





# **Law Enforcement Integrity Legislation Amendment Act 2012**

**No. 194, 2012**

**An Act to provide for testing the integrity of staff  
members of certain enforcement agencies, and for  
other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**An Act to provide for testing the integrity of staff  
members of certain enforcement agencies, and for  
other purposes**

*[Assented to 12 December 2012]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Law Enforcement Integrity  
Legislation Amendment Act 2012*.

## **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	12 December 2012
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	13 December 2012
3. Schedule 1, Part 2	1 July 2013.	1 July 2013
4. Schedule 1, Part 3	The day after this Act receives the Royal Assent.	13 December 2012
5. Schedule 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Integrity testing and expansion of coverage by ACLEI

### Part 1—Integrity testing

#### *Crimes Act 1914*

#### **1 Section 15GC (definition of ACC authorising officer)**

Omit “15GF(4)”, substitute “15GF(3)”.

#### **2 Section 15GC (definition of ACLEI authorising officer)**

Omit “15GF(5)”, substitute “15GF(4)”.

#### **3 Section 15GC (definition of AFP authorising officer)**

Omit “15GF(3)”, substitute “15GF(2)”.

#### **4 Section 15GC**

Insert:

*disciplinary or legal action*, in relation to a staff member of a target agency, means any of the following:

- (a) action in respect of alleged misconduct of the staff member;
- (b) termination of the employment or appointment of the staff member;
- (c) a disciplinary proceeding in relation to the staff member, within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*, or a report of such a proceeding;
- (d) the investigation of an offence suspected to have been committed by the staff member;
- (e) a legal proceeding in relation to the staff member, or a report of such a proceeding.

*Disciplinary or legal action* also includes the consideration of whether an action or proceeding covered by this definition should be taken or brought.

#### **5 Section 15GC**

Insert:

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*integrity testing authority* means an authority granted under Part IABA, and includes any such authority as varied.

## **6 Section 15GC**

Insert:

*integrity testing controlled operation authority* means an authority granted under section 15GI on the basis that an integrity testing authority is in effect.

Note: See subparagraph 15GI(2)(a)(ii).

## **7 Section 15GC**

Insert:

*staff member* of a target agency has the same meaning in relation to that agency as in the *Law Enforcement Integrity Commissioner Act 2006*.

Note: The target agencies are the ACC, the Australian Federal Police and Customs. See subsections 10(1), (2) and (2A) of the *Law Enforcement Integrity Commissioner Act 2006*.

## **8 Section 15GC**

Insert:

*target agency* means any of the following:

- (a) the ACC;
- (b) the Australian Federal Police;
- (c) Customs.

## **9 Paragraph 15GI(2)(a)**

Repeal the paragraph, substitute:

- (a) that either:
  - (i) a serious Commonwealth offence or a serious State offence that has a federal aspect has been, is being or is likely to be committed; or
  - (ii) an integrity testing authority is in effect in relation to an offence that it is suspected has been, is being or is likely to be committed by a staff member of a target agency (see the notes at the foot of this subsection); and

## **10 At the end of subsection 15GI(2)**

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Add:

- Note 1: Subparagraph (a)(ii) applies in relation to offences punishable on conviction by imprisonment for 12 months or more (see section 15JG).
- Note 2: The target agencies mentioned in subparagraph (a)(ii) are the ACC, the Australian Federal Police and Customs (see section 15GC).

### **11 Paragraphs 15GK(1)(d) and (2)(d)**

Repeal the paragraphs, substitute:

- (d) identify the nature of the criminal activity (including the relevant suspected offences) in respect of which the controlled conduct is to be engaged in; and
- (da) in the case of an integrity testing controlled operation authority—identify the integrity testing authority concerned; and

### **12 At the end of subsection 15GN(3)**

Add:

- ; or (c) in the case of an integrity testing controlled operation authority—the integrity testing authority concerned (the *earlier ITA*) stops being in effect under Part IABA (see section 15JJ).

Note: For integrity testing controlled operation authorities, see subparagraph 15GI(2)(a)(ii).

### **13 At the end of section 15GN**

Add:

- (4) Paragraph (3)(c) does not apply if a further integrity testing authority is granted under Part IABA that continues the effect of the earlier ITA.

### **14 Paragraph 15GQ(2)(a)**

Repeal the paragraph, substitute:

- (a) that either:
  - (i) a serious Commonwealth offence or a serious State offence that has a federal aspect has been, is being or is likely to be committed; or
  - (ii) an integrity testing authority is in effect in relation to an offence that it is suspected has been, is being or is likely

to be committed by a staff member of a target agency  
(see the notes at the foot of this subsection); and

### **15 At the end of subsection 15GQ(2)**

Add:

- Note 1: Subparagraph (a)(ii) applies in relation to offences punishable on conviction by imprisonment for 12 months or more (see section 15JG).
- Note 2: The target agencies mentioned in subparagraph (a)(ii) are the ACC, the Australian Federal Police and Customs (see section 15GC).

### **16 Paragraph 15GV(2)(a)**

Repeal the paragraph, substitute:

- (a) that either:
- (i) a serious Commonwealth offence or a serious State offence that has a federal aspect has been, is being or is likely to be committed; or
  - (ii) an integrity testing authority is in effect in relation to an offence that it is suspected has been, is being or is likely to be committed by a staff member of a target agency (see the notes at the foot of this subsection); and

### **17 At the end of subsection 15GV(2)**

Add:

- Note 1: Subparagraph (a)(ii) applies in relation to offences punishable on conviction by imprisonment for 12 months or more (see section 15JG).
- Note 2: The target agencies mentioned in subparagraph (a)(ii) are the ACC, the Australian Federal Police and Customs (see section 15GC).

