administrative body, to enforce this Act or any Commonwealth law containing whistleblower protection responsibilities.

Clause 15: Functions and powers of the Federal Integrity Commissioner

This clause provides that the Federal Integrity Commissioner has the Federal Integrity Commissioner functions. In this role, the Federal Integrity Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of the Federal Integrity Commissioner functions conferred by this section.

In performing functions or exercising powers conferred on the Australian Federal Integrity Commission, the Federal Integrity Commissioner must as far as practicable, direct attention to serious corrupt conduct and systemic corrupt conduct; and take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct. This provision is activated throughout the Act as a threshold within the public interest test.

Clause 16: Functions and powers of the Law Enforcement Integrity Commissioner

This clause provides that the Law Enforcement Integrity Commissioner has the law enforcement integrity commissioner functions.

The Law Enforcement Integrity Commissioner has the powers conferred under Parts 9 and 12 of the *Law Enforcement Integrity Commissioner Act 2006* to do things necessary or convenient to be done for or in connection with the performance of the law enforcement integrity commissioner functions conferred by this section.

There is a note following this section that outlines that the Law Enforcement Integrity Commissioner is subject to direction by the Federal Integrity Commissioner in relation to the performance of certain functions and the exercise of certain powers (see section 184 of the *Law Enforcement Integrity Commissioner Act 2006*).

Clause 17: Functions and powers of the Whistleblower Protection Commissioner

This clause provides that the Whistleblower Protection Commissioner has the whistleblower protection commissioner functions.

The Whistleblower Protection Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of the whistleblower protection commissioner functions conferred by this section.

Clause 18: Functions and powers of the Assistant Federal Integrity Commissioner for Research and Public Interest

This clause provides that the Assistant Federal Integrity Commissioner for Research and Public Interest is responsible for assisting the Federal Integrity Commissioner undertake and procure quality evidence-driven research into the incidence and risk of corruption in Australia, its causes and antecedents, and methods of prevention, for the primary but not sole purpose of providing a sound evidence base for the work of the Federal Integrity Commissioner, including relevant decisions about the serious and/or systemic nature of particular corruption issues throughout Parts 4 through 8 as part of the specified public interest test.

Clause 19: Functions and powers of the Assistant Federal Integrity Commissioner for Assessment, Investigations and Inquiries

This clause provides that the Assistant Federal Integrity Commissioner for Assessment, Investigation and Inquiries is responsible for assisting the Federal Integrity Commissioner to perform the functions referred to in clauses 12(1)(e), (f), (g), (h), (i), (j) and (k). This includes assistance with the making of determinations on each referral under Part 4 and the identification of frivolous and vexatious claims. It also includes the systematic collection of administrative data for use by the Assistant Federal Integrity Commissioner for Research and Public Interest.

Clause 20: Functions and powers of the Assistant Federal Integrity Commissioner for Education, Training and Prevention

This clause provides that the Assistant Federal Integrity Commissioner for Education, Training and Prevention is responsible for assisting the Federal Integrity Commissioner to perform the functions referred to in subclauses 12(1)(b) and (d).

Part 3—Corruption prevention, research and coordination

Division 1—Promoting integrity in public administration and Australia

Clause 21: Role of the Federal Integrity Commissioner

This clause provides duties of the Federal Integrity Commissioner in promoting integrity and preventing corruption in Australia.

Clause 22: Role of the Commission

This clause outlines the role of the Federal Integrity Commissioner in fulfilling the role outlined in Part 3.

Division 2—Commonwealth integrity and anti-corruption plans

Clause 23: Preparation of integrity and anti-corruption plans

This clause provides that the head of each Commonwealth agency is to prepare, every two years, a plan to protect and enhance integrity in the performance of the agency's functions (including the prevention of corruption in its program delivery, use of financial assets and information, decision-making, and the conduct of its staff) covering at least the next four-year period.

The integrity and anti-corruption plans must be consistent with any relevant rule, guidance or standard made under this Act. The plan could be combined with a fraud control plan, or corporate plan, for the entity under the *Public Governance, Performance and Accountability Act 2013,* but must deal with topics of integrity and anti-corruption.

An agency head is not required to publish part or all of the plan if it would be counter to the interests of preventing or dealing with corruption in or by the agency.

Clause 24: Audit Committee to monitor plans

This clause provides that if a Commonwealth agency is a Commonwealth entity, the audit committee for the agency must review the integrity and anticorruption plan, monitor its implementation and assess its effectiveness, having regard to the level of corruption risk applicable to the agency and its programs.

Notes following this clause point to (1) section 45 of the *Public Governance, Performance and Accountability Act 2013* (which deals with audit committees for Commonwealth entities) and (2) that the responsibility for preparing and implementing the entity's plan remains with the accountable authority for the entity.

Clause 25: Federal Integrity Commissioner to receive plans on request

This clause provides that a copy of an agency's integrity and anti-corruption plan, together with (for a Commonwealth entity) any Audit Committee comments or reports relating to its preparation or monitoring, is to be provided by the Accountable Authority when requested by the Federal Integrity Commissioner. The head of an agency may also request the Federal Integrity Commissioner review the agency's integrity and anticorruption plan or advise on its preparation. The Federal Integrity Commissioner may provide comment on the plan and may publish a Commonwealth agency's integrity and anticorruption plan, in part or whole, together with any comments, if satisfied it is in the public interest to do so.

Clause 26: Consideration of adequacy of plans

This clause provides that the Federal Integrity Commissioner must consider the adequacy of an agency's integrity and anti-corruption plan in the report of an investigation or public inquiry under section 60 or section 74, or any special report under section 234, which identifies that a corruption issue arose in respect of any particular Commonwealth agency or agencies.

Division 3—Corruption prevention inquiries

Clause 27: Federal Integrity Commissioner may conduct inquiries

This clause provides that the Federal Integrity Commissioner may conduct, undertake on the Federal Integrity Commissioner's own initiative, or at the request of the Minister or either House of the Parliament, a public inquiry to identify changes in laws, practices or procedures necessary to promote integrity and reduce the likelihood of the occurrence of serious and/or systemic corrupt conduct or corruption issues.

Clause 28: Scope and powers of inquiries

This clause provides the scope and powers of the inquiries provided at clause 27.

Clause 29: Reports of inquiries

This clause provides that a report of an inquiry under this Division is to be prepared in accordance with Division 4 of Part 5 of this Act and may include recommendations as the Federal Integrity Commissioner sees fit.

Division 4—Education, training and advice

Clause 30: Agency heads to provide training

This clause provides that the head of each Commonwealth agency is to ensure that officers of the agency are given appropriate education and training relating to ethical conduct, corruption risk and the prevention of corrupt conduct, including any obligations arising under this Act.

Clause 31: Role of Federal Integrity Commissioner

This clause outlines that the role of the Federal Integrity Commissioner is to develop and implement a strategy for how the Commission can best lead, facilitate and support the training and education of, and provision of advice to, the public sector and the community about the consequences and prevention of corruption. The Assistant Commissioner for Education, Training and Prevention would assist in the delivery of this clause.

Division 5—Research and intelligence

Clause 32: Research functions

This clause requires the Federal Integrity Commissioner, in consultation with the Assistant Federal Integrity Commissioner for Research and Public Interest, to develop and implement a strategy for research to support the performance of AFIC's functions. This strategy **must** include research into:

- the promotion of integrity and ethical conduct;
- individual and organisational behaviour related to integrity and ethical conduct;
- the incidence and prevention of corruption;

- detection and investigatory processes relating to corruption;
- factors giving rise, and factors influencing responses, to corruption issues among Commonwealth agencies;
- continuous improvement in responses to corruption;
- any other matter relating to the promotion of integrity or the prevention and eradication of corruption.

This clause also provides that any research conducted by the Federal Integrity Commissioner or the Assistant Federal Integrity Commissioner for Research and Public Interest must state any limitations of the research. These limitations should not prevent the Assistant Federal Integrity Commissioner for Research and Public Interest from providing advice on the seriousness or systematic nature of a particular corruption issue based on research evidence, and the presence of research limitations should also not be automatic grounds to discount the capacity of the Federal Integrity Commissioner to make a determination about the seriousness or systematic nature of a particular corruption issue based on research evidence.

This clause also implies the establishment of a research ethics committee and supplementary processes to ensure the robustness and quality assurance of research products.

Clause 33: Research strategy—consultation and implementation

This clause outlines who the Federal Integrity Commissioner will consult with when developing and implementing the research strategy under section 32.

Clause 34: Relationship between research and operations

This clause provides that the Federal Integrity Commissioner will give priority to research which assists the Commission in identifying and dealing with specific corruption issues or applies, includes and makes use of the Commission's experience in dealing with specific corruption issues.

Division 6—Commonwealth cooperation and coordination

Clause 35: Principles of operation of Australian Federal Integrity Commission

This clause outlines that the Australian Federal Integrity Commission is to work cooperatively with public authorities, integrity entities and Parliamentary integrity entities to prevent or respond to misconduct.

The Federal Integrity Commission is to improve the capacity of public authorities to prevent and respond to cases of misconduct; and not duplicate or interfere with work that it considers has been undertaken or is being undertaken appropriately by a public authority.

Clause 36: Cooperation and coordination with other Commonwealth agencies

This clause provides that the Federal Integrity Commissioner will facilitate cooperation and coordination among Commonwealth agencies with responsibility for integrity, ethics or the prevention of, or responses to, corruption in Commonwealth public administration.

In carrying out this function, the Federal Integrity Commissioner will ensure a comprehensive, efficient, nationally coordinated approach to the prevention, detection, reduction and remediation of corruption in Commonwealth public administration. This clause also provides that despite any other Act, agencies to whom this section applies may exchange any information relating to the promotion of integrity, or to preventing or responding to corruption, and engage in joint activities, projects or operations relating to the promotion of integrity, or to preventing or responding to corruption, with any other agency to whom this section applies.

Clause 37: Commonwealth Integrity Coordination Committee

This clause provides for the Commonwealth Integrity Coordination Committee to be established. It will be chaired by a member of the Committee as agreed by the members of the Committee from time to time; or if, no other member is agreed under paragraph (a), the Federal Integrity Commissioner. The Committee will meet no less than twice in any calendar year.

Clause 38: Functions of the Commonwealth Integrity Coordination Committee

This clause provides for the functions of the Commonwealth Integrity Coordination Committee.

Division 7—National cooperation and coordination

Clause 39: Role of the Federal Integrity Commissioner

This clause provides that the role of the Federal Integrity Commissioner in supporting a comprehensive, efficient, nationally coordinated approach to the prevention, detection, reduction and remediation of corruption in Australia, in Australia's relations with other countries; and in the implementation of Australia's international anti-corruption responsibilities, including under the United Nations Convention Against Corruption (2005).

Clause 40: National Integrity and Anti-Corruption Plan

This clause relates to the Minister publishing the National Integrity and Anti-Corruption Plan no less frequently than every four years, covering at least the next four-year period. This clause also provides an outline of the elements that must be included in the National Integrity and Anti-Corruption Plan.

Clause 41: Preparation of plan

This clause provides guidance on preparing the National Integrity and Anti-Corruption Plan, who the Minister is to consult, including asking the Federal Integrity Commissioner to comment on drafts of the plan in various stages. The National Integrity and Anti-Corruption Plan must include an assessment and recommendations regarding the adequacy of strategies to counter risks to integrity in high risk areas of Commonwealth public administration, including the following:

- major procurement and capital works;
- the allocation of grants and subsidies;
- enforcement of the criminal law;
- regulatory enforcement of industry and commerce;
- border crime and transboundary corruption;
- elections;
- the use of contractors to carry out work and any conflicts of interests of such contractors;
- any other item specified in the Rules;
- any other area considered relevant for inclusion by the Minister.

This clause also provides that the Minister must not publish a plan unless it has been prepared following a period of public consultation.

Clause 42: Examination of plan

This clause provides that the Parliamentary Joint Committee is to inquire into each National Integrity and Anti-Corruption Plan, and report to both houses on any matters it sees fit within 18 months of publication of the National Integrity and Anti-Corruption Plan by the Minister.

Clause 43: National Integrity and Anti-Corruption Advisory Committee

This clause provides for the National Integrity and Anti-Corruption Advisory Committee to be established. The Committee is to be chaired by the Secretary of the Attorney-General's Department. The Committee will meet no less than twice in any calendar year

Clause 44: Functions of the advisory committee

This clause provides the function of the National Integrity and Anti-Corruption Advisory Committee.

Part 4—Dealing with corruption issues

Division 1—Referring corruption issues to Federal Integrity Commissioner

Clause 45: Referral of corruption issues

This clause deals with the ways in which a corruption issue may be brought to the attention of the Federal Integrity Commissioner by another agency or person.

The Federal Integrity Commissioner may request but not require the person to identify, in writing, the nature of the person's relationship with any other persons or agencies identified in the referral, to assist in the vetting of referrals for vexatious, frivolous or otherwise baseless claims.

Clause 46: Referral under section 45 by person in custody

This clause deals with referrals under section 45 if a person who is detained in custody (the ***prisoner***) wishes to refer an allegation or information to the Federal Integrity Commissioner under section 45.

Clause 47: Public officials must refer corruption issues

This clause outlines that as soon as practicable after a public official becomes aware of an allegation, or information, that raises a corruption issue, the public official must refer the allegation or information to the Federal Integrity Commissioner under section 45; or if the public official is an employee of a Commonwealth agency other than the head of the agency—notify the head of the agency of the allegation or information.

A note under this clause points out that the head of a Commonwealth agency is a public official.

Clause 48: Federal Integrity Commissioner may enter into agreements etc. with head of Commonwealth agency

The Federal Integrity Commissioner may issue directions or guidance to, or enter into an agreement with, the head of a Commonwealth agency in relation to the level of detail required to refer an allegation or information to the Federal Integrity Commissioner and/ or the way in which information or documents in relation to an allegation or information may be given to the Federal Integrity Commissioner (whether for the purpose of referring an allegation or information to the Federal Integrity Commissioner or otherwise).

The Federal Integrity Commissioner may revoke the direction, guidance or agreement by written notice given to the head of the agency. The revocation takes effect on a day specified in the notice, which must be at least 14 days after the day it is given.

Division 2—How Federal Integrity Commissioner deals with corruption issues

Subdivision A—General

Clause 49: How Federal Integrity Commissioner may deal with corruption issues

This clause outlines the ways in which the Federal Integrity Commissioner may deal with a corruption issue, by investigating, referring managing or overseeing an investigation, including that the Federal Integrity Commissioner may investigate the corruption issue either alone or jointly with another government agency with appropriate functions or powers for the purpose.

Clause 50: Alleged contraventions of the *Commonwealth Parliamentary Standards Act 2020*

This clause applies if a corruption issue involves an alleged contravention of the *Commonwealth Parliamentary Standards Act 2020* and the corruption issue was not referred to the Federal Integrity Commissioner by the Parliamentary Standards Commissioner.

The Federal Integrity Commissioner must refer the corruption issue to the Parliamentary Standards Commissioner in accordance with paragraph 49(1)(b)(iii), unless the Federal Integrity Commissioner considers that exceptional circumstances apply in relation to the corruption issue as outlined in subsections (3), (4)and (5).

Clause 51: Criteria for deciding how to deal with a corruption issue

This clause outlines that the Federal Integrity Commissioner must have regard to the matters set out in subsection (2) in deciding how to deal with a corruption issue; or whether to take no further action in relation to a corruption issue. This includes:

- the need to ensure that the corruption issue is fully investigated;
- the rights and obligations of any other agency to investigate the corruption issue;
- the rights and obligations of any person who refers or provides information in relation to the corruption issue, including any need to protect the person's identity or confidentiality or to protect the person from reprisal or detrimental action;
- if a joint investigation of the corruption issue by the Federal Integrity Commissioner and another agency is being considered—the extent to which the other agency is able to cooperate in the investigation;
- the resources that are available to any other agency to investigate the corruption issue;
- the need to ensure a balance between:
- the Federal Integrity Commissioner's role in dealing with corruption issues (particularly in dealing with significant corruption issues); and
- ensuring that the heads of Commonwealth agencies take responsibility for managing their agencies;
- the likely significance of the corruption issue for any agency and for the Commonwealth;
- any advice requested of the Assistant Federal Integrity Commissioner for Research and Public Interest about the seriousness and/or systematic nature of the corruption issue, and the need for reform.

Clause 52: Dealing with multiple corruption issues

This clause provides for the Federal Integrity Commissioner to have discretion to deal with a number of corruption issues together (whether or not they are raised by the same allegation or information). This clause provides the flexibility for the Federal Integrity Commissioner to deal with issues in the way that will be most effective in the circumstances.

Subdivision B—Federal Integrity Commissioner dealing with referred corruption issues

Clause 53: Federal Integrity Commissioner must make a decision

This clause outlines that the Federal Integrity Commissioner must make a decision if an allegation, or information, that raises a corruption issue is referred to under section clause 45.

The Federal Integrity Commissioner must decide to deal with the corruption issue in one of the ways referred to in subsection clause 49(1); or to take no further action in relation to the corruption issue. The Federal Integrity Commissioner may consider additional information before making a decision and may direct the head of the agency that the agency is not to investigate the corruption issue. The clause outlines circumstances in which the Federal Integrity Commissioner can decide not to take further action; these need to be provided in writing to the head of the agency.

Clause 54: Advising person who refers corruption issue of decision about how to deal with corruption issue

The Federal Integrity Commissioner may advise a person (or a representative nominated by the person) of the Federal Integrity Commissioner's decision under section 53 in relation to a corruption issue raised by the person in a referral under section 45; and any decision the Federal Integrity Commissioner makes under section 59 on a reconsideration of how the corruption issue should be dealt with.

Clause 55: Advising person to whom referred corruption issue relates of decision about how to deal with corruption issue

If the Federal Integrity Commissioner makes a decision under section clause 53 in relation to a referred corruption issue that relates to a person, the Federal Integrity Commissioner may advise the person of the Federal Integrity Commissioner's decision.

Subdivision C—Federal Integrity Commissioner dealing with corruption issues on own initiative

Clause 56: Federal Integrity Commissioner may deal with corruption issues on own initiative

This clause provides that the Federal Integrity Commissioner may decide to deal with a corruption issue on the Federal Integrity Commissioner's own initiative and can request information to assist in making the decision.

The Federal Integrity Commissioner may direct the head of the agency that the agency is not to investigate the corruption issue. If the Federal Integrity Commissioner becomes aware of an allegation, or information, that raises another corruption issue the Federal Integrity Commissioner may deal with that other corruption issue in one of the ways referred to in subsection clause 49(1).

Clause 57: Advising head of Commonwealth agency of decision to deal with corruption issue on own initiative

Clause 57 applies when the Federal Integrity Commissioner decides to deal with a corruption issue under clause 49 on his or her own initiative and the corruption issue relates to the conduct of a person who is an employee of a Commonwealth agency (other than the head of the agency). The Federal Integrity Commissioner must advise the head of the agency of his or her decision to deal with the matter in that way, or any decision made following reconsideration under clause 59.

The Federal Integrity Commissioner must advise the head of the Commonwealth agency of the decision in writing; and as soon as reasonably practicable after the decision is made. However, the Federal Integrity Commissioner need not advise the head of the Commonwealth agency if doing so would be likely to prejudice the investigation of the corruption issue or another corruption investigation or any action taken as a result of an investigation.

Clause 58: Advising person of decision to deal with corruption issue on own initiative

Clause 58 applies if the Federal Integrity Commissioner decides to deal with a corruption issue on his or her own initiative and the corruption issue relates to a person who is, or has been a public official. The Federal Integrity Commissioner may advise the public official of the decision to deal with the corruption issue in that way, or any decision made following reconsideration in clause 59.

