

NORTHERN TERRITORY OF AUSTRALIA

INDEPENDENT COMMISSIONER AGAINST CORRUPTION
(CONSEQUENTIAL AND RELATED AMENDMENTS) ACT 2018

Act No. 3 of 2018

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 3 of 2018

An Act to amend various Acts in consequence of the enactment of the
Independent Commissioner Against Corruption Act

[Assented to 21 February 2018]
[Second reading 19 October 2017]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Independent Commissioner Against Corruption (Consequential and Related Amendments) Act 2018*.

2 Commencement

This Act commences on the commencement of section 17 of the *Independent Commissioner Against Corruption Act*.

Part 2 Amendment of Correctional Services Act

3 Act amended

This Part amends the *Correctional Services Act*.

4 Section 19A inserted

After section 19

insert

19A Commissioner to facilitate ICAC access

- (1) The Commissioner must take all reasonable steps to facilitate access by an ICAC officer to:
 - (a) a correctional services establishment; and
 - (b) a person (including an offender), document or thing under the custody or control of the Commissioner.
- (2) Despite section 19(2), the Commissioner may refuse to facilitate access as mentioned in subsection (1) only if the Commissioner believes on reasonable grounds that the access would compromise the security or good order of a correctional services establishment or an offender.
- (3) In this section:

ICAC officer means:

- (a) the ICAC; or
- (b) a member of ICAC staff as defined in section 4 of the *Independent Commissioner Against Corruption Act*.

5 Section 151 amended

Section 151, definition **protected correspondent**, paragraph (i)

omit, insert

- (i) the ICAC;

6 Section 156 amended

- (1) After section 156(1)

insert

- (1A) Despite subsection (1), for protected items where the protected correspondent is the ICAC, the nominated examiner is:
 - (a) the Inspector; or
 - (b) a person agreed by the Commissioner and the ICAC.

(2) After section 156(2)

insert

(3) In this section:

Inspector, see section 4 of the *Independent Commissioner Against Corruption Act*.

Part 3 Amendment of Criminal Code

7 Act amended

This Part amends the Criminal Code.

8 Section 1 amended

(1) Section 1, definition **gain**

omit

(2) Section 1

insert (in alphabetical order)

benefit, for Part IV, see section 75B.

gain:

(a) means:

(i) gain of property; or

(ii) gain of services provided free of cost or at less than the usual cost; and

(b) includes temporary gain and a gain by keeping what one has.

improper, for Part IV, see section 75C.

obtain, for Part IV, see section 75A.

public officer, for Part IV, see section 75A.

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

Part IV, Division 1, Division 2 heading and sections 77 to 82

repeal, insert

Division 1 Disclosure of confidential information and corruption and abuse of office**Subdivision 1 Interpretation and preliminary matters****75A Definitions**

In this Part:

benefit, see section 75B.

improper, see section 75C.

obtain includes to get or receive.

public officer, see section 4 of the *Independent Commissioner Against Corruption Act*.

75B Meaning of *benefit*

- (1) ***Benefit*** means a benefit of any kind, including a non-pecuniary benefit.
- (2) For this Part:
 - (a) a benefit is taken to be requested by a person:
 - (i) whether the benefit is a current benefit or a promise of a future benefit; and
 - (ii) whether the benefit is to be received by the person or another person; and
 - (b) a benefit is taken to be obtained by a person:
 - (i) whether the benefit is a current benefit or a promise of a future benefit; and
 - (ii) whether the benefit is received by the person or another person; and

- (c) a benefit is taken to be offered by a person to a public officer:
 - (i) whether the benefit is a current benefit or the promise of a future benefit; and
 - (ii) whether the benefit is to be received by the public officer or another person; and
- (d) a benefit is taken to be given by a person to a public officer:
 - (i) whether the benefit is a current benefit or the promise of a future benefit; and
 - (ii) whether the benefit is received by the public officer or another person.

75C Improper conduct

- (1) A person's conduct is ***improper*** if the conduct, in the circumstances, warrants criminal sanction.
- (2) The finder of fact must find the conduct improper unless:
 - (a) the finder of fact is satisfied that:
 - (i) the conduct is trivial; or
 - (ii) the conduct has caused only minimal damage to the public interest; and
 - (b) the finder of fact is satisfied that the conduct, in the circumstances, does not warrant criminal sanction.
- (3) In deciding whether a person's conduct, in the circumstances, warrants criminal sanction, the finder of fact must have regard to the following matters:
 - (a) if the person is a public officer – whether the person behaved in a way reasonably expected of a public officer;
 - (b) if the person is not a public officer – whether the person behaved in a way reasonably expected of the person;
 - (c) whether the person acted in an honest and reasonable belief that the person was lawfully entitled to act in the manner the person acted in the conduct being considered;
 - (d) the seriousness of the conduct and any result of the conduct;

- (e) whether the conduct occurred:
 - (i) as an isolated incident; or
 - (ii) as part of repeated similar conduct; or
 - (iii) as part of a course of conduct.

75D Dismissal of trivial case

If, in any proceedings for an offence under this Part, the court considers that the offence is of a trivial or merely technical nature, the court may in its discretion dismiss the case.

Subdivision 2 Offences

76 Disclosure of confidential information

- (1) A person commits an offence if:
 - (a) the person:
 - (i) is a public officer who obtains information because of the officer's position; or
 - (ii) was a public officer who obtained information because of the person's position as a public officer; and
 - (b) the information is confidential information and the person has knowledge of that circumstance; and
 - (c) the person intentionally engages in conduct; and
 - (d) the conduct is improper; and
 - (e) the conduct results in the disclosure of the information and the person is reckless in relation to the result.

Maximum penalty: Imprisonment for 3 years.

- (2) Strict liability applies to subsection (1)(a)
- (3) Absolute liability applies to subsection (1)(d).
- (4) A person commits an offence if:
 - (a) the person:
 - (i) is a public officer who obtains information because of the officer's position; or

- (ii) was a public officer who obtained information because of the person's position as a public officer; and
- (b) the information is confidential information and the person has knowledge of that circumstance; and
- (c) the person intentionally engages in conduct; and
- (d) the conduct is improper; and
- (e) the conduct results in the disclosure of the information and the person is reckless in relation to the result; and
- (f) the improper conduct is engaged in with the intention of gaining a benefit.

Maximum penalty: Imprisonment for 5 years.

- (5) Strict liability applies to subsection (4)(a).
- (6) Absolute liability applies to subsection (4)(d).

77 Corruption

- (1) A public officer commits an offence if:
 - (a) the officer intentionally requests or knowingly obtains a benefit; and
 - (b) the officer knows the benefit is:
 - (i) an inducement to influence the officer's performance of the officer's powers or functions; or
 - (ii) a reward for the officer having performed the officer's powers or functions in a particular way or for a particular result; and
 - (c) the conduct mentioned in paragraph (a) is improper.

Maximum penalty: Imprisonment for 10 years.

- (2) Absolute liability applies to subsection (1)(c).
- (3) A person commits an offence if:
 - (a) the person intentionally offers or gives a benefit to another person; and

- (b) the person offered or given the benefit is a public officer and the person offering or giving the benefit is reckless in relation to that circumstance; and
- (c) the person offering or giving the benefit does so with the intention that the benefit is:
 - (i) an inducement to influence the officer's performance of the officer's powers or functions; or
 - (ii) a reward for the person; and
- (d) the conduct mentioned in paragraph (a) is improper.

Maximum penalty: Imprisonment for 10 years.

- (4) Absolute liability applies to subsection (3)(d).

78 Other corrupting benefits

- (1) A public officer commits an offence if:
 - (a) the officer intentionally requests or knowingly obtains a benefit; and
 - (b) the officer knows the benefit would tend to:
 - (i) be an inducement to influence the officer's performance of the officer's powers or functions; or
 - (ii) be a reward for the officer; and
 - (c) the conduct mentioned in paragraph (a) is improper.

Maximum penalty: Imprisonment for 5 years.

- (2) Absolute liability applies to subsection (1)(c).
- (3) A person commits an offence if:
 - (a) the person intentionally offers or gives a benefit to another person; and
 - (b) the person offered or given the benefit is a public officer and the person offering or giving the benefit is reckless in relation to that circumstance; and

- (c) the person offering or giving the benefit knows the benefit would tend to:
 - (i) be an inducement to influence the officer's performance of the officer's powers or functions; or
 - (ii) be a reward for the officer.
- (d) the conduct mentioned in paragraph (a) is improper.