### **18 At the end of section 15HD**

Add:

- (4) In this section, a reference to an authority that is cancelled includes, in the case of an integrity testing controlled operation authority, a reference to an authority that has stopped being in effect because the integrity testing authority concerned has stopped being in effect.

Note: See paragraph 15GN(3)(c).

### **19 After subsection 15HK(1)**

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Insert:

*Exceptions—general*

**20 At the end of subsection 15HK(2)**

Add:

Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the *Criminal Code*.

**21 After subsection 15HK(2)**

Insert:

*Exceptions—integrity testing controlled operation authority*

(2A) Subsection (1) does not apply, in the case of a controlled operation authorised by an integrity testing controlled operation authority (granted on the basis that an integrity testing authority is in effect), if the disclosure was:

- (a) in any of the circumstances mentioned in paragraphs (2)(a) to (e); or
- (b) in connection with the administration or execution of Part IABA, or the *Law Enforcement Integrity Commissioner Act 2006*, in relation to the integrity testing authority; or
- (c) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, the controlled operation; or
- (d) in relation to the integrity testing authority:
  - (i) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, an integrity testing operation authorised by the authority; or
  - (ii) to an authority of the Commonwealth, a State or a Territory, if the disclosure relates to the misconduct of an employee or officer of the authority.

Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the *Criminal Code*.

*Exception—misconduct*

**22 Paragraph 15HK(3)(c)**

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Repeal the paragraph, substitute:

- (c) the information concerns:
  - (i) a corruption issue within the meaning of the *Law Enforcement Integrity Commissioner Act 2006* (see section 7 of that Act) in relation to a controlled operation; or
  - (ii) misconduct in relation to a controlled operation; and

**23 Section 15HK (note)**

Omit “subsections (2) and (3)”, substitute “this subsection”.

**24 After subsection 15HL(1)**

Insert:

*Exceptions—general*

**25 At the end of subsection 15HL(2)**

Add:

Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the *Criminal Code*.

**26 After subsection 15HL(2)**

Insert:

*Exceptions—integrity testing controlled operation authority*

- (2A) Subsection (1) does not apply, in the case of a controlled operation authorised by an integrity testing controlled operation authority (granted on the basis that an integrity testing authority is in effect), if the disclosure was:
  - (a) in any of the circumstances mentioned in paragraphs (2)(a) to (e); or
  - (b) in connection with the administration or execution of Part IABA, or the *Law Enforcement Integrity Commissioner Act 2006*, in relation to the integrity testing authority; or
  - (c) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, the controlled operation; or
  - (d) in relation to the integrity testing authority:

- (i) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, an integrity testing operation authorised by the authority; or
- (ii) to an authority of the Commonwealth, a State or a Territory, if the disclosure relates to the misconduct of an employee or officer of the authority.

Note: A defendant bears an evidential burden in relation to the matters in this subsection—see subsection 13.3(3) of the Criminal Code.

*Exception—misconduct*

## **27 Paragraph 15HL(3)(c)**

Repeal the paragraph, substitute:

- (c) the information concerns:
  - (i) a corruption issue within the meaning of the *Law Enforcement Integrity Commissioner Act 2006* (see section 7 of that Act) in relation to a controlled operation; or
  - (ii) misconduct in relation to a controlled operation; and

## **28 Subsection 15HL(3) (note)**

Omit “subsections (2) and (3)”, substitute “this subsection”.

## **29 After Part IAB**

Insert:

# **Part IABA—Integrity testing**

## **Division 1—Introduction**

### **15JA Integrity testing—simplified outline**

The following is a simplified outline of this Part:

<p>This Part provides for the authorisation of operations (called integrity testing operations) that are designed to test the integrity of staff members of the Australian Crime Commission, the Australian</p>
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Federal Police and the Australian Customs and Border Protection Service, using controlled or simulated situations.

Operations can be authorised only if there is a reasonable suspicion that a staff member has committed, is committing or is likely to commit an offence punishable on conviction by imprisonment for 12 months or more.

Authorisations for integrity testing operations may form the basis for the authorisation of controlled operations under Part IAB.

Integrity testing operations may be authorised by the agency concerned, or (if a corruption issue is involved) the Australian Commission for Law Enforcement Integrity. Law enforcement officers and others may take part.

Participants in integrity testing operations are indemnified against civil liability in relation to the conduct of the operations in accordance with the authorisations concerned.

Information relating to an integrity testing operation may only be disclosed for the purposes of disciplinary or legal action in relation to the staff member concerned, or a number of related purposes.

### **15JB Integrity testing—concurrent operation of State and Territory laws**

It is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Part.

### **15JC Integrity testing—definitions**

In this Part:

***appropriate authorising officer***, for an integrity testing operation, has the meaning given by the table in subsection 15JE(1).

***authorising officer*** means any of the appropriate authorising officers.

Note: These officers are listed in the table in subsection 15JE(1).

***civilian participant***, in an integrity testing operation, means a participant in the operation who is not a law enforcement participant (as defined in this section).

***corruption issue*** has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

Note: See section 7 of the *Law Enforcement Integrity Commissioner Act 2006*.

***disciplinary or legal action***, in relation to a staff member of a target agency, means any of the following:

- (a) action in respect of alleged misconduct of the staff member;
- (b) termination of the employment or appointment of the staff member;
- (c) a disciplinary proceeding in relation to the staff member, within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*, or a report of such a proceeding;
- (d) the investigation of an offence suspected to have been committed by the staff member;
- (e) a legal proceeding in relation to the staff member, or a report of such a proceeding.

***Disciplinary or legal action*** also includes the consideration of whether an action or proceeding covered by this definition should be taken or brought.

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

***integrity testing agency*** means any of the following:

- (a) the ACC;
- (b) the Australian Commission for Law Enforcement Integrity;
- (c) the Australian Federal Police;
- (d) Customs.