Subdivision D—Reconsidering how to deal with a corruption issue

Clause 59: Reconsidering how to deal with a corruption issue

The Federal Integrity Commissioner may, at any time, reconsider how a particular corruption issue should be dealt with. On that reconsideration, the Federal Integrity Commissioner may adopt a new or an alternative method of investigation under subclause 49(1).

The Federal Integrity Commissioner may decide under subsection (2) to take no further action in relation to the corruption issue only if the Federal Integrity Commissioner is satisfied that the corruption issue is already being, or will be, investigated by another Commonwealth agency; or the referral of the allegation, or information, that raises the corruption issue is frivolous or vexatious; or the corrupt conduct to which the corruption issue relates has been, is or will be, the subject of proceedings before a court; or further investigation of the corruption issue is not warranted having regard to all the circumstances.

Division 3—Information sharing when decision made on how to deal with corruption issue

Clause 60: If Commonwealth agency to conduct, or continue conducting, investigation of corruption issue

This clause applies where the Federal Integrity Commissioner refers a corruption issue to an agency or the AFP for investigation or an agency has already commenced investigating a corruption issue before it is referred to the Federal Integrity Commissioner.

Subsection 2 obliges the Federal Integrity Commissioner to provide all information relevant to the corruption issue being investigated by an agency to the head of the agency investigating the corruption issue if the head of the agency does not already have the information.

There is a note that under section Clause 163, the Federal Integrity Commissioner has a continuing obligation to pass on information that the Federal Integrity Commissioner becomes aware of and that is relevant to the corruption issue.

The Federal Integrity Commissioner may give the original or a copy of a document.

Clause 61: If Commonwealth agency has already commenced investigating corruption issue

This clause applies where the Federal Integrity Commissioner decides to deal with a corruption issue that a law enforcement agency started, or continued to investigate, prior to the Integrity Commissioner's decision as to how to deal with the matter.

Part 5—Investigations and public inquiries by the Federal Integrity Commissioner

Division 1—Investigations

Clause 62: Application of Division

This Division applies if the Federal Integrity Commissioner investigates a corruption issue (whether alone or jointly with another person or persons).

Clause 63: Federal Integrity Commissioner to determine manner of conducting investigation

This clause provides that the Federal Integrity Commissioner may conduct the investigation in such manner as the Federal Integrity Commissioner thinks fit, subject to safeguards throughout the Act. There is a note that Part 6 provides for particular powers that are available to the Federal Integrity Commissioner for the purposes of the investigation.

Clause 64: Information sharing for joint investigation

The Federal Integrity Commissioner may provide information and documents within the Federal Integrity Commissioner's possession and control to the head of an agency with which the Federal Integrity Commissioner is jointly conducting an investigation.

Clause 65: Opportunity to be heard

The Federal Integrity Commissioner must not disclose any opinions or findings that are critical of a government agency or person in a report, unless the head of the agency or the person has been given an opportunity to appear, or have a representative appear before the Federal Integrity Commissioner to make submissions in relation to the subject matter.

Where the opinion or finding is critical of a person, the Commissioner must provide the person with a statement setting out the opinion or finding and give the person a reasonable opportunity to be heard or make submissions. Where the opinion or finding is critical of an agency, the Federal Integrity Commissioner must provide the head of the agency with the same opportunities. The clause also provides for submissions to be made by a representative of the head of agency or person. However, the Commissioner does not have to give a person the opportunity to be heard where the Commissioner is satisfied that a person may have committed a criminal offence, contravened a civil penalty provision or engaged in conduct which could be the subject of disciplinary proceedings or termination of employment/ appointment, and that an investigation or any related action would be compromised by giving the person the opportunity to make submissions.

Division 2—Reporting in relation to investigations

Subdivision A—Reporting during investigation

Clause 66: Federal Integrity Commissioner may keep person who referred corruption issue informed of progress of investigation

The Federal Integrity Commissioner may keep a person (or a representative nominated by the person) informed of the progress of an investigation of a corruption issue if the person raised the corruption issue in a referral under section 45.

Subdivision B—Reporting at the end of investigation

Clause 67: Report on investigation

The Federal Integrity Commissioner must complete a report after an investigation of a corruption issue. The report must set out the Federal Integrity Commissioner's findings, evidence, action taken or to be taken, recommendations and reasons. The Federal Integrity Commissioner may recommend disciplinary action, action to rectify or mitigate the effects of the conduct or adopting measures to remedy deficiencies in policy or practice. If the Federal Integrity Commissioner has conducted a public hearing into a corruption issue, the Federal Integrity Commissioner may also exclude sensitive information. In deciding whether to exclude information from the report under subsection (4), the Federal Integrity Commissioner must seek to achieve an appropriate balance between the:

- public interest that would be served by including the information in the report; and
- prejudicial consequences that might result from including the information in the report.

Clause 68: Federal Integrity Commissioner to give report to Minister

The Federal Integrity Commissioner must give the Minister the report prepared under subsection clause 66(1); and if a supplementary report is prepared under subsection clause 67(6) in relation to the investigation—the supplementary report.

There is a note under this clause that clause 237 provides that the Minister must table a copy of the report prepared under subsection clause 67(1) in each House of the Parliament if a public hearing has been held in the course of the investigation to which the report relates. The Minister is not required, however, to table a copy of a supplementary report under subsection clause 67(6) in each House of the Parliament.

Clause 69: Advising person who referred corruption issue of outcome of the investigation

The Federal Integrity Commissioner may advise a person (or a representative nominated by the person) of the outcome of an investigation of a corruption issue raised by the person in a referral under section 45. However, if the Federal Integrity Commissioner is satisfied that advising the person is likely to prejudice an investigation or any related action, the Federal Integrity Commissioner can withhold advising the person until such time as the circumstances change to remove such prejudice.

Clause 70: Advising person whose conduct is investigated of outcome of the investigation

If the Federal Integrity Commissioner investigates a corruption issue that relates to a person, the Federal Integrity Commissioner may advise the person of the outcome of the investigation. In deciding whether to exclude information from the report or advice the Federal Integrity Commissioner must seek to achieve an appropriate balance between the person's interest in having the information included in the advice; and the prejudicial consequences that might result from including the information in the advice.

Clause 71: Standalone reports for critical views or reputational risks

If during an investigation of a corruption issue, the Federal Integrity Commissioner holds a public hearing that involves testing a critical view or opinion of a person; and, the person is exonerated of that critical view or opinion in the course of the investigation then the Federal Integrity Commissioner must, in addition to the report required under subsection 67(1), produce a standalone report that sets out that finding.

Similarly, under subsection (2), if during an investigation of a corruption issue, the Federal Integrity Commissioner holds a public hearing that involves subjecting a witness to high personal reputational risk by the witness being publicly associated with the investigation; and no critical views or opinions are formed about that person in the course of the investigation, then the Federal Integrity Commissioner must, in addition to the report required under subsection 67(1), produce a standalone report that sets out that finding.

That report must be given to the Minister, and the person who the subject of that report.

Division 3—Conducting a public inquiry

Clause 72: Federal Integrity Commissioner may conduct public inquiry

The Federal Integrity Commissioner may conduct a public inquiry in relation to a corruption issue or issues if the Federal Integrity Commissioner is satisfied that it is in the public interest to do so, based on the following (and any related advice requested of the Assistant Federal Integrity Commissioner for Research and Public Interest):

- the seriousness and/or systemic nature of the corruption issue or issues; and
- the prevalence of, or risk of occurrence of, the corruption issue or issues;
- the probity of the current evidence available about the corruption issue or issues.

It is noted, with emphasis, that this clause operates in conjunction with clause 93 which gives all persons compelled to give evidence before the Federal Integrity Commissioner the right to request a private hearing at any time throughout an inquiry, and requires the Federal Integrity Commissioner to have regard to the considerations listed in clause 86(4).

Clause 73: Publicising inquiry

The Federal Integrity Commissioner must invite submissions on the corruption issue that is to be the subject of the public inquiry.

The invitation must specify the closing date for submissions. If the Federal Integrity Commissioner receives a submission, the Federal Integrity Commissioner may, if satisfied that it is in the public interest to do so, authorise it to be published on the Commission's website.

Division 4—Reporting in relation to public inquiries

Clause 74: Report on public inquiry

After conducting a public inquiry, the Federal Integrity Commissioner must prepare a report on the inquiry. The report must include the findings, evidence, action taken or proposed to be taken and recommendations. Under section Clause 237, the report must be tabled in each House of the Parliament.

The Federal Integrity Commissioner may exclude information from the report if the Federal Integrity Commissioner is satisfied that it is desirable in the circumstances outlined in subsection 3, to exclude the information from the report. The Federal Integrity Commissioner must seek to achieve an appropriate balance between the public interest that would be served by including the information in the report and the prejudicial consequences that might result from including the information in the report.

If the Federal Integrity Commissioner excludes information from a report prepared under subsection (1), the Federal Integrity Commissioner must prepare a supplementary report that sets out the information; and the reasons for excluding the information from the report prepared under subsection (1).

Clause 75: Giving report to Minister

The Federal Integrity Commissioner must give the Minister the report prepared under subsection Clause 74(1); and if a supplementary report is prepared under subsection Clause 74(5)—the supplementary report.

Clause 76: Standalone reports for critical views or reputational risks

If during an inquiry of a corruption issue, the Federal Integrity Commissioner holds a public hearing that involves testing a critical view or opinion of a person; and, the person is exonerated of that critical view or opinion in the course of the inquiry then the Federal Integrity Commissioner must, in addition to the report required under subsection 74(1), produce a standalone report that sets out that finding.

Similarly, under subsection (2), if during an inquiry of a corruption issue, the Federal Integrity Commissioner holds a public hearing that involves subjecting a witness to high personal reputational risk by the witness being publicly associated with the inquiry; and no critical views or opinions are formed about that person in the course of the inquiry, then the Federal Integrity Commissioner must, in addition to the report required under subsection 74(1), produce a standalone report that sets out that finding.

That report must be given to the Minister, and the person who the subject of that report.

Part 6—Federal Integrity Commissioner's powers in conducting investigations and public inquiries

Division 1—Requiring people to give information or produce documents or things

Subdivision A—Requirement by Federal Integrity Commissioner

Clause 77: Notice to give information or to produce document or things

For the purpose of investigating a corruption issue, the Federal Integrity Commissioner may, by notice in writing, require a person to give the information specified in the notice or produce the documents or things specified in the notice, or do both. If the Federal Integrity Commissioner considers that allowing a 14-day period would significantly prejudice a corruption investigation, in which case a shorter period may be specified.

If the Federal Integrity Commissioner has reasonable grounds to suspect that the information, documents or things will be relevant to the investigation, the person must give the information in writing or produce the documents or things within the time specified in the notice, or within such further time as the Federal Integrity Commissioner allows. Failure to comply with the notice is an offence, as described below.

The Federal Integrity Commissioner may require that information specified under paragraph (1)(a) is to be given in writing.

Clause 78: Compliance with notice

A person served with a notice under section 77 must comply with the notice within the period specified in the notice; or within such further time as the Federal Integrity Commissioner allows under subsection (3). A person served with a notice under section 77 may apply to the Federal Integrity Commissioner, in writing, for further time to comply with the notice, before or as soon as possible after the period expires.

The Federal Integrity Commissioner may allow a person served with a notice further time to comply with the notice, whether or not an application has been made.

Clause 79: Federal Integrity Commissioner may retain documents and things

If a document or thing is produced in accordance with a notice under section clause 77, the Federal Integrity Commissioner may take possession of, and may make copies of, the document or thing, or take extracts from the document; and may retain possession of the document or thing for such period as is necessary for the purposes of the investigation to which the document or thing relates.

While the Federal Integrity Commissioner retains the document or thing, the Federal Integrity Commissioner must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

Subdivision B— Prohibitions against disclosing information about notices

Clause 80: Disclosure of notice may be prohibited

This clause applies in respect of a notice served on a person under section 77. The Federal Integrity Commissioner may include a notation in the notice to the effect that disclosure of information about the notice; or any official matter connected with the notice is prohibited except in

the circumstances (if any) specified in the notation, if the Federal Integrity Commissioner considers disclosure would reasonably be expected to or might prejudice a person's safety or reputation; or a person's fair trial, if the person has been charged with an offence or such a charge is imminent; or the investigation to which the notice relates or another corruption investigation; or any action taken as a result of an investigation.

If a notation is included in the notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed on the person on whom the notice is served.

A notation included in the notice is cancelled by this subsection if the Federal Integrity Commissioner concludes the investigation to which the notice relates and any criminal proceedings or civil penalty proceedings resulting from the investigation are commenced.

If a notation is cancelled by subsection (7), the Federal Integrity Commissioner must advise the person who was served with the notated notice, in writing, of the cancellation.

If a notation has been included in the notice in relation to the disclosure of information about the notice or any official matter connected with the notice; and the notation has not been cancelled; and a credit reporting body (within the meaning of the Privacy Act 1988) would be required, under subsection 20E(5) of that Act, to make a note about the disclosure of the information such a note must not be made until the notation is cancelled.

Clause 81: Offences of disclosure

This clause outlines offences of disclosure of a notice under section 77 with a notation under section 80. A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.

Subdivision C—Offence and related provisions

Clause 82: Failure to comply with notice

This clause outlines offences a person commits if the person is served with a notice under section 77 and the person fails to comply with the notice within the period specified in the notice; or if the Federal Integrity Commissioner has allowed the person further time under subsection 78(3)—within such further time.

Clause 83: Legal practitioner not required to disclose privileged communications

This clause outlines that, subject to paragraph 84(4)(c), a legal practitioner may refuse to give information; or to produce a document or thing when served with a notice to do so under section 77 if the information would disclose, or the document contains, a privileged communication made by the legal practitioner (or to the legal practitioner) in his or her capacity as a legal practitioner for the purpose of providing legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a compulsory examination or public or private hearing before the Federal Integrity Commissioner.

Subsection (1) does not apply if the person to whom the communication was made (or by whom the communication was made) agrees to the legal practitioner giving the information or producing the document or thing.

If the legal practitioner refuses to give the information; or to produce the document or thing; he or she must, if required by the Federal Integrity Commissioner, give the Federal Integrity Commissioner the name and address of the person to whom the communication was made (or by

whom the communication was made).

If a legal practitioner gets agreement, as mentioned in subsection (3) the fact that he or she gives information; or produces a document or thing does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document or thing; and the information or document does not cease to be the subject of legal professional privilege merely because it is given, produced or referred to.

Clause 84: Self-incrimination etc.

This clause outlines the circumstances a person is not excused from giving information; or producing a document or thing when served with a notice to do so under section 77 on the ground that doing so would tend to incriminate the person or expose the person to a penalty other than:

- proceedings for an offence against section 82; or
- confiscation proceedings; or
- proceedings for an offence against section 137.1 or 137.2 of the Criminal Code (which deals with false or misleading information or documents) that relates to this Act; or
- proceedings for an offence against section 149.1 of the Criminal Code (which deals with obstruction of Commonwealth public officials) that relates to this Act; or
- disciplinary proceedings against the person if the person is an employee of a Commonwealth agency.

Clause 85: Protection of person required to give information or produce documents or things

A person who gives information, or produces a document or thing, to the Federal Integrity Commissioner in response to a notice under section 77 has the same protection as a witness in proceedings in the High Court.

The Federal Integrity Commissioner may make such arrangements as are necessary to protect the safety of any person mentioned in paragraph (2)(c); or to protect any person mentioned in paragraph (2)(d) from intimidation or harassment. This may make include arrangements with members of the AFP; or members of the police force of a State or Territory.

This section does not affect the *Witness Protection Act 1994*.

Division 2—Conducting hearings

Subdivision A—General provisions

Clause 86: Federal Integrity Commissioner may hold hearings

Federal Integrity Commissioner may hold hearings for investigations or public inquiries

The Federal Integrity Commissioner may hold a hearing for the purpose of investigating a corruption issue; or conducting a public inquiry. Subject to subsections (3) to (5), a hearing may be conducted in such manner as the Federal Integrity Commissioner thinks fit.

Hearing in relation to an investigation of a corruption issue

The Federal Integrity Commissioner may decide to hold the whole (or a part) of a hearing in relation to an investigation of corruption issue either in public or in private.

In deciding under subsection (3) whether a hearing (or a part of a hearing) is to be held in public or in private, the Federal Integrity Commissioner must have regard to the following:

- advice provided by the Assistant Federal Integrity Commissioner for Research and Public Interest about the seriousness and/or systemic nature of the type of corruption issue
- whether evidence that may be given by the person, or a matter that may arise during the hearing (or that part of the hearing), is of a confidential nature, including but not limited to a journalistic source
- whether evidence that may be given by the person, or a matter that may arise during the hearing (or that part of the hearing), relates to the confidential operations of the commission, or to the alleged or suspected commission of an offence
- any unfair prejudice to a person's reputation or unfair exposure of a person's private life that would be likely to be caused if the evidence was given in public, or a matter that may arise during the hearing (or that part of the hearing) is held in public, including by way of simple association with the commission
- whether the person has a particular vulnerability, such as membership of a minority group
- whether the person is under the direct instruction or control of another person, such as a junior staff member and other relationships that involve significant power differentials
- any other relevant matter.

Hearing in relation to a public inquiry

A hearing in relation to a public inquiry must be held in public. However, a part of a hearing in relation to a public inquiry may be held in private if the Federal Integrity Commissioner so directs.

Record of hearing

The Federal Integrity Commissioner must make a record of a hearing. If the Federal Integrity Commissioner is conducting a public inquiry, the record of the hearing must include:

- any document produced to the Federal Integrity Commissioner at the hearing; or
- a description of anything (other than a document) produced to the Federal Integrity Commissioner at the hearing;

unless the Federal Integrity Commissioner directs otherwise.

The Federal Integrity Commissioner holds the discretion as to whether a hearing into a corruption issue will be heard in public or in private.

Clause 87: Federal Integrity Commissioner may summon person

The Federal Integrity Commissioner may summon a person to attend a hearing at a time and place specified in the summons to do either or both give evidence or produce any documents or other things referred to in the summons, if the Federal Integrity Commissioner has reasonable grounds to suspect that the evidence, documents or things will be relevant to the investigation of a corruption issue or the conduct of a public inquiry.

A summons must:

- be in writing and signed by the Federal Integrity Commissioner; and
- be served on the person required to attend a hearing.

The Federal Integrity Commissioner must record in writing the reasons for the summons. The record must be made at or before the time the summons is issued.

The matters in relation to which the Federal Integrity Commissioner may require the person to give evidence, or produce documents or things, at the hearing may include:

- the subject matter of any charge, or imminent charge, against the person; and
- the subject matter of any confiscation proceeding, or imminent confiscation proceeding, against the person.

If the hearing is held for the purpose of investigating a corruption issue, a summons requiring a person to give evidence must set out, so far as is reasonably practicable, the general nature of the matters in relation to which the Federal Integrity Commissioner intends to question the person. This does not prevent the Federal Integrity Commissioner from questioning in relation to:

- any aspect of the corruption issue to which the hearing relates; or
- another corruption issue.

Subsection (4) does not apply if the Federal Integrity Commissioner is satisfied that complying with that subsection is likely to prejudice the investigation to which the hearing relates or another corruption investigation; or any action taken as a result of an investigation.

The Federal Integrity Commissioner may, at the hearing, require the witness to produce a document or other thing.