Maximum penalty: Imprisonment for 5 years.

- (4) Absolute liability applies to subsection (3)(d).

79 Advancing secret personal interests

- (1) A public officer who is a public sector employee commits an offence if:
 - (a) the officer knowingly holds a private interest; and
 - (b) the officer would be able to exercise the officer's duties or functions as an officer in a manner that substantially affects the private interest and the officer is reckless in relation to that circumstance; and
 - (c) the officer had a reasonable opportunity to disclose the private interest to an appropriate person; and
 - (d) the officer fails to disclose the private interest to an appropriate person and is reckless in relation to that failure; and
 - (e) the conduct mentioned in paragraph (d) is improper.

Maximum penalty: Imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(c).
- (3) Absolute liability applies to subsection (1)(e).
- (4) A public officer commits an offence if:
 - (a) the officer knowingly holds a private interest; and
 - (b) the officer:
 - (i) intentionally exercises the officer's duties or functions as a public officer in a manner that materially affects the private interest; and

- (ii) obtains a benefit as a result of the conduct mentioned in subparagraph (i); and
- (iii) is reckless in relation to that result; and
- (c) the officer fails to disclose the private interest to an appropriate person and is reckless in relation to that failure; and
- (d) the conduct mentioned in paragraphs (b) and (c) is improper.

Maximum penalty: Imprisonment for 7 years.

Examples for subsection (4)(b)

- (a) *the officer influences the performance or management of, or influences the decision whether to enter into or terminate, a contract or agreement made on account of the public sector that affects the value of a business in which the officer is a partner; or*
 - (b) *the officer influences a decision to refuse a licence to a business that is a competitor with a business which owes the officer money.*
- (5) Absolute liability applies to subsection (4)(d).
- (6) This section does not apply to a person who is a public officer by the sole reason of being a member, officer or employee of a public body mentioned in section 16(1)(l) of the *Independent Commissioner Against Corruption Act*.
- (7) In this section:

appropriate person means one of the following:

- (a) for a public officer who is a public sector employee – the Chief Executive Officer of the Agency in, or in relation to, which the public officer is employed or engaged;
- (b) for a public officer who is not a public sector employee or a Chief Executive Officer – the Chief Executive Officer of the Agency in, or in relation to, which the public officer is employed or engaged;
- (c) for a public officer who holds an office established under an Act and is not a public sector employee – the minister administering that Act;
- (d) for a public officer mentioned in section 16(2)(f) of the *Independent Commissioner Against Corruption Act* – the person mentioned in section 16(2)(a) to (e) of that Act by whom, or on behalf of whom, the public officer is engaged;

- (e) for a public officer who is a Chief Executive Officer of an Agency – the minister responsible for that Agency;
- (f) for a minister other than the Chief Minister – the Chief Minister;
- (g) for the Chief Minister – the Administrator;
- (h) for a member of the Legislative Assembly other than the Speaker – the Speaker;
- (i) for the Speaker – the Deputy Speaker;
- (j) for a police officer other than the Commissioner of Police – the Commissioner of Police;
- (k) for the Chief Justice – the next most senior Supreme Court Judge;
- (l) for the Chief Judge – the Chief Justice;
- (m) for any other Local Court Judge – the Chief Judge;
- (n) for the President of the Civil and Administrative Tribunal (the ***Tribunal***) – the Chief Judge;
- (o) for any member of the Tribunal who is a judicial officer – the Chief Judge;
- (p) for any other member of the Tribunal – the President of the Tribunal;
- (q) for the Territory Coroner – the Chief Judge;
- (r) for the Deputy Coroner – the Territory Coroner;
- (s) for a public officer who is an employee of a local government council other than the CEO (as defined in section 3 of the *Local Government Act*) of that council – the CEO of that council;
- (t) for the CEO of a local government council – the principal member (as mentioned in section 42 of the *Local Government Act*) of that council;
- (u) for a member of a local government council other than the principal member – the principal member;
- (v) for the principal member of a local government council – the CEO of that council.

private interest means a legal or financial interest that is held directly or indirectly.

80 Abuse of office – dishonesty

- (1) A public officer commits an offence if:
- (a) the officer:
 - (i) intentionally provides, certifies or approves a document that is false in a material particular; or
 - (ii) intentionally modifies a document so that it is false in a material particular; and
 - (b) the material particular mentioned in paragraph (a) relates to either of the following circumstances and the officer has knowledge of that circumstance:
 - (i) the expenditure of public money;
 - (ii) the rights of a person; and
 - (c) the conduct mentioned in paragraph (a) is improper.
- (2) For subsection (1)(b), a material particular relates to the expenditure of public money if it relates to one or more of the following:
- (a) remuneration payable, or claimed to be payable, to any person;
 - (b) payment of money;
 - (c) delivery of goods or services;
 - (d) records or documents made for any accounting purposes, financial purpose or other similar purpose.

Maximum penalty: Imprisonment for 3 years.

- (3) Absolute liability applies to subsection (1)(c).

Note for section 80

If false information is provided for the purpose of gain to the public officer, the offence of false accounting under section 233 may be applicable.

81 Abuse of office – arbitrary and prejudicial conduct

- (1) A public officer commits an offence if:
- (a) the officer intentionally engages in conduct; and
 - (b) the conduct is intentionally arbitrary or an abuse of process; and
 - (c) the conduct is prejudicial to the rights of another person and the officer is reckless in relation to that circumstance; and
 - (d) the conduct is improper.

Maximum penalty: Imprisonment for 2 years.

- (2) Absolute liability applies to subsection (1)(d).

- (3) A public officer commits an offence if:

- (a) the officer intentionally engages in conduct; and
- (b) the conduct is intentionally arbitrary or an abuse of process; and
- (c) the conduct is prejudicial to the rights of another person and the officer is reckless in relation to that circumstance; and
- (d) the conduct is improper; and
- (e) the conduct is engaged in with the intention of obtaining a benefit.

Maximum penalty: Imprisonment for 3 years.

- (4) Absolute liability applies to subsection (3)(d).

10 Section 84 repealed

Section 84

repeal

11 Section 86A inserted

After section 86

insert

86A Alternative verdicts

- (1) This section applies if, in a proceeding against a person charged with an offence against section 77(1) (the ***prosecuted offence***), the trier of fact:
 - (a) is not satisfied beyond reasonable doubt that the person committed an offence against section 77(1); but
 - (b) is satisfied beyond reasonable doubt that the person committed any offence in this Division (an ***alternative offence***).
- (2) The trier of fact may find the person not guilty of the prosecuted offence but guilty of the alternative offence.

12 Part XI, Division 12 inserted

After section 454

insert

**Division 12 Independent Commissioner Against Corruption
(Consequential and Related Amendments)
Act 2017****455 Definitions**

In this Division:

amending Act means the *Independent Commissioner Against Corruption (Consequential and Related Amendments) Act 2017*.

commencement means the commencement of Part 3 of the amending Act.

456 Application of sections 76 to 78, 80 and 81 as inserted by amending Act

- (1) Sections 76 to 78, 80 and 81, as inserted by the amending Act, apply only in relation to offences committed after the commencement.

- (2) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

457 Application of section 79 as inserted by amending Act

- (1) If, before the commencement, there was a failure to disclose a private interest in a company, section 79 as in force immediately before the commencement applies in relation to that failure.
- (2) If, before the commencement, there was a failure to disclose a private interest in property, manufacture, trade or business, section 80 as in force immediately before the commencement applies in relation to that failure.
- (3) Section 79 as in force after the commencement applies to a failure to disclose a private interest after the commencement irrespective of whether that failure began before or after the commencement.
- (4) Section 79, as inserted by the amending Act, applies in relation to offences committed after the commencement.

13 Schedule 1 amended

Schedule 1, after "Section 103A (Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings or against public officers)"

insert

Part IV (Offences against the administration of law and justice and against public authority), Division 1 (Disclosure of confidential information and corruption and abuse of office) (other than sections 83, 85 and 86)

Part 4 Amendment of Criminal Records (Spent Convictions) Act

14 Act amended

This Part amends the *Criminal Records (Spent Convictions) Act*.