***integrity testing authority*** means an authority granted under section 15JG to conduct an integrity testing operation.

***integrity testing operation***: see section 15JD.

***law enforcement participant***, in an integrity testing operation, means a participant in the operation who is:

- (a) a law enforcement officer; or
- (b) an employee or officer of an integrity agency for a State or Territory, within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*.

Note: Staff members of integrity testing agencies (as defined in this section) are law enforcement officers. Law enforcement officers also include members of State and Territory police forces, and police forces of foreign countries (see section 3).

**participant**, in an integrity testing operation authorised by an integrity testing authority, means a person who is authorised under this Part to participate in the operation.

**responsible staff member**, for an integrity testing operation authorised by an integrity testing authority, means the staff member of an integrity testing agency identified in the authority as the staff member responsible for the conduct of the operation.

**staff member** of an integrity testing agency has the same meaning in relation to that agency as in the *Law Enforcement Integrity Commissioner Act 2006*.

Note: See subsections 10(1), (2) and (2A), and section 11, of the *Law Enforcement Integrity Commissioner Act 2006*.

**target agency** means any of the following:

- (a) the ACC;
- (b) the Australian Federal Police;
- (c) Customs.

### **15JD Integrity testing—meaning of *integrity testing operation***

- (1) An ***integrity testing operation*** is an operation conducted in relation to a target agency using controlled or simulated situations to test the integrity of a staff member of the agency.
- (2) An ***integrity testing operation*** includes an operation that offers the staff member an opportunity to engage in conduct, whether lawful or unlawful, so as to contravene principles of behaviour required (by law or otherwise) of persons occupying the position of such a staff member.

Note 1: The target agencies are the ACC, the Australian Federal Police and Customs (see section 15JC).

Note 2: References to a staff member include references to more than one staff member (see section 23 of the *Acts Interpretation Act 1901*).

## Division 2—Integrity testing operations: authority

### 15JE Integrity testing authorities—circumstances in which applications may be made

(1) The following table has effect:

<b>Integrity testing—circumstances in which applications may be made</b>			
<b>Item</b>	<b>If a proposed integrity testing operation is concerned with ...</b>	<b>a staff member of the following agency may apply for authority for the operation ...</b>	<b>from the following officer (an <i>appropriate authorising officer</i>)</b> ...
1	the integrity of a staff member of the ACC	the ACC	(a) the Chief Executive Officer of the ACC; or (b) an SES employee in the ACC.
2	the integrity of a staff member of the Australian Federal Police	the Australian Federal Police	(a) the Commissioner; or (b) a Deputy Commissioner; or (c) an SES employee in the Australian Federal Police.
3	the integrity of a staff member of Customs	Customs	(a) the Chief Executive Officer of Customs; or (b) an SES employee in Customs.
4	a corruption issue in relation to a staff member of a target agency	(a) the target agency; or (b) the Australian Commission for Law Enforcement Integrity	(a) the Integrity Commissioner; or (b) an Assistant Integrity Commissioner; or (c) an SES employee in the Australian Commission for

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**Integrity testing—circumstances in which applications may be made**

<b>Item</b>	<b>If a proposed integrity testing operation is concerned with ...</b>	<b>a staff member of the following agency may apply for authority for the operation ...</b>	<b>from the following officer (an appropriate authorising officer)</b>
			...
			Law Enforcement Integrity.

Note 1: The target agencies are the ACC, the Australian Federal Police and Customs (see section 15JC).

Note 2: References to a staff member include references to more than one staff member (see section 23 of the *Acts Interpretation Act 1901*).

- (2) The application of item 4 of the table in subsection (1) in relation to a staff member of a target agency does not prevent the application of any of the other items in the table in relation to the integrity of the staff member.
- (3) A reference in a cell in the table in subsection (1) to an **SES employee** of an integrity testing agency is taken to be a reference to an SES employee authorised in writing by the officer of the agency mentioned in paragraph (a) in the cell.

**15JF Integrity testing authorities—application**

- (1) An application under section 15JE must:
  - (a) be in writing; and
  - (b) provide sufficient information to enable the authorising officer to decide whether or not to grant the application; and
  - (c) state whether or not the proposed integrity testing operation is related to any past, current or proposed:
    - (i) integrity testing operation; or
    - (ii) controlled operation under Part IAB; and
  - (d) state the proposed period of effect of the authority, which must not exceed 12 months.
- (2) The appropriate authorising officer may require the applicant to provide such additional information concerning the proposed integrity testing operation as is necessary for the proper consideration of the application.

Note: See the table in section 15JE for which staff members may apply to conduct an integrity testing operation, and to which authorising officers (called *appropriate authorising officers*) such applications may be made.

### **15JG Integrity testing authorities—grant**

- (1) The appropriate authorising officer may, after considering an application for an authority to conduct an integrity testing operation in relation to a target agency, and any additional information provided under subsection 15JF(2):
  - (a) authorise the operation by granting the authority, in writing, either unconditionally or subject to conditions; or
  - (b) refuse the application.
- (2) The authorising officer must not grant the authority to conduct the integrity testing operation unless the authorising officer is satisfied that:
  - (a) there are reasonable grounds to suspect that a Commonwealth offence or a State offence, punishable on conviction by imprisonment for 12 months or more, has been, is being or is likely to be committed by a staff member of the target agency (whether or not the identity of the staff member is suspected or known); and
  - (b) it is appropriate in all the circumstances to conduct the operation; and
  - (c) if the authorising officer is an officer of the Australian Commission for Law Enforcement Integrity—in addition to the matters mentioned in paragraphs (a) and (b), the purpose of the operation is to investigate a corruption issue.
- (3) The authorising officer may grant an integrity testing authority even if the operation has been authorised by a previous integrity testing authority, or has been the subject of a previous application for such an authority.