A witness appearing at a hearing is entitled to be paid by the Commonwealth any allowances for travelling and other expenses that are prescribed by the regulations.

Clause 88: Federal Integrity Commissioner may take evidence outside Australia

If arrangements have been made between Australia and another country in relation to the taking of evidence in that country by the Federal Integrity Commissioner for a hearing held under this Division, the Federal Integrity Commissioner may take evidence on oath or by affirmation; and use any evidence taken in that country in accordance with those arrangements for the purpose of performing any function, or exercising any power, under this Act.

Subdivision B—Procedure at hearing

Clause 89: Who may be represented at a hearing

A person giving evidence at a hearing may be represented by a legal practitioner.

A person who is not giving evidence may be represented at a hearing by a legal practitioner if special circumstances exist; and the Federal Integrity Commissioner consents to the person being so represented.

Clause 90: Who may be present at a hearing

This clause provides that, for a private hearing, the Federal Integrity Commissioner may determine the people who can be present during all, or part of the hearing. A determination made by the Federal Integrity Commissioner under subclause 90(1) is not a legislative instrument.

In any case however, the Federal Integrity Commissioner must allow all legal practitioners representing a person giving evidence to be present when the evidence is being given. The Federal Integrity Commissioner can also consent to a legal practitioner representing a person not giving evidence to be present.

If a witness is giving evidence at a hearing and there is another person present who is neither a staff member of the Commission nor a legal practitioner representing a person at the hearing, the Federal Integrity Commissioner must inform the witness that the person is present and give the witness an opportunity to comment on the person's presence.

Subclause 90(4) also provides, for the avoidance of doubt, that even if the Federal Integrity Commissioner fails to inform the witness that a person, who is neither a staff member of the Commission nor a legal practitioner representing a person at the hearing, is present at the hearing, or the Federal Integrity Commissioner does not give the witness the opportunity to comment on the person's presence at the hearing, the person is still entitled to be present at the hearing if the Federal Integrity Commissioner has determined this to be the case under subclause 90(1).

Subclause 90(5) creates a criminal offence. The offence applies if a person is present while evidence is being given in private at a hearing and the person is not authorised to be there. The only time a person can be taken to be authorised to be there is where:

- The person is giving evidence, or
- The person is a legal practitioner representing a person giving evidence,
- The person is a legal practitioner and even though he or she is not representing a person giving evidence, the Federal Integrity Commissioner has consented to him or her being present,
- The Federal Integrity Commissioner has determined under subclause 90(1) that the person can be present.

The offence is punishable by a maximum penalty of 12 months imprisonment.

Subdivision C—Taking evidence at hearing

Clause 91: Evidence on oath or by affirmation

At a hearing, the Federal Integrity Commissioner may require a witness to either take an oath or make an affirmation; and administer an oath or affirmation to the witness. Failure to take an oath or make an affirmation is an offence: see section 97. This means that a hearing is a ***judicial proceeding*** for the purposes of Part III of the *Crimes Act 1914*, which creates various offences in relation to judicial proceedings.

The Federal Integrity Commissioner may administer an oath or affirmation to a person appearing as a witness in another country, but must do so in accordance with:

- any provision of the arrangements made between Australia and that other country, as referred to in section 88; and
- the laws of that other country.

The oath or affirmation is an oath or affirmation that the evidence the person will give will be true.

The Federal Integrity Commissioner may allow a person attending a hearing who has been sworn, or who has made an affirmation, to give evidence by tendering a written statement and verifying it by oath or affirmation.

Clause 92: Examination and cross-examination of witnesses

At a hearing, the following persons may, so far as the Federal Integrity Commissioner thinks appropriate, examine or cross-examine any witness on any matter that the Federal Integrity Commissioner considers relevant:

- counsel assisting the Federal Integrity Commissioner generally or in relation to the investigation or public inquiry to which the hearing relates;
- a person summoned, or otherwise authorised, to appear before the Federal Integrity Commissioner;
- any legal practitioner representing a person at the hearing.

Clause 93: Person may request that particular evidence be given in private

A person giving evidence at a hearing held in public may request at any time, including after receiving a summons and before appearing at the commission, to give particular evidence in private based on the considerations listed in clause 86(4) and clause 93(3). To avoid doubt, this can occur multiple times throughout an investigation or hearing.

Under subclause (4), the Federal Integrity Commissioner must give a person making such a request a private hearing for the purposes of making such a decision before making the decision.

The Federal Integrity Commissioner may, if the Federal Integrity Commissioner considers it appropriate, allow the evidence to be given in private. In making that decision, the Federal Integrity Commissioner must have regard to the following:

- advice provided by the Assistant Federal Integrity Commissioner for Research and Public Interest about the seriousness and/or systemic nature of the type of corruption issue

- whether evidence that may be given by the person, or a matter that may arise during the hearing (or that part of the hearing), is of a confidential nature, including but not limited to a journalistic source

- whether evidence that may be given by the person, or a matter that may arise during the hearing (or that part of the hearing), relates to the confidential operations of the commission, or to the alleged or suspected commission of an offence

- any unfair prejudice to a person's reputation or unfair exposure of a person's private life that would be likely to be caused if the evidence was given in public, or a matter that may arise during the hearing (or that part of the hearing) is held in public, including by way of simple association with the commission

- whether the person has a particular vulnerability, such as membership of a minority group

- whether the person is under the direct instruction or control of another person, such as a junior staff member and other relationships that involve significant power differentials

- any other relevant matter.

Clause 94: Directions in relation to confidentiality

This clause provides for directions in relation to confidentiality

Prohibition of limitation on publication

Subclause 94(1) confers power on the Federal Integrity Commissioner to issue a direction limiting or preventing the publication of evidence, documents and descriptions of things produced to the Federal Integrity Commissioner during a hearing. Under subclause 94(1) the Federal Integrity Commissioner can also prevent or limit the publication of information that could enable the identification of a person who has given evidence at a hearing, or the fact that the person has given, or may be about to give, evidence at the hearing.

The Integrity Commissioner has a discretion whether to issue a direction under subclause 94(1) unless the hearing is being held in private and the Federal Integrity Commissioner is satisfied that failure to give a direction might prejudice a person's safety or reputation, or the fair trial of a person who has been or may be charged with an offence. In such cases, subclause 94(2) removes the Federal Integrity Commissioner's discretion and requires him or her to issue a direction under subclause 94(1).

Failure to comply with a direction issued by the Federal Integrity Commissioner under subclause 94(1) is an offence under subclause (6), punishable by a maximum penalty of 12 months imprisonment.

Under subclause 94(3), the Federal Integrity Commissioner has a limited ability to vary or revoke a direction given under subclause 94(1). The Federal Integrity Commissioner cannot vary or revoke a direction if the Federal Integrity Commissioner is satisfied that doing so might prejudice a person's safety or reputation or the fair trial of a person who has been or may be charged with an offence. Any variation to, or revocation of, a subclause 94(1) direction must be given in writing.

Court certificate in relation to evidence in respect of which a direction has been given

Where a person has been charged with an offence, before a federal court or a court of a State or Territory, and the court considers it to be desirable in the interests of justice that particular evidence that is the subject of a direction given by the Federal Integrity Commissioner under subclause 94(1) be made available to the person or a legal practitioner representing the person, the court is empowered to give the Federal Integrity Commissioner a certificate to that effect. If the Federal Integrity Commissioner is given a certificate by a court under subclause 94(4), he or she must make the evidence available to the court.

If the Federal Integrity Commissioner provides evidence to a court pursuant to a certificate issued by the court under subclause 94(4), the court may, after examining the evidence, make the evidence available to the person charged with the offence concerned, or to a legal practitioner representing the person, provided that the court is satisfied that the interests of justice so require (subclause 94(5)). The court makes the final determination whether the evidence should be passed to the defendant, or the defendant's legal practitioner.

Offence

Subclause 94(6) makes it an offence for a person to contravene a direction given to him or her by the Federal Integrity Commissioner under subclause 94(1).

The offence is punishable by a maximum penalty of 12 months imprisonment.

Subdivision D—Prohibitions against disclosing information about a summons

Clause 95: Disclosure of summons may be prohibited

This clause provides that if a summons has been served on a person under clause 87 requiring the person to attend a private hearing (or the commissioner believes that there is a likelihood that part of the hearing should be held in private based on the considerations listed in section 86(4) and 93(3)), then the Federal Integrity Commissioner has a general discretion (limited by subclauses 95(3)-(5)) to include a notation in the summons preventing or limiting disclosure of information about the summons or any official matter connected with the summons.

Under subclause 95(3) the Federal Integrity Commissioner will be required to include a notation (no discretion) if the Federal Integrity Commissioner is satisfied that failure to include a notation would reasonably be expected to prejudice the safety, reputation or fair trial of a person, or an investigation or action taken as a result of an investigation, whether that investigation relates to the hearing or another corruption issue.

If the Federal Integrity Commissioner has a discretion whether to include a notation in a summons (that is, subclause 95(3) does not apply), subclause 95(4) provides that the Federal Integrity Commissioner can only include the notation if satisfied that failure to do so might prejudice the safety, reputation or fair trial of a person, or an investigation or action taken as a result of an investigation, whether that investigation relates to the hearing or another corruption issue, or would otherwise be contrary to the public interest. If none of these factors are present, subclause 95(5) provides that the Federal Integrity Commissioner cannot include a notation in a summons.

Written statement to accompany notation

If a notation is included in a summons, subclause 95(6) requires that the summons must be accompanied by a written statement that sets out the rights and obligations conferred and imposed by clause 96 of the Act.

Cancellation of a notation

Subclause 95(7) provides that a notation to a summons is cancelled if the Federal Integrity Commissioner concludes the subject investigation and any criminal proceedings resulting from the investigation have commenced.

If a notation is cancelled, subclause 95(8) requires the Federal Integrity Commissioner to advise the person that was served the summons of the cancellation in writing.

This clause is designed to prevent a disclosure which could lead to the destruction, or alteration of evidence, intimidation of witnesses etc. Disclosing the mere existence of an investigation may prompt actions of those under investigation, detrimentally affecting the Federal Integrity Commissioner's outcome. However, a specified circumstance allowing disclosure is likely to be in order to obtain legal advice.

Relationship of notation with Privacy Act

Subclause 95(9) provides that where a notation has been made on a summons, credit reporting bodies are prohibited from making a note about any disclosure of personal information they make about an individual unless the notation is cancelled. This is relevant because credit reporting agencies would otherwise be required to make a note about that disclosure in the individual's credit information file (subsection 20E(5) of the Privacy Act)..

Clause 96: Offences of disclosure

This clause provides for offences in relation to disclosure.

Offence

Subclause 96(1) creates a criminal offence where a person who has been served with a summons (under clause 87 of the bill) that includes a notation (included on the summons under clause 95 of the bill) and the person discloses the existence of, or any information about, the summons or any official matter connected with the summons. The elements of the offence will only be satisfied if the prosecution can prove that the notation was not cancelled by subclause 95(7) and five years has not passed since the summons was served on the person.

The offence is punishable by a maximum penalty of 12 months imprisonment.

Defence

Subclause 96(2) provides a defence to the offence in subclause 96(1) where the disclosure was made:

- In circumstances permitted by the terms of the notation,
- To a legal practitioner for the purpose of obtaining legal advice or representation in relation to the summons,
- To a legal aid officer for the purpose of obtaining assistance in relation to the summons, or
- Where the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons.

If a defendant wishes to rely on the defence in subclause 96(2), he or she will bear an evidentiary burden in relation to the matters set out in subclause 96(2). This is because of the operation of section 13.3 of the Criminal Code. It is appropriate for the defendant to bear the burden of proving these matters because they are matters that, by their nature, are within the knowledge of the defendant.

Offence

Subclause 96(3) creates a criminal offence where a person who has been served with a summons (under clause 87 of the bill) that includes a notation (included on the summons under clause 95 of the bill) and the person discloses the existence of, or any information about, the summons or any official matter connected with the summons. The elements of the offence will only be satisfied if the prosecution can prove that the notation was not cancelled by subclause 95(7) and five years has not passed since the summons was served on the person.

The offence is punishable by a maximum penalty of 12 months imprisonment.

Defence

Subclause 96(4) provides a defence to the offence in subclause 96(3) where the disclosure was made:

- if the person is an officer or agent of a body corporate referred to in paragraph (2)(d):
  - to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons,
  - to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the summons, or
  - to a legal aid officer for the purpose of obtaining assistance under section 74 in relation to the summons, or
- if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or obtaining assistance in relation to the summons, or
- if the person is a legal aid officer—for the purpose of obtaining legal advice or representation in relation to the summons.

If a defendant wishes to rely on the defence in subclause 96(4), he or she will bear an evidentiary burden in relation to the matters set out in subclause 96(4). This is because of the operation of section 13.3 of the Criminal Code. It is appropriate for the defendant to bear the burden of proving these matters because they are matters that, by their nature, are within the knowledge of the defendant.

Offence

Subclause 96(5) creates a criminal offence where a person who has been served with a summons (under clause 87 of the bill) that includes a notation (included on the summons under clause 95 of the bill) and the person makes a record of, or discloses the existence of, or any information about, the summons or any official matter connected with the summons. The elements of the offence will only be satisfied if the prosecution can prove that the notation was not cancelled by subclause 95(7) and five years has not passed since the summons was served on the person.

The restrictions of disclosure are imposed to ensure the quality of investigations and to protect the nature of any proceedings. The offences are aimed at preventing investigative work from being compromised by the disclosure of information that could infer the identity of a witness or the existence of an investigation.

Subclause 96(6) provides that a reference in clause 96 to disclosing the existence of something extends to the disclosure of information from which a person could reasonably be expected to infer its existence.

Subdivision E—Offences in relation to hearings

Clause 97: Offences

This clause outlines various offences for failing to comply with a summons served by the Federal Integrity Commissioner.

Offence for failure to attend hearing

Subclause 97(1) makes it is an offence for a person to fail to attend or report from day to day at a hearing if required to do so under a summons.

There is an exception to this offence where the defendant can prove that the Federal Integrity Commissioner excused him or her from attending the hearing. The defendant will bear an evidentiary burden to prove that he or she was excused if he or she wishes to rely on this exception. The defendant bears the evidentiary burden because of the operation of section 13.3 of the Criminal Code.

The offence is punishable by a maximum penalty of 12 months imprisonment.

Failure to swear an oath or make an affirmation

Subclause 97(2) makes it an offence for a person who is served with a summons to attend a hearing to fail to be sworn or make an affirmation at the hearing.

The offence is punishable by a maximum penalty of 2 years imprisonment.

Failure to answer questions

Subclause 97(2) also makes it an offence for a person who is served with a summons to attend a hearing to fail to answer questions that the Federal Integrity Commissioner requires the person to answer at the hearing.

This offence is punishable by a maximum penalty of 2 years imprisonment.

Failure to produce a document or thing

Subclause 97(4) makes it an offence for a person to fail to produce a document or thing the person was required to produce under a summons served on them by the Federal Integrity Commissioner.

This offence is punishable by a maximum penalty of 2 years imprisonment.

Clause 98: Contempt of the Commission

Subclauses (1), (2) and (3) stipulate the circumstances under which a person is in contempt of the commission. To avoid doubt, holding a peaceful protest outside the physical location of the commission would not constitute contempt under subclause 98(1)(d) and (e).

Clause 99: Federal Court or Supreme Court to deal with contempt

Application

If, in respect of a hearing, the Federal Integrity Commissioner is of the opinion that a person is in contempt of the Commission, the Federal Integrity Commissioner may apply to either of the following courts for the person to be dealt with in relation to the contempt:

(a) the Federal Court;

(b) the Supreme Court of the State or Territory in which the hearing is held.

Before making the application, the Federal Integrity Commissioner must inform the person that the Federal Integrity Commissioner proposes to make the application.

The application must be accompanied by a certificate that states:

(a) the grounds for making the application; and

(b) evidence in support of the application.

A copy of the certificate must be given to the person before, or at the same time as, the application is made. To avoid doubt, if the Federal Integrity Commissioner makes an application under this section, the Federal Integrity Commissioner need not give the evidence to the relevant person or authority under section 151.

How court may deal with application

If, after considering the matters specified in the certificate; and hearing or receiving any evidence or statements by or in support of Commission; and hearing or receiving any evidence or statements by or in support of the person the court to which the application was made finds that the person was in contempt of the Commission, the court may deal with the person as if the acts or omissions involved constituted a contempt of that court.

For the purposes of determining whether a person is in contempt of the Commission under subsection (1), Chapter 2 of the Criminal Code applies as if:

(a) being in contempt of the Commission were an offence; and

(b) references to a person being criminally responsible for an offence were references to a person being responsible for being in contempt of the Commission.

Clause 100: Conduct of contempt proceedings

This section applies if an application is made to the Federal Court or to the Supreme Court of a State or Territory under section 99. Proceedings in relation to the application are, subject to this Act, to be instituted, carried on, heard and determined in accordance with the laws (including any Rules of Court) that apply in relation to the punishment of a contempt of the court to which the application was made.

In proceedings relating to the application, a certificate under subsection 99(3) is prima facie evidence of the matters specified in the certificate.

Clause 101: Federal Integrity Commissioner may withdraw contempt application

The Federal Integrity Commissioner may, at any time, withdraw an application under subsection 99(1).

Clause 102: Double jeopardy

If an act or omission by a person is an offence against this Act and is also an offence against a law of a State, the person may be prosecuted and convicted under this Act or under that law of that State in respect of the act or omission, but nothing in this Act renders a person liable to be punished twice in respect of the same act or omission. If:

(a) an application is made to the Federal Court or a Supreme Court under subsection 99(1) in respect of an act or omission by a person; and

(b) the person is dealt with by the court under that section in respect of the act or omission;

the person is not liable to be prosecuted for an offence in respect of that act or omission.

If a person is prosecuted for an offence in respect of an act or omission referred to in subsection 98(1) without an application being made to the Federal Court or a Supreme Court under subsection 99(1) in respect of the act or omission, an application must not be made under subsection 99(1) in respect of the act or omission.

Clause 103: Legal professional privilege—answer to question

A person must not refuse or fail to answer a question at a hearing that the Federal Integrity Commissioner requires the person to answer on the ground that the answer (or the relevant part of the answer) would disclose a communication that is subject to legal professional privilege, unless a that communication was made for the for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a compulsory examination or public or private hearing before the Federal Integrity Commissioner.

Clause 104: Legal professional privilege—documents or things

A person must not refuse or fail to produce a document or thing to the Federal Integrity Commissioner at a hearing on the ground that the document or thing is subject to legal professional privilege, unless that document or thing was part of a communication for the for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a compulsory examination or public or private hearing before the Federal Integrity Commissioner.

Clause 105: Offences relating to claims for legal professional privilege

A person commits an offence if:

(a) the person had been served with a summons:

(i) to attend a hearing and the person fails to answer a question at the hearing that the Federal Integrity Commissioner requires the person to answer; or

(ii) to produce a document or thing specified in the summons and the person fails to produce the document or thing that the person was required to produce; and

(b) the person refuses or fails to answer the question or produce the document or thing as the Federal Integrity Commissioner requires; and

(c) subsection ^103(2) or ^104(2) does not apply.

Penalty: Imprisonment for 6 months or 10 penalty units.

Subsection (1) is an offence of strict liability.

It is a defence to a prosecution for an offence against this section constituted by a refusal or failure to answer a question or to produce a document or thing if the answer, document or thing was not relevant to the corruption issue or public inquiry to which the hearing related. A defendant bears an evidential burden in relation to the matters in subsections (3) and (5) (see subsection 13.3(3) of the *Criminal Code*).

