

2017

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

**Independent Commissioner Against Corruption  
(Consequential and Related Amendments) Bill 2017**

**SERIAL NO. 35**

**EXPLANATORY STATEMENT**

**GENERAL OUTLINE**

The Bill amends a number of Acts in relation to the establishment of the Independent Commissioner Against Corruption ('ICAC') and repeal of the *Public Interest Disclosures Act*. An associated Bill to create the ICAC and repeal the *Public Interest Disclosure Act* is also currently before the Legislative Assembly (the 'ICAC Act').

In particular, the Independent Commissioner Against Corruption (Consequential and Related Amendments) Bill 2017 (the Bill):

- amends the *Correctional Services Act* to facilitate the ICAC's access to Correctional premises and to prisoners as required;
- amends the Criminal Code to update the offences and penalties of a number of offences concerning government corruption which the ICAC can investigate;
- provides that the ICAC can handle and disclose spent convictions for certain purposes by amending the *Criminal Records (Spent Convictions) Act*;
- amends the *Legislative Assembly (Disclosure of Interests) Act* to provide that the ICAC has access to the register of interests for the Legislative Assembly;
- amends the *Procurement Act* to guarantee that the ICAC has complete independence as to whom it chooses to contract to conduct investigative and legal work;
- amends the *Police (Special Investigative and Other Powers) Act* to give the ICAC the power to apply for warrants to conduct controlled operations;
- amends the *Surveillance Devices Act* to give the ICAC the power to apply for warrants to use and install surveillance devices;
- amends the *Witness Protection (Northern Territory) Act* to provide that witnesses for the ICAC can be considered for the witness protection program, and that the ICAC can apply to the court for a witness to be given an assumed identity;

- amends the *Telecommunications (Interception) Northern Territory Act* to give the ICAC the power to intercept telecommunications; and
- removes obsolete references to the *Public Interest Disclosure Act* and replaces them with references to the ICAC Act as appropriate from the *Housing Act*, the *Education and Care Services (National Uniform Legislation) Act*, the *Evidence (National Uniform Legislation) Act*, and the *Rail Safety (National Uniform Legislation) Act*.

## **NOTES ON CLAUSES**

### **Part 1 Preliminary matters**

#### **Clause 1. Short title**

This is a formal clause, which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Independent Commissioner Against Corruption (Consequential and Related Amendments) Act 2017*.

#### **Clause 2. Commencement**

This is a formal clause that provides that the commencement of the Bill will occur at the same time that the primary provisions of the ICAC Act commence.

### **Part 2 Amendment of Correctional Services Act**

#### **Clause 3. Act amended**

This clause notes that clauses 4 to 6 amend the *Correctional Services Act*.

#### **Clause 4. Section 19A inserted**

The new section 19A inserted by this clause ensures that the ICAC will have reasonable access to evidence held by correctional services. It covers entry to correctional services premises, and access to witnesses in custody. The Commissioner of Correctional Services may only refuse access on certain limited grounds. The amendment places the onus on the Commissioner of Correctional Services to devise a suitable process for the ICAC to access facilities and prisoners in the event that complications around the security and good order of correctional premises arise.

#### **Clause 5. Section 151 amended**

This section replaces the Commissioner for Public Interest Disclosures with the ICAC in the list of persons and bodies recognised as 'protected correspondents'. Communications between prisoners and protected correspondents cannot be routinely inspected in the same manner as other correspondence, but are subject to special processes in order to preserve their confidentiality.

#### **Clause 6. Section 156 amended**

This section provides that in the case of communications with the ICAC, the person who scrutinises correspondence to make sure it does not contain contraband or other inappropriate material is a person agreed upon by the ICAC and the Commissioner of Correctional Services. In the event that such a person has not been agreed upon

or has not been selected, the Inspector scrutinises the correspondence. The Inspector is a statutory position created by the ICAC Act to oversight the ICAC.

### **Part 3                      Amendment of Criminal Code**

#### **Clause 7.                      Act amended**

This clause notes that clauses 8 to 15 amend the Criminal Code contained in the *Criminal Code Act*. The new offences inserted into this Part replace similar offences, but now drafted so that Part IIAA of the Criminal Code applies (meaning they are in the 'model criminal code' drafting style). Policy changes to the offences are noted in the notes to the clauses below.

#### **Clause 8.                      Section 1 amended**

This clause contains new and revised definitions for the Criminal Code. The terms 'gain' and 'benefit' provide a way to distinguish between situations where any benefit is relevant, and where only pecuniary benefits are relevant. Most of these terms provided in this clause reference definitions that are fully set out in Part IV of the Criminal Code as they apply only to that Part.

However, the term 'gain' has been updated for the entire Criminal Code. This term currently relates to pecuniary benefits only, but has been amended to include gains in the form of services. This change reflects contemporary practice and technology, where products that have been traditionally understood as 'property' are now provided in the form of 'services'. For example, in relation to much valuable electronic information, including software systems and access to records, what is exchanged / bought / sold are licences to use and access systems rather than objects such as computers, disks, and accessories. Given these issues, amending the term across the whole Criminal Code has been preferred for consistency and to cover contemporary methods of offending.

Gain continues to include temporary gains and a gain by keeping what one has. The definition of gain affects the offences at sections 76 and 82 of Part IV of the Criminal Code as amended by this Bill.

In addition to offences in Part IV, this means that gains in the form of services as well as property are prosecutable for the following offences which are not otherwise amended by this Bill:

- section 125A - publishing child abuse;
- section 194 - kidnapping;
- section 227(4) - obtaining property by deception;
- section 233 – false accounting;
- section 235(2) – improperly procuring the execution of a valuable security.

It can be noted that the word 'gain' is used in computer offences at sections 276 and 276B of the Criminal Code, but in a different grammatical context that makes the definition of 'gain' as set out here inapplicable.

**Clause 9. Part IV, Division 1, Division 2 heading and sections 77 to 82 replaced**

The definitions which apply specifically to Part IV of the Criminal Code are inserted by this clause (new sections 75A Definitions, 75B Meaning of *benefit* and 75C Improper conduct)).

The definition of 'public officer' reflects the major policy change to the Criminal Code offences made by this Bill. This is to broaden offences that applied only to persons employed in the public service so that they apply to anyone who is a 'public officer' as defined by section 4 of the ICAC Act.

The term 'benefit' was previously undefined but appeared from its context to be broad enough to encompass a benefit of any kind. This is clarified by the definition, which notes that a benefit means a benefit of any kind, including a non-pecuniary benefit. It is therefore distinct from a 'gain', which is a pecuniary benefit only.