Example: The authorising officer may grant an integrity testing authority that authorises the continuation or resumption of an operation authorised by an earlier authority.

- (4) An integrity testing authority is not a legislative instrument.

Note: See the table in section 15JE for who are the appropriate authorising officers for a proposed integrity testing operation in relation to a target agency.

## **15JH Integrity testing authorities—form**

### *Contents of integrity testing authority*

- (1) An integrity testing authority must:
  - (a) state the name and rank or position of the appropriate authorising officer; and
  - (b) identify the responsible staff member for the integrity testing operation and, if he or she is not the applicant for the authority, state the name of the applicant; and
  - (c) identify the nature of the criminal activity (including the suspected offence mentioned in paragraph 15JG(2)(a)) in relation to which the integrity testing operation is to be conducted; and
  - (d) identify the persons authorised to participate in the integrity testing operation; and
  - (e) describe the nature of the integrity testing operation; and
  - (f) identify (to the extent known) the staff member or staff members who are the target of the operation; and
  - (g) state a period of effect of the authority of not more than 12 months after the day the authority is granted; and
  - (h) state any conditions to which the conduct of the controlled operation is subject; and
  - (i) state the day and time when the authority is granted.

Note: The period of effect may be extended (or further extended) for up to 12 months, but not so the period of effect of the authority ends more than 24 months after it is granted (see section 15JK).

### *Identity of persons authorised to conduct the integrity testing operation*

- (2) A person is sufficiently identified for the purposes of paragraph (1)(d) if the person is identified:
  - (a) by an assumed name under which the person is operating that the authorising officer can match to the person's identity; or
  - (b) by a code name or code number that the authorising officer can match to the person's identity.
- (3) An authority must not identify persons for the purposes of paragraph (1)(d) by identifying a class of persons.

### **15JI Integrity testing authorities—notice to Integrity Commissioner**

As soon as practicable after granting an integrity testing authority for an integrity testing operation, the authorising officer must give a copy of the authority to:

- (a) the responsible staff member for the operation; and
- (b) the Integrity Commissioner (unless the authorising officer is an officer of the Australian Commission for Law Enforcement Integrity).

### **15JJ Integrity testing authorities—duration**

- (1) An integrity testing authority comes into force when the authority is granted (see section 15JG).
- (2) The authority has effect for the period stated in the authority, as extended by any variation under section 15JK, unless earlier cancelled (see section 15JL).

Note: The maximum period of effect for an integrity testing authority (taking into account any extension) is 24 months after it is granted (see paragraph 15JH(1)(g) and subsection 15JK(2)).

### **15JK Integrity testing authorities—variation**

- (1) An appropriate authorising officer for an integrity testing operation that is authorised by an integrity testing authority may, in writing, vary the authority:
  - (a) at any time on the authorising officer's own initiative; or
  - (b) on application, in writing, by the responsible staff member for the operation.
- (2) A variation may extend, or further extend, the period of effect of the authority for up to 12 months, but not so that the period of effect ends more than 24 months after the authority was granted.
- (3) As soon as practicable after varying an integrity testing authority for an integrity testing operation, the authorising officer must give a copy of the variation to:
  - (a) the responsible staff member for the operation; and
  - (b) the Integrity Commissioner (unless the authorising officer is an officer of the Australian Commission for Law Enforcement Integrity).

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Note: If the variation has the effect of changing the responsible staff member, the authorising officer would be required to give a copy of the variation to the new responsible staff member.

- (4) Subsection 33(3) of the *Acts Interpretation Act 1901* applies in relation to the variation of the authority, subject to this Act.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* has the effect that the power to grant an instrument (such as an integrity testing authority) includes the power to vary the instrument in the like manner and subject to the like conditions.

- (5) A variation is not a legislative instrument.

**15JL Integrity testing authorities—cancellation**

- (1) An appropriate authorising officer for an integrity testing operation may, by order in writing given to the responsible staff member for the operation, cancel the authority at any time and for any reason.
- (2) The reasons for cancelling an integrity testing authority under subsection (1) include (but are not limited to) cancellation at the request of the responsible staff member.
- (3) Cancellation of an integrity testing authority takes effect at the time the order is made or at a later time stated in the order.

**15JM Integrity testing authorities—defects**

An application for an integrity testing authority or for the variation of an authority, and any integrity testing authority or variation granted on the basis of such an application, is not invalidated by any defect, other than a defect that affects the application, authority or variation in a material particular.

**Division 3—Integrity testing operations: protection of participants**

**15JN Integrity testing operations—authorised conduct**

- (1) Subject to subsection (2), an integrity testing authority for an integrity testing operation authorises each person identified in the authority as a participant to take part in the operation, subject to any conditions set out in the authority.

Note: Paragraphs 15JH(1)(d) and (e) require participants to be identified, and the nature of the operation to be described, in the authority. Subsection 15JH(2), however, allows for participants to be identified in the authority by an assumed identity, or by code.

- (2) A participant is authorised to take part in the integrity testing operation for the period of effect of the authority, unless:
  - (a) the authority states (or is varied to state) a shorter period during which the person is so authorised; or
  - (b) the authority is varied to provide that the person is no longer so authorised; or
  - (c) the authority is cancelled before the end of that period.
- (3) An integrity testing authority does not authorise a participant identified in the authority to delegate participation to another person.