15 Section 3 amended

Section 3(1), definition **law enforcement agency**, after paragraph (k)

insert

(l) the ICAC; or

16 Section 15A amended

(1) After section 15A(1A)

insert

(1B) In addition, sections 11 and 13 do not apply in respect of a spent record in relation to:

(a) an application for appointment or employment as the ICAC, an Acting ICAC, a member of ICAC staff, the Inspector or a member of Inspector staff; or

(b) anything done under section 126 of the *Independent Commissioner Against Corruption Act*.

(2) Section 15A(2)

insert (in alphabetical order)

Acting ICAC, see section 4 of the *Independent Commissioner Against Corruption Act*.

Inspector, see section 4 of the *Independent Commissioner Against Corruption Act*.

member of ICAC staff, see section 4 of the *Independent Commissioner Against Corruption Act*.

member of Inspector staff, see section 4 of the *Independent Commissioner Against Corruption Act*.

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

This Part amends the *Housing Act*.

18 Section 28X amended

Section 28X(3)

omit, insert

- (3) This section does not limit a person's right to make a complaint to the Ombudsman under the *Ombudsman Act*.

Part 6 Amendment of Independent Commissioner Against Corruption Act

19 Act amended

This Part amends the *Independent Commissioner Against Corruption Act*.

20 Section 164 amended

Section 164, heading

omit

Current investigations

insert

Information and records to be transferred

Part 7 Amendment of Legislative Assembly (Disclosure of Interests) Act

21 Act amended

This Part amends the *Legislative Assembly (Disclosure of Interests) Act*.

22 Section 5 amended

After section 5(4)

insert

- (5) Despite subsections (3) and (4), the ICAC or a person authorised in writing by the ICAC, may inspect and take a copy of, or extract from, the register at any time.

- (6) The ICAC may also inspect and take a copy of, or extract from, the register as kept by the Clerk for previous sessions of the Legislative Assembly, including the registrable interests disclosed by former members.

Part 8 Amendment of Procurement Act

23 Act amended

This Part amends the *Procurement Act*.

24 Section 5 amended

- (1) Section 5, before "The"

insert

(1)

- (2) Section 5, at the end

insert

- (2) The accountable officer for the Agency administering the *Independent Commissioner Against Corruption Act* is exempt from the need to comply with this Act in relation to the acquisition of investigative, legal and audit services.

Part 9 Amendment of Police (Special Investigative and Other Powers) Act

25 Act amended

This Part amends the *Police (Special Investigative and Other Powers) Act*.

26 Section 3 amended

- (1) Section 3

insert (in alphabetical order)

ICAC Act means the *Independent Commissioner Against Corruption Act*.

ICAC Minister, see section 4 of the ICAC Act.

Inspector, see section 4 of the ICAC Act.

Minister means:

- (a) for the ICAC – the ICAC Minister; or
- (b) otherwise – the Minister as defined in section 19 of the *Interpretation Act*.

relevant improper conduct means:

- (a) for corrupt conduct, in Part 2 – see section 10 of the ICAC Act; or
- (b) for anti-democratic conduct, in Part 2 – see section 15 of the ICAC Act.

relevant oversight body means:

- (a) for the ICAC – the Inspector; or
- (b) otherwise – the Ombudsman.

- (2) Section 3, definition **chief officer**, paragraph (c)

omit

(Cth).

insert

(Cth); or

- (3) Section 3, definition **chief officer**, after paragraph (c)

insert

(d) for the purposes of the ICAC Act – the ICAC.

- (4) Section 3, definition **law enforcement agency**

omit

either of

- (5) Section 3, definition **law enforcement agency**, paragraph (b)

omit

Commission.

insert

Commission;

-
- (6) Section 3, definition **law enforcement agency**, after paragraph (b)
insert
(c) the ICAC.
- (7) Section 3, definition **law enforcement officer**, paragraph (b)
omit
ACC.
insert
ACC; and
- (8) Section 3, definition **law enforcement officer**, after paragraph (b)
insert
(c) in relation to the ICAC – an authorised officer as defined in section 4 of the ICAC Act.
- (9) Section 3, at the end
insert
Note for section 3
The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

27 Section 11 amended

- (1) Section 11(2)(b)
omit, insert
(b) that the nature and extent of the following is such as to justify the conduct of a controlled operation in the Territory (whether or not it is also conducted in another participating jurisdiction):
(i) for ICAC – suspected criminal activity or suspected relevant improper conduct;
(ii) otherwise – suspected criminal activity; and
- (2) Section 11(2)(h)
omit
officer.

insert

officer; and

(3) After section 11(2)(h)

insert

(i) for the ICAC and, in the event that the operation is intended to be conducted entirely in the Territory, that the relevant improper conduct has been, is being or is likely to be committed.

28 Section 11A inserted

After section 11

insert

11A Territorial limitation on operations relating to relevant improper conduct

A controlled operation that relates to relevant improper conduct that is not also a relevant offence does not authorise controlled conduct outside the Territory.

29 Section 12 amended

After section 12(3)(f)

insert

(fa) identify the nature of the criminal activity (including the suspected relevant offences), or for an authority granted by the ICAC the relevant improper conduct, in relation to which the controlled conduct is to be engaged in; and

30 Section 19 amended

(1) Section 19(5)(a)(iii)

omit

lost; and

insert

lost;

(2) After section 19(5)(a)(iii)

insert

- (iv) relevant improper conduct other than the relevant improper conduct in respect of which the authorised operation was being conducted had occurred, or was likely to occur, and there was a substantial risk that evidence relating to that relevant improper conduct would be lost; and

31 Section 22 amended

Section 22(i)

omit, insert

(i) any other matter concerning:

- (i) powers of criminal investigation; or
(ii) powers to conduct an investigation under the ICAC Act.

32 Section 30 amended

(1) Section 30(1) and (3)

omit

Ombudsman

insert

relevant oversight body

(2) After section 30(2)(c)

insert

- (ca) the nature of the criminal activities, or for a report by the ICAC the nature of the relevant improper conduct, against which the authorised operations were directed;

33 Section 31 amended

(1) Section 31, heading

omit

Ombudsman

insert

relevant oversight body

- (2) Section 31(1) and (2)

omit

Ombudsman

insert

relevant oversight body

- (3) Section 31(1)(a), after "enforcement agency"

insert

that reported to that relevant oversight body under section 30

34 Section 33 amended

After section 33(2)(b)(iv)

insert

(iva) each relevant offence, or for an authority granted by the ICAC each instance of relevant improper conduct, in relation to which controlled conduct under the authority was to be engaged in; and

35 Section 34 amended

- (1) Section 34, heading

omit

Ombudsman

insert

relevant oversight body

- (2) Section 34(1) and (2)

omit (all references)

Ombudsman

insert

relevant oversight body

- (3) Section 34(3)
omit (first reference)
Ombudsman
insert
relevant oversight body

- (4) Section 34(3)
omit (second and third reference)
Ombudsman
insert
body

36 Section 71 amended

- (1) Section 71, heading, after "**records**"
insert
– law enforcement agencies other than the ICAC
- (2) Section 71(1), after "enforcement agency"
insert
, other than the ICAC,

37 Section 71A inserted

After section 71

insert

71A Audit of records – the ICAC

- (1) The Inspector must arrange for the records kept under section 70 by the ICAC for each authority in relation to the ICAC to be audited:
- (a) at least once every 6 months while the authority is in force;
and
 - (b) at least once in the 6 months after the cancellation or expiry of the authority.

-
- (2) The audit is to be conducted by a person appointed by the Inspector.
- (3) The person appointed to conduct the audit:
- (a) may be a member of ICAC staff; and
 - (b) must not be a person:
 - (i) who granted, varied or cancelled any of the authorities to which the records under section 70 relate; or
 - (ii) who is or was an authorised person under any of the authorities to which those records relate.
- (4) The results of an audit are to be reported to the Inspector.
- (5) In this section:
- member of ICAC staff***, see section 4 of the ICAC Act.

38 Section 95 amended

- (1) Section 95, heading, after "**Delegation**"
- insert*
- **chief officers other than ICAC**
- (2) Before section 95(1)
- insert*
- (1AA) This section (other than this subsection) does not apply to the ICAC.

39 Section 95A inserted

After section 95

insert

95A Delegation – ICAC

- (1) The ICAC may delegate any of the ICAC's powers or functions as chief officer under this Act (other than this power of delegation) to a member of ICAC staff who would be an eligible person to be appointed as the ICAC in accordance with section 111 of the ICAC Act.

(2) No more than one delegation may be in force under subsection (1) at any one time.