Further, the definition clarifies that a benefit can include anticipated future benefits, and that a benefit given to another person is relevant (subject to certain causal connections specified in the offences in this Part). Hence, if a person is influenced to improperly perform their duties in a particular way because another person (eg. a spouse, friend, business associate) will receive a benefit, this is still receiving a benefit for the purpose of the relevant offences.

*Improper conduct:*

The term 'improper' is dealt with in a definition inserted as section 75C. A number of the existing offences in Part IV required conduct to be performed 'corruptly' (section 77), 'in abuse of the authority of his office' (section 82), or inherently describe conduct which is improper, given the person's position in the public service. This clause is designed to provide a standard, consistent element of impropriety across the amended offences of Part IV.

The test allows for a jury (or judge in a summary matter) to look at all the circumstances of the case, and consider what kind of behaviour is expected of a reasonable person in the position of the offender, and to apply community standards to those facts to determine whether the conduct has the kind of corrupt character that would make criminal sanctions appropriate. This approach was adopted by South Australia in relation to similar offences, which similarly apply to all public officers as defined by the South Australian ICAC legislation (see section 238 of the *Criminal Law Consolidation Act 1935 (SA)*, as amended in 2012).

This test recognises that the conduct technically criminalised by these offences ranges from very serious corruption, down to the kind of errors of judgement by new employees that would typically be addressed by performance management. In the case of the offence at section 76, it could, for example, be put to a jury that a person who disclosed confidential information did so to advance the public interest. It would be up to the jury to decide whether this was the case and whether this puts the conduct in a different light that might excuse criminal liability. Given that these offences are being broadened to apply not only to employees in the public service, but to all public officers, it is particularly appropriate this test be included to avoid criminalising low-level conduct that would not be viewed as criminal by community standards. The definition of public officer is very broad and includes persons working for private and non-government organisations that are the receive government

funding under agreements (such as contractors and recipients of government grants).

In looking at the conduct for the purpose of this definition, section 75C is clear that the jury considers the conduct in context—that is to say it should look at the circumstances in which the conduct occurred, and the results of the conduct, and whether the conduct was an isolated incident or part of a pattern.

It should be noted that whether conduct is *improper* is a ‘circumstance’. This is relevant particularly with respect to the application of transitional provisions. An offence under sections 76, 77, 78 and 80 can only be charged if the conduct as charged occurs wholly after commencement. However, in evaluating whether the conduct is improper, the jury may look at all the surrounding circumstances, including whether the conduct has occurred as an isolated incident or as part of repeated similar conduct or a course of conduct. It is possible that the conduct charged will have occurred entirely after commencement, but that similar conduct occurred prior to commencement and this is a relevant circumstance to take into account in deciding whether the conduct which occurred was improper.

Whether the conduct was improper is a fact in issue, and an additional element for the prosecution to prove along with the other elements of the offence. As such, evidence adduced to prove that conduct was improper does not engage the *tendency rule* or the *coincidence rule* set out in the *Evidence (National Uniform Legislation) Act*. However, a court remains able to exclude such evidence if it is more prejudicial than probative in all the circumstances of the case, and also has a general discretion to limit the use of the evidence that is admitted if it would be unfairly prejudicial.

Because the test is about applying community standards, and because the test itself requires the jury to consider whether the person acted in an honest and reasonable belief that he or she was lawfully entitled to act in the way alleged, an additional fault element is not imposed upon the element of impropriety when it appears in offences in Part IV. To ensure this, this element is one of absolute liability throughout the offences.

#### *Section 75D Dismissal of trivial case*

Section 75D allows the court to dismiss an offence where the allegations involve conduct that is trivial or merely technical. While it is anticipated that such conduct would rarely be prosecuted, this is an additional safeguard to make clear that the intent of these offences is not to create an environment where everyone who works for or deals with the Territory government is at threat of criminal sanctions over minor mistakes or errors of judgement. An application to dismiss an offence under section 75D could be made at any stage of the proceeding. This provision is modelled on an equivalent provision in NSW legislation.

#### *New subdivision 2 Offences*

This clause also inserts a subdivision into Part IV Division 1 of the Criminal Code, to contain the revised offences which currently appear through Divisions 1 and 2 of the Criminal Code.

#### *Offences:*

This clause also repeals and replaces a number of offences relating to Government Corruption. The offences have been:

- amended to apply to all public officers (as defined by the ICAC Act) rather than just persons employed in the public service;
- updated into the modern Criminal Code drafting style set out in Part IIAA of the Criminal Code;
- reviewed in terms of elements and penalties, and in view of similar offences in other jurisdictions.

**Section 76 (Disclosure of confidential information)** updates the offence of disclosing confidential information. The key difference is that it will now be an offence to disclose confidential information that a person learned as a public officer, even if they are no longer employed as a public officer. This is consistent with the recommendations of the Australian Law Reform Commission Report No 112 'Secrecy Laws and Open Government in Australia', and with a number of similar provisions interstate.

The nature of 'confidential information' is not defined in the legislation, leaving it to follow the common law understanding that confidential information means information that is, in fact, confidential and not a matter of public knowledge – see *Snell v Pryce* (1989) 99 FLR 213.

The transitional provision for this offence (inserted as section 456 of the Criminal Code) provides that where the conduct for this offence occurs before and after commencement, the offence is taken to have been committed before the commencement. It should be noted that the meaning of 'conduct' here is technical and defined by the Criminal Code. The fact that information was obtained by a public officer prior to commencement of the new provision is irrelevant to assessing when the 'conduct' constituting the offence occurred, as whether the information was obtained as a public officer is a 'circumstance' and the relevant question is whether this 'circumstance' was true at the time the 'conduct' (of disclosing the information) occurred. The following examples are illustrative:

- Jane is a public officer. Prior to commencement of this Bill, Jane provides someone with an encrypted USB drive of government information. After commencement, Jane provides the person with the password that allows the encrypted information to be viewed. The 'conduct' element of the offence – namely, disclosing the confidential information on the USB drive – has occurred both before and after commencement. Section 456 provides that the whole offence is taken to be committed before commencement and Jane must be charged using the pre-commencement offence.
- Jane is a public officer. Over two years she has numerous conversations where she discloses different pieces of confidential information she has learned in her role as a public officer. Some of these conversations occur before commencement and some occur after commencement. A number of conversations which occur after commencement independently disclose new confidential information. These instances of disclosing confidential information can be charged as instances of the new offence under section 76, as they have occurred after commencement.
- Jane was a public officer in 2015 when she obtained confidential information through her role. In 2016, Jane left her public officer role to start her own business. In 2018, after commencement, Jane is no longer a public officer. She

discloses the confidential information to a person who she is not authorised to disclose the information to. Jane's 'conduct', namely disclosing the information, has occurred entirely after commencement. The elements that require the prosecution to prove that Jane was a public officer and obtained information in that capacity are 'circumstances', not 'conduct'. The relevant question is not whether events giving rise to those circumstances occurred prior to commencement, but whether at the point Jane engages in conduct, those circumstances exist. Hence, section 456 is not engaged in this example, and Jane can be charged with the new offence under section 76 in relation to this conduct.