### **15JO Integrity testing operations—indemnity against civil liability**

The Commonwealth must indemnify a participant in an integrity testing operation that is authorised by an integrity testing authority against any civil liability (including reasonable costs) the participant incurs because of conduct the participant engages in if:

- (a) the participant engages in the conduct in the course of, and for the purposes of, the operation in accordance with the authority; and
- (b) the participant is identified in the authority; and
- (c) the conduct does not involve the participant intentionally inducing a person to commit a Commonwealth offence or a State offence that the person would not otherwise have intended to commit; and
- (d) the conduct does not involve the participant engaging in any conduct that is likely to:
  - (i) cause the death of, or serious injury to, any person; or
  - (ii) involve the commission of a sexual offence against any person; and
- (e) if the participant is a civilian participant in the operation—he or she acts in accordance with the instructions of a law enforcement participant in the operation; and
- (f) the requirements (if any) prescribed by regulation have been met.

**15JP Integrity testing operations—participants unaware of variation or cancellation of authority**

- (1) If an integrity testing authority for an integrity testing operation is varied in a way that limits the scope of the operation, this Part continues to apply to a participant in the operation as if the authority had not been varied in that way, for so long as the participant:
  - (a) is unaware of the variation; and
  - (b) is not reckless about the existence of the variation.
- (2) If an integrity testing authority to conduct an integrity testing operation is cancelled, this Part continues to apply to a person who was a participant in the operation immediately before the cancellation as if the authority had not been cancelled in that way, for so long as the person:
  - (a) is unaware of the cancellation; and
  - (b) is not reckless about the existence of the cancellation.
- (3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an integrity testing authority if:
  - (a) the person is aware of a substantial risk that the variation or cancellation has happened; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk that the authority has not been varied or cancelled.

**Division 4—Integrity testing operations: disclosure of information**

**15JQ Integrity testing operations—disclosure**

*Disclosure—offence*

- (1) A person commits an offence if:
  - (a) the person discloses information; and
  - (b) the information relates to an integrity testing operation.

Penalty: Imprisonment for 2 years.

*Exception—authorised disclosure*

- (2) Subsection (1) does not apply if the disclosure was:
- (a) in connection with the administration or execution of this Part; or
  - (b) for the purposes of obtaining legal advice in relation to the integrity testing operation; or
  - (c) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, the integrity testing operation; or
  - (d) in connection with the administration or execution of the *Law Enforcement Integrity Commissioner Act 2006*; or
  - (e) to an authority of the Commonwealth, a State or a Territory, if the disclosure relates to the misconduct of an employee or officer of the authority; or
  - (f) in accordance with any requirement imposed by law; or
  - (g) in connection with the performance of functions or duties, or the exercise of powers, of the target agency in relation to which the operation was conducted.

*Exception—corruption issue or misconduct*

- (3) Subsection (1) does not apply if:
- (a) the person (the **discloser**) discloses the information to the Integrity Commissioner; and
  - (b) the discloser informs the person to whom the disclosure is made of the discloser's identity before making the disclosure; and
  - (c) the information concerns a corruption issue, or misconduct, in relation to an integrity testing operation; and
  - (d) the discloser considers that the information may assist the Integrity Commissioner to perform the Commissioner's functions or duties; and
  - (e) the discloser makes the disclosure in good faith.

Note: A defendant bears an evidential burden in relation to the matters in subsections (2) and (3)—see subsection 13.3(3) of the *Criminal Code*.

**15JR Integrity testing operations—disclosure endangering safety etc.**

*Offence—disclosure endangering safety etc.*

- (1) A person commits an offence if:
- (a) the person discloses information; and
  - (b) the information relates to an integrity testing operation; and
  - (c) either:
    - (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of an integrity testing operation; or
    - (ii) the disclosure of the information will endanger the health or safety of any person or prejudice the effective conduct of an integrity testing operation.

Penalty: Imprisonment for 10 years.

*Exceptions—authorised disclosure*

- (2) Subsection (1) does not apply if the disclosure was:
- (a) in connection with the administration or execution of this Part; or
  - (b) for the purposes of obtaining legal advice in relation to the integrity testing operation; or
  - (c) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, the integrity testing operation; or
  - (d) in connection with the administration or execution of the *Law Enforcement Integrity Commissioner Act 2006*; or
  - (e) a disclosure to an authority of the Commonwealth, a State or a Territory; or
  - (f) in accordance with any requirement imposed by law; or
  - (g) in connection with the performance of functions or duties, or the exercise of powers, of the target agency in relation to which the operation was conducted.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

*Exception—corruption issue or misconduct*

- (3) Subsection (1) does not apply if:
- (a) the person (the *discloser*) discloses the information to the Integrity Commissioner; and
  - (b) the discloser informs the person to whom the disclosure is made of the discloser's identity before making the disclosure; and
  - (c) the information concerns a corruption issue, or misconduct, in relation to an integrity testing operation; and
  - (d) the discloser considers that the information may assist the Integrity Commissioner to perform the Commissioner's functions or duties; and
  - (e) the discloser makes the disclosure in good faith.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

## **Division 5—Integrity testing operations: reporting**

### **15JS Integrity testing operations—annual reports**

- (1) As soon as practicable after 30 June in each year, the chief officer of each integrity testing agency must submit a report to the Law Enforcement Minister setting out the details required by subsection (2) in relation to integrity testing operations authorised by an authorising officer of the agency during the previous 12 months.
- (2) The details to be set out in the report are as follows:
  - (a) the number of integrity testing authorities granted by authorising officers of the agency;
  - (b) the nature of the suspected criminal activity in relation to which each authority was given;
  - (c) the period of effect of each authority (including any extension of the period granted by variation);
  - (d) if an authority was cancelled—the reasons for cancellation.
- (3) A report must not disclose any information that identifies any person involved in an integrity testing operation or that is likely to lead to such a person being identified.

- (4) Nothing in this section requires particulars of an integrity testing operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.
- (5) In this section:

**chief officer**, of an integrity testing agency, means:

- (a) for the ACC—the Chief Executive Officer of the ACC; or
- (b) for the Australian Federal Police—the Commissioner; or
- (c) for Customs—the Chief Executive Officer of Customs; or
- (d) for the Australian Commission for Law Enforcement Integrity—the Integrity Commissioner.