(3) In this section:

member of ICAC staff, see section 4 of the ICAC Act.

Part 10 Amendment of Surveillance Devices Act

40 Act amended

This Part amends the *Surveillance Devices Act*.

41 Section 3 amended

Section 3(c), after "officers"

insert

and ICAC officers

42 Section 4 amended

(1) Section 4

insert (in alphabetical order)

ICAC Act means the *Independent Commissioner Against Corruption Act*.

ICAC officer means:

(a) the ICAC; or

(b) a member of ICAC staff.

improper conduct, see section 9 of the ICAC Act.

Inspector, see section 4 of the ICAC Act.

member of ICAC staff, see section 4 of the ICAC Act.

(2) Section 4, definition ***applicant***, after "officer"

insert

or ICAC officer

- (3) Section 4, definition **public officer**, after "enforcement officer"
insert
and an ICAC officer
- (4) Section 4, definition **relevant proceeding**, paragraph (l), at the end
insert
or
- (5) Section 4, definition **relevant proceeding**, paragraph (m)
omit
Court.
insert
Court; or
- (6) Section 4, definition **relevant proceeding**, after paragraph (m)
insert
(n) an examination as defined in section 4 of the ICAC Act; or
(o) a public inquiry as defined in section 4 of the ICAC Act.
- (7) Section 4, definition **senior officer**, paragraph (b)
omit
(Cth);
insert
(Cth); or
- (8) Section 4, definition **senior officer**, after paragraph (b)
insert
(c) for the Independent Commissioner Against Corruption:
(i) the ICAC; or
(ii) a person to whom the ICAC's powers or functions under section 95A of the *Police (Special Investigative and Other Powers) Act* are delegated.

43 Section 5 amended

- (1) Section 5, heading, after "**officer**"
insert
or ICAC officer
- (2) Section 5, after "enforcement officer"
insert
or ICAC officer

44 Section 6 amended

- (1) Section 6, before "For"
insert
- (1)
- (2) Section 6, at the end
insert
- (2) For this Act, an investigation (as defined in section 4 of the ICAC Act) into improper conduct is taken to be conducted in this jurisdiction (whether or not it is also conducted in another jurisdiction) if an ICAC officer participates in the investigation.
- (3) In subsection (2):
investigation, see section 4 of the ICAC Act.

45 Section 11 amended

- Section 11(2)(b), after "enforcement officer"
insert
or an ICAC officer

46 Section 12 amended

- Section 12(2)(c) and (d), after "officer"
insert
or an ICAC officer

47 Section 13 amended

Section 13(2)(c), after "officer"

insert

or an ICAC officer

48 Section 14 amended

(1) Section 14, heading, after "**officers**"

insert

or ICAC officers

(2) Section 14(1), after "law enforcement officer"

insert

or an ICAC officer

49 Section 15 amended

After section 15(2)(e)

insert

(ea) to a communication or publication made by an ICAC officer:

- (i) to a person authorised by the ICAC for investigating, reporting or referring an allegation of improper conduct; or
- (ii) to the occupier of a place of a record or report of a private activity made as a direct or indirect result of the use at the place of an optical surveillance device in the circumstances mentioned in section 12(2)(c); or
- (iii) otherwise – in the performance of the officer's duty; or

50 Section 16 amended

(1) Section 16(1), after "law enforcement officer"

insert

or an ICAC officer

(2) After section 16(2)(d)

insert

(da) to a communication or publication made by an ICAC officer:

- (i) to a person authorised by the ICAC for investigating, reporting or referring an allegation of improper conduct; or
- (ii) otherwise in the performance of the officer's duty; or

51 Section 19 amended

(1) After section 19(1)

insert

(1A) An ICAC officer (or another person on the officer's behalf) may apply for the issue of a surveillance device warrant if the ICAC officer reasonably believes:

- (a) improper conduct has been, is being, is about to be or is likely to be committed; and
- (b) the use of a surveillance device is or will be necessary for the purpose of an investigation into improper conduct.

(2) Section 19(4)(a), after "(1)(b)"

insert

or (1A)

(3) After section 19(7)

insert

(8) In subsection (1A):

investigation, see section 4 of the ICAC Act.

52 Section 20 amended

Section 20(1), after "officer"

insert

or an ICAC officer

53 Section 21 amended

- (1) Section 21(2), after "be issued"
- insert*
- to a law enforcement officer
- (2) After section 21(2)
- insert*
- (3) In deciding whether a surveillance device warrant should be issued to an ICAC officer, the Judge must have regard to the following:
- (a) the nature and gravity of the alleged improper conduct for which the warrant is sought, including the extent to which the alleged improper conduct is a serious breach of public trust;
 - (b) the extent to which anyone's privacy is likely to be affected;
 - (c) the existence of any alternative way of obtaining the evidence or information sought to be obtained and the extent to which that way may assist or prejudice the investigation (as defined in section 4 of the ICAC Act);
 - (d) the evidentiary or intelligence value of any information sought to be obtained;
 - (e) any previous warrant sought or issued under this Division or a corresponding law (if known) in relation to the same conduct.

54 Section 22 amended

- (1) Section 22(1)(a), after "21(2)"
- insert*
- or (3)
- (2) Section 22(1)(b)(ii), after "offence"
- insert*
- or improper conduct
- (3) Section 22(1)(b)(ix), after "officer"
- insert*
- or ICAC officer

55 Section 23 amended

- (1) Section 23(3)(g), after "officer"
insert
or ICAC officer
- (2) Section 23(5), after "warrant"
insert
issued to a law enforcement officer
- (3) After section 23(5)
insert
- (5A) The authority conferred under a warrant issued to an ICAC officer may be exercised by an ICAC officer acting in the performance of the officer's duty.

56 Section 24 amended

- (1) Section 24(1), after "officer"
insert
or an ICAC officer
- (2) Section 24(4), after "21(2)"
insert
or (3)

57 Section 25 amended

- (1) Section 25(2)(b)
omit, insert
- (b) on application by or on behalf of:
- (i) for a warrant issued to a law enforcement officer – a law enforcement officer; or
 - (ii) for a warrant issued to an ICAC officer – an ICAC officer.

-
- (2) Section 25(4)
omit, insert
- (4) A Judge who revokes a warrant must give notice of the revocation:
- (a) for a warrant issued to a law enforcement officer – to the chief officer of the relevant law enforcement agency; or
 - (b) for a warrant issued to an ICAC officer – to the ICAC.
- (3) Section 25(5), after "law enforcement officer"
insert
or an ICAC officer
- (4) Section 25(5), after "chief officer"
insert
or the ICAC

58 Section 26 amended

Section 26, heading, after "**warrant**"

insert

– law enforcement agency

59 Section 26A inserted

After section 26, in Part 4, Division 2

insert

26A Discontinuing use of surveillance device under warrant – ICAC

- (1) This section applies if a surveillance device warrant is issued to an ICAC officer.
- (2) If the ICAC is satisfied the use of a surveillance device under the warrant is no longer necessary for the investigation, the ICAC must:
 - (a) take the steps necessary to ensure use of the surveillance device authorised by the warrant is discontinued as soon as practicable; and
 - (b) ensure an application is made for the revocation of the warrant.

-
- (3) If the ICAC is given notice that the warrant has been revoked by a Supreme Court Judge or Local Court Judge, the ICAC must take the steps necessary to ensure use of the surveillance device authorised by the warrant is discontinued immediately.
 - (4) If the ICAC officer to whom the warrant is issued, or who is primarily responsible for executing the warrant, reasonably believes use of a surveillance device under the warrant is no longer necessary for the investigation, the officer must tell the ICAC as soon as practicable.