Clause 106: Self-incrimination etc.

This clause abrogates the privilege against self-incrimination. This means that a person, summoned under clause 87 to answer questions, provide information, documents or things at a hearing cannot refuse to produce the document, information or things on grounds that doing so could incriminate him or her. Subsection (4) steps out the limited use provisions which include:

- proceedings for an offence against section 97; or
- confiscation proceedings; or
- proceedings for an offence against section 137.1 or 137.2 of the Criminal Code (which deals with false or misleading information or documents) that relates to this Act; or
- proceedings for an offence against section 149.1 of the Criminal Code (which deals with obstruction of Commonwealth public officials) that relates to this Act; or
- disciplinary proceedings against the person if the person is an employee of a Commonwealth agency.

Subdivision F—Court orders for delivery of witness's passport and witness's arrest

Clause 107: Federal Integrity Commissioner may apply for order that witness deliver passport

This clause gives the Federal Integrity Commissioner standing to apply to a Judge of the Federal Court for an order that a person deliver his or her passport to the Federal Integrity Commissioner. The Federal Integrity Commissioner can only apply to the Judge if:

(i) the person has been served with a summons under clause 87 of the bill to attend a hearing into a corruption investigation or public inquiry, or the person has already attended a hearing in relation to a corruption investigation or public inquiry to give evidence or produce documents or things, and
(ii) there are reasonable grounds for believing that the person may be able to give evidence that is relevant to the investigation or public inquiry, and
(iii) there are reasonable grounds for suspecting that the person has, in his or her possession, custody or control, a passport issued to him or her, and
(iv) there are reasonable grounds for suspecting that the person intends to leave Australia.

In applying for an order under subclause 107(1), subclause 107(2) requires that the Federal Integrity Commissioner give the Judge the information on oath or by affirmation.

This clause is aimed at preserving the evidence of witnesses by assuring their attendance at a hearing to provide information, documents, things or testimony where there is a reasonable suspicion that the witness may leave Australia before providing that evidence.

Clause 108: Court orders

This Clause allows the Federal Court make an independent decision about whether a person's passport should be submitted to the Integrity Commissioner.

Clause 109: Applying for a warrant to arrest witness

This clause confers power on an authorised officer to apply to a Judge of the Federal Court of Australia, or of the Supreme Court of a State or Territory, for a warrant to arrest a person. An authorised officer can only make an application to a court under subclause 109(1) if he or she has reasonable grounds to believe that the person falls within one of the three categories that follow:

(i) The person has been ordered to deliver his or her passport to the Federal Integrity Commissioner (whether or not the person has complied with the order) and is likely to leave Australia for the purpose of avoiding giving evidence at a hearing before the Federal Integrity Commissioner, or
(ii) The person has been served with a summons issued under clause 82 and has either absconded or is likely to abscond, or is otherwise attempting, or likely to attempt, to evade service of the summons, or
(iii) The person has committed an offence under subclause 97(1) or is likely to do so.

In making an application under subclause 109(1), subclause 109(2) requires that the authorised officer give the Judge the information required in subclause 109(1) either on oath, or by affirmation.

Clause 110: Warrant for arrest

This clause provides for the issue of a warrant for arrest. If a Judge, while sitting in Chambers, is satisfied on the evidence that there are reasonable grounds for believing that the matters set out in subclause 109(1)(a) or 109(1)(b) or 109(1)(c) are met, subclause 110(1) confers power on the Judge to issue a warrant authorising the authorised officer to arrest the person.

Subclause 110(2) provides that, for the purpose of executing a warrant issued under subclause 110(1), if the authorised officer executing the warrant, or an assisting officer, believes on reasonable grounds that the person to whom the warrant relates is on certain premises, the authorised officer or assisting officer is authorised to break into, and enter, those premises.

However, if the premises are a dwelling house, subclause 110(3) limits the ability of the authorised officer or assisting officer to enter the premises. Subclause 110(3) prohibits the authorised officer executing the warrant, or assisting officer, from entering a dwelling house at any time during the

period commencing at 9 pm on a day and ending at 6 am on the following day unless the authorised officer or assisting officer believes on reasonable grounds that it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time.

In arresting a person under a warrant issued under subclause 110(1), subclause 110(4) prohibits the authorised officer executing the warrant, or assisting officer, from using more force, or subjecting the person to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the person after the arrest.

Under subclause 110(5) a warrant issued under subclause 110(1) can be executed even if the authorised officer does not have a copy of the warrant in his or her possession at the time that the warrant is executed.

Subclause 110 (6) requires the authorised officer executing a warrant, or an assisting officer who arrests the person to whom the warrant relates, to inform the person, at the time of the arrest, of the reason for which he or she is being arrested. For the purposes of informing the person under subclause 110(6), subclause 110(7) provides that it is sufficient if the person is informed of the substance of the reason. That is, it is not necessary that this be done in language of a precise or technical nature.

There is an exception to the requirement on an authorised officer or assisting officer under subclause 110 (6) to inform the person, at the time of the arrest, of the reason for which he or she is being arrested. Subclause 110(8) provides that the requirement on an authorised officer or assisting officer under subclause 110(6) to inform the person, at the time of the arrest, of the reason for which he or she is being arrested does not apply if:

- the person should, in the circumstances, know the substance of the reason for which he or she is being arrested, or
- the person's actions make it impracticable for the authorised officer executing the warrant (or an assisting officer making the arrest) to inform the person of the reason for which he or she is being arrested.

Subclause 110(9) provides that nothing in clause 110 prevents the arrest of a person in accordance with any other law (such as the Crimes Act).

Definitions

Subclause 110 (10) sets out particular definitions for the terms 'dwelling house' and 'Judge' for the purposes of the operation of clause 106.

Subclause 110 (10) provides that, for the purposes of clause 110, 'dwelling house' includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

Subclause 110 (10) provides also that 'Judge' means a Judge of the Federal Court of Australia, or a Judge of the Supreme Court of a State or Territory.

Clause 111: Powers of Judge in relation to person arrested

This clause provides for the powers of a Judge in relation to a person arrested. Subclause 111(1) provides that a person who is arrested under a warrant issued under clause 110 must be brought before a Judge as soon as practicable after the arrest.

Following the person being brought before the Judge in accordance with subclause 111(1), subclause 111(2) confers power on the Judge to:

(a) Grant the person bail on such security as the Judge thinks fit and on such conditions as the Judge thinks are necessary to ensure that the person appears as a witness at a hearing before the Federal Integrity Commissioner, or
(b) Order that the person continue to be detained for the purpose of ensuring that the person appears as a witness at a hearing before the Federal Integrity Commissioner, or
(c) Order that the person be released.

Where a person is detained under subclause 111(2)(b), subclause 111(3) requires that the person must be brought before a Judge within the time fixed by the Judge on the person's last appearance before a Judge, or if a Judge has not fixed a time, within 14 days after the person was last brought before a Judge.

Subclause 111(4) provides that, for the purposes of clause 111, 'Judge' means a Judge of the Federal Court of Australia, or a Judge of the Supreme Court of a State or Territory.

Subdivision G—Miscellaneous

Clause 112: Federal Integrity Commissioner may retain documents or things

If a document or thing is produced to the Federal Integrity Commissioner in accordance with a summons under section 87, the Federal Integrity Commissioner:

(a) may take possession of, and may make copies of, the document or thing, or take extracts from the document; and

(b) may retain possession of the document or thing for such period as is necessary for the purposes of the investigation or public inquiry to which the document or thing relates.

While the Federal Integrity Commissioner retains the document or thing, the Federal Integrity Commissioner must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

Clause 113: Person may apply for legal and financial assistance

This clause provides for a person who is summoned under clause 87 to attend a hearing may apply to the Attorney-General for assistance in respect of his or her attendance at the hearing, or his or her representation at the hearing by a legal practitioner.

Under subclause 113(2), a person who is not giving evidence at a hearing before the Federal Integrity Commissioner; and is being represented at the hearing by a legal practitioner with the consent of the Federal Integrity Commissioner, may apply to the Attorney-General for assistance in respect of that representation.

Under subclause 113(3), the Attorney-General can authorise the Commonwealth to provide a person who has applied for assistance under subclause 113(1) or (2) with financial or legal assistance in respect of the person's attendance at the hearing or the person's representation at the hearing by a legal practitioner, if the Attorney-General is satisfied that it would involve substantial hardship to the person to refuse the application or the circumstances of the case are of such a special nature that the application should be granted.

Subclause 113(4) provides that legal or financial assistance may be given unconditionally or subject to such conditions as the Attorney-General determines.

Subclause 113(5) provides that an instrument that determines the conditions on which legal or financial assistance may be given is not a legislative instrument.

Clause 114: Protection of Federal Integrity Commissioner etc.

The Federal Integrity Commissioner has, in exercising the Federal Integrity Commissioner's power to hold a hearing, the same protection and immunity as a Justice of the High Court.

A legal practitioner assisting the Federal Integrity Commissioner, or representing a person at a hearing, has the same protection and immunity as a barrister appearing for a party in proceedings in the High Court.

To avoid doubt, this section does not limit the powers of the Ombudsman under the *Ombudsman Act 1976* to investigate issues of administrative practice in relation to a hearing under this Division.

A reference in this section to the Federal Integrity Commissioner includes a reference to an Assistant Commissioner who exercises the power to hold a hearing in relation to a corruption issue under an authorisation under section 233.

Clause 115: Protection of witnesses etc.

This clause provides protections for witnesses at a hearing before the Federal Integrity Commissioner, which are the same those as witnesses in proceedings in the High Court.

Division 3—Search warrants

Subdivision A—Preliminary

Clause 116: Application to things under the control of a person

This Division applies to a person (the ***possessor***) who has a thing under the possessor's control in any place (whether for the use or benefit of the possessor or another person), even if another person has the actual possession or custody of the thing, as if the possessor has possession of the thing.

Subdivision B—Applying for a search warrant

Clause 117: Authorised officer may apply for a search warrant

Application for warrant to search premises (investigation warrant)

An authorised officer may apply to an issuing officer for an investigation warrant to search premises if the authorised officer has reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material on the premises; and has reasonable grounds for believing that, if a person was served with a summons to produce the evidential material, the material might be concealed, lost, mutilated or destroyed.

Note: In special circumstances and urgent cases, an application may be made by telephone, fax, email or other electronic means: see section 120.

Application for warrant to search premises (offence warrant)

An authorised officer may apply to an issuing officer for an offence warrant to search premises if the authorised officer has reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material on the premises.

Note: In special circumstances and urgent cases, an application may be made by telephone, fax,

email or other electronic means: see section 120.

Application for a warrant to search person (investigation warrant)

An authorised officer may apply to an issuing officer for an investigation warrant to carry out an ordinary search or a frisk search of a person if the authorised officer has reasonable grounds for suspecting that the person has in the person's possession, or will within the next 72 hours have in the person's possession, any evidential material; and has reasonable grounds for believing that, if the person was served with a summons to produce the evidential material, the material might be concealed, lost, mutilated or destroyed.

Note: In special circumstances and urgent cases, an application may be made by telephone, fax, email or other electronic means: see section 120.

Application for a warrant to search person (offence warrant)

An authorised officer may apply to an issuing officer for an offence warrant to carry out an ordinary search or a frisk search of a person if the authorised officer has reasonable grounds for suspecting that the person has in the person's possession, or will within the next 72 hours have in the person's possession, any evidential material.

Note: In special circumstances and urgent cases, an application may be made by telephone, fax, email or other electronic means: see section 120.

Information in support of application

An authorised officer must give the issuing officer information on oath or by affirmation to support the grounds for an application under subsection (1), (2), (3) or (4).

If an authorised officer applying for a search warrant suspects that, in executing the warrant, it will be necessary to use firearms, the authorised officer must state that suspicion, and the grounds for it, in the information given under subsection (5).

If the authorised officer applying for a search warrant (or another authorised officer who will be an assisting officer in relation to the search warrant) has, at any time previously, applied for a search warrant under this Act or another Act in relation to the same person or premises, the authorised officer must state particulars of those applications, and their outcome, in the information given under subsection (5).

Subdivision C—Issue of a search warrant

Clause 118: When search warrants may be issued

This clause provides that the issuing officer may issue a warrant if he or she is satisfied that the authorised officer has reasonable grounds to suspect that there is or will be within 72 hours, evidential material on the premises or person which may be concealed, lost, mutilated or destroyed.

Clause 119: Content of warrants

This clause sets out the information that is required to be included in a warrant which must include a statement as to whether the warrant is an investigation warrant or an offence warrant. If it is an investigation warrant the warrant must state the corruption issue or public inquiry to which it relates. If it is an offence warrant, the warrant must state the offence to which the warrant relates. In both cases the warrant must contain a description of the premises or the name and description of the person to be searched, the kinds of evidentiary material that are to be searched for, the name of the Authorised Officer responsible for execution of the warrant, the period in which the warrant remains in force and the particular hours in which the warrant may be executed.

If the warrant is in relation to premises, it must also include authorisation for the necessary seizure of things found to prevent concealment, loss, destruction or use, and whether an ordinary or frisk search of a person at, or near the premises is authorised.

Where the warrant is in relation to a person, it must also include whether an ordinary or frisk search is authorised and the authority for the necessary seizure of things found in the person's possession, or in an aircraft, vehicle or vessel the subject person had operated or occupied within 24 hours before the search to prevent the concealment, loss, destruction or use.

Clause 120: Application by telephone etc. and issue of warrant

An Authorised Officer may apply for a warrant by telephone, fax, e-mail or other electronic means where there is urgency or where a delay would in some way frustrate the effective execution of the warrant.

These applications must contain all necessary information required from an ordinary warrant application and an application made by these means must be where there is a belief that evidentiary material is, or will be on the subject premises or person within 48 hours (any time longer, up to 72 hours will require an ordinary application).

The Authorised Officer must, no later than the day after either the warrant expires or is executed, whichever is earlier, provide the completed form of a warrant and the information duly sworn or affirmed containing the reasonable grounds for belief to the Issuing Officer. If the form of a warrant signed by the Issuing Officer is not produced, it will be assumed that the exercise of power was not duly authorised unless proved otherwise. This Clause acknowledges that in practice there may be circumstances where there is a need for urgency and therefore provides for faster process.

Clause 121: The things authorised by a search warrant in relation to premises

Clauses 121 and 122 set out the powers of an authorised officer in executing a warrant in relation to premises and persons respectively. In the case of a warrant executed on premises an Authorised Officer or Assisting Officer is allowed to enter and search the subject premises and record fingerprints and take samples for forensic purposes. The authorised officer can also seize what are believed to be eligible seizable items (which are defined in clause 5), the types of evidential material specified in the warrant and any other things found if there is a belief that seizure is necessary to prevent concealment, loss, destruction or use of what may be evidentiary material. If the warrant allows, the Authorised Officer may also conduct an ordinary or frisk search of a person who is at, or near the premises. Note that strip searches of a person are prohibited.

Clause 122: The things authorised by a search warrant in relation to a person

A search warrant executed in relation to a person allows an Authorised or Assisting Officer to search the person in the manner specified in the warrant, being either a frisk or ordinary search as defined in clause 5 of the bill. The Authorised or Assisting Officer may search all things found in the person's possession, any aircraft, vessel or vehicle operated or occupied by the person within the 24 hours before the search, seize things specified in the warrant, take and record fingerprints and forensic samples, seize other things found if there is a belief that it is evidentiary material and the seizure is necessary to prevent concealment, loss, destruction or use. The search of the person must not be different from that authorised in the warrant. Note strip searches are prohibited.

Clause 123: Restrictions on personal searches

A search warrant may not authorise a strip search or a search of a person's body cavities.

Clause 124: When warrant may be executed etc.

If a search warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

If things are seized under a search warrant, the warrant authorises the authorised officer executing the warrant to make the things available to officers of other government agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

Subdivision D—General provisions about executing a search warrant

Clause 125: Announcement before entry

Prior to entering premises under a warrant, an Authorised Officer must announce that he or she is authorised to enter and provide any person at the premises with the opportunity to allow the entry. Announcement of entry will not, however, be required if the authorised Officer believes that immediate entry is required to ensure either the safety of a person, or the effective execution of the warrant. This Clause ensures the person is given notice and provided with an opportunity to co-operate with the Authorised Officer in the search. A search with co-operation is often more successful and professional. The occupier of the premises is also entitled to be made aware of the situation.

Clause 126: Availability of assistance and use of force in executing a warrant

An Authorised or Assisting Officer may obtain the assistance necessary and use a reasonable amount of force whilst executing a warrant. A person who is not an Authorised Officer or a constable may take part in searching or arresting any person. The Authorised Officer is given the discretion to use the necessary force needed which allows for the Authorised Officer to protect him or herself and others assisting in the execution of a warrant. The requirement of having only Authorised Officers or a constable taking part in searches and arrests is to ensure that these procedures are carried out by only those who have been provided with training and fulfilled the requirements to ensure that care, professionalism and due diligence are present.

Subdivision E—Specific provisions about executing a warrant in relation to premises

Clause 127: Application

This Subdivision applies if a search warrant in relation to premises is being executed.

Clause 128: Copy of warrant to be shown to occupier etc.

If an occupier or someone representing the occupier is present at the premises, the Authorised Officer must identify him or herself to the person and make a copy of the warrant available to that person, and/or a person being searched under the warrant. The person has the right to be informed and it clarifies that the search is legal and all requirements have been fulfilled to allow the procedure to take place.

Clause 129: Occupier entitled to watch search

The occupier or someone representing the occupier, is entitled to watch the search, or part thereof (more than one area may be searched at a time), but such right ceases when he or she impedes the search in any way. This Clause provides the occupier with rights but those rights shall not conflict with a search. In circumstances where an occupier can assist in the search by providing instructions as to how to operate a device etc. it will be useful for the Authorised Officer to have him or her present.

Clause 130: Specific powers available to person executing a warrant

An Authorised or Assisting Officer may take photographs or video recordings at the premises for a purpose incidental to the execution of the warrant, or with the written consent of the occupier. The Authorised and Assisting Officers may temporarily stop the search and leave the premises for up to one (1) hour (or longer with the written consent of the occupier) and then return to the premises and complete the search, only if the warrant is still in force.

If the execution of a warrant is stopped by a Court Order which is later revoked or reversed on appeal, the execution may be completed only if the Warrant is still in force. This Clause ensures that under no circumstances should a warrant be executed unless it is valid and in force, regardless of partial execution or Court proceedings delaying etc. It prescribes the Authorised Officer with the onus to re-apply for a new warrant where an existing warrant expires for any reason. The strict provision of this Clause is to ensure the admissibility of evidence obtained and further, to protect the Commonwealth from being exposed to an action for damages in relation to premises and persons searched and items seized.

Clause 131: Use of equipment to examine or process things

An Authorised or Assisting Officer may bring any equipment necessary to examine and process things to determine if they may be seized under the warrant. If it is not practicable to examine or process things on the premises, or if the occupier consents, things may be moved to another place. If things are moved, the Authorised Officer must advise the occupier of the time and place of any examination or processing, and allow him, her or a representative to attend. An Authorised Officer may operate equipment (other than electronic equipment) to examine or process things to determine if they may be seized, only where the Authorised or Assisting Officer believe the examination or processing can be carried out without damaging the equipment or thing. In circumstances where there may be a large amount of data, searching through it all for evidentiary material whilst at the premises will be time consuming.