**Law Enforcement Minister** means the Minister responsible for the administration of the *Law Enforcement Integrity Commissioner Act 2006*.

## **Division 6—Integrity testing operations: evidence**

### **15JT Evidence of integrity testing authorities**

A document purporting to be an integrity testing authority:

- (a) is admissible in any legal proceedings; and
- (b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person granting the authority was satisfied of the facts he or she was required to be satisfied of to grant the authority.

### **30 Application of amendments in Part 1**

- (1) The amendments of the *Crimes Act 1914* made by this Part apply in relation to an integrity testing authority granted (or sought to be granted) on or after the commencement of this Part:
- (a) whether the act or omission constituting the suspected offence in relation to which the authority is (or is sought to be) granted occurred (or is alleged to have occurred) before, on or after that commencement; and
  - (b) whether any other circumstance in relation to which the authority is (or is sought to be) granted occurred (or is

alleged to have occurred) before, on or after that commencement.

(2) In this item:

***integrity testing authority*** means an integrity testing authority under Part IABA of the *Crimes Act 1914*, as inserted by this Part.

## Part 2—Expansion of coverage by ACLEI

### *Law Enforcement Integrity Commissioner Act 2006*

#### 31 Subsection 5(1)

Insert:

*Agriculture Department* means the Department administered by the Minister administering the *Primary Industries Levies and Charges Collection Act 1991*.

#### 32 Subsection 5(1)

Insert:

*Anti-Money Laundering Act* means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*.

#### 33 Subsection 5(1)

Insert:

*AUSTRAC* has the same meaning as in the Anti-Money Laundering Act.

#### 34 Subsection 5(1) (paragraph (b) of the definition of *disciplinary proceeding*)

Omit “Division 5”, substitute “Division 3”.

#### 35 Subsection 5(1) (after paragraph (ba) of the definition of *head*)

Insert:

- (bb) if the agency is AUSTRAC—the AUSTRAC CEO (within the meaning of the Anti-Money Laundering Act); or
- (bc) if the agency is the CrimTrac Agency—the chief executive officer of the CrimTrac Agency; or
- (bd) if the agency is the Agriculture Department—the Secretary of the Agriculture Department;

**36 Subsection 5(1) (after paragraph (ba) of the definition of law enforcement agency)**

Insert:

- (bb) AUSTRAC; or
- (bc) the CrimTrac Agency; or
- (bd) the Agriculture Department; or

**37 Subsection 5(1) (paragraph (a) of the definition of law enforcement secrecy provision)**

Omit “*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*”, substitute “*Anti-Money Laundering Act*”.

**38 After subsection 10(2A)**

Insert:

*AUSTRAC staff members*

- (2B) The following are *staff members* of AUSTRAC for the purposes of this Act:
- (a) the AUSTRAC CEO (within the meaning of the *Anti-Money Laundering Act*);
  - (b) a member of the staff referred to in subsection 224(1) of that Act;
  - (c) a consultant engaged under subsection 225(1) of that Act;
  - (d) a person referred to in subsection 225(3) of that Act whose services are made available to the AUSTRAC CEO.

*Financial Transaction Reports Act AUSTRAC staff members*

- (2C) The following are also *staff members* of AUSTRAC for the purposes of this Act:
- (a) the Director of AUSTRAC under the *Financial Transaction Reports Act 1988*, as in force before section 3 of the *Anti-Money Laundering Act* commenced;
  - (b) a member of the staff referred to in section 40 of the *Financial Transaction Reports Act 1988* as so in force;
  - (c) a consultant engaged under section 40A of the *Financial Transaction Reports Act 1988* as so in force;
  - (d) an officer or employee of another government agency whose services were made available to the Director of AUSTRAC

while the *Financial Transaction Reports Act 1988* was so in force, in connection with the performance of any of the Director's functions.

Note: Section 3 of the Anti-Money Laundering Act commenced on 13 December 2006.

*CrimTrac Agency staff members*

- (2D) The following are **staff members** of the CrimTrac Agency for the purposes of this Act:
- (a) the chief executive officer of the CrimTrac Agency;
  - (b) a member of the staff of the CrimTrac Agency;
  - (c) a consultant engaged by the chief executive officer of the CrimTrac Agency;
  - (d) an officer or employee of another government agency whose services are made available to the chief executive officer of the CrimTrac Agency, in connection with the performance of any of the chief executive officer's functions.

*Agriculture Department staff members*

- (2E) The following are **staff members** of the Agriculture Department for the purposes of this Act:
- (a) the Secretary of the Agriculture Department;
  - (b) a person in a class of persons prescribed by regulation for the purposes of this subsection.

**39 After paragraph 10(5)(ba)**

Insert:

- (bb) a person referred to in paragraph (2B)(d) or (2C)(d) is a **secondee** to AUSTRAC; and
- (bc) a person referred to in paragraph (2D)(d) is a **secondee** to the CrimTrac agency; and
- (bd) a person is a **secondee** to the Agriculture Department if a regulation provides that the person is a secondee of the Agriculture Department; and

**40 Application of amendments in Part 2**

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- (1) The amendments made by Part 2 of this Schedule apply in relation to corrupt conduct, whether engaged in before or after the commencement of the *Law Enforcement Integrity Commissioner Act 2006*.
- (2) However, a requirement for the head of AUSTRAC, the CrimTrac Agency or the Agriculture Department to notify a corruption issue to the Integrity Commissioner under that Act only applies at and after the commencement of this item.

Note: See sections 19 and 20 of that Act.