The existing penalties are retained, where a maximum term of imprisonment of 3 years is provided for the offence, and a maximum term of 5 years is applicable if the conduct was done for the purpose of obtaining a benefit.

**Section 77 (Corruption)** updates the offences of 'official corruption'. The offence has been renamed 'bribery of a public officer' as this describes the kind of conduct the offence covers in a more accessible way. The new section 77 covers very similar conduct to the existing offence, but is drafted in a more similar way to equivalent contemporary clauses in the Commonwealth and ACT Criminal Codes.

The new section 77 parallels the existing two offences of official corruption found at the existing section 77, which covered both public servants accepting bribes, and giving bribes to public servants. The penalty for these two offences has been increased from 7 years to 10 years, consistent with relatively recent increases in penalties for equivalent offences in South Australia, Victoria, the ACT, and the Commonwealth. The increased penalty reflects a community expectation that, at the high end, this offence can be particularly serious, involving significant detriment to the public interest.

This offence is now defined to include situations where a public officer is improperly extorting funds from people merely to do their job in an appropriate manner. That conduct used to be separately provided for by an offence at section 78.

**Section 78 (Other corrupting benefits)** inserts a new variation on the offence of bribery at section 77, consistent with the approach taken in the Commonwealth and the ACT. Section 78 will apply when a public officer accepts a benefit that would tend to cause the public officer to act corruptly, but where the particular benefit cannot be causally linked to a particular instance of corruptly exercising powers. It is modelled on the equivalent offence at section 357 of the *Criminal Code 2002* (ACT), and the section 142.1 of the *Criminal Code 1995* (Cth). It is intended to cover a situation where a public officer is compromised by accepting gifts that raise inherent conflicts for that officer, even if a particular favour has not yet been called in.

For example, in Operation Atlas, the New South Wales ICAC looked at the conduct of a town planner who accepted regular gifts, holidays, and engaged in a sexual relationship with building developers who needed to seek planning approvals. The evidence disclosed that the town planner's actions were partly taking advantage of her position, and partly creating relationships with potential future clients she might service in a future business as a consultant. While it might be possible in such a scenario to connect a particular benefit to an inducement to perform the planner's functions in a particular way, some benefits might only be proven to tend to be corrupting.

Because this offence does not necessarily involve a causal link between the improper benefit and particular conduct, it carries a lower penalty. The penalty is set at a maximum term of imprisonment of 5 years, aligned with the interstate equivalent offence.

**Section 79** updates the two offences relating to failing to disclose private interests which are currently in the Criminal Code at sections 79 and 80. The existing offences artificially limited criminality for failure to disclose to matters relating to contracts or to making decisions regarding particular kinds of commercial agreements.

The new section 79(**Advancing secret personal interests**) contains two broad offences in relation to failure to disclose conflicts of interest.

The first offence (79(1)) retains the existing offences as they apply to persons employed in the public service (and not to all public officers, as broadly defined). It requires persons employed in the public sector to disclose any substantial conflicts of interest, whether or not they intend to act on that conflict of interest. This is important to ensure persons do not exert unofficial influence through close working relationships, and reflects the kind of ethical obligations generally placed on public servants.

The person must knowingly hold a private interest in a relevant agreement. As per the existing offence, is not an offence to fail to declare a conflict which the person does not know about. The penalty for this offence has been set at 2 years. Such non-disclosures can be very serious, but given that the offence does not include any element of acting to advance the interest, it is comparatively far less serious than the second offence in section 79.

The second offence (section 79(4)) applies to a person who both keeps their private interest secret, and then uses their position as a public officer to advance that private interest to obtain a benefit. The expansion of this offence to all public officers required also redefining who is an 'appropriate person' for disclosure of the interest. In the case of contract service providers or grant recipients, it would usually be the case that there would be nominated persons tasked with handling communications between the private body and the Agency, although such arrangements may vary widely on a case by case basis. As such, for public officers external to an Agency, a disclosure can be made to 'a public officer that the person reasonably believes will ensure that the Agency is made aware of the private interest'.

Given the seriousness at the higher end of the range of the conduct this offence encompasses—the potential damage to public and private interests and the substantial personal benefits which could be obtained—the maximum penalty for this second variant of the offence has been raised to 7 years.



For the purposes of section 79(1) and (4), section 79(7) spells out who is the appropriate person regarding the various classes of public officers.

The offences at section 79 have their own transitional provision (clause 12, new section 457), which provides that a person can be charged under a new section 79 offence of failing to disclose if that failure continues after commencement, even if they were also failing to disclose the interest prior to commencement. The person would be charged with the new offence for the time period during which they failed to disclose after commencement. If the person was also failing to disclose prior to commencement, they could be charged under the existing offence in relation to that time period, if appropriate.

**Section 80 (abuse of office – dishonesty)** updates the offence of false claims by officials to incorporate both the kind of conduct covered by section 81 (false claims by officials) and section 84 (false certificates by public officers) into a single offence of abusing one's role as a public officer through creating, endorsing, approving, or providing, certain kinds of false documents.

The maximum penalty for both section 81 and section 84 was 3 years imprisonment, and this remains the penalty for the new amalgamated offence. If the offence amounts to the more serious offence of false accounting, section 233 of the Criminal Code may be charged, which carries a higher maximum penalty (7 years imprisonment).

**Section 81 (Abuse of office – arbitrary and prejudicial conduct)** updates the offence of abuse of office. This offence covers abuse through making arbitrary or prejudicial use of one's role as a public officer, for example through exercising decision-making power in an intentionally arbitrary way. Where the existing offence referred only to arbitrary conduct, this has been amended to also include conduct that is deliberately intended to harm as well. Given that it is not necessary to prove that the person obtained any gain from the conduct, it must be proved that the person was intentionally arbitrary or intentionally abused the process. The existing maximum penalty of 2 years has been retained. If it can also be proven that the person engaged in this conduct with the intention of obtaining a benefit, the maximum penalty is 3 years. The term 'benefit' is broad and includes non-pecuniary benefits. If the benefit is to advance the public officer's private legal or financial interest, the offence in section 79(4) may be applicable, which carries a higher maximum penalty of 7 years.

This charge cannot be made out in relation to a public officer who was trying to do the right thing but adopted a poor process, as such conduct would not be intentionally arbitrary or intentionally an abuse of process. Poor practices are a matter for disciplinary action rather than criminal sanctions.

**Clause 10.                    Section 84 repealed**

The new wording of section 81 encompasses the conduct previously covered by the offence at section 84, and so this offence has been repealed.