The Cybercrime Act 1995 provides that it is practical to move items where it will be faster or less costly to search for evidentiary material. It is often the case that computers and other electronic equipment hold a large amount of data which is protected by complex security measures such as encryption and passwords. Many experts may be required to decipher multi levels of password

protection which are often designed to delete or alter data if the correct password is not used. It is practical to operate the equipment to see if evidentiary material is present, if so, move the equipment and examine or process off the premises. The initial check for the existence of evidentiary material is to ensure that equipment is not unnecessarily seized. It is also important to engage experts to ensure that valuable evidence is not lost or deleted, again, exposing the Commonwealth to an action for damages.

Clause 132: Use of electronic equipment at premises without expert assistance

This clause provides that an authorised officer may operate electronic equipment to see if evidentiary material is accessible, if he or she believes that it can be operated without damage. If evidentiary material is found, the equipment may be seized with any disk, tape or associated device, only if it is not practicable to document, or copy the evidentiary material, or if the possession of such equipment constitutes an offence.

This clause permits an authorised officer to copy all data held on a storage device if some of the data contains evidentiary material. In circumstances where it is not practical to make copies such as a computer where the hard drive contains a large amount of data, an authorised officer is not required to search through all the data during the execution of the warrant at the premises, and copy only the evidentiary material found at this time. Rather this clause allows the authorised officer to copy all of the data where an initial search uncovers some evidentiary material or where the authorised officer believes it may contain evidentiary material. For example, the most effective way to search a large amount of data may be to load it all to a single device and develop a program to search the data.

Clause 133: Use of electronic equipment at premises with expert assistance

This clause provides that if an authorised officer believes that an expert may access evidential material from electronic equipment found at the premises, and the material may be destroyed, altered or interfered with if action is not taken to secure the equipment, the authorised officer may, after notifying the occupant in writing, take steps necessary to secure the equipment, for up to 24 hours to allow it to be operated by an expert. An authorised officer may apply to an issuing officer for an extension of time if it is believed that an expert will not be available within 24 hours. The occupant must be notified of the application for an extension and is entitled to be heard.

This clause allows the authorised officer to follow a procedure which adequately considers the occupier's rights, and allows for evidentiary material to be preserved until processed or examined.

Clause 134: Person with knowledge of a computer or a computer system to assist access

This clause provides that an authorised officer may apply to an issuing officer for an order requiring a specified person to provide information or assistance necessary to access data from a computer on warrant premises. The issuing officer may grant the order where there are reasonable grounds to suspect that the specified person can access evidentiary material from the computer, if he or she is suspected of committing the offence stated in the warrant, if he or she is the owner or the lessee, or the employee of the owner or lessee of the computer, and has the relevant knowledge of the computer or the network and the measures applied to protect the data held, or accessible from the computer. A person that fails to comply with such order is liable to six (6) months imprisonment.

This clause intends to secure the access and value of evidentiary material stored in computers on warrant premises. Developments in technology allow computers to store large amounts of data and have complex security measures such as encryption and passwords to protect information.

Clause 135: Accessing data on other premises—notification to occupier of those premises

Clause 136: Compensation for damage to electronic equipment

This clause provides that if insufficient care is exercised when either operating, or choosing a person to operate equipment, the Commonwealth must pay reasonable compensation to the owner if the equipment, data or programs are damaged. In determining reasonable compensation, consideration will be given to whether or not the owner, user, their agents or employees provided any appropriate warnings or guidance for the operation of the equipment. If an agreement on reasonable compensation cannot be reached, the owner or user may institute proceedings in the Federal Court.

For the purpose of subsection (1):

damage, in relation to data, includes damages by erasure of data or addition of other data.

Clause 137: Copies of seized things to be provided

This clause provides that if a document, film, computer file or other thing that can be readily copied is seized, the authorised officer must provide a copy to the occupier if requested.

This clause allows the person to obtain legal advice in relation to copies of material seized while ensuring there can be no dispute as to the state of evidence.

Clause 138: Receipts of things seized under warrant

This clause provides for a receipt for items seized or moved under a warrant to be provided by the Authorised to ensure the proper handling and returning of evidence when it is no longer required. This clause ensures there will be no dispute as to an item not being returned as well as keeping records of evidentiary material.

Subdivision F—Specific provisions about executing a warrant in relation to a person

Clause 139: Copy of warrant to be shown to person

This clause provides that an authorised officer must identify themselves to a person being searched and a copy of the warrant must be made available to him or her. The person has a right to be informed of the situation, prior to a search commencing. This identification offers an opportunity for the person to co-operate as they are less likely to resist with the officers which will make the search easier on all involved.

Clause 140: Conduct of an ordinary search or a frisk search

An ordinary search or a frisk search of a person must, if practicable, be conducted by a person of the same sex as the person being searched.

Subdivision G—Offences

Clause 141: Making false statements in warrants

This clause provides that a person (i.e. an authorised officer) commits an offence if he or she knowingly makes a false or misleading statement in applying for a search warrant and will be liable to two (2) years imprisonment.

This clause intends to ensure that all warrants executed are granted by a Judge or Magistrate on correct information. The reasonable grounds to believe that evidentiary material may be obtained stated in the application must be honest and accurate.

Clause 142: Offence for stating incorrect names in telephone warrants

This clause provides that a person commits an offence if he or she states a name of an issuing officer on the form of search warrant that differs to that of the issuing officer who approved the telephone application and will be liable to two (2) years imprisonment.

This clause is to ensure that the approval of a search warrant is in all ways true and correct.

Clause 143: Offence for unauthorised form of warrant

This clause provides that in circumstances where a person makes an application for a search warrant by telephone, he or she commits an offence if a matter is stated on the form of search warrant which he or she knows to be a departure from the authority given by the issuing officer and will be liable to two (2) years imprisonment.

This clause intends to serve as a control on the operation of telephone warrants. Potentially, telephone warrants may cause problems with confusion, misinterpretation and honest mistakes arising out of the haste at the time and this clause will ensure that persons applying for telephone warrants do not take advantage of the process.

Clause 144: Offence for executing etc. an unauthorised form of warrant

This clause provides that person commits an offence if he or she executes or presents a document purporting to be a search warrant which he or she knows has not been approved, or departs from the approval obtained from an issuing officer and will be liable to two (2) years imprisonment.

This clause intends to prevent authorised officers from failing to fulfil all requirements of a valid search warrant

Clause 145: Offence for giving unexecuted form of warrant

This clause provides that a person commits an offence if he or she gives an issuing officer a form of search warrant which is not the form of search warrant that he or she executed under a telephone application and will be liable to two (2) years imprisonment.

This clause ensures that the telephone application granted is the same as the search carried out. All of these offences carry a criminal penalty making the authorised officers individually liable for their own actions.

Subdivision H—Miscellaneous

Clause 146: Other laws about search, arrest etc. not affected

This clause provides that this Division is not intended to limit or exclude the operation of another law of the Commonwealth in relation to the search of persons or premises, arrests or seizures.

Clause 147: Law relating to legal professional privilege not affected

This Division does not affect the law relating to legal professional privilege.

Division 4—Powers of arrest

Clause 148: Authorised officers may exercise powers of arrest

For the purposes of investigating a corruption issue, an authorised officer who is not a constable (within the meaning of the *Crimes Act 1914*) has the same powers and duties under Divisions 4 and 5 of Part IAA of the *Crimes Act 1914* as a constable as if the authorised officer were a constable.

Division 5—Authorised officers

Clause 149: Appointment of authorised officers

This clause provides that the Federal Integrity Commissioner may appoint a person in writing to be an authorised officer where, the person is either a member of the AFP or, a staff member of the Federal Integrity Commission and the Federal Integrity Commissioner considers him or her to be suitable and qualified for the appointment based on official industry standards for police training and competency

This clause seeks to ensure that authorised officers exercising powers and duties under the bill possess the upmost of integrity, skills and experiences in investigations and obtaining evidence. Authorised officers are given the powers of arrest and to apply and execute search warrants under the bill and it is essential that they are experienced, diligent and trustworthy.

Clause 150: Identity cards

This clause provides that the Federal Integrity Commissioner must issue all authorised officers an identity card in the form provided in the Regulations, which includes a recent photograph of the authorised officer, which must be returned to the Federal Integrity Commissioner immediately upon ceasing to be an authorised officer, a failure to do so is punishable by one (1) penalty unit.

This clause intends to ensure that authorised officers are easily identifiable. In circumstances where authorised officers are executing a search warrant on premises, the identity card can be displayed to occupiers to confirm their authority

Part 7—Dealing with evidence and information obtained in investigation or public inquiry

Clause 151: Evidence of offence or liability to civil penalty

This clause provides that if the Federal Integrity Commissioner obtains admissible evidence rendering a person liable to a criminal or civil penalty under a Commonwealth, State or Territory law, the Federal Integrity Commissioner must provide the evidence to the Commissioner of the Australian Federal Police in the case of a Commonwealth law, the head of the police force of the State or Territory in the case of a State or Territory law, or an authority or person who is authorised to prosecute the offence or commence civil penalty proceedings under a Commonwealth, State or Territory law.

Clause 152: Evidence that could be used in confiscation proceedings

This clause provides that if the Federal Integrity Commissioner obtains admissible evidence rendering a person liable to proceedings under the Proceeds of Crime Act 1987, the Proceeds of Crime Act 2002 or a corresponding law of a State or Territory, the Federal Integrity Commissioner must provide the evidence to the Commissioner of the Australian Federal Police in the case of a Commonwealth law, the head of the police force of the State or Territory in the case of a State or Territory law, or an authority or a person who is authorised to commence proceedings under a Commonwealth, State or Territory law.

Clause 153: Evidence of, or information suggesting, wrongful conviction

This clause provides that if, during an investigation or public inquiry, the Federal Integrity Commissioner obtains evidence that a person was wrongly convicted of an offence against a law of the Commonwealth, a State or Territory, he or she must notify the Prime Minister of the evidence. The Federal Integrity Commissioner must also notify the convicted person that the evidence has been brought to the notice of the Minister.

Part 8—Investigations by other Commonwealth agencies

Division 1—Nominated contact for investigations by Commonwealth agencies

Clause 154: Nominating contact for investigation

If the Federal Integrity Commissioner decides to deal with a corruption issue by referring the corruption issue to a Commonwealth agency for investigation; or managing or overseeing an investigation of the corruption issue by a Commonwealth agency; the head of the agency may nominate a representative of the agency as the contact for the investigation.

Note: If the head of the agency does not nominate someone under this subsection, the head of the agency is the nominated contact for the investigation (see the definition of ***nominated contact*** in section 8).

The nomination must be made by notice in writing to the Federal Integrity Commissioner.

Division 2—Managing or overseeing investigations by Commonwealth agencies

Clause 155: Managing an investigation

This clause sets out how the Federal Integrity Commissioner ***manages*** an investigation of a corruption issue by a Commonwealth agency by giving the agency's nominated contact for the investigation detailed guidance about the planning, and carrying out, of the investigation.

The head of the agency must ensure that the agency adheres to the Federal Integrity Commissioner's detailed guidance in planning and carrying out the investigation; and the agency cooperate with the Federal Integrity Commissioner in relation to the planning and carrying out the investigation.

Clause 156: Overseeing an investigation

The Federal Integrity Commissioner ***oversees*** an investigation of a corruption issue by a Commonwealth agency by giving the agency's nominated contact for the investigation general guidance about the planning, and carrying out, of the investigation.

The head of the agency must ensure that the agency follows the Federal Integrity Commissioner's general guidance in relation to the planning and carrying out the investigation.

Division 3—Reporting

Subdivision A—Reporting by Commonwealth agencies during investigations

Clause 157: Federal Integrity Commissioner may request individual progress report

The Federal Integrity Commissioner may request a progress report from the Commonwealth agency conducting an investigation. This request must be in writing, specifying a date at least seven days later in which the report is due to the Federal Integrity Commissioner and may specify matters which the report is to address. The nominated contact, or the head of the agency must comply with the request.

Clause 158: Federal Integrity Commissioner may request periodic progress reports

The Federal Integrity Commissioner may request periodic progress report from the Commonwealth agency conducting an investigation. This request must be in writing, specifying a date at least seven days later in which the report is due to the Federal Integrity Commissioner and may specify matters which the report is to address. The nominated contact, or the head of the agency must comply with the request.

Subdivision B—Reporting by Commonwealth agencies at end of investigations

Clause 159: Final report on investigation

At the conclusion of an investigation, the head of the agency must prepare a report for the Federal Integrity Commissioner including findings, evidence and any action taken, or proposed to be taken in relation to the investigation. This obligation applies to all Commonwealth agencies not just law enforcement agencies. Where the report is prepared by the AFP in relation to another law enforcement agency the report may make recommendations to the head of the other agency.

The head of the agency must give a copy of the report to the Federal Integrity Commissioner as soon as reasonably practicable after the investigation or further investigation is completed.

Clause 160: Federal Integrity Commissioner may comment on final report

Upon receipt of the final report provided pursuant to clause 159, the Federal Integrity Commissioner may make comments and/or recommendations in writing to the head of agency concerned, in relation to any matter arising from the report or the investigation. Depending on his or her satisfaction with the report, the Federal Integrity Commissioner may reconsider how the corruption issue should be dealt with. The Federal Integrity Commissioner may request details of actions that the agency plans to take in response to the Federal Integrity Commissioner's recommendations. If the Federal Integrity Commissioner is not satisfied with the response of the agency the Federal Integrity Commissioner may refer the matter to the Minister responsible for the agency. The Federal Integrity Commissioner may also provide a copy of the relevant information to Parliament and may discuss the matter with the agency head for the purpose of resolving the matter. The Federal Integrity Commissioner may also exclude other information from presentation to Parliament if he or she is satisfied that it is sensitive information that it is desirable to exclude in the circumstances.

Clause 161: Advising person who referred corruption issue of outcome of the investigation

If the person who refers a corruption issue elects under clause 45 to be kept informed, or nominates a person to be kept informed, of any action taken in relation to a referred corruption issue, and the Federal Integrity Commissioner refers the corruption issue to another agency for investigation, the agency must advise the person, or the relevant nominated person, of the outcome of the investigation and may provide a copy of whole or part of the report prepared by the Federal Integrity Commissioner under clause 159.

However, if the head of the agency is satisfied that advising the person or relevant nominated person is likely to prejudice an investigation or any related action, the head of the agency can withhold advising until such time as the circumstances change to remove such prejudice. This clause ensures that those who are entitled to be informed, are notified of the outcome of the investigation, unless the prejudicial nature of advising him or her outweighs that entitlement.

Clause 162: Advising person whose conduct is investigated of outcome of the investigation

If a Commonwealth government agency investigates a corruption issue that relates to a person who is or has been a staff member of a law enforcement agency, the head of that agency may advise the staff member of the outcome and may provide them with a copy of whole or part of the final report prepared by the investigating agency under clause 159.

Division 4—Federal Integrity Commissioner to pass on information relevant to agency

Clause 163: Federal Integrity Commissioner to pass on information relevant to agency investigation

In circumstances where a Commonwealth agency is investigating a corruption issue, the Federal Integrity Commissioner must provide the head of agency with any relevant information.

Part 9—Whistleblower Protection

Division 1—Disclosures, information or requests

Clause 164: Receipt of disclosures, information or requests

Clause 164 (1) provides that a person may make, or provide information about, a disclosure of wrongdoing, to; or request information, advice, guidance or assistance in relation to a disclosure of wrongdoing or a whistleblower protection issue, from the Whistleblower Protection Commissioner.

Clause 164 (2) without limiting subsection (1) provides that the person make the disclosure or request, or provide the information on behalf of: another person; or a Commonwealth agency; or a body or association of persons. Further, that he person may make the disclosure or request, or provide the information anonymously; and that the person may make the disclosure or request, or provide the information either orally or in writing.

Clause 164 (3) provides that if the person who makes the disclosure or request, or provides the information, orally, the Whistleblower Protection Commissioner may require the person to put the disclosure, request, or information in writing.

Clause 164 (4) provides that if the person is asked to put the disclosure, request, or information in writing under subsection (3), the Whistleblower Protection Commissioner may refuse to deal further with the disclosure, request or information until it is put in writing.

Clause 164 (5) provides that if a government agency:

(a) decides, under relevant legislation, to refer a disclosure, request, or information to the Whistleblower Protection Commissioner; or

(b) is required, under relevant legislation, to refer a disclosure, request, or information to the Whistleblower Protection Commissioner;

the person who made the disclosure or request, or provided the information, to the agency is taken to have made the disclosure or request, or provided the information to the Whistleblower Protection Commissioner under this section.

Clause 164 (6) provides that to avoid doubt, a disclosure of wrongdoing may include or consist of an allegation, or information, that raises a corruption issue, and to which the definition of ***disclosure of wrongdoing*** in this Act also applies.

Clause 165: Person making disclosure or request under section 160 may elect to be kept informed

Clause 165 (1) provides that if a person makes a disclosure or request, or provides information to the Whistleblower Protection Commissioner under section 164, the Whistleblower Protection Commissioner must ask the person to elect whether or not to be kept informed of the action taken in relation to the disclosure, request or information.

Clause 165 (2) provides that subsection (1) does not apply if the person makes the disclosure or request, or provides the information anonymously.

Clause 165 (3) provides that if the person fails to make an election when asked to do so, the person is taken to have elected not to be kept informed of the action taken in relation to the disclosure, request or information.

Clause 165 (4) provides that if the person elects to be kept informed of the action taken in relation to the disclosure, request or information, the person may revoke the election at any time by notice to the Whistleblower Protection Commissioner.

Clause 166: Public officials must refer whistleblower protection issues

Clause 166 (1) provides that as soon as practicable after a public official becomes aware of an allegation, or information, that raises a whistleblower protection issue, the public official must:

(a) refer the allegation or information to the Whistleblower Protection Commissioner under section 164; or

(b) if the public official is an employee of a Commonwealth agency other than the head of the agency—notify the head of the agency of the allegation or information.

Note: The head of a Commonwealth agency is a public official.

Clause 166 (2) provides that if subsection (1) does not apply if the public official:

(a) has already taken action referred to in subsection (1) in relation to the allegation or information; or

(b) has reasonable grounds to believe that the Whistleblower Protection Commissioner is already aware of the allegation or information.

Clause 166 (3) provides that action taken under subsection (3) by the head of a Commonwealth agency must be taken in accordance with any direction, guidance or agreement under section 167 that applies to the agency.

Clause 167: Whistleblower Protection Commissioner may enter into agreements etc. with head of Commonwealth agency

Clause 167 (1) provides that the Whistleblower Protection Commissioner may issue directions or guidance to, or enter into an agreement with, the head of a Commonwealth agency in relation to either or both of the following matters:

(a) the level of detail required to refer an allegation or information to the Whistleblower Protection Commissioner;

(b) the way in which information or documents in relation to an allegation or information may be given to the Whistleblower Protection Commissioner (whether for the purpose of referring an allegation or information to the Whistleblower Protection Commissioner or otherwise).

Clause 167 (2) provides that the Whistleblower Protection Commissioner may revoke the direction, guidance or agreement by written notice given to the head of the agency. The revocation takes effect on a day specified in the notice, which must be at least 14 days after the day it is given.

Clause 167 (3) provides that without limiting subsection (1), the direction, guidance or agreement may set out how it may be varied and other ways how it may be revoked.

Clause 167 (4) provides that before issuing directions or guidance to, or entering into an agreement with, the head of a Commonwealth agency for the purposes of this section, the

Whistleblower Protection Commissioner must consult with:

(a) the Federal Integrity Commissioner; and

(b) the Commonwealth Ombudsman; and

(c) the Australian Public Service Commission; and

(d) the Australian Securities and Investments Commission; and

(e) any other Commonwealth agency with responsibility for issuing directions or guidance, or entering into agreements with, the heads of Commonwealth agencies with respect to the receipt, referral or investigation of disclosures of wrongdoing or whistleblower protection issues.