60 Section 27 amended

- (1) Section 27(1), after "A law enforcement officer"
insert
or an ICAC officer
- (2) Section 27(1)(b), after "law enforcement officer"
insert
or ICAC officer

61 Section 28 amended

- Section 28(1), after "officer"
insert
or an ICAC officer

62 Section 30 amended

- Section 30(1)(b)(vi), after "officer"
insert
or ICAC officer

63 Section 31 amended

- Section 31(1)(e), after "officer"
insert
or ICAC officer

64 Section 32 amended

- (1) Section 32(2)(b)
omit, insert
- (b) on application by or on behalf of:
- (i) for a warrant issued to a law enforcement officer – a law enforcement officer; or
- (ii) for a warrant issued to an ICAC officer – an ICAC officer.
- (2) Section 32(4)
omit, insert
- (4) A Judge who revokes a warrant must give notice of the revocation:
- (a) for a warrant issued to a law enforcement officer – to the chief officer of the relevant law enforcement agency; or
- (b) for a warrant issued to an ICAC officer – to the ICAC.
- (3) Section 32(5), after "law enforcement officer"
insert
or an ICAC officer
- (4) Section 32(5), after "chief officer"
insert
or the ICAC
- (5) After section 32(7)
insert
- (8) If the ICAC is satisfied the grounds for issue of a retrieval warrant to an ICAC officer no longer exist, the ICAC must ensure an application is made to revoke the warrant.
- (9) If the ICAC officer to whom a retrieval warrant has been issued, or who is primarily responsible for executing a retrieval warrant, reasonably believes the grounds for issue of the warrant no longer exist, the officer must tell the ICAC as soon as practicable.

65 Section 46 amended

- (1) Section 46(4)(b)
omit
to: or
insert
to:
- (2) Section 46(4)(b)(i), at the end
insert
or
- (3) After section 46(4)(b)(iii)
insert
(iv) the ICAC; or

66 Section 47 amended

Section 47(2), after "officer"
insert
or an ICAC officer

67 Section 53 amended

- (1) Section 53(1)(f), after "agency"
insert
or the ICAC
- (2) Section 53(1)(h)
omit
information.
insert
information;

(3) After section 53(1)(h)

insert

- (i) to make a protected communication (as defined in section 4 of the ICAC Act) to the ICAC;
- (j) to deal with an allegation of improper conduct.

68 Section 55 amended

(1) After section 55(1)

insert

(1A) The ICAC must ensure:

- (a) a record or report obtained by the use of a surveillance device by an ICAC officer under a warrant or a corresponding warrant is kept in a secure place that is not accessible to people who are not entitled to deal with the record or report; and
- (b) a record or report mentioned in paragraph (a) is destroyed, if satisfied it is not likely to be required in relation to a purpose mentioned in section 52(3), 53(1) or 54(1).

(2) Section 55(2)

omit

Subsection (1) does

insert

Subsections (1) and (1A) do

69 Section 56 amended

(1) Section 56(4), after "officer"

insert

or an ICAC officer

(2) Section 56(7)

omit, insert

(7) In this section:

proceeding includes:

(a) a proceeding before:

(i) a court or tribunal; and

(ii) a board of inquiry under the *Inquiries Act*; and

(b) an examination as defined in section 4 of the ICAC Act; and

(c) a public inquiry as defined in section 4 of the ICAC Act.

70 Section 58 amended

Section 58(1), after "officer"

insert

or an ICAC officer

71 Section 59 amended

(1) Section 59(1)(h), after "devices"

insert

by the law enforcement agency

(2) After section 59(1)

insert

(1A) The ICAC must give a report to the Minister that includes the following information for each financial year:

(a) the number of applications for warrants by, and the number of warrants issued to, ICAC officers during the year;

(b) the number of remote applications for warrants by ICAC officers during the year;

(c) the number of applications for warrants by ICAC officers that were refused during the year, and the reasons for refusal;

-
- (d) the number of applications for extensions of warrants by ICAC officers during the year, the number of extensions granted or refused and the reasons why they were granted or refused;
 - (e) the number of prosecutions that were started during the year in which information obtained by the use of a surveillance device under a warrant was given in evidence and the number of the prosecutions that resulted in a finding of guilt;
 - (f) the number of investigations under the ICAC Act that were concluded during the year in which information obtained by the use of a surveillance device under a warrant formed part of the relevant evidence;
 - (g) the number of investigations referred to in paragraph (f) which resulted in a finding that:
 - (i) a person or body had committed improper conduct; or
 - (ii) a person or body had committed corrupt conduct; or
 - (iii) a person or body had committed anti-democratic conduct (as defined in section 15 of the ICAC Act);
 - (h) the number of investigations that were concluded during the year in which information obtained by the use of a surveillance device under warrant was provided in a brief of evidence to the Director of Public Prosecutions or any other body for further investigation;
 - (i) any other information relating to the use of surveillance devices by the ICAC and the administration of this Act the Minister considers appropriate.
- (3) Section 59(2)
- omit*
- subsection (1)(a) and (b)
- insert*
- subsections (1)(a) and (b) and (1A)(a) and (b)

72 Section 60 amended

- (1) Section 60, before "The chief"
- insert*

(1)

-
- (2) Section 60(f), after "made"
insert
by a law enforcement officer of the agency
- (3) Section 60, at the end
insert
- (2) The ICAC must keep the following documents:
- (a) each warrant issued to an ICAC officer;
 - (b) each revocation notice given to the ICAC under section 25(4);
 - (c) a copy of each application made by an ICAC officer for:
 - (i) a warrant; and
 - (ii) an extension, variation or revocation of a warrant;
 - (d) a copy of each report made by an ICAC officer to a Judge under section 58;
 - (e) a copy of each certificate issued by a senior officer of the ICAC under section 71.

73 Section 61 amended

- (1) Section 61, before "The chief"
insert
- (1)
- (2) Section 61, at the end
insert
- (2) The ICAC must keep the following records:
- (a) a statement as to whether each application made by an ICAC officer for a warrant, or extension, variation or revocation of a warrant, was granted, refused or withdrawn;
 - (b) details of each use by an ICAC officer of information obtained by the use of a surveillance device by an ICAC officer;

-
- (c) details of each communication by an ICAC officer to a person other than an ICAC officer of information obtained by the use of a surveillance device by an ICAC officer;
 - (d) details of each occasion when, to the knowledge of an ICAC officer, information obtained by the use of a surveillance device by an ICAC officer was given in evidence in a relevant proceeding;
 - (e) details of the destruction of records or reports under section 55(1A)(b).

74 Section 62 amended

After section 62(3)

insert

- (4) The ICAC must keep a register of warrants and emergency authorisations.
- (5) The register must, for each warrant issued to an ICAC officer, state the following:
 - (a) the date of issue;
 - (b) the name of the Judge who issued it;
 - (c) the name of the ICAC officer primarily responsible for executing it;
 - (d) the investigation for which it was issued;
 - (e) the period during which it is in force;
 - (f) the kind of improper conduct for which it was issued, including specifying the relevant provisions of Part 1, Division 2 of the ICAC Act which were relied on to define the conduct as improper conduct;
 - (g) details of any extension or variation of it.

75 Section 63 amended

Section 63, heading, after "**of**"

insert

law enforcement agency

76 Sections 64A and 64B inserted

After section 64

insert

64A Inspection of ICAC records by Inspector

- (1) The Inspector must, from time to time, inspect the records of the ICAC to decide the extent of compliance with this Act by ICAC officers.
- (2) For the inspection, the Inspector:
 - (a) after notifying the ICAC, may enter at any reasonable time a place occupied by the ICAC; and
 - (b) is entitled to have full and free access at all reasonable times to all records of the ICAC that are relevant to the inspection; and
 - (c) may require an ICAC officer to give the Inspector information that:
 - (i) is in the officer's possession or to which the officer has access; and
 - (ii) is relevant to the inspection.
- (3) The ICAC must give, and ensure other ICAC officers give, the Inspector any assistance the Inspector reasonably requires to enable the Inspector to perform functions under this section.

64B Inspector's reports on investigations

- (1) The Inspector must make a written report to the Minister at 6-monthly intervals on the results of each inspection under section 64A.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 7 sitting days after receiving the report.

77 Section 67 amended

Section 67(1)(b), after "officer"

insert

or an ICAC officer

78 Section 70 amended

- (1) Section 70(1)
omit
officer or
insert
officer, an ICAC officer or an
- (2) Section 70(2), after "officer"
insert
, ICAC officer

79 Section 71 amended

- (1) After section 71(1)
insert
- (1A) A senior officer of the ICAC, or a person assisting the senior officer of the ICAC, may issue a written certificate signed by the officer or person stating any facts the officer or person considers relevant in relation to:
- (a) anything done by an ICAC officer, or by a person assisting or providing technical expertise to the officer, in relation to the execution of a warrant; or
 - (b) anything done by an ICAC officer in relation to:
 - (i) the communication by a person to another person of relevant information; or
 - (ii) the making use of relevant information; or
 - (iii) the making of a record of relevant information; or
 - (iv) the custody of a record of relevant information.
- (2) Section 71(2)
omit
subsection (1)(b)

insert

subsections (1)(b) and (1A)(b)

80 Section 76 amended

(1) After section 76(1)(a)

insert

(ab) an ICAC officer; or

(2) Section 76(1)(c), after "officer"

insert

, ICAC officer

**Part 11 Amendment of Telecommunications
(Interception) Northern Territory Act**

81 Act amended

This Part amends the *Telecommunications (Interception) Northern Territory Act*.