**Clause 11. Section 86A inserted**

This clause provides for new section 86A (Alternative verdicts) that a jury can return alternative verdicts to a charge under section 77(1), which is bribery by a public officer. For example, if the jury was satisfied that the public officer had knowingly obtained a benefit, and satisfied that the public officer knew that the benefit would tend to improperly influence her performance of her role, but was not satisfied that the benefit was in relation to a clear request to do particular thing, the jury cannot convict of the offence at s 77(1), but could convict instead of the offence under section 78. It is up to the judge to charge the jury to consider alternative verdicts of offences that arise on the evidence led at the hearing.

**Clause 12. Part XI, Division 12 inserted**

This clause provides for transitional provisions (new sections 455-457) to define what law applies when conduct spans the date of the commencement of these amendments.

**455 Definitions**

This provides definitions of “amending Act” and “commencement”.

**456 Application of sections 76to80, 80 and 81**

This section provides the basic principle which is that the new sections and the sections as amended only apply to conduct occurring after the commencement of Part 3 of this Act. The exception is where the conduct covers the period before and after that commencement. In that case the new provisions apply,

**457 Application of section 79 as inserted by amending Act**

This section provides the basic principle which is that section 79 as it existed prior to amendment applies to conduct with private interests that occurred prior to the commencement of Part 3 of this Act. The exception is where a failure to disclose continues after commencement of Part 3.

**Clause 13. Schedule 1 amended**

This clause adds the amended offences to Schedule 1 of the Criminal Code. Schedule 1 lists all the offences to which Part IIAA of the Criminal Code applies.

**Part 4 Amendment of Criminal Records (Spent Convictions) Act****Clause 14. Act amended**

This clause notes that clauses 15 to 16 amend the *Criminal Records (Spent Convictions) Act* (Spent Convictions Act).

**Clause 15. Section 3 amended**

This clause amends the definition of *law enforcement agency* in the Spent Convictions Act to include the ICAC. Law enforcement agencies have powers to handle and disclose spent convictions for the purpose of investigations.

**Clause 16. Section 15A amended**

This clause allows spent convictions to be considered with respect to determining the suitability of a person to be the ICAC, a member of ICAC staff, the Inspector, or a member of the Inspector's staff.

**Part 5 Amendment of Housing Act****Clause 17. Act amended**

This clause notes that clause 18 amends the *Housing Act*.

**Clause 18. Section 28X amended**

This clause removes a reference to the Commissioner for Public Interest Disclosures. No corresponding reference to the ICAC has been inserted as the ICAC Act is more recent than the enactment of section 28X of the *Housing Act*, and so there is no doubt that section 28X of the *Housing Act* does not limit any person's right to make a complaint to the ICAC.

**Part 6 Amendment of Legislative Assembly (Disclosure of Interests) Act****Clause 19. Act amended**

This clause notes that clause 20 amends the *Legislative Assembly (Disclosure of Interests) Act*.

**Clause 20. Section 5 amended**

This clause provides that the ICAC or a person authorised by the ICAC can inspect a copy of the Register of Interests which is required to be maintained by the *Legislative Assembly (Disclosure of Interests) Act*. There is no need for the ICAC to seek the authorisation of the Legislative Assembly each time it wishes to access the Register as it will have a statutory right to do so at any time. This is a deliberate incursion on parliamentary privilege. Guaranteed access to the register implements a recommendation made in the Report of the Anti-Corruption, Integrity and Misconduct Commission Inquiry conducted by Commissioner Brian Martin AO QC at paragraph [433].

The amendment specifically provides that the ICAC is authorised to access the registered interests of former MLAs. It has been necessary to provide this because the definition of 'member' in the *Legislative Assembly (Disclosure of Interests) Act* does not refer to past members, and so the amendment is intended to remove any doubt that the ICAC is able to access the interests that former MLAs registered during their time as MLAs.

**Part 7                      Amendment of Procurement Act**

**Clause 21.                Act amended**

This clause notes that clause 22 amends the *Procurement Act*.

**Clause 22.                Section 5 amended**

This clause provides that the ICAC can contract investigators and legal services completely independently of government control. An amendment to the *Public Sector Employment and Management Act* made by the ICAC Act provides that the ICAC is the accountable officer for the ICAC's office, which is the Agency administering the ICAC Act.

The *Procurement Act* requires services to be sourced in accordance with particular rules, which are controlled by the Treasurer. While it is possible for the Treasurer to grant the ICAC an exemption from procurement rules, this particular exemption has been placed in legislation so that the ICAC's independence in this respect is guaranteed by legislation. It will often be appropriate for the ICAC to obtain services confidentially, and to go interstate to do so, given the conflict of interest issues that may arise in relation to the ICAC's investigations. This exemption does not exempt the ICAC from procurement rules in relation to sourcing corporate services, or services to conduct education and training.

**Part 8                      Amendment of Police (Special Investigative and Other Powers) Act**

**Clause 23.                Act amended**

This clause notes that clauses 24 to 37 amend the *Police (Special Investigative and Other Powers) Act* ('PSIOP Act'). These amendments relate to controlled operations. Controlled operations are those which enable undercover officers to engage in specified criminal activity for the limited purpose of conducting a particular investigation.

**Clause 24.                Section 3 amended**

This clause inserts new definitions into the PSIOP Act. The ICAC Minister and the Inspector refer to the definitions in the ICAC Act.

The terms 'Minister' and 'relevant oversight body' are defined so that their meaning depends on the body that is being discussed. In the case of the ICAC, the ICAC Minister is the relevant Minister, and the Inspector is the relevant oversight body. For Police, the relevant Minister means the Minister as defined in section 19 of the *Interpretation Act* (which turns on who is defined as the relevant Minister in the current Administrative Arrangements Order), and the relevant oversight body remains the Ombudsman.

The definition of 'chief officer' is amended to clarify that the chief officer for the purposes of the ICAC Act is the ICAC. The ICAC is a law enforcement agency. Authorised officers of the ICAC are 'law enforcement officers' for the purposes of the PSIOP Act.

For the purpose of cross-border controlled operations, a mutual recognition scheme with other jurisdictions provides that controlled conduct is permissible for the purpose

of investigating more serious offences, namely those punishable by 3 or more years imprisonment.

This clause inserts the definition 'relevant improper conduct' which limits the ICAC's use of controlled operations to corrupt conduct or anti-democratic conduct. Such operations can therefore not be used to investigating misconduct or unsatisfactory conduct, as defined by the ICAC Act. ICAC investigations into conduct which meets the threshold definition of 'relevant improper conduct' but do not also meet the definition of a 'relevant offence' will be able to be conducted by the ICAC within the Territory, if approved by the relevant authorities in accordance with the PSIOP Act.