- (3) In this item:
- corrupt conduct** has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.
- corruption issue** has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.
- head** of AUSTRAC, the CrimTrac Agency or the Agriculture Department has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

## Part 3—Related amendments

### *Australian Crime Commission Act 2002*

#### **41 Subsection 4(1) (at the end of the definition of *ACC operation/investigation*)**

Add:

However, an *ACC operation/investigation* does not include an integrity operation.

#### **42 Subsection 4(1)**

Insert:

*integrity authority* means:

- (a) an integrity testing controlled operations authority under Part IAB of the *Crimes Act 1914* authorising a controlled operation under that Part; or
- (b) an integrity testing authority under Part IABA of the *Crimes Act 1914* authorising an integrity testing operation under that Part.

#### **43 Subsection 4(1)**

Insert:

*integrity operation* means:

- (a) a controlled operation authorised by an integrity testing controlled operation authority granted under Part IAB of the *Crimes Act 1914*; or
- (b) an integrity testing operation authorised by an integrity testing authority granted under Part IABA of the *Crimes Act 1914*.

#### **44 Subsection 4(1) (at the end of the definition of *intelligence operation*)**

Add:

However, an *intelligence operation* does not include an integrity operation.

**45 Subsection 4(1) (at the end of the definition of *special ACC operation/investigation*)**

Add:

However, a *special ACC operation/investigation* does not include an integrity operation.

**46 After paragraph 7A(c)**

Insert:

(ca) to do any of the following (whether in its own name or through officers or members of staff of the ACC), as permitted or required for the purposes of Part IAB or IABA of the *Crimes Act 1914* or any other law of the Commonwealth:

- (i) to apply for, and to grant, integrity authorities in relation to members of staff of the ACC;
- (ii) to conduct and participate in integrity operations in relation to members of staff of the ACC;
- (iii) to assist the Australian Federal Police, Customs or the Australian Commission for Law Enforcement Integrity in making applications for integrity authorities;
- (iv) to assist those agencies in the conduct of integrity operations;

***Surveillance Devices Act 2004***

**47 Subsection 6(1) (definition of *disciplinary proceeding*)**

Repeal the definition, substitute:

*disciplinary proceeding* has the same meaning as in the *Law Enforcement Integrity Commissioner Act 2006*.

**48 Subsection 6(1)**

Insert:

*integrity authority* means:

- (a) an integrity testing controlled operations authority under Part IAB of the *Crimes Act 1914* authorising a controlled operation under that Part; or

- (b) an integrity testing authority under Part IABA of the *Crimes Act 1914* authorising an integrity testing operation under that Part.

#### **49 Subsection 6(1)**

Insert:

*integrity operation* means:

- (a) a controlled operation authorised by an integrity testing controlled operation authority granted under Part IAB of the *Crimes Act 1914*; or
- (b) an integrity testing operation authorised by an integrity testing authority granted under Part IABA of the *Crimes Act 1914*.

#### **50 Subsection 6(1) (after paragraph (da) of the definition of relevant offence)**

Insert:

- (db) if a surveillance device warrant, or a tracking device authorisation, is issued or given (or is sought) for the purposes of an integrity operation in relation to a suspected offence against the law of the Commonwealth, or of a State or Territory, that is punishable by a maximum term of imprisonment of 12 months or more or for life—that offence;  
or

#### **51 Subsection 6(1)**

Insert:

*target agency* means any of the following:

- (a) the Australian Federal Police;
- (b) the Australian Crime Commission;
- (c) Customs.

#### **52 Before subsection 14(1)**

Insert:

*Warrants sought for offence investigations*

#### **53 Before subsection 14(3)**

Insert:

*Warrants sought for recovery orders*

**54 Before subsection 14(3A)**

Insert:

*Warrants sought for mutual assistance investigations*

**55 After subsection 14(3A)**

Insert:

*Warrants sought for integrity operations*

- (3B) A federal law enforcement officer (or another person on his or her behalf) may apply for the issue of a surveillance device warrant if:
- (a) an integrity authority is in effect authorising an integrity operation in relation to an offence that it is suspected has been, is being or is likely to be committed by a staff member of a target agency; and
  - (b) the federal law enforcement officer suspects on reasonable grounds that the use of a surveillance device will assist the conduct of the integrity operation by:
    - (i) recording or monitoring the operation; and
    - (ii) enabling evidence to be obtained relating to the commission of the offence or the integrity, location or identity of any staff member of the target agency.

*Procedure for making applications*

**56 Subsection 14(4)**

Omit “or (3A)”, substitute “, (3A) or (3B)”.

**57 After paragraph 16(1)(ba)**

Insert:

- (bb) in the case of a warrant sought for the purposes of an integrity operation—that the integrity authority for the operation is in effect, and that there are reasonable grounds for the suspicions founding the application for the warrant (as mentioned in paragraphs 14(3B)(a) and (b)); and

**58 Paragraph 16(2)(a)**

After “or a mutual assistance authorisation”, insert “, or for the purposes of an integrity operation”.

**59 Paragraph 16(2)(e)**

Omit “or a recovery order—”, substitute “or a recovery order, or for the purposes of an integrity operation—”.

**60 After subparagraph 17(1)(b)(iia)**

Insert:

- (iib) if the warrant is issued for the purposes of an integrity operation—the integrity authority for the operation and each alleged relevant offence in relation to which the authority was granted; and

**61 Subparagraph 17(1)(b)(ix)**

Omit “, being a period not exceeding 90 days”, substitute “(see subsection (1A))”.

**62 After subsection 17(1)**

Insert:

(1A) A warrant may only be issued:

- (a) for a period of no more than 90 days; or
- (b) if the warrant is issued for the purposes of an integrity operation—for a period of no more than 21 days.

Note: The use of a surveillance device pursuant to a warrant may be discontinued earlier: see section 21.