82 Long title amended

Long title

omit

to be declared an agency for the purposes of

insert

and the ICAC to be declared as agencies for

83 Section 3 amended

(1) Section 3(1), definitions ***inspecting officer*** and ***inspection***

omit

(2) Section 3(1)

insert (in alphabetical order)

inspecting officer means:

- (a) for records of the Police Force:
 - (i) the Ombudsman; or
 - (ii) a public sector employee to whom the Ombudsman has delegated a function or functions in relation to an inspection; or
- (b) for records of the ICAC:
 - (i) the Inspector; or
 - (ii) a person to whom the Inspector has delegated a function or functions in relation to an inspection.

inspection means:

- (a) for records of the Police Force – an inspection under Part 3, Division 1; or
- (b) for records of the ICAC – an inspection under Part 3A, Division 1.

Inspector, see section 4 of the *Independent Commissioner Against Corruption Act*.

member of ICAC staff, see section 4 of the *Independent Commissioner Against Corruption Act*.

(2) Section 3(1), at the end

insert

Note for subsection (1)

The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

84 Part 2, Division 1 heading inserted

Before section 4, in Part 2

insert

Division 1 Records of Police Force

85 Part 2, Division 2 inserted

After section 8

insert

Division 2 Records of the ICAC**8A Records connected with issue of warrants**

The ICAC must keep as records of the ICAC:

- (a) each warrant issued to the ICAC; and
- (b) a copy of each notification given by the ICAC under section 59A(2) of the Commonwealth Act; and
- (c) each instrument revoking a warrant issued to the ICAC; and
- (d) a copy of each certificate issued under section 61(4) of the Commonwealth Act by a certifying officer of the ICAC; and
- (e) each authorisation made by the ICAC under section 66(2) of the Commonwealth Act.

8B Other records connected with an interception

- (1) The ICAC must cause the following information to be recorded as soon as practicable after the event to which it relates occurs:
 - (a) particulars of each telephone application for a warrant made on behalf of the ICAC;
 - (b) in relation to each application for a warrant made on behalf of the ICAC, a statement as to whether:
 - (i) the application was withdrawn or refused; or
 - (ii) a warrant was issued on the application;
 - (c) in relation to each warrant whose authority is exercised by the ICAC, particulars of:
 - (i) the warrant; and
 - (ii) the day on which, and the time at which, each interception under the warrant began; and
 - (iii) the duration of each such interception; and

- (iv) the name of the person who carried out each such interception; and
 - (v) in relation to a named person warrant – each service to or from which communications have been intercepted under the warrant;
 - (d) in relation to each restricted record that has at any time been in the possession of the ICAC, particulars of:
 - (i) if the record was obtained by an interception under a warrant – that warrant; and
 - (ii) each occasion on which the record came (whether by its making or otherwise) to be in the possession of the ICAC; and
 - (iii) each occasion (if any) on which the record ceased (whether by its destruction or otherwise) to be in the possession of the ICAC; and
 - (iv) each agency, body or other person (if any) from whom the ICAC received the record or to whom the ICAC supplied the record;
 - (e) particulars of each use made by the ICAC of lawfully obtained information;
 - (f) particulars of each communication of lawfully obtained information by the ICAC or a member of ICAC staff to a person or body other than the ICAC or another member of ICAC staff;
 - (g) particulars of each occasion on which, to the knowledge of the ICAC or a member of ICAC staff, lawfully obtained information was given in evidence in a relevant proceeding in relation to the ICAC.
- (2) The ICAC must keep as records of the ICAC the information recorded under subsection (1).

8C Documents to be given to Minister

The ICAC must give to the Minister:

- (a) within 3 months after a warrant issued to the ICAC ceases to be in force, a written report about:
 - (i) the use made by the ICAC of information obtained by interceptions under the warrant; and

-
- (ii) the communication of that information to persons other than the ICAC or members of ICAC staff; and
 - (b) as soon as practicable (and in any event within 3 months) after each 30 June, a written report that sets out the information that:
 - (i) is required by Part 2-8, Division 2 of the Commonwealth Act to be set out in the Commonwealth Minister's report under that Division in relation to the year ending on that 30 June; and
 - (ii) can be derived from the records of the ICAC.

8D Documents to be given to Commonwealth Minister

- (1) As soon as practicable after a warrant or instrument revoking a warrant is issued to the ICAC, the ICAC must give a copy of the warrant or instrument to the Commonwealth Minister.
- (2) As soon as practicable after receiving a report under section 8C(a) or (b), the Minister must give a copy of the report to the Commonwealth Minister.

8E Keeping and destruction of restricted records

- (1) In this section, a reference to a restricted record is to be read as a reference to a restricted record that is in the possession of the ICAC, whether made before or after the commencement of section 35 of the Commonwealth Act.
- (2) Except while a restricted record is being dealt with in accordance with this Act or the Commonwealth Act, the ICAC must cause the restricted record to be kept in a secure place so that it is not accessible to persons who are not entitled to deal with it.
- (3) The ICAC must cause a restricted record to be destroyed without delay if the ICAC is satisfied that the record is not likely to be required for a permitted purpose in relation to the ICAC, other than a purpose connected with an inspection or a report on an inspection.

86 Part 3 heading amended

Part 3, heading, after "of"

insert

Police Force

87 Section 9 amended

- (1) Section 9, heading, after "**on**"

insert

Police Force

- (2) Section 9(1)(a), after "Part 2"

insert

, Division 1

88 Section 10 amended

- (1) Section 10, heading, after "**of**"

insert

Police Force

- (2) Section 10(1), after "Part 2"

insert

, Division 1

89 Section 11 amended

Section 11, heading

omit

of Part 2

90 Section 13 amended

- (1) Section 13, heading, at the end

insert

in relation to Police Force

- (2) Section 13(1), after "inspection"

insert

in relation to the Police Force

91 Section 14 amended

Section 14(1)

omit

section 16(1)

insert

section 17A(1)

92 Sections 15 and 16 replaced

Sections 15 and 16

repeal, insert

Part 3A Inspections of ICAC records and reports by Inspector**Division 1 Inspections and reports****15 General power to inspect and report on ICAC records**

- (1) The Inspector may at any time:
 - (a) inspect the records of the ICAC to determine compliance by the ICAC and members of ICAC staff with Part 2, Division 2 during any period; and
 - (b) report to the Minister about the results of the inspection.
- (2) The Inspector may do anything necessary or convenient for the purposes of subsection (1).

16 Regular inspections of ICAC records

- (1) At least once in each period of 6 months, the Inspector must inspect the records of the ICAC to determine compliance by the ICAC and members of ICAC staff with Part 2, Division 2 since the last inspection.
- (2) Not later than 3 months after the end of each financial year, the Inspector must report in writing to the Minister on the results of inspections carried out in that financial year.

16A Report on contravention

If, as a result of an inspection, the Inspector is of the opinion that the ICAC or a member of ICAC staff has contravened the Commonwealth Act or the ICAC has contravened section 8C(a), the Inspector must:

- (a) allow the ICAC an opportunity to provide written comments in respect of that matter; and
- (b) include in the report under section 15(1)(b) or 16(2):
 - (i) a report on the contravention; and
 - (ii) a copy of the written comments of the ICAC.

16B Notification of report

If the Inspector has provided a report under this Division to the Minister, the Inspector:

- (a) must notify the Commonwealth Minister, in writing, that the report has been given; and
- (b) must provide the ICAC with a copy of the report.

Division 2 Powers of inspecting officers**16C General powers for inspections in relation to the ICAC**

- (1) For an inspection in relation to the ICAC, an inspecting officer:
 - (a) after notifying the ICAC, may enter at any reasonable time premises occupied by the ICAC; and
 - (b) is to have full and free access at all reasonable times to all records of the ICAC that the inspecting officer considers are relevant to the inspection; and
 - (c) despite any other law, may make copies of, and take extracts from, records of the ICAC that the inspecting officer considers are relevant to the inspection; and
 - (d) may require the ICAC or a member of ICAC staff to provide to the inspecting officer any information that the inspecting officer considers is relevant to the inspection and that is in the ICAC's or member's possession or to which the ICAC or member has access.