Clause 167 (5) provides that the directions, guidance or agreements for the purposes of this section, may be included in directions, guidance or agreements issued or entered into by the Federal Integrity Commissioner for the purposes of section 45.

Clause 168: General information, advice, guidance and assistance

Clause 168 (1) provides that the Whistleblower Protection Commissioner is to provide general information, advice, guidance and assistance to persons who:

(a) make, or provide information about, disclosures of wrongdoing; or

(b) request information, advice, guidance or assistance in relation to a disclosure of wrongdoing or a whistleblower protection issue; or

(c) are responsible for whistleblower protection responsibilities in any Commonwealth agency or any other body in relation to whom a disclosure of wrongdoing has been made or can be made; or

(d) are responsible for investigating or otherwise dealing with disclosures of wrongdoing.

Clause 168 (2) provides that determining the nature of general information, advice, guidance and assistance to be provided under this Part, the Whistleblower Protection Commissioner must consult with:

(a) the Federal Integrity Commissioner; and

(b) the Commonwealth Ombudsman; and

(c) the Australian Public Service Commission; and

(d) the Australian Securities and Investments Commission; and

(e) a body or bodies representing the interests of employers in the public and private sectors; and

(f) a body or bodies representing the interests of employees or workers in the public and private sectors; and

(g) one or more civil society organisations representing persons with experience of making disclosures of wrongdoing or with expertise in whistleblower protection; and

(h) any other government agencies with responsibility for issuing directions or guidance to other agencies or organisations with respect to whistleblower protection issues; and

(i) any other person or body that the Whistleblower Protection Commissioner deems fit.

Clause 168 (3) provides that in making arrangements and giving direction for the provision of general information, advice, guidance and assistance to persons who:

(a) make, or provide information about, disclosures of wrongdoing; or

(b) request information, advice, guidance or assistance in relation to a disclosure of wrongdoing or a whistleblower protection issue—

the Whistleblower Protection Commissioner must ensure that the relevant members or staff or consultants of the Commission have appropriate specialist training and experience in the provision of legal, administrative, investigative, psychological and workplace-related advice, guidance and support.

Division 2—How Whistleblower Protection Commissioner deals with disclosures of wrongdoing and whistleblower protection issues

Subdivision A—General

Clause 169: How Whistleblower Protection Commissioner may deal with disclosures of wrongdoing

Clause 169 (1) provides that the Whistleblower Protection Commissioner may deal with a disclosure of wrongdoing, or information about a disclosure of wrongdoing, in any of the following ways:

(a) if the disclosure of wrongdoing relates to a Commonwealth agency—by referring the disclosure or information to the agency for investigation; or

(b) if the disclosure of wrongdoing relates to a matter that is within the functions and powers of a government agency to investigate or otherwise deal with—by referring the disclosure or information to the agency for investigation or to be otherwise dealt with.

Clause 169 (2) provides that if a disclosure of wrongdoing includes an allegation or information that raises a corruption issue, that allegation or information must, unless it concerns the Federal Integrity Commissioner, be referred to the Federal Integrity Commissioner under section 42.

Clause 169 (3) provides that if the Whistleblower Protection Commissioner refers a disclosure of wrongdoing, or information about a disclosure to another government agency, the Whistleblower Protection Commissioner may, for the purpose of ensuring that whistleblower protection responsibilities are fulfilled:

(a) monitor the way in which the agency investigates or deals with the disclosure or

information; and

(b) provide advice, guidance or assistance to the person who made the disclosure or provided the information, or any related person; and

(c) provide advice, guidance or assistance to the agency or any other person with respect to the way in which the agency investigates or deals with the disclosure or information.

Requesting information to assist in monitoring and guidance

Clause 169 (4) provides for the purposes of subsection (1), the Whistleblower Protection Commissioner may request the head of any government agency to give the Whistleblower Protection Commissioner any information specified in the request.

Clause 169 (5) provides that the head of a Commonwealth agency must comply with the request.

Clause 170: How Whistleblower Protection Commissioner may deal with whistleblower protection issues

Clause 170 (1) provides that the Whistleblower Protection Commissioner may deal with an allegation, or information that raises a whistleblower protection issue in any of the following ways:

(a) by investigating the whistleblower protection issue;

(b) if the whistleblower protection issue relates to a Commonwealth agency—by referring the whistleblower protection issue to the agency for investigation and:

(i) managing the investigation; or

(ii) overseeing the investigation; or

(iii) neither managing nor overseeing the investigation;

(c) if the whistleblower protection issue relates to a matter that is within the functions and powers of a government agency to investigate or otherwise deal with—by referring the whistleblower protection issue to the agency for investigation or to be otherwise dealt with and:

(i) managing the investigation; or

(ii) overseeing the investigation; or

(iii) neither managing nor overseeing the investigation;

(d) by managing an investigation of the whistleblower protection issue that is being conducted by a Commonwealth agency;

(e) by overseeing an investigation of the whistleblower protection issue that is being conducted by a Commonwealth agency.

Clause 170 (2) provides that the Whistleblower Protection Commissioner may investigate the whistleblower protection issue under paragraph (1)(a) either alone or jointly with another government agency with appropriate functions or powers for the purpose.

Clause 170 (3) provides that the Whistleblower Protection Commissioner may not deal with a disclosure of wrongdoing or information relating to a disclosure in any of the ways provided for in this section, unless the disclosure or information involves a whistleblower protection issue.

Clause 171: Criteria for deciding how to deal with a disclosure of wrongdoing or whistleblower protection issue

Clause 171 (1) provides that the Whistleblower Protection Commissioner must have regard to the matters set out in subsection (2) in deciding:

(a) how to deal with a disclosure of wrongdoing, or whistleblower protection issue; or

(b) whether to take no further action in relation to a disclosure of wrongdoing, or whistleblower protection issue.

Clause 171 (2) provides that the matters to which the Whistleblower Protection Commissioner must have regard are the following:

(a) the need to ensure that disclosures of wrongdoing and whistleblower protection issues are fully investigated;

(b) the rights and obligations of any other agency to investigate a disclosure of wrongdoing or the whistleblower protection issue;

(c) the rights and obligations of any person who makes or provides information in relation to the disclosure of wrongdoing or raises the whistleblower protection issue, including any need to protect the person's identity or confidentiality or to protect the person from reprisal or detrimental action;

(d) if a joint investigation of the whistleblower protection issue by the Whistleblower Protection Commissioner and another agency is being considered—the extent to which the other agency is able to cooperate in the investigation;

(e) the resources that are available to any other agency to investigate the whistleblower protection issue;

(f) the need to ensure a balance between:

(i) the Whistleblower Protection Commissioner's role in dealing with whistleblower protection issues (particularly in dealing with significant whistleblower protection issues); and

(ii) ensuring that the heads of Commonwealth agencies take responsibility for managing their agencies, or for investigating and dealing with whistleblower protection issues;

(g) the likely significance of the whistleblower protection issue for any person to whom it relates, for any agency and for the Commonwealth.

Clause 171 (3) provides that the Subsection (2) does not limit the matters to which the Whistleblower Protection Commissioner may have regard.

Clause 172: Dealing with multiple whistleblower protection issues

Clause 172 (1) provides that the Whistleblower Protection Commissioner may, in the Whistleblower Protection Commissioner's discretion, deal with a number of whistleblower protection issues together (whether or not they are raised by the same allegation or information).

Clause 172 (2) provides that without limiting subsection (1), if an allegation, or information, raises a number of whistleblower protection issues, the Whistleblower Protection Commissioner:

(a) may deal with some or all of those whistleblower protection issues together; and

(b) may deal with some or all of those whistleblower protection issues separately.

Clause 172 (3) provides that without limiting subsection (1), the Whistleblower Protection Commissioner may prepare a single report in relation to a number of whistleblower protection issues.

Subdivision B—Whistleblower Protection Commissioner dealing with referred whistleblower protection issues

Clause 173: Whistleblower Protection Commissioner must make a decision

Clause 173 (1) provides that if an allegation, or information, that raises a whistleblower protection issue is referred to the Whistleblower Protection Commissioner under section 164(5), the Whistleblower Protection Commissioner must decide:

(a) to deal with the whistleblower protection issue in one of the ways referred to in subsection 170(1); or

(b) to take no further action in relation to the whistleblower protection issue.

Clause 173 (2) provides that for the purposes of making a decision under subsection (1), the Whistleblower Protection Commissioner may request the head of any government agency to give the Whistleblower Protection Commissioner the information specified in the request.

Clause 173 (3) provides that the head of a Commonwealth agency must comply with the request.

Clause 173 (4) provides that subsections (2) and (3) do not limit the information to which the Whistleblower Protection Commissioner may have regard in making a decision under subsection (1).

Direction not to investigate

Clause 173 (5) provides that if the whistleblower protection issue relates to a Commonwealth agency and the Whistleblower Protection Commissioner decides to deal with the whistleblower protection issue in one of the ways referred to in subsection 166(1), the Whistleblower Protection Commissioner may direct the head of the agency that the agency is not to investigate the whistleblower protection issue.

Clause 173 (6) provides that a direction under subsection (5) is not a legislative instrument.

Deciding to take no further action

Clause 173 (7) provides that the Whistleblower Protection Commissioner may decide under subsection (1) to take no further action in relation to the whistleblower protection issue only if the Whistleblower Protection Commissioner is satisfied that:

(a) the whistleblower protection issue is already being, or will be, investigated by another government agency; or

(b) the referral of the allegation, or information, that raises the whistleblower protection issue is frivolous or vexatious; or

(c) the whistleblower protection issue has been, is or will be, the subject of proceedings before a court or an application to an industrial, civil or administrative body; or

(d) investigation of the whistleblower protection issue is not warranted having regard to all the circumstances.

Clause 173 (8) provides that the whistleblower protection issue relates to a Commonwealth agency, the Whistleblower Protection Commissioner must advise the head of the agency of a decision under subsection (1) to take no further action in relation to the whistleblower protection issue. That advice must be given:

(a) in writing; and

(b) as soon as reasonably practicable after the decision is made.

Clause 173 (9) provides that this Act continues to apply to the head of a Commonwealth agency given advice under subsection (8), in relation to the whistleblower protection issue unless the Whistleblower Protection Commissioner advises otherwise:

(a) in the advice given under subsection (8); or

(b) in a later written advice given to the head of that agency.

Clause 174: Advising person who raises whistleblower protection issue of decision about how to deal with issue

Whistleblower Protection Commissioner to advise person who raises whistleblower protection issue

Clause 174(1) provides that if a person:

(a) makes an allegation, or provides information, that raises a whistleblower protection issue to the Whistleblower Protection Commissioner under section 160; and

(b) elects under section 165 to be kept informed of the action taken in relation to the whistleblower protection issue;

the Whistleblower Protection Commissioner must advise the person of:

(c) the Whistleblower Protection Commissioner's decision under section 169 in relation to the whistleblower protection issue; and

(d) any decision the Whistleblower Protection Commissioner makes under section 179 on a reconsideration of how the whistleblower protection issue should be dealt with.

Clause 174(2) provides that the Whistleblower Protection Commissioner must advise the person of the decision in writing and as soon as reasonably practicable after the decision is made.

Clause 174(3) provides that, however, the Whistleblower Protection Commissioner need not advise the person if the Whistleblower Protection Commissioner is satisfied that doing so is likely to prejudice:

(a) the investigation of the whistleblower protection issue or any other investigation; or

(b) protection of the identity or confidentiality of any person who referred or provided information in relation to the whistleblower protection issue, or protection of such a person from reprisal or detrimental action; or

(c) any action taken as a result of an investigation referred to in paragraph (a).

Clause 174(4) provides that if:

(a) a person refers an allegation, or information, that raises the whistleblower protection issue to the Whistleblower Protection Commissioner on behalf of:

(i) another person; or

(ii) a Commonwealth agency; or

(iii) a body or association of persons; and

(b) the other person, the agency, the body or the association nominates:

(i) another person; or

(ii) the holder of a particular office in the agency, body or association;

by notice in writing to the Whistleblower Protection Commissioner to receive communications from the Whistleblower Protection Commissioner;

the Whistleblower Protection Commissioner must give the advice required by subsection (1) to the person nominated or the person for the time being holding the office nominated.

Clause 175: Advising person to whom referred whistleblower protection issue relates of decision about how to deal with issue

Clause 175(1) provides that the Whistleblower Protection Commissioner makes a decision under section 173 in relation to a referred whistleblower protection issue that relates to a person, the Whistleblower Protection Commissioner may advise the person of the Whistleblower Protection Commissioner's decision.

Subdivision C—Whistleblower Protection Commissioner dealing with whistleblower protection issues on own initiative

Clause 176: Whistleblower Protection Commissioner may deal with whistleblower protection issues on own initiative

Whistleblower Protection Commissioner may decide to deal with a whistleblower protection issue

Clause 176(1) provides that if the Whistleblower Protection Commissioner becomes aware of an allegation, or information, that raises a whistleblower protection issue, the Whistleblower Protection Commissioner may, on the Whistleblower Protection Commissioner's own initiative, deal with the whistleblower protection issue in one of the ways referred to in subsection 170(1).

Clause 176(2) provides that subsection (1) does not apply if the Whistleblower Protection Commissioner becomes aware of the allegation or information because of action taken under Division 1 of this Part.

Requesting information to assist in making the decision

Clause 176(3) provides that for the purposes of making a decision under subsection (1), the Whistleblower Protection Commissioner may request the head of any Commonwealth agency to give the Whistleblower Protection Commissioner the information specified in the request. Clause 172(4) provides that the head of the Commonwealth agency must comply with the request.

Clause 176(5) provides that the subsection (3) does not limit the information to which the Whistleblower Protection Commissioner may have regard in making a decision under subsection (1).

Direction not to investigate

Clause 176(6) provides that the whistleblower protection issue relates to a Commonwealth agency and the Whistleblower Protection Commissioner decides to deal with the whistleblower protection issue in one of the ways referred to in subsection 170(1), the Whistleblower Protection Commissioner may direct the head of the agency that the agency is not to investigate the whistleblower protection issue.

Clause 176(7) provides that a direction under subsection (6) is not a legislative instrument.

Becoming aware of another whistleblower protection issue

Clause 176(8) provides that without limiting subsection (1), if the Whistleblower Protection Commissioner:

(a) is investigating, or inquiring into, a particular whistleblower protection issue; and

(b) in the course of doing so, becomes aware of an allegation, or information, that raises another whistleblower protection issue;

the Whistleblower Protection Commissioner may deal with that other whistleblower protection issue in one of the ways referred to in subsection 170(1).

Clause 177: Advising head of Commonwealth agency of decision to deal with whistleblower protection issue on own initiative

Application of section

Clause 177(1) provides that this section applies if:

(a) the Whistleblower Protection Commissioner decides, on the Whistleblower Protection Commissioner's own initiative, to deal with a whistleblower protection issue in one of the ways referred to in subsection 166(1); and

(b) the whistleblower protection issue relates to the conduct of a person who is an employee of a Commonwealth agency (other than the head of the agency).

Advising head of Commonwealth agency

Clause 177(2) provides that the Whistleblower Protection Commissioner must advise the head of that Commonwealth agency of:

(a) the Whistleblower Protection Commissioner's decision to deal with the whistleblower protection issue in that way; and

(b) any decision the Whistleblower Protection Commissioner makes under section 179 on a reconsideration of how the whistleblower protection issue should be dealt with.

Form and timing of advice

Clause 177(3) provides that the Whistleblower Protection Commissioner must advise the head of the Commonwealth agency of the decision in writing; and as soon as reasonably practicable after the decision is made. However, clause 177(3) provides that he Whistleblower Protection Commissioner need not advise the head of the Commonwealth agency if doing so would be likely to prejudice:

(a) the investigation of the whistleblower protection issue or another corruption investigation; or

(b) any action taken as a result of an investigation referred to in paragraph (a).

Clause 178: Advising person of decision to deal with whistleblower protection issue on own initiative

Clause 178(1) provides that if:

(a) the Whistleblower Protection Commissioner decides, on the Whistleblower Protection Commissioner's own initiative, to deal with a whistleblower protection issue in one of the ways referred to in subsection 170(1); and

(b) the whistleblower protection issue relates to a person who is, or has been, a public official;

Then the Whistleblower Protection Commissioner may advise the person of:

(c) the Whistleblower Protection Commissioner's decision to deal with the whistleblower protection issue in that way; and

(d) any decision the Whistleblower Protection Commissioner makes under section 179 on a reconsideration of how the whistleblower protection issue should be dealt with.

Subdivision D—Reconsidering how to deal with a whistleblower protection issue

Clause 179: Reconsidering how to deal with a whistleblower protection issue

Clause 179(1) provides that if the Whistleblower Protection Commissioner may, at any time, reconsider how a particular whistleblower protection issue should be dealt with.

Clause 179(2) provides that reconsideration, the Whistleblower Protection Commissioner may:

(a) if the whistleblower protection issue is not being dealt with in one of the ways referred to in subsection 170(1)—decide to deal with the whistleblower protection issue in accordance with one of the ways referred to in that subsection; or

(b) if the whistleblower protection issue is being dealt with in one of the ways referred to in subsection 170(1)—decide to deal with the whistleblower protection issue in another of the ways referred to in that subsection, or to take no further action in relation to the whistleblower protection issue.

Clause 179(3) provides that the Whistleblower Protection Commissioner may decide under subsection (2) to take no further action in relation to the whistleblower protection issue only if the Whistleblower Protection Commissioner is satisfied that:

(a) the whistleblower protection issue is already being, or will be, investigated by another government agency; or

(b) the allegation, or information, that raises the whistleblower protection issue is frivolous or vexatious; or

(c) the whistleblower protection issue relates has been, is or will be, the subject of proceedings before a court or an application to an industrial, civil or administrative body; or

(d) further investigation of the whistleblower protection issue is not warranted having regard to all the circumstances.

Division 3—Information sharing when decision made on how to deal with whistleblower protection issue

Clause 180: If Commonwealth agency to conduct, or continue conducting, investigation of whistleblower protection issue

Clause 180(1) provides that this section applies if:

(a) the Whistleblower Protection Commissioner decides to deal with a whistleblower protection issue that relates to a Commonwealth agency by referring the whistleblower protection issue to that or another Commonwealth agency for investigation; or

(b) an allegation, or information, that raises a whistleblower protection issue is referred to the Whistleblower Protection Commissioner under subsection 160(5) by the head of a Commonwealth agency and the Commonwealth agency is investigating the whistleblower protection issue.

Clause 180(2) provides that the Whistleblower Protection Commissioner must give the head of the Commonwealth agency investigating the whistleblower protection issue information or a document if:

(a) the information or document:

(i) relates to the whistleblower protection issue to the extent to which the agency is investigating the issue; and

(ii) is in the possession, or under the control, of the Whistleblower Protection Commissioner; and

(b) the head of the agency does not already have the information or document.

Note: Under section 163, the Whistleblower Protection Commissioner has a continuing obligation to pass on information that the Whistleblower Protection Commissioner becomes aware of and that is relevant to the whistleblower protection issue.

Clause 180(3) provides that the Whistleblower Protection Commissioner may give the original or a copy of a document.

Clause 181: If Commonwealth agency has already commenced investigating whistleblower protection issue

Clause 181(1) provides that this section applies if:

(a) the Whistleblower Protection Commissioner decides to deal with a whistleblower protection issue that relates to a Commonwealth agency in one of the ways referred to in subsection 170(1); and

(b) the agency has started or continued investigating the whistleblower protection issue before the Whistleblower Protection Commissioner makes that decision.