**Clause 25. Section 11 amended**

This clause amends section 11 of the PSIOP Act, which sets out the factors that must be satisfied before approval to grant a controlled operation is given. Using the definition of 'relevant improper conduct' inserted by clause 24, this clause requires an authorised officer of the ICAC to demonstrate the need for the controlled operation, including that suspected relevant improper conduct is involved, and that the relevant improper conduct has been, is being, or is likely to be committed.

**Clause 26. Section 11A inserted**

This clause inserts new section 11A (Territorial limitation on operations relating to relevant improper conduct).

Section 11A clarifies that even though section 11 allows controlled operations in regard to 'relevant improper conduct', such an operation cannot be authorised to be conducted beyond the borders of the Territory unless it also concerns a relevant offence. This will ensure that warrants issued for cross-border use are recognised by equivalent interstate legislation.

**Clause 27. Section 12 amended**

This clause specifies the form and content of an authority to conduct a controlled operation. The insertion continues to require compliance with s 12(3) (f), which requires the ICAC to specify any relevant offences in relation to which the controlled conduct is to be engaged in, but also inserts s 12(3) (fa), which requires the ICAC to specify the nature of the relevant improper conduct in relation to which the authority is issued if the authority does not relate to a relevant offence.

**Clause 28. Section 19 amended**

This clause amends section 19 of the PSIOP Act, which allows for a chief officer of a law enforcement agency to retrospectively approve unlawful conduct that was engaged in in certain limited circumstances. Section 19(5)(a)(iv) is inserted by this clause in order to ensure the section appropriately relates to ICAC investigations, which concern improper conduct rather just criminal conduct. Note that relevant improper conduct in the PSIOP Act is limited to corrupt conduct and anti-democratic conduct. See clause 24 of this Bill.

**Clause 29. Section 22 amended**

This clause amends section 22 of the PSIOP Act. Section 22 relates to sections 20 and 21, which require a law enforcement agency to indemnify person who participate in controlled operations. Section 22 provides limitations on the circumstances in

which such a person must be indemnified, and clarifies that just because a person is indemnified in relation to a controlled operation, this does not mean they are indemnified in relation to any other matter concerning powers to conduct an investigation under the ICAC Act.

**Clause 30. Section 30 amended**

This clause amends section 30 of the PSIOP Act, which requires the Chief Officer of a law enforcement agency to produce an annual report about its controlled operations activities. The amendments to the section provide that the reports are required for both existing law enforcement agencies and by the ICAC. The ICAC's reports go to the Inspector, which is defined as the 'relevant oversight body' (see clause 28), whereas other law enforcement agencies continue to report to the Ombudsman.

**Clause 31. Section 31 amended**

This clause amends section 31 of the PSIOP Act so as to provide that the ICAC reports to the Inspector, while Police and the Australian Crime Commission continue to report to the Ombudsman.

**Clause 32. Section 33 amended**

This clause amends section 33 of the PSIOP Act. It makes a minor amendment to provide that the reporting requirements for the ICAC reflect the scope of the ICAC's authority relates to relevant improper conduct as well as relevant offences.

**Clause 33. Section 34 amended**

This clause amends section 34 of the PSIOP Act. It provides that the relevant oversight body has powers to inspect and audit a law enforcement agency's records in relation to controlled operations. The amendments ensure that the ICAC is inspected by the Inspector, while the Police and Australian Crime Commission continue to be inspected by the Ombudsman.

**Clause 34. Section 71 amended**

This clause amends section 71 of the PSIOP Act. Section 71 requires the chief officer of a law enforcement agency to arrange twice yearly audits of authorities granted in relation to assumed identities. The amendment specifies that this requirement applies to law enforcement agencies other than the ICAC, as the ICAC will be required to comply with the new section 71A (to be inserted by clause 35).

**Clause 35. Section 71A inserted**

This clause inserts a new section 71A (Audit of records – the ICAC) into the PSIOP Act. This new section places responsibility for auditing the ICAC's use of controlled operations on the Inspector, who is the statutory position responsible for auditing the ICAC's use of powers generally.

**Clause 36. Section 95 amended**

This clause amends section 95 of the PSIOP Act to clarify that section 95 does not apply to the ICAC. Section 95 specifies the situations in which delegations may be made under the PSIOP Act to other law enforcement agencies. The ICAC's powers of delegation are specified by the new section 95A, inserted by clause 37.

**Clause 37. Section 95A inserted**

This clause inserts a new section 95A (Delegation – ICAC) into the PSIOP Act. This clause specifies that the ICAC may delegate the ICAC’s powers under the PSIOP Act to a suitable person. This person must be a member ICAC staff, and a person who meets the eligibility criteria to be the ICAC. Only one delegation may be in force at any one time, which is more limited than section 95. This is because while delegation may be necessary to provide the ICAC with some flexibility, there is not a need to have the number of persons with delegations that Police have, because of the size of Police and the nature of Police investigations, which notably include drug matters in which PSIOP Act powers are used relatively frequently.

**Part 9 Amendment of Surveillance Devices Act****Clause 38. Act amended**

This clause notes that clauses 39 to 78 amend the *Surveillance Devices Act* (‘SDA’). These amendments are intended to give the ICAC the power to apply for warrants to use surveillance devices for the purpose of the ICAC’s investigations.

**Clause 39. Section 3 amended**

This clause amends the purposes of the SDA to include ICAC officers seeking warrants.

**Clause 40. Section 4 amended**

This clause inserts definitions that identify the ICAC, the ICAC Act, and the ICAC’s staff. Further, it defines the Inspector, who is a statutory officer in the ICAC Act who oversees the ICAC, and defines ‘improper conduct’ in accordance with the ICAC Act.

The amendments to the definition of a ‘relevant proceeding’ refers to examinations and public inquiries as defined by the ICAC Act. The definition of a senior officer includes the ICAC and delegate.

**Clause 41. Section 5 amended**

This clause amends section 5 of the SDA, which clarifies who is the primary officer responsible for executing a warrant. The amendment ensures that the provision applies in a similar manner to ICAC officers as it applies to law enforcement officers.

**Clause 42. Section 6 amended**

This clause amends section 6 of the SDA, which provides that in the event an ICAC investigation extends beyond the borders of the Northern Territory, and involves persons who are not ICAC Officers, the SDA applies provided an ICAC officer participates in the investigation.

**Clause 43. Section 11 amended**

This clause amends section 11 of the SDA, which makes it an offence to install listening devices. The amendments provide that the exemptions to the offences applicable to law enforcement officers are similarly applicable to ICAC officers.

**Clause 44. Section 12 amended**

This clause amends section 12 of the SDA, which make it an offence to install an optical surveillance devices respectively. The amendments provide that the exemptions to the offences applicable to law enforcement officers are similarly applicable to ICAC officers.