**63 Paragraph 19(1)(a)**

Repeal the paragraph, substitute:

- (a) for an extension of the warrant for a period of no more than:
  - (i) 90 days after the day the warrant would otherwise expire; or
  - (ii) if the warrant is issued for the purposes of an integrity operation—21 days after the day the warrant would otherwise expire; or

**64 Subsection 20(2)**

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Omit “or 21(3A)(a) and (b)”, substitute “, 21(3A)(a) and (b) or 21(3B)(a) and (b)”.

**65 After subsection 21(3A)**

Insert:

(3B) If:

- (a) the surveillance device warrant has been sought by or on behalf of a federal law enforcement officer for the purposes of an integrity operation; and
- (b) the chief officer of the law enforcement agency to which the law enforcement officer belongs or is seconded is satisfied that:
  - (i) the use of a surveillance device under the warrant sought is no longer necessary for the purposes of the integrity operation; or
  - (ii) the integrity authority for the integrity operation is no longer in effect;

the chief officer must, in addition to revoking the warrant under section 20, take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued.

**66 At the end of section 21**

Add:

- (6) In the case of a warrant issued for the purposes of an integrity operation, if the law enforcement officer to whom the warrant is issued, or who is primarily responsible for executing the warrant, believes that:
  - (a) the use of a surveillance device under the warrant is no longer necessary for those purposes; or
  - (b) the integrity authority for the integrity operation is no longer in effect;

he or she must immediately inform the chief officer of the law enforcement agency to which he or she belongs or is seconded.

**67 After subsection 39(3)**

Insert:

- (3A) A federal law enforcement officer may, with the written permission of an appropriate authorising officer, use a tracking device without a warrant for the purposes of an integrity operation.

**68 Subsection 39(4)**

Omit “and (3)”, substitute “, (3) and (3A)”.

**69 Subsections 39(5) and (7)**

Omit “or (3)”, substitute “, (3) or (3A)”.

**70 After paragraph 40(1)(d)**

Insert:

- (da) if the authorisation authorises the use of a tracking device for the purposes of an integrity operation—details identifying the integrity authority for the operation and each alleged relevant offence; and

**71 Paragraphs 45(1)(c) and (2)(c)**

After “this section”, insert “or section 45A (which deals with information relating to integrity operations)”.

**72 After section 45**

Insert:

**45A Protected information related to integrity operations**

- (1) Protected information may be used, recorded, communicated or published, or may be admitted in evidence, if it is necessary to do so for any of the following purposes:
- (a) making a decision about whether to apply for an integrity authority;
  - (b) designing an integrity operation;
  - (c) applying for an integrity authority;
  - (d) granting an integrity authority;
  - (e) conducting an integrity operation;
  - (f) applying for any warrant, authorisation or order, under a law of the Commonwealth, for the purposes of an integrity operation;

(g) any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, an integrity testing operation.

Note: If use etc. of protected information is permitted under this section, the offences in subsections 45(1) and (2) do not apply (see paragraphs 45(1)(c) and (2)(c)).

(2) Subsection (1) does not limit subsections 45(4) and (5) (which permit protected information to be used etc. for certain other purposes).

(3) If protected information is communicated under subsection (1), subsection 45(7) does not apply in relation to the further communication of the information.

Note: If protected information is communicated from one agency to another agency, subsection 45(7) restricts the circumstances in which the information may be further communicated.

(4) Paragraph (1)(g) (use etc. for disciplinary or legal action) does not authorise:

- (a) the use, recording, communication or publication of information of the kind referred to in paragraph (d) of the definition of *protected information* in section 44; or
- (b) the giving in evidence of protected information of the kind referred to in paragraph (d) of that definition;

regardless of whether that information is also information of the kind referred to in paragraph (b) or (c) of that definition.

Note: Paragraph (d) of the definition of *protected information* in section 44 covers information obtained by a law enforcement officer in contravention of a requirement for a warrant, tracking device authorisation or emergency authorisation.

(5) In this section:

*disciplinary or legal action*, in relation to a staff member of a target agency, means any of the following:

- (a) action in respect of alleged misconduct of the staff member;
- (b) termination of the employment or appointment of the staff member;
- (c) a disciplinary proceeding in relation to the staff member, or a report of such a proceeding;
- (d) the investigation of an offence suspected to have been committed by the staff member;

(e) a legal proceeding in relation to the staff member, or a report of such a proceeding.

*Disciplinary or legal action* also includes the consideration of whether an action or proceeding covered by this definition should be taken or brought.

*staff member*, of a target agency, means a staff member of that agency within the meaning of the *Law Enforcement Integrity Commissioner Act 2006* (see section 10 of that Act).

**73 Subparagraph 46(1)(b)(i)**

After “45(5)”, insert “or 45A(1)”.

**74 Subsection 46(2)**

After “45(4) or (5)”, insert “or 45A(1)”.

**75 Subparagraph 46(2)(b)(i)**

After “45(5)”, insert “or 45A(1)”.

**76 After subparagraph 49(2)(b)(x)**

Insert:

- (xa) if the warrant is issued or the authorisation given for the purposes of an integrity operation—give details of the benefit to the operation of the use of the device and of the general use made or to be made of any evidence or information obtained by the use of the device; and

**77 After subparagraph 53(2)(c)(iiia)**

Insert:

- (iiib) if the warrant was issued for the purposes of an integrity operation—details identifying the integrity authority for the operation and the relevant offence in respect of which the integrity authority was granted; and

**78 At the end of paragraph 53(4)(c)**

Add:

- ; and (iv) if the authorisation was given for the purposes of an integrity operation—details identifying the integrity authority authorising the operation and the relevant

offence in respect of which the integrity authority was granted.

***Telecommunications (Interception and Access) Act 1979***

**79 Subsection 5(1)**

Insert:

***integrity authority*