Clause 181(2) provides that the Whistleblower Protection Commissioner may direct the head of the agency investigating the whistleblower protection issue to give the Whistleblower Protection Commissioner, or the head of another government agency, all information or documents that:

(a) relate to the whistleblower protection issue; and

(b) are in the possession, or under the control, of the head of the agency.

Clause 181(3) provides that the direction must be in writing. And 181(4) that a direction given under this section is not a legislative instrument.

Division 4— Investigations and public inquiries by the Whistleblower Protection Commissioner

Clause 182: Manner and powers of investigation

Clause 182(1) provides that this Division applies if the Whistleblower Protection Commissioner investigates or conducts a public inquiry in relation to a whistleblower protection issue (whether alone or jointly with another person or persons).

Clause 182(2) provides that this Parts 5, 6 and 7 of this Act apply to an investigation or public inquiry by the Whistleblower Protection Commissioner as if a reference to the Federal Integrity Commissioner were a reference to the Whistleblower Protection Commissioner, and a reference to a corruption issue were a reference to a whistleblower protection issue.

Division 5— Investigations by other Commonwealth agencies

Clause 183: Dealing with, managing or overseeing investigations

Clause 183(1) provides that this Division applies if the Whistleblower Protection Commissioner decides to deal with a corruption issue by referring the corruption issue to a Commonwealth agency for investigation; or managing or overseeing an investigation of the corruption issue by a Commonwealth agency.

Clause 183(2) provides that Part 8 of this Act applies to the investigation by the Commonwealth agency as if a reference to the Federal Integrity Commissioner were a reference to the Whistleblower Protection Commissioner, and a reference to a corruption issue were a reference to a whistleblower protection issue.

Division 6— Remedial functions and powers

Clause 184: Additional recommendations

Clause 184(1) provides that this section applies to a report of an investigation or public inquiry or a special report made by the Whistleblower Protection Commissioner under section 67, 74, 237 or 238 of the Act.

Clause 184(2) provides that without limiting any recommendations that the Whistleblower Protection Commissioner thinks fit to make, the Whistleblower Protection Commissioner may also recommend:

(a) the adoption of measures to remedy deficiencies in the policy, procedures or practices that facilitated:

(i) a person or body engaging in reprisal, victimisation, detrimental acts or omissions in relation to a person as a result of the disclosure of wrongdoing; or

(ii) a failure to support and protect, or prevent detrimental acts or omissions from occurring in relation to, a person as a result of the disclosure of wrongdoing; or

(b) the adoption of measures to prevent detriment from being suffered, or further detriment from being suffered, by a person as a result of the disclosure of wrongdoing; or

(c) a decision to reinstate a person's employment or duties or otherwise deal with a person's employment to remedy or compensate for detriment suffered; or

(d) the payment of compensation or giving of a reward or other remedies to a person, including payment of legal and other costs;

(e) the taking of appropriate action to enforce a civil penalty or obtain a civil, industrial, workplace or administrative remedy for a person; or

(f) such other action as the Whistleblower Protection Commissioner considers necessary to protect a person from, or compensate a person for, detrimental actions or omissions a result of the disclosure of wrongdoing.

Clause 185: Proceedings and applications

Clause 185(1) provides that this section applies to a whistleblower protection issue that the Whistleblower Protection Commissioner is investigating or has investigated, or in relation to which the Whistleblower Protection Commissioner has made a report under sections 67, 74, 237 or 238 of the Act.

Clause 185(2) provides that where the Whistleblower Protection Commissioner is satisfied it is in the public interest to do so, the Commissioner may, in respect of the whistleblower protection issue:

(a) commence proceedings in a court; or

(b) make applications to an industrial, civil or administrative body;

seeking such orders as may be available under any Commonwealth law for remedies for a breach or apprehended breach of whistleblower protection responsibilities.

Clause 185(3) provides that the Whistleblower Protection Commissioner may provide legal advice, representation or other practical support, as appropriate, to a person who:

(a) experienced a whistleblower protection issue as a result of a disclosure of wrongdoing; and

(b) is, or may become, a party to proceedings in a court or to a matter before an industrial, civil or administrative body, under any law for enforcement or remedies in relation to a whistleblower protection responsibility;

if the Whistleblower Protection Commissioner considers that representing or providing advice or support to the person will promote compliance with whistleblower protection responsibilities, and is appropriate in all the circumstances.

Clause 185(4) provides that practical support under subsection (3) may include payments for

non-legal costs, services, living support, or a reward.

Clause 185(5) provides that the Whistleblower Protection Commissioner must establish a fund to support the provision of legal advice, representation or other practical support to persons under subsection (3). Clause 181(6) provides that the fund described in subsection (5) is to be supported by the Whistleblower Protection Special Account created by section 184.

Clause 185(7) provides that where the orders that may be sought by the Whistleblower Protection Commissioner under subsection (2) include exemplary damages for a breach or apprehended breach of a whistleblower protection responsibility, the Whistleblower Protection Commissioner may seek such damages; and must, if such damages are awarded and the court of tribunal so agrees, have the damages paid into the Whistleblower Protection Special Account created by section 188.

Clause 186: Mediation and arbitration

Clause 186(1) provides that this section applies to a whistleblower protection issue:

(a) that the Whistleblower Protection Commissioner is investigating or has investigated; or

(b) in relation to which the Whistleblower Protection Commissioner has made a report under section 67, 74, 237 or 238 of the Act;

and which involves a dispute between two or more parties in respect of the whistleblower protection issue and its resolution.

Clause 186(2) provides that where the Whistleblower Protection Commissioner is satisfied it is in the public interest and the interests of all parties to do so, the Commissioner may, with the consent of all parties:

(a) mediate the dispute; or

(b) arbitrate in respect of the dispute.

Clause 186(3) provides that the Whistleblower Protection Commissioner may provide legal advice, representation or other practical support, as appropriate, to any person involved in a mediation or arbitration under subsection (2).

Clause 187: Enforceable undertakings relating to contraventions of civil remedy provisions

Clause 187(1) provides that this section applies if the Whistleblower Protection Commissioner reasonably believes that a person has contravened a civil remedy provision in respect of a whistleblowing protection responsibility.

Clause 187(2) provides that the Whistleblower Protection Commissioner may accept a written undertaking given by the person in relation to the contravention.

Clause 187(3) provides that the person may withdraw or vary the undertaking at any time, but only with the Whistleblower Protection Commissioner's consent.

Clause 187(4) provides that the Whistleblower Protection Commissioner must not apply for an order under section 185(2) in relation to a contravention of a civil remedy provision by a person if an undertaking given by the person under this section in relation to the contravention has not been

withdrawn.

Note: A person other than the Whistleblower Protection Commissioner who is otherwise entitled to apply for an order in relation to the contravention may do so.

Clause 187(5) provides that the Whistleblower Protection Commissioner considers that the person who gave the undertaking has contravened any of its terms, the Whistleblower Protection Commissioner may apply to the Federal Court, the Federal Magistrates Court or a State or Territory Court for an order under subsection (6).

Clause 187(6) provides that if the court is satisfied that the person has contravened a term of the undertaking, the court may make one or more of the following orders:

(a) an order directing the person to comply with the term of the undertaking;

(b) an order awarding compensation for loss that a person has suffered because of the contravention;

(c) an order that a civil penalty be paid into the Whistleblower Protection Special Account created by section 188;

(d) any other order that the court considers appropriate.

Division 7—Special Account

Clause 188: Whistleblower Protection Special Account

Clause 188(1) provides that the Whistleblower Protection Special Account (the ***Account***) is established by this section.

Clause 188(2) provides that the Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

Clause 189: Credits to the Account

Clause 189(1) provides that there may be credited to the Account amounts equal to the following:

(a) amounts received by the Commonwealth in connection with the performance of the Whistleblower Protection Commissioner's functions under this Act, including awards of exemplary damages or civil penalties under Division 6;

(b) interest received by the Commonwealth from the investment of amounts debited from the Account;

(c) amounts received by the Commonwealth in relation to property paid for with amounts debited from the Account;

(d) amounts of any gifts given or bequests made for the purposes of the Account;

(e) such amounts as the Minister may approve for the expenditure of money standing to the credit of the Confiscated Assets Account, for the purpose of crime prevention or law enforcement measures, under section 298 of the Proceeds of Crime Act 2002.

Note: An Appropriation Act provides for amounts to be credited to a special account if any of the purposes of the special account is a purpose that is covered by an item in the Appropriation Act.

Clause 190: Purposes of the Account

Clause 190(1) provides that the purposes of the Account are as follows:

(a) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the Whistleblower Protection Commissioner's functions;

(b) paying any remuneration and allowances payable to any staff of the Commission assisting the Whistleblower Protection Commission under this Act (including staff mentioned in subsection 231(3));

(c) meeting the expenses of administering the Account.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

Part 10—Administrative provisions relating to the Commission

Division 1—Federal Integrity Commissioner

These clauses provide for the appointment and conditions of appointment of the Federal Integrity Commissioner.

Clause 191: Appointment of Federal Integrity Commissioner

Clause 192: General terms and conditions of appointment

Clause 193: Other paid work

Clause 194: Remuneration

Clause 195: Leave of absence

Clause 196: Resignation

Clause 197: Removal from Office

Clause 198: Acting appointments

Clause 199: Disclosure of interests

Division 2—Law Enforcement Integrity Commissioner

Clause 200: Appointment etc. of Law Enforcement Integrity Commissioner

The appointment and conditions of the Law Enforcement Integrity Commissioner are provided in Division 1 of Part 13 of the *Law Enforcement Integrity Commissioner Act 2006*.

Division 3—Whistleblower Protection Commissioner

These clauses provide for the appointment and conditions of appointment of the Federal Integrity Commissioner.

Clause 201: Appointment of Whistleblower Protection Commissioner

Clause 202: General terms and conditions of appointment

Clause 203: Other paid work

Clause 204: Remuneration

Clause 205: Leave of absence

Clause 206: Resignation

Clause 207: Removal from Office

Clause 208: Acting appointments

Clause 209: Disclosure of interests

Division 4—Assistant Federal Integrity Commissioners

These clauses provide for the appointment and conditions of appointment of Assistant Federal Integrity Commissioner.

Clause 210: Appointment of Assistant Commissioners

Clause 211: General terms and conditions of appointment

Clause 212: Other paid work

Clause 213: Remuneration

Clause 214: Leave of absence

Clause 215: Resignation

Clause 216: Removal from Office

Clause 217: Acting appointments

Clause 218: Disclosure of interests

Division 5—Chief Executive Officer

Clause 219: CEO

This clause provides that there is to be a Chief Executive Officer of the Commission.

Clause 220: Functions of the CEO

This cluse outlines that the CEO's functions are to manage the administration of the Commission; and to assist the Federal Integrity Commissioner, the Federal Integrity Assistant Commissioners, the Law Enforcement Integrity Commissioner, the Whistleblower Protection Commissioner, any other Assistant Commissioners, and any Assistant Law Enforcement Integrity Commissioner or the Commission in the performance of its functions.

Clause 221: Powers of the CEO

This clause provides that the CEO has power to do all things necessary or convenient to be done for or in connection with the performance of the CEO's functions.

Clause 222: Commission may give directions to CEO

This clause provides that the Commission may give written directions to the CEO about the performance of the CEO's function.

The CEO must comply with a direction of the Commissions unless the direction is inconsistent with the CEO's performance of functions or exercise of powers under the *Public Governance, Performance and Accountability Act 2013* in relation to the Commission; or the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to the Commission.

Clause 223: Appointment of CEO

The CEO is to be appointed by the Commission by written instrument. The Commission must refer the proposed recommendation for the appointment to the Parliamentary Joint Committee on the Australian Federal Integrity Commission.

The CEO holds office on a full-time basis and is appointed for a period no longer than 5 years but can be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

Clause 224: Appointment of acting CEO

This clause provides for the Commission may, by written instrument, to appoint a person to act as the CEO and conditions of that appointment.

Clause 225: Remuneration of the CEO

Clause 226: Leave of absence of the CEO

Clause 227: Other paid work of the CEO

Clause 228: Resignation of the CEO

Clause 229: Termination of appointment of the CEO

Clause 230: Other terms and conditions of the CEO

These clauses provide for the conditions of employment of the CEO

Division 6—Staff, consultants and delegations

Clause 231: Staff

Clause 232: Consultants

These clauses provide for the appointment of staff and engagement of consultants by the Federal Integrity Commission.

The CEO may, on behalf of the Commonwealth, engage consultants to assist in the performance of the CEO's functions.

Clause 233: Delegation—Federal Integrity Commissioner

This clause provides for the delegation of powers by the Federal Integrity Commissioner, except in relation to holding hearings for the purpose of a public inquiry. Delegations must be in writing and signed by the Federal Integrity Commissioner.

Clause 234: Delegation—Whistleblower Protection Commissioner

Provides that Clause 233 applies to the Whistleblower Protection Commissioner as if a reference to the Federal Integrity Commissioner were a reference to the Whistleblower Protection Commissioner.

However, a function or power of the Whistleblower Protection Commissioner must not be delegated to the same person to whom the Federal Integrity Commissioner has delegated any function or power, other than in respect of the whistleblower protection commissioner functions of receiving and referring disclosures of wrongdoing under Part 9, Division 1 and section Clause 159.

Clause 235: Delegation—CEO

This clause delegations by the CEO, that the CEO may, in writing, delegate all or any of the CEO's functions or powers to a staff member of the Commission who is an SES employee or an acting SES employee.

Note: Sections 34AA to 34A of the Acts Interpretation Act 1901 contain provisions relating to delegations.

In performing a function or exercising a power delegated under subsection (1), the delegate must comply with any written directions of the CEO.

Division 7—Public reporting

Clause 236: Annual report

This clause provides that the Federal Integrity Commissioner must give a report to the Minister to be presented in Parliament on the performance of the Federal Integrity Commissioner's functions during each financial year. The clause prescribes all matters to be addressed in the report.

Clause 237: Reports on investigations and public inquiries

This clause provides that the Minister must cause reports given to him or her by the Federal Integrity Commissioner under a series of clauses relating to a public hearing, to be laid before each House of Parliament within five (5) sitting days of receipt of the report.

To avoid doubt, the clause also particularises that a supplementary report is not required to be tabled in Parliament.

Clause 238: Special reports

This clause provides that the Federal Integrity Commissioner may, from time to time, give the Minister, for presentation to the Parliament, a special report on areas outlined in this clause.

Clause 239: Contents of annual or special report

This clause provides that the Federal Integrity Commissioner may exclude from an annual report prepared under clause 236 or a special report prepared under clause 238 information that is sensitive and it is desirable to exclude, however, in doing so, the Federal Integrity Commissioner must seek to balance the public interest served and the prejudicial consequences occurring by the disclosure of the information in the report.

Clause 240: Public reporting—Whistleblower Protection Commissioner

This Clause provides that clauses 224 to 239 apply to the Whistleblower Protection Commissioner as if a reference to the Federal Integrity Commissioner were a reference to the Whistleblower Protection Commissioner, a reference to a Federal Integrity Commissioner function were a reference to a whistleblower protection commissioner function, and a reference to corruption or corruption issues were a reference to whistleblower protection issues.

Clause 240 (2) provides that a report by the Whistleblower Protection Commissioner under this Division may, by arrangement with Federal Integrity Commissioner, be published together with or as part of a report of the same type by the Federal Integrity Commissioner.

Division 8—Confidentiality requirements

Clause 241: Confidentiality requirements for Federal Integrity Commission staff

This clause provides that a person who either directly or indirectly, whilst they are, or were a staff member of Federal Integrity Commission makes record, divulges or communicates any information disclosed or obtained under the bill, acquired by being a staff member of Federal Integrity Commission, or in the course of his or her duties as a staff member of Federal Integrity Commission, is liable to 60 penalty units and/or 12 months imprisonment, subject to clauses 242 and 243.

Clause 242: Exceptions to confidentiality requirements

This clause provides that clause 242 does not prevent a staff member from making records, divulging or communicating information acquired in the performance of his or her duties for the performance of the functions of the Federal Integrity Commissioner under the bill. The Federal Integrity Commissioner is also permitted to disclose information to the Commonwealth Ombudsman, the Ombudsman of a State or Territory, the head of a law enforcement agency, the head of a police force of a State or Territory, the head of an integrity agency or the head of another government agency where the Federal Integrity Commissioner decides that the information may be more appropriately dealt with by that agency.

This clause provides that the disclosure of information is not prevented by clause 241 where the disclosure is required under another Commonwealth law. This clause also provides that the Federal Integrity Commissioner is authorised to disclose information to a particular person where necessary to protect the person's life or safety.

Clause 243: Disclosure by Federal Integrity Commissioner in public interest etc.

This clause provides that the Federal Integrity Commissioner may disclose information to the public or a section of the public about the performance of his or her functions or an investigation where the disclosure is in the public interest.

The clause provides that prior to disclosing any sensitive information, the Federal Integrity Commissioner must consider a balance between the public interest and the prejudicial consequences that may result in disclosing the information.

Clause 244: Opportunity to be heard

This clause provides that the Federal Integrity Commissioner must not disclose any opinions or findings which are critical of a government agency or person, unless the head of the agency or the person has been given an opportunity to appear, or have a representative appear before the Federal Integrity Commissioner to make submissions in relation to the subject matter

Clause 245: Federal Integrity Commission staff generally not compellable in court

This clause provides that a person who is, or has been a staff member of the Australian Federal Integrity Commission cannot be compelled to disclose information that was obtained under the provisions of the bill, which were acquired because of being, or having been a staff member of the Australian Federal Integrity Commission, before any court proceedings or a person authorised to hear, receive and examine evidence.

However, the clause provides that a staff member or former staff member of the Australian Federal Integrity Commission will be compelled to provide evidence in proceedings where either the Federal Integrity Commissioner, a delegate of the Federal Integrity Commissioner or a person authorised by the Federal Integrity Commissioner are party to proceedings in official capacity. Staff members of Australian Federal Integrity Commission may also be compelled to provide evidence in proceedings brought in carrying out a provision of the bill or proceedings resulting from an investigation.

Clause 246: Confidentiality requirements—Whistleblower Protection Commissioner

This clause provides that clause 241 to 245 apply to the Whistleblower Protection Commissioner as if a reference to the Federal Integrity Commissioner were a reference to the Whistleblower Protection Commissioner, a reference to a Federal Integrity Commissioner function were a reference to a whistleblower protection commissioner function, and a reference to corruption or corruption issues were a reference to whistleblower protection issues.

Part 11—Parliamentary Joint Committee on the Australian Federal Integrity Commission

Clause 247: Definitions

This defines key terms used in this Part. The Parliamentary Joint Committee on the Australian Federal Integrity Commission will be referred to as the ***committee*** and members of the committee will be referred to as a ***member***.

Clause 248: Parliamentary Joint Committee on the Australian Federal Integrity Commission

This clause provides that as soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of the Parliament to be known as the Parliamentary Joint Committee on the Australian Federal Integrity Commission is to be appointed according to the practice of the Parliament with reference to the appointment of members to serve on joint select committees of both Houses of the Parliament.

The committee will consist of 12 members. Six (6) members of the Senate appointed by the Senate, and six (6) members of the House of Representatives appointed by that House. Five (5) must be members of the Government; and 5 must be members of the Opposition and two (2) must be members of the Parliament other than members of the Government or Opposition.

There are to be co-Chairs of the committee: one member nominated as co-chair by the Prime Minister; and one member nominated by the leader of the Opposition.