**Clause 45. Section 13 amended**

This clause amends section 13 of the SDA, which makes it an offence to install, use or maintain a tracking device. The amendments provide that exemptions to the offences applicable to law enforcement officers are similarly applicable to ICAC officers.

**Clause 46. Section 14 amended**

This clause amends section 14 of the SDA, which makes it an offence for a law enforcement officer to install, use or maintain a data surveillance device without a warrant. The amendments make the offence apply to ICAC officers in the same way as it applies to law enforcement officers.

**Clause 47. Section 15 amended**

This clause amends section 15 of the SDA, which makes it an offence to communicate or publish private information derived from the use of a surveillance device. The amendments provide that exemptions to the offence applicable to law enforcement officers similarly apply to ICAC officers.

**Clause 48. Section 16 amended**

This clause amends section 16 of the SDA, which makes it an offence for a law enforcement officer to communicate or publish information obtained by use of a data surveillance device. The amendments make the offence apply to ICAC officers as it applies to law enforcement officers.

**Clause 49. Section 19 amended**

This clause amends section 19 of the SDA, which provides a process for obtaining warrants to use surveillance devices. The amendments provide the circumstances in which an ICAC officer can apply for a surveillance devices warrant. These are similar to the circumstances in which a law enforcement officer can apply for such a warrant, but relate to an investigation into improper conduct as defined by the ICAC Act, rather than an offence per se.

**Clause 50. Section 20 amended**

This clause amends section 20 of the SDA, which provides a process for obtaining a warrant remotely when the usual process is impracticable. The amendment gives ICAC officers a similar ability to apply for warrants remotely.

**Clause 51. Section 21 amended**

This clause amends section 21 of the SDA, which provides the power for a Judge to issue a warrant. The amendments to this section provides a separate, but similar test for when a Judge may issue a surveillance device warrant to an ICAC officer.



Where the test for a law enforcement officer refers to ‘the nature and gravity of the alleged offence’, the test for an ICAC officer refers to ‘the nature and gravity of the alleged improper conduct ... including the extent to which the alleged improper conduct is a serious breach of public trust’. This reflects the purpose of the ICAC’s investigations, and the kind of harm the ICAC’s activities are primarily directed at dealing with.

**Clause 52.                    Section 22 amended**

This clause amends section 22 of the SDA, which sets out what a surveillance device warrant must contain. The amendments ensure that the content of the warrant logically covers the basis on which an ICAC warrant will be issued, where this is applicable.

**Clause 53.                    Section 23 amended**

This clause amends section 23 of the SDA, which sets out what a surveillance device warrant may authorise. The amendments make the section equally applicable to an ICAC officer as to a law enforcement officer.

**Clause 54.                    Section 24 amended**

This clause amends section 24 of the SDA, which provides for applications to be made to extend or vary a surveillance device warrant. The amendments provide that ICAC officers can also seek extensions and variations of such warrants.

**Clause 55.                    Section 25 amended**

This clause amends section 25 of the SDA, which provides that a Judge can revoke a warrant issued under the SDA. The amendments ensure that a Judge can equally revoke a warrant issued to an ICAC officer, and in this situation it is the ICAC who must be notified of the revocation.

**Clause 56.                    Section 26 amended**

This clause amends section 26 of the SDA, which provides that if use of a surveillance device is no longer necessary, such use must be discontinued. The amendments provide that this section applies to law enforcement agencies only. Equivalent provisions in relation to the ICAC are inserted by clause 57 as section 26A.

**Clause 57.                    Section 26A inserted**

This clause inserts a new section 26A (Discontinuing use of surveillance device under warrant – ICAC) into the SDA. The new section imposes similar requirements on the ICAC as section 26 imposes on a law enforcement agency.

**Clause 58.                    Section 27 amended**

This clause amends section 27 of the SDA, which provides for applications to be made for a warrant to retrieve a surveillance device. The amendments provide that ICAC officers can also apply for retrieval warrants.

**Clause 59. Section 28 amended**

This clause amends section 28 of the SDA, which provides for an application for a retrieval warrant to be made remotely. The amendment allows ICAC officers to also remotely apply for retrieval warrants.

**Clause 60. Section 30 amended**

This clause amends section 30 of the SDA, which sets out what a retrieval warrant must contain. The amendment makes these details relevant to either a retrieval warrant issued to a law enforcement officer or an ICAC officer.

**Clause 61. Section 31 amended**

This clause amends section 31 of the SDA, which sets out what a retrieval warrant authorises. The amendment makes these details relevant to either a retrieval warrant issued to a law enforcement officer or an ICAC officer.

**Clause 62. Section 32 amended**

This clause amends section 32 of the SDA, which provides that a Judge has the power to revoke a retrieval warrant. The amendment provides that a Judge also has the power to revoke a retrieval warrant issued to an ICAC officer, and that in this situation it is the ICAC who must be notified of the revocation. Similarly to law enforcement agencies, the ICAC is required to apply for revocation of a retrieval warrant if the grounds for issuing or executing a retrieval warrant no longer exist.

**Clause 63. Section 46 amended**

This clause amends section 46 of the SDA, which allows a Supreme Court Judge to make an order authorising publication of material obtained from a surveillance device, where this is to protect or further the public interest. An amendment to section 46(4) (b) fixes a typo in relation to the placement of the word 'or'. The insertion of subsection 46(4)(b)(iv) allows the Judge to order that a report of surveillance device material may be given to the ICAC in addition to the other law enforcement bodies currently specified.

**Clause 64. Section 47 amended**

This clause amends section 47 of the SDA, which sets out requirements for the form and content of an application for a publication order under section 46. The amendment ensures that this provision applies equally to an applicant who is an ICAC officer.

**Clause 65. Section 53 amended**

This clause amends section 53 of the SDA, which authorises the use of 'local protected information' for certain specified purposes. Local protected information is defined by section 51, and means information obtained under a warrant issued under the SDA, as opposed to information obtained under a warrant from another jurisdiction.

The amendments provide that the ICAC is authorised to use local protected information to keep its records and to report on its use of surveillance devices, similarly to law enforcement agencies. It also authorises use of local protected

information to make a protected communication (a whistleblower disclosure in accordance with Part 6 of the ICAC Act), or to deal with an allegation of improper conduct (as defined by the ICAC Act, see clause 42 of this Bill).

**Clause 66.                   Section 55 amended**

This clause amends section 55 of the SDA, which imposes requirements for an investigating body to keep records obtained by use of a surveillance device securely. The amendments ensure that similar obligations are placed on the ICAC as are placed on a law enforcement agency.