- (2) If an inspecting officer has reason to believe that the ICAC or a member of ICAC staff is able to provide information relevant to an inspection, the inspecting officer may, by written notice provided to the ICAC or member:
 - (a) require the ICAC or member to provide the information:
 - (i) in writing and signed by the ICAC or member; and
 - (ii) at a place specified in the notice; and
 - (iii) within a period specified in the notice; and
 - (b) require the ICAC or member, for the purpose of answering questions relevant to the inspection, to attend before an inspecting officer specified in the notice at the place, and within the period or at the time, specified in the notice.
- (3) If an inspecting officer has reason to believe that a member of ICAC staff may be able to provide information relevant to an inspection but does not know the member's identity, the inspecting officer may require the ICAC or a person nominated by the ICAC to attend before an inspecting officer specified in the requirement for the purpose of answering questions relevant to the inspection or to identifying the member who may be able to provide the information.
- (4) A requirement under subsection (3) is to be made by written notice provided to the ICAC and specify the place at which, and the period within which or the time at which, the ICAC or nominated person is to attend.
- (5) Despite any other law, a person is not excused from providing information, answering a question or giving access to a document if required by or under this section, on the ground that to do so would contravene a law, would be contrary to the public interest or might tend to incriminate the person or make the person liable to a penalty.
- (6) The ICAC must ensure that members of ICAC staff provide an inspecting officer with the assistance in relation to an inspection as the inspecting officer reasonably requires.

Division 3 Information arising from inspection**16D Use of information**

- (1) The following are not admissible in evidence against a person except in proceedings for an offence against section 17A(1), 18(1) or 19(1) or (2):
 - (a) information provided or an answer given by the person under section 16C or as required by an inspecting officer under that section;
 - (b) the fact that the person has given access to a document under section 16C;
 - (c) any information or thing (including a document) obtained directly or indirectly as a consequence of the person having provided information or given an answer or access to a document under section 16C or as required by an inspecting officer under that section.
- (2) Despite any other law, the Inspector and any inspecting officer may make use of, make a record of, or provide to another inspecting officer and to the Inspector any information that:
 - (a) is obtained during or as a result of an inspection; and
 - (b) is relevant to the inspection.
- (3) The Inspector may provide information of a kind mentioned in subsection (1) to the Commonwealth Ombudsman if satisfied that the provision of the information is relevant to the performance of the Commonwealth Ombudsman's functions under the Commonwealth Act.

93 Section 17 amended

Section 17, after "Division 1"

insert

or Part 3A, Division 1

94 Section 17A inserted

After section 17

insert

17A Confidentiality of information obtained under warrant

(1) Except as otherwise allowed by this Act, an inspecting officer must not record or disclose information that:

- (a) was obtained by a person under a warrant; and
- (b) became known by the inspecting officer during or as the result of an inspection.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(2) Subsection (1) does not prevent an inspecting officer from:

- (a) disclosing in a report under Part 3 or 3A any matter for the purpose of stating the grounds for the conclusions and recommendations in the report; or
- (b) recording or disclosing information for the discharge of functions under this Act.

(3) A person cannot be compelled in any proceeding to disclose information that:

- (a) was obtained under a warrant (whether by the person or another person); and
- (b) became known by the person because the person is or was engaged in the administration of this Act.

(4) Subsections (1) and (3) apply despite the provisions of another Act that would otherwise allow the person to record, disclose or be compelled in a proceeding to disclose the information, if:

- (a) information obtained under a warrant became known by a person because the person is, or was:
 - (i) an inspecting officer; and
 - (ii) exercising a power or performing a function under this Act; and

-
- (b) the same information also became known by the person because the person is, or was, engaged in the administration of the other Act.

95 Section 18 amended

Section 18, heading, at the end

insert

generally

96 Section 19 amended

- (1) Section 19(1)(a), after "(3)"

insert

or 16C(1), (2) or (3)

- (2) Section 19(1)(b) and (2), after "13"

insert

or 16C

97 Section 20 inserted

After section 19

insert

20 Protection of Ombudsman, Inspector and inspecting officers from liability

- (1) Except as otherwise provided by sections 17A and 18, the Ombudsman, the Inspector or an inspecting officer does not incur any liability in respect of any act done (or omitted to be done) in good faith:
- (a) in the performance or exercise, or the purported performance or exercise, of any function or power under this Act; or
 - (b) in the administration, or the purported administration, of this Act.
- (2) If subsection (1) prevents civil liability attaching to a person, the liability attaches instead to the Territory.

Part 12 Amendment of Witness Protection (Northern Territory) Act

98 Act amended

This Part amends the *Witness Protection (Northern Territory) Act*.

99 Section 3 amended

(1) Section 3(1)

insert (in alphabetical order)

ICAC Act means the *Independent Commissioner Against Corruption Act*.

ICAC examination means an examination as defined in section 4 of the ICAC Act.

ICAC investigation means an investigation as defined in section 4 of the ICAC Act.

ICAC witness means a person mentioned in the definition **witness**, paragraph (d).

Inspector, see section 4 of the ICAC Act.

public inquiry, see section 4 of the ICAC Act.

(2) Section 3(1), definition **approved authority**, before paragraph (a)

insert

(aa) the ICAC; or

(3) Section 3(1), definition **approved authority**, paragraphs (a) and (b), at the end

insert

or

(4) Section 3(1), definition **witness**, paragraph (a)(ii), at the end

insert

or

-
- (5) Section 3(1), definition **witness**, paragraph (c)
omit
Commonwealth.
insert
Commonwealth; or
- (6) Section 3(1), definition **witness**, after paragraph (c)
insert
(d) is a person for whom the ICAC may take action under section 111 of the ICAC Act.
- (7) Section 3(1), at the end
insert
Note for subsection (1)
The Interpretation Act contains definitions and other provisions that may be relevant to this Act.

100 Section 5 amended

- Section 5(3)(a), after "court"
insert
or an ICAC examination or public inquiry

101 Section 8 amended

- Section 8(2)(a)(iii), after "offence"
insert
or, in the case of an ICAC witness, the conduct

102 Section 16 amended

- Section 16(1), after "15"
insert
or 29C

103 Section 28 amended

- (1) Section 28(1), after "27"
insert
or 29L
- (2) Section 28(4), after "Commissioner"
insert
or ICAC
- (3) Section 28(4), after "TWPP"
insert
or under Part 2A

104 Part 2A inserted

After section 29

insert

Part 2A Assumed identities for ICAC witnesses**Division 1 Preliminary matters****29A Application of Part**

This Part applies if:

- (a) an ICAC witness or a family member of an ICAC witness is not, or is no longer, included in the TWPP; or
- (b) an ICAC witness or a family member of an ICAC witness is included in the TWPP but the Commissioner decides not to apply to the Supreme Court under section 14 for an order in respect of the witness or family member.

Division 2 Orders for protection**29B Application by ICAC for order**

- (1) The ICAC may apply to the Supreme Court for an order authorising the Registrar to make a new entry in the Register in respect of a participant.

- (2) An application under subsection (1) is to:
- (a) specify the nature of the new entry the ICAC seeks to be made in the Register and the particulars to be noted in respect of the entry in the Register; and
 - (b) be supported by evidence of the matters specified in section 29C(1)(a), (b) and (c).

29C Power of Supreme Court to make order

- (1) On hearing an application made under section 29B, the Supreme Court may make the order applied for in respect of the person if the Supreme Court is satisfied that:
- (a) there is a risk to the safety and welfare of the person because the person is an ICAC witness or a family member of an ICAC witness; and
 - (b) an assumed identity would assist in reducing that risk; and
 - (c) the witness has undertaken to comply with a memorandum of understanding between the ICAC and the ICAC witness in accordance with section 29D.
- (2) If the Supreme Court makes an order under subsection (1), Part 2, Division 3 (other than sections 14 and 15) applies as if:
- (a) the order were an order made under section 15; and
 - (b) a reference in that Division to the participant were a reference to the person; and
 - (c) a reference in that Division to the Commissioner were a reference to the ICAC.