A member of the Parliament is not eligible for appointment as a member of the committee if the member is:

(a) a Minister; or

(b) the President of the Senate; or

(c) the Speaker of the House of Representatives; or

(d) the Deputy President and Chair of Committees of the Senate or the Deputy Speaker of the House of Representatives.

A member ceases to hold office when the House of Representatives expires by the passing of time or is dissolved; or if the member becomes the holder of an office specified in any of the paragraphs of subsection (4) above; or if the member ceases to be a member of the House of the Parliament by which the member was appointed; or if the member resigns by writing to the relevant presiding officer. Either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the committee appointed by that House.

Clause 249: Powers and proceedings of the committee

This clause provides that all matters relating to the powers and proceedings of the committee are to be determined by resolution of both Houses of the Parliament.

Clause 250: Duties of the committee

This clause provides that the committee: is to consider a proposed recommendations for the appointment of the Federal Integrity Commissioner, the Assistant Commissioners, the Parliamentary Inspector and the CEO; must monitor and report on the performance of the Federal Integrity Commissioner functions and any matter relating to the Federal Integrity Commission; examine annual and special reports of Federal Integrity Commission; examine trends in law enforcement in relation to corruption and proposed changes to the Federal Integrity Commissioner's functions, powers, procedures or the Federal Integrity Commission structure.

Under this clause, the committee must also request the Parliamentary Inspector to undertake an independent audit of AFIC's budget and finances every 3 years for the purposes of the committee advising as to whether:

- AFIC has sufficient resources to perform all of its functions and discharge its objectives under this Act to the fullest extent possible; or
- AFIC's budget should be increased to allow AFIC to perform all of its functions and discharge its objectives under this Act to the fullest extent possible.

The duties listed in clause 250(1) do not permit the committee itself to review of the finances and budget allocation of the Australian Federal Integrity Commission itself. Those assessments can only be made independently by the Parliamentary Inspector under clause 250(10(g), and the committee may only observe those recommendations relating to fiscal allocation.

To avoid doubt, this clause also provides that the committee is not authorised to investigate a corruption issue or reconsider decisions, or recommendations made by the Federal Integrity Commissioner or by the Law Enforcement Integrity Commissioner.

Clause 251: Committee may approve or reject recommendation for appointment

Federal Integrity Commissioner or Assistant Commissioners

This clause provides that if the Minister refers a proposed recommendation for an appointment of the Federal Integrity Commissioner or Assistant Commissioner for approval, the committee must approve or reject the recommendation within 10 sitting days or notify the Minister they need more time to consider the proposed recommendation within 20 sitting days after receiving it.

CEO

This clause provides that if the Commission refers a proposed recommendation for an appointment of the CEO to the committee for approval they must approve or reject the proposed recommendation within 10 sitting days after receiving it or notify the Commission, within 10 sitting days after receiving a proposed recommendation, that it needs more time to consider the proposed recommendation. If the committee does so, the committee must approve or reject the proposed recommendation within 20 sitting days after receiving it.

Parliamentary Inspector

This clause provides the if the Presiding Officers refer a proposed recommendation for an appointment of the Parliamentary Inspector to the committee for approval they must approve or reject the proposed recommendation within 10 sitting days after receiving it or notify the Commission, within 10 sitting days after receiving a proposed recommendation, that it needs more time to consider the proposed recommendation. If the committee does so, the committee must approve or reject the proposed recommendation within 20 sitting days after receiving it.

Making of decision

A decision to approve or reject a proposed recommendation must be by majority of the members of the committee for the time being holding office; and the majority must include at least 2 members of each of the Government and the Opposition, and 1 member from neither the Government or the Opposition. If the committee does not decide on a proposed recommendation by the required time, the committee is taken, at that time, to have rejected the proposal.

The committee must notify, in writing, the Minister, the Commission of the Presiding Officers (as the case may be) of its decision in relation to a proposed recommendation as soon as practicable after making the decision. The committee must report to both Houses of the Parliament on its decision in relation to a proposed recommendation.

Clause 252: Disclosure to committee by Federal Integrity Commissioner

This clause provides that the Federal Integrity Commissioner must inform the committee when requested, of the general conduct of Federal Integrity Commission operations and provide information related to investigations and inquiries. If the Federal Integrity Commissioner is satisfied that the information is or includes sensitive information and the prejudicial consequences outweigh the public interest served by providing the information to the committee, the Federal Integrity Commissioner may also decide not to comply with the committee's request.

In circumstances where the Federal Integrity Commissioner does not provide requested information to the committee, the committee may refer their request to the Minister, who will then determine whether or not the information is sensitive information, and, if so, whether the prejudicial consequences outweigh the public interest served by providing the information to the committee.

Clause 253: Parliamentary Joint Committee—Whistleblower Protection Commissioner

This clause provides that Clause 250 to Clause 252 apply to the duties and powers of the Parliamentary Joint Committee as if a reference to the Federal Integrity Commissioner were a reference to the Whistleblower Protection Commissioner, a reference to a Federal Integrity Commissioner function were a reference to a whistleblower protection commissioner function, and a reference to corruption or corruption issues were a reference to whistleblower protection issues.

Clause 254: Disclosure to committee by Law Enforcement Integrity Commissioner

This clause provides that the Federal Integrity Commissioner must inform the committee when requested, of the general conduct of Federal Integrity Commission operations and provide information related to investigations and inquiries. If the Federal Integrity Commissioner is satisfied that the information is, or includes sensitive information and the prejudicial consequences outweigh the public interest served by providing the information to the committee, including an obtuse political motivation not in the spirit of the Act, the Federal Integrity Commissioner may also decide not to comply with the committee's request.

In circumstances where the Federal Integrity Commissioner does not provide requested information to the committee, the committee may refer their request to the Prime Minister, who will then determine whether or not the information is sensitive information, and, if so, whether the prejudicial consequences outweigh the public interest served by providing the information to the committee.

Clause 255: Disclosure to committee by Minister

This clause provides that the Minister must comply with a request from the committee in relation to an investigation of an ACLEI corruption issue by a special investigator, unless the information would contravene a certificate under section 149 of the *Law Enforcement Integrity Commissioner Act 2006*.

Clause 256: Ombudsman to brief committee about controlled operations

This clause provides for the Ombudsman to brief the committee about the Law Enforcement Integrity Commissioner's involvement in controlled operations.

Part 12—Parliamentary Inspector of the Australian Federal Integrity Commission

Division 1—Establishment and functions and powers of the Parliamentary Inspector of the Australian Federal Integrity Commission

Clause 257: Parliamentary Inspector of the Australian Federal Integrity Commission

This clause provides that there is to be a Parliamentary Inspector of the Australian Federal Integrity Commission. The Parliamentary Inspector of the Australian Federal Integrity Commission is an independent officer of the Parliament.

Clause 258: Functions of the Parliamentary Inspector

Subclause 258(1) outlines what the functions of the Parliamentary Inspector are, as required by the Parliamentary Joint Committee on the Australian Federal Integrity Commission.

This includes functions to inspect records kept by the Commission, including operational files and accompanying documentary material, for the purpose of forming an opinion as to whether the Commission has exercised power in an appropriate way; required authorisations for the exercise of power have been obtained; any practice or procedural guidelines set by the Commission are adequate, having regard to risk; any practice or procedural guidelines set by the Commission have been strictly complied with.

The Parliamentary Inspector will also investigate complaints made against, or concerns expressed about, the conduct or activities of the Commission or its staff; audit the Commission's systems of governance and risk management relating to control of information, including relating to the protection of whistleblowers and human sources; review alleged incidences of possible unauthorised disclosure of information or other material that, under an enactment, is confidential; review information given by the Commission to the Parliamentary Joint Committee on the Federal Integrity Commission to verify its accuracy and completeness, particularly in relation to an operational matter; report, and make recommendations, to the Parliamentary Joint Committee on the Australian Federal Integrity Commission on the results of performing the functions.

Subclause 258(2) outlines that a requirement under subsection (1) is effective only if it is requested or authorised in terms of reference jointly issued by the co-Chairs of the Parliamentary Joint Committee on the Australian Federal Integrity Commission.

Subclause 258(3) provides that the Parliamentary Inspector also has such other functions as are conferred on the Parliamentary Inspector by this Act or any other law of the Commonwealth.

Clause 259: Matters arising from a conduct investigation

This section applies if the Parliamentary Inspector investigates a matter relating to the conduct of a person.

The Parliamentary Inspector may seek the assistance of the AFP or a police service of a State of Territory to assist in the investigation of a criminal offence.

If, from information obtained in conducting the investigation, the Parliamentary Inspector decides that prosecution proceedings for an offence should be considered, the Parliamentary Inspector may give information or evidence gathered about the matter to the Director of Public Prosecutions, or other appropriate prosecuting authority, for the purposes of any prosecution proceedings the director or other authority considers warranted.

Clause 260: Report on conduct investigations conducted by Parliamentary Inspector

If the matter involved conduct of a staff member of the Commission, the Parliamentary Inspector may produce a report relating to the information or evidence gathered, and may include:

- for conduct of the Federal Integrity Commissioner, a Commissioner, an Assistant Commissioner or the CEO—a recommendation to the Minister or the Parliamentary Joint Committee on the Federal Integrity Commission that the Minister or Parliamentary Joint Committee on the Federal Integrity Commission consider whether disciplinary action should be taken against that staff member; or
- for conduct of another staff member of the Commission—a recommendation to the CEO that the CEO consider whether disciplinary action should be taken against the staff member.

The Parliamentary Inspector must not include in a report any statement that a person has engaged, is engaging or is about to engage in conduct that constitutes a criminal offence or disciplinary breach; or any opinion or recommendation that a person should be prosecuted for a criminal offence or be the subject of disciplinary action or further disciplinary action.

The Parliamentary Joint Committee on the Australian Federal Integrity Commission or the Minister, as the case may be, may table the report, or an extract from the report if, criteria are met.

Clause 261: Parliamentary Inspector cannot be required to disclose particular information

The Parliamentary Inspector cannot be required by the Parliamentary Joint Committee on the Australian Federal Integrity Commission to disclose to the Committee information relating to a conduct investigation conducted by the Parliamentary Inspector.

Division 2—Audits, investigations, reviews and reports

Clause 262: Process for conducting an audit, investigation or review

An audit, inspection, investigation or review conducted by the Parliamentary Inspector is to be conducted in accordance with the process prescribed by the regulations.

Clause 263: Contents of reports on results of performance of functions

A report by the Parliamentary Inspector on the performance of a function referred to in paragraph 258(1) must be prepared in accordance with the requirements prescribed by the regulations.

Clause 264 Parliamentary Inspector may require information etc.

For the purposes of performing his or her functions, the Parliamentary Inspector may exercise any of the powers of the Federal Integrity Commissioner, as prescribed by the regulations.

Clause 265 Privilege against self-incrimination

A person required by notice or summons to produce information to the Parliamentary Inspector enjoys the same privileges and immunities, and holds the dame obligations and responsibilities, as if the person were subject to a notice or summons issued by the Federal Integrity Commissioner.

Division 3—Administrative provisions relating to the Parliamentary Inspector

These clauses provide for the appointment and conditions of appointment of Assistant Federal Integrity Commissioner.

Clause 266: Appointment of Parliamentary Inspector

Clause 267: General terms and conditions of appointment

Clause 268: Other paid work

Clause 269: Remuneration

Clause 270: Leave of absence

Clause 271: Resignation

Clause 272: Termination of appointment

Clause 273: Acting appointments

Clause 274: Disclosure of interests

Clause 275: Assistance to Parliamentary Inspector

The Parliamentary Inspector may seek assistance from the Presiding Officers to support the performance of the Parliamentary Inspector's functions.

Part 13—Miscellaneous

Clause 276: Offence of victimisation

This section outlines that a person commits an offence if the person causes, or threatens to cause, detriment to another person (the ***victim***) on the ground that the victim, or any other person: has referred, or may refer, to the Federal Integrity Commissioner an allegation, or information, that raises a corruption issue; or has given, or may give, information to the Federal Integrity Commissioner; or has produced, or may produce, a document or thing to the Federal Integrity Commissioner. This carries a penalty of Imprisonment for 2 years.

Clause 277: Legal and financial assistance in relation to applications for administrative review

A person may apply to the Attorney-General for assistance in respect of the person's application, or proposed application, to the Federal Court or the Federal Circuit Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act.

Clause 278: Immunity from civil proceedings

A staff member of the Commission is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the staff member's functions, powers or duties under, or in relation to, this Act. A person whom the Federal Integrity Commissioner requests, in writing, to assist a staff member of the Commission is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith for the purpose of assisting the staff member. If:

(a) information or evidence has been given to the Federal Integrity Commissioner; or

(b) a document or thing has been produced to the Federal Integrity Commissioner;

a person is not liable to an action, suit or proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the information or evidence was given or the document or thing was produced.

Clause 279: Immunities from certain State and Territory laws

The Federal Integrity Commissioner, an Assistant Commissioner or a staff member of the Commission is not required under, or by reason of, a law of a State or Territory:

(a) to obtain or have a licence or permission for doing any act or thing in the exercise of the person's powers or the performance of the person's duties as the Federal Integrity Commissioner, an Assistant Commissioner or a staff member of the Commission; or

(b) to register any vehicle, vessel, animal or article belonging to the Commonwealth.

Clause 280: Miscellaneous—Whistleblower Protection Commissioner

Sections 276 to 279 apply to the Whistleblower Protection Commissioner as if a reference to the Federal Integrity Commissioner were a reference to the Whistleblower Protection Commissioner, and a reference to corruption or corruption issues were a reference to whistleblower protection issues.

Clause 281: Review relating to the Law Enforcement Integrity Commissioner etc.

It is the intention of Parliament that the functions conferred on the Law Enforcement Integrity Commissioner under section 15 of the *Law Enforcement Integrity Commissioner Act 2006* are transferred to the Commission.

The Minister must cause to be undertaken a review of the preferred legislative options to:

(a) transfer the functions conferred on the Law Enforcement Integrity Commissioner under section 15 of the *Law Enforcement Integrity Commissioner Act 2006* to the Commission; and

(b) update the provisions of this Act (whether included in this Act before the review or to be included as recommended by the review) relating to search warrants, to align with contemporary legislative approaches relating to search warrants; and

(c) ensure alignment between the treatment of matters relating to whistleblowers in this Act and the *Public Interest Disclosure Act 2013*.

The Minister must ensure that public consultation is undertaken in connection with the undertaking of the review. The Minister must cause to be prepared a written report of the review. The report must be completed within 6 months after the commencement of this section. The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Clause 282: Review relating to judicial integrity

It is the intention of Parliament that there be a robust system of integrity oversight for Commonwealth judicial officers consistent with section 72 of the Constitution.

The Minister must cause to be undertaken a review of the preferred legislative options for establishing a body or bodies to ensure such oversight. The Minister must ensure that public consultation is undertaken in connection with the undertaking of the review.

The review must take into account the advice of the Chief Justice or Chief Judge of each federal court. The Minister must cause to be prepared a written report of the review. The report must be completed within 18 to 24 months after the commencement of this section. The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

Clause 283: Review of operation of Act

Undertaking the review

The Minister must cause an independent review to be undertaken of the first 3 years of the operation of this Act. The persons undertaking the review must give the Minister a written report of the review within 6 months after the end of the 3-year period.

The review must include an opportunity for:

(a) persons who are, or have been, staff members of the Commission; and

(b) members of the public;

to make written submissions on the operation of this Act.

The Federal Integrity Commissioner and staff members of the Commission must, if requested to do so by the persons undertaking the review, assist them in:

(a) conducting the review; and

(b) preparing the written report.

The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

However, this section does not apply if a committee of one or both Houses of the Parliament (including the Parliamentary Joint Committee on the Australian Federal Integrity Commission) has reviewed the operation of this Act, or started such a review, before the end of the 3-year period.

In this section ***independent review*** means a review undertaken by a person or persons who, in the Minister's opinion, possess appropriate qualifications to undertake the review.

Clause 284: Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Clause 285: Regulations

The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

The regulations may require that information or reports that are required to be given under prescribed provisions are also to be given to prescribed persons in specified circumstances.

Schedule 1—Amendments

The schedule includes limited number of consequential amendments that result from the provisions in this bill.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Australian Federal Integrity Commission Bill 2020

This Australian Federal Integrity Commission Bill 2020 is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the bill

The bill will establish the Australian Federal Integrity Commission – a new independent body responsible for the implementation of a new national pro-integrity framework, with an emphasis on prevention. The Australian Federal Integrity Commission will be given appropriate powers of assessment, investigation and referral to enable clear, proportionate and practical responses to allegations of serious and/or systemic corruption issues at the federal level in the public interest, with comprehensive procedural fairness and whistleblower safeguards.

Human rights implications

This bill has been drafted to incorporate numerous safeguards to protect the right to privacy and personal reputation, balanced against the overall objective to investigate and prevent corruption.

The safeguards adopted in this bill are drawn largely unchanged from the *Law Enforcement Integrity Commission Act 2006*, as these are generally viewed as robust and tested for the purpose. These powers are under Parts 4, 5 and 6.

There are safeguards related to the disclosure of personal or confidential information, with proportionate penalties that apply to people who disclose information in relation to an investigation that might impact on rights to privacy or unfairly damage personal reputation.

There are also safeguards on the powers to compel the production of documents, information and obtain search warrants that may impact on the right to privacy. Application for a warrant is consistent with existing procedures under Australian law. The ability to keep a document or item is also limited to the time reasonably necessary for the purposes of the investigation.

The burden of proof is reversed on a person who is believed to have breached the notation requirements on a summons. This is necessary because of the operation of section 13.3 of the Criminal Code. It is appropriate for the defendant to bear the burden of proving these matters because they are matters that, by their nature, are within the knowledge of the defendant.

The right to due process and procedural fairness is maintained in this bill to ensure that no opinions or findings that are critical of a person or agency are publicly released and are considered preliminary unless the subject has been given an opportunity to appear and make submissions to the Commission with legal representation. Personal safety must also be considered in the context of release of information as well.

Additional safeguards are also included with respect to confidentiality and personal reputation or privacy risks associated with public hearings. This includes the ongoing right of any person who is giving evidence before the Commission (or has been summoned to give evidence before the Commission) to request to give that evidence in private based on a comprehensive public interest test laid out in section 86(4). The bill also requires the Commissioner to publish a standalone report for any person or persons who are exonerated of any critical preliminary views or opinions.

More broadly, the bill focusses the resources and attention of the Commission to serious or systemic corrupt conduct based on research evidence and includes statutory definitions to prevent the advancement of frivolous or vexatious claims.

The bill engages the requirement for minimum guarantees in proceedings of this nature. The privilege against self-incrimination is partially abrogated by the bill because use immunity is available. Similarly, legal professional privilege is partially limited. This is necessary to ensure that the public interest is served by not having crucial and relevant material relating to corruption withheld, while also respecting a citizen's right to not be incriminated by their own statements. The provisions related to this in the bill are wholly proportionate to this purpose.

The bill upholds principles of natural justice and the rule of law and does not involve the retrospective application of new laws or standards, including criminal laws, to historic conduct.

The bill also engages with the right to an effective remedy through the whistleblower protection commissioner, who will also have a role providing advice, assistance, guidance and support to persons making of disclosures of wrongdoing and have powers to represent whistleblowers to obtain remedy for mistreatment.

Conclusion

This bill is wholly compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. All impacts are minimal, reasonable and proportionate to purpose. This bill also includes proactive provisions to support and promote human rights.

Dr Helen Haines MP