**Clause 67.                   Section 56 amended**

This clause amends section 56 of the SDA, which provides some protection for investigation methodologies that use surveillance devices. It enables a person to object to evidence being led in proceedings before a court or tribunal that would reveal details of such methods. The amendments provide that such objections can be made in relation to evidence proposed to be led in an examinations or public inquiry under the ICAC Act.

**Clause 68.                   Section 58 amended**

This clause amends section 58 of the SDA, which requires a follow-up report to a Judge who issued a surveillance device warrant about actions taken as a result. The amendment requires that an ICAC officer must provide such a follow-up report, similarly to a law enforcement officer.

**Clause 69.                   Section 59 amended**

This clause amends section 59 of the SDA, which imposes annual reporting requirements on law enforcement agencies in relation to the use of surveillance device powers. The amendment imposes similar reporting requirements on the ICAC, but with some necessary adaptations to reflect the ICAC's functions under the ICAC Act. The ICAC cannot apply for emergency authorisations and so does not have reporting requirements in relation to such authorisations.

**Clause 70.                   Section 60 amended**

This clause amends section 60 of the SDA, which requires key documents in relation to the issuing of warrants to be kept by a law enforcement agency. The amendments impose similar obligations on the ICAC, with necessary changes to reflect that ICAC officers cannot apply for emergency authorisations.

**Clause 71. Section 61 amended**

This clause amends section 61 of the SDA, which requires further details to be kept in relation to the use and usefulness of warrants. The amendments impose similar obligations on the ICAC as the existing obligations imposed on law enforcement agencies, but do not concern emergency authorisations.

**Clause 72. Section 62 amended**

This clause amends section 62 of the SDA, which requires a law enforcement agency to keep a register of warrants and emergency authorisations. The amendments require the ICAC to keep an equivalent register, although not for emergency authorisations because the ICAC cannot obtain emergency authorisations.

**Clause 73. Section 63 amended**

This clause amends section 63 of the SDA. Section 63 relates to the Ombudsman's oversight of the use of surveillance devices by law enforcement agencies. The amendment makes it clear that the Ombudsman's oversight role does not extend to the ICAC. Oversight of the ICAC is provided by clause 74, which inserts sections 64A and 64B.

**Clause 74. Sections 64A and 64B inserted**

This clause inserts sections 64A (Inspection of ICAC records by Inspector) and 64B (Inspector's records on investigations) into the SDA. These new sections impose an equivalent requirement on the Inspector to inspect the ICAC in relation to the use of surveillance devices, as sections 63 and 64 imposes on the Ombudsman.

**Clause 75. Section 67 amended**

This clause amends section 67 of the SDA, which provides an offence of damaging or interfering with a surveillance device. The amendment makes this offence equally applicable, irrespective of whether the device was installed by a law enforcement officer or an ICAC officer.

**Clause 76. Section 70 amended**

This clause amends section 70 of the SDA, which deal with the situation where an investigator using a surveillance device inadvertently learns information that the person was not expecting to learn. It enables evidence of the unexpected information to be given, provided that it relates to a warrant based on an application made in good faith. The amendment provides that this section applies equally to ICAC officers as it applies to law enforcement officers.

**Clause 77. Section 71 amended**

This clause amends section 71 of the SDA, which enables evidentiary certificates to be issued in relation to certain technical matters concerning the use of a surveillance device. The amendments provide that such an evidentiary certificate may also be issued by a senior officer of the ICAC.

**Clause 78. Section 76 amended**

This clause amends section 76 of the SDA, which provides protection from liability for law enforcement officers and certain other persons in relation to acts done in a good faith under the SDA. The amendments extend this provision to apply to an ICAC officer.

**Part 10 Amendment of Telecommunications (Interception) Northern Territory Act****Clause 79. Act amended**

This clause notes that clauses 80 to 95 amend the *Telecommunications (Interception) Northern Territory Act* ('TI Act'). It should be noted that for the ICAC to exercise powers under this Act, it will be necessary for the Commonwealth to also approve that the ICAC is exempt from certain offences under Commonwealth legislation. These amendments will provide the basis for the Commonwealth to be satisfied that the ICAC will be subject to suitable processes and oversight in order to grant such an exemption.

**Clause 80. Long title amended**

This clause amends the long title of the TI Act so that it will accurately reflect the new scope of the Act, which also covers the ICAC.

**Clause 81. Section 3 amended**

This clause amends various definitions in section 3 of the TI Act. The definition of 'inspecting officer' is amended to reflect that the Inspector will provide oversight of the ICAC in a similar manner to the oversight the Ombudsman provides over Police. The terms 'inspection', 'Inspector', and 'member of ICAC staff' are likewise defined to support this objective.

**Clause 82. Part 2, Division 1 heading inserted**

This clause, together with clause 83, divides Part 2 of the TI Act into two divisions, and specifies that Division 1 deals with records of the Police Force.

**Clause 83. Part 2, Division 2 inserted**

This clause, together with clause 82, divides Part 2 of the TI Act into two divisions, and provides the content of Division 2, which deals with records of the ICAC.

This clause inserts section 8A (Records connected with issue of warrants), 8B (Other records connected with an interception), 8C (documents to be given to Minister), 8D (Documents to be given to Commonwealth Minister), and 8E (Keeping and destruction of restricted records) into the TI Act. They mirror sections 4-8 of the TI Act, but impose requirements on the ICAC to keep relevant records, to keep such records securely, and to provide written reports to the NT and Commonwealth Ministers concerning the use of telecommunication interception powers.

**Clause 84. Part 3 heading amended**

This clause amends the heading of Part 3 of the TI Act so that it relates specifically to the Police Force. Equivalent provisions in relation to the ICAC are inserted by Part 3A (see clause 92).

**Clause 85. Section 9 amended**

This clause amends section 9 of the TI Act so as to reflect that Part 3 now applies to the Police Force in distinction to the ICAC, and to reference the correct division of Part 2, given that Part 2 has been amended to contain two divisions.

**Clause 86. Section 10 amended**

This clause amends section 10 of the TI Act so as to reflect that Part 3 now applies to the Police Force in distinction to the ICAC, and to reference the correct division of Part 2, given that Part 2 has been amended to contain two divisions.

**Clause 87. Section 11 amended**

This clause amends section 11 of the TI Act, again to ensure consistent referencing of relevant Parts and Divisions, given the amendments divide Part 2 into two divisions.

**Clause 88. Section 13 amended**

This clause amends section 13 of the TI Act, so as to reflect that Part 3 now applies to the Police Force in distinction to the ICAC.

**Clause 89. Section 14 amended**

This clause amends section 14 of the TI Act. The amendment changes a reference to a section of the TI Act that contains an offence. The relevant offence has been moved from section 16(1) to section 17A (1) as part of arranging sections in a logical order given the insertion of sections to deal with the ICAC.