Division 3 Arrangements for protection

29D Memorandum of understanding – content

- (1) A memorandum of understanding in relation to an ICAC witness must:
- (a) set out the basis on which the witness and the witness' family members (if any) to whom it relates are being provided with protection by the ICAC; and

- (b) set out details of the protection and assistance that are to be provided to the witness and family members, including that the protection and assistance provided may be reviewed and modified by the ICAC at any time; and
 - (c) state that the ICAC may terminate the protection at any time if, in the opinion of the ICAC, protection is:
 - (i) no longer required; or
 - (ii) cannot be provided; and
 - (d) set out the process and timeframes for termination of protection, including how the witness and family members would be notified of the termination; and
 - (e) state that if the protected person cannot be located after reasonable inquiry, termination of protection may still proceed; and
 - (f) state that if protection is terminated, the ICAC may take action to restore a person's identity; and
 - (g) contain a statement advising the witness and family members of their right under the ICAC Act to complain to the Inspector about the conduct of the ICAC or a member of ICAC staff in relation to the matters dealt with in the memorandum.
- (2) A memorandum of understanding in relation to an ICAC witness may contain the following:
- (a) the terms and conditions on which protection and assistance are to be provided to the witness and each family member;
 - (b) requirements that the witness and each family member must not engage in activities of a kind specified in the memorandum of understanding;
 - (c) an undertaking by, or on behalf of, the witness and each family member not to compromise, directly or indirectly, the security or any other aspect of the protection and assistance being provided;
 - (d) an undertaking by, or on behalf of, the witness and each family member to comply with all reasonable directions of the ICAC in relation to the protection and assistance provided to the witness;

- (e) a list of the following and specification as to how they will be dealt with:
 - (i) the outstanding legal obligations (including family maintenance obligations and taxation obligations) of the witness and each family member;
 - (ii) any other obligations and relationships of the witness and each family member;
- (f) a list of obligations that the witness and each family member may or may not enter into;
- (g) details of any financial assistance to be given to the witness and each family member;
- (h) an undertaking by or on behalf of the witness and each family member to disclose to the ICAC details of any criminal charges brought against the witness or family member, and any civil or bankruptcy proceedings made in relation to the witness or family member, while the witness or family member is being provided with protection by the ICAC;
- (i) details concerning the surrender and issue of passports and the issue of any other documents relating to the identity of the witness and each family member;
- (j) any other matter that the ICAC considers appropriate.

29E Memorandum of understanding – signing

- (1) A memorandum of understanding does not take effect until it is signed in accordance with subsection (2).
- (2) A memorandum of understanding must be signed:
 - (a) by the ICAC witness and each family member to whom it relates; or
 - (b) if the ICAC witness or family member is less than 18 years of age or lacks legal capacity – by a parent or other person for and on behalf of the witness or family member.
- (3) The ICAC may require the ICAC witness or family member to sign the memorandum of understanding if:
 - (a) a parent or other person signed a memorandum of understanding for and on behalf of an ICAC witness or family member who was less than 18 years of age or lacked legal capacity; and

- (b) the memorandum of understanding is still effective after the ICAC witness or family member becomes 18 years of age or attains legal capacity.

29F Memorandum of understanding – amending

- (1) Subject to subsection (2), the ICAC may amend a memorandum of understanding.
- (2) An amendment to a memorandum of understanding:
 - (a) has no effect unless the participant or, if more than one, each participant to whom it relates or, if a participant is less than 18 years of age or lacks legal capacity, a parent or other person for and on behalf of the participant consents to the amendment; and
 - (b) is not to have the effect of removing from the memorandum of understanding the provisions referred to in section 29D(1).

Division 4 Restoration of former identity of former ICAC witness

29G Restoration of former identity

- (1) If protection under this Part of a person is terminated, the ICAC may decide that it is appropriate to restore the person's former identity.
- (2) The ICAC must take reasonable steps to notify the person of the ICAC's decision.
- (3) The ICAC is not required to notify a person under subsection (2) if the person cannot be found after making reasonable inquiry.
- (4) The person may, within 7 days after receiving notice of the decision, apply to the ICAC to review the decision.
- (5) On receiving an application for review under subsection (4), the ICAC must review the decision and, in doing so, must give the person a reasonable opportunity to state the person's case.
- (6) After conducting the review, the ICAC must:
 - (a) confirm or reverse the decision reviewed; and
 - (b) give notice in writing of the outcome of the review to the person; and

- (c) if the ICAC confirms the decision to restore the person's former identity – specify in the notice under paragraph (b) the ICAC's reasons for doing so; and
- (d) if the ICAC reverses the decision – state in the notice that the decision has no effect and that the person's former identity will not be restored.

29H When ICAC may take action to restore former identity

- (1) If the ICAC decides under section 29G to restore a person's former identity, the ICAC may commence action to restore the person's former identity:
 - (a) if the person's location is not known and the ICAC has taken reasonable steps to notify the person of the decision but has been unable to do so – on the expiry of 28 days after the ICAC commenced taking the steps to notify the person; or
 - (b) if the person receives notice of the ICAC's decision but does not apply for review of the decision under section 29G(4) – on the expiry of 28 days after the person receives notice of the decision; or
 - (c) if the person receives notice of the ICAC's decision and applies for review of the decision under section 29G(4) and, on review, the ICAC confirms the decision – on the expiry of 3 days after the ICAC notifies the person that the ICAC has confirmed the decision.
- (2) The ICAC must not restore a person's former identity if:
 - (a) the person applies to the ICAC to review the decision to restore the person's former identity; and
 - (b) the ICAC reverses the decision.

29J ICAC must apply to Supreme Court to restore former identity

- (1) If the ICAC decides under section 29G to restore a person's former identity, the ICAC must apply to the Supreme Court for an order to restore the person's former identity.
- (2) The application must:
 - (a) specify the particulars that will need to be cancelled to restore the person's former identity; and
 - (b) be supported by evidence of the matters specified in section 29L(1)(a) and (b).

29K Approved authority may apply to Court to restore former identity

- (1) An approved authority may apply to the Supreme Court for an order to restore the former identity of a person who was protected under this Part.
- (2) Sections 28, 29J(2) and 29L apply in relation to an application under subsection (1) as if:
 - (a) a reference to an application under section 29J includes a reference to an application under subsection (1); and
 - (b) reference to the ICAC includes a reference to the approved authority; and
 - (c) a reference to a person who was a participant includes a reference to a person who was a recognised participant.

29L Power of Supreme Court to make order

- (1) On hearing an application made under section 29J, if the Supreme Court is satisfied that:
 - (a) the person named in the application as a person who was protected by the ICAC was protected; and
 - (b) the protection given to the person has been terminated;the Supreme Court may make the orders it considers necessary to:
 - (c) cancel the new identity given to the person;
 - (d) restore the person's former identity; and
 - (e) secure the return to the ICAC of any document issued in respect of the person's new identity within the 14 day period specified in section 28(4).
- (2) The orders that the Supreme Court may make under subsection (1) include an order authorising the Registrar to cancel the entry in the Register in respect of the new identity given to the person and specified members of the person's family (if any).

105 Section 33 amended

- (1) Section 33(1)(b)

omit

participant,

insert

participant;

- (2) Section 33(1)(c), at the end

insert

or

- (3) After section 33(1)(d)

insert

(da) for the purposes of an ICAC investigation (not including a public inquiry as defined in section 4 of the ICAC Act or a report or brief of evidence under Part 3, Division 7 of the ICAC Act); or

106 Section 34 amended

- (1) Section 34(1)(a) to (c) and (2)(a), at the end

insert

or

- (2) After section 34(2)(b)

insert

(ba) is a protected communication (as defined in section 93 of the ICAC Act) to the ICAC; or

(bb) is necessary to comply with the direction of an authorised officer as defined in the ICAC Act; or

Part 13 Other Acts amended

107 Other Acts amended

The Schedule amends the Acts mentioned in it.

Part 14 Repeal

108 Repeal of Act

This Act is repealed on the day after it commences.

Schedule Other Acts amended

section 107

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Education and Care Services (National Uniform Legislation) Act</i>		
section 7(2)(g)	whole paragraph	
<i>Evidence (National Uniform Legislation) Act</i>		
section 4, note 4	<i>section 25(2) of the Public Disclosure Act</i>	<i>section 60 of the Independent Commissioner Against Corruption Act</i>
<i>Rail Safety (National Uniform Legislation) Act</i>		
section 7(2)(g)	whole paragraph	