**Clause 90. Sections 15 and 16 replaced**

This clause repeals section 15 and 16 of the TI Act, and inserts Part 3A (Inspections by ICAC records and reports by Inspector).

Sections 15 and 16 are not in fact removed from the TI Act. Section 16 has been moved to a new location at section 17A of the TI Act (see clause 92). Section 15 has been moved to a new location at s 20 of the TI Act (see clause 95).

Part 3A mirrors Part 3, but applies to inspections of the ICAC by the Inspector, as opposed to inspections of the Police Force by the Ombudsman. It provides for new sections 15 (General power to inspect and report on ICAC records), 16 (Regular inspections of ICAC records), 16A (Report on contravention), 16B (Notification of report), 16C (General powers of inspections in relation to the ICAC and 16D (Use of information).

**Clause 91. Section 17 amended**

This clause amends section 17 of the TI Act. The amendment adds a reference to Part 3A to ensure that the ICAC's reports regarding its activities under the TI Act are also required to be provided to the Commonwealth Minister.

**Clause 92. Section 17A inserted**

This clause inserts a new section 17A (Confidentiality of information obtained under warrant) into the TI Act. This section is in fact the offence that was at section 16, but which has now been moved to section 17A to preserve a logical structure for the TI Act, given the new sections that have been added. Shifting this offence to section 17A means that it is logically placed together with the general confidentiality offence at section 18.

The minor changes in wording includes the broadened definition of 'inspecting officer', which now means either the Ombudsman or the Inspector, depending on which body is subject to inspection.

**Clause 93. Section 18 amended**

This clause amends the title to section 18. The amendment clarifies that this offence is a general confidentiality offence, as distinct from the offence at section 17A which specifically applies in relation to information obtained under a warrant.

**Clause 94. Section 19 amended**

This clause amends section 19 of the TI Act. Section 19 makes it an offence to hinder an inspecting officer or fail to comply with certain notices issued by an inspecting officer. The amendments ensure that the offence refers to notices issued by inspecting officers who inspect the ICAC as well as inspecting officers who investigate Police.

**Clause 95. Section 20 inserted**

This clause inserts section 20(Protection of Ombudsman, Inspector and inspecting officers from liability) into the TI Act. This reproduces the section that was previously found at section 15 of the TI Act, however it has been amended to provide standard 'good faith' protection for the Inspector as well as the Ombudsman.

**Part 11 Amendment of Witness Protection (Northern Territory) Act****Clause 96. Act amended**

This clause notes that clauses 97 to 104 amend the *Witness Protection (Northern Territory) Act* ('WPA'). The amendments both broaden the definition of a witness to enable the witness to be considered for the witness protection program administered by NT Police, but also give the ICAC the power to make its own arrangements to protect a witness, including the power to apply for orders to issue new identities.

**Clause 97. Section 3 amended**

This clause amends section 3 of the WPA to insert a number of definitions specific to the ICAC's activities by reference to the terminology of the ICAC Act. It amends the definition of an 'approved authority' to include the ICAC. Witnesses are potentially eligible for protection when they have made a statement to an 'approved authority'. Approved authorities have the ability to apply for court orders for the purpose of authorising new identities and other matters. The ICAC is to be given these powers to enable it to take steps to protect a witness.

**Clause 98. Section 5 amended**

This clause amends section 5 of the WPA, which provides for the establishment of the Territory witness protection program ('TWPP'). This clause enables the Police Commissioner to consider a person for the TWPP in order to provide protection for a witness who is attending an ICAC examination or public inquiry.

**Clause 99. Section 8 amended**

This clause amends section 8 of the WPA, which provides that the Police Commissioner has the responsibility of deciding who is included in the TWPP. The amendment reflects that an ICAC witness may be giving evidence about improper conduct that may or may not be an offence. The amendment ensures that the seriousness of the conduct is relevant to the assessment of whether the witness is included in the TWPP.

**Clause 100. Section 16 amended**

This clause amends section 16 of the WPA, which sets out the effect of an order authorising a new identity under the WPA. The amendment adds a reference to the relevant provision (the new section 29C) under which such orders are issued in response to an application by the ICAC.

**Clause 101. Section 28 amended**

This clause amends section 28 of the WPA, which sets out what the Registrar of Births, Deaths and Marriages must do when cancelling a person's new identity. The amendment ensures that relevant identity documentation is returned to the ICAC where such documentation was issued by the ICAC under the new Part 2A.

**Clause 102. Part 2A inserted**

This clause inserts a new Part 2A into the WPA, including new section 29A(Application of Part), 29B (orders for protection), 29C(Power of Supreme Court to make order), 29D(Memorandum of understanding – content), 29E (memorandum of understanding –signing), 29F (memorandum of understanding – amending), 29G (Restoration of former identity)), 29H (When ICAC may take action to restore former identity), 29J (ICAC must apply to Supreme Court to restore former identity), 29K (Approved authority may apply to Court to restore former identity) and 29L (Power of Supreme Court to make order).



This Part provides processes under which the ICAC can apply for a witness to adopt an assumed identity. It sets out stringent requirements for an agreement which such a witness must adhere to and provides for the processes under which a person's former identity can be restored, and situations where this must occur. These requirements are very similar to those in the formal witness protection program.

**Clause 103. Section 33 amended**

This clause amends section 33 of the WPA, which provides that it is an offence to disclose certain information about protected witnesses unless it is necessary to do so for certain limited purposes. One of those limited purposes is to allow complaints about the conduct of a member of the Police Force by the Ombudsman under the *Ombudsman Act*. The Police Force administers the TWPP, so investigation of allegations of Police misconduct may necessarily involve handling information which would otherwise be protected by the TWPP.

**Clause 104. Section 34 amended**

This clause amends section 34 of the WPA, which provides that it is an offence for a participant in the WPA to reveal information about the person or the person's family's participation in the witness protection program. The amendment ensures that this offence is not an impediment to reporting information to the ICAC as a whistleblower, or to cooperating with an ICAC investigation.

**Part 12 Other Acts amended**

**Clause 105. Other Acts amended**

This clause provides that the Schedule to this Bill makes minor additional amendments to other legislation.

**Part 13 Repeal**

**Clause 106. Repeal of Act**

This is a standard clause for legislation which consists entirely of amendments to other legislation. It provides that the Bill ceases to have effect once it has performed its function of amending the other legislation.

**Schedule Other Acts Amended**

The Schedule removes what will be obsolete references to the *Public Interest Disclosure Act* in the *Education and Care Services (National Uniform Legislation) Act* and the *Rail Safety (National Uniform Legislation) Act*. It replaces a reference to the *Public Interest Disclosure Act* with a reference to the ICAC Act in the *Evidence (National Uniform Legislation) Act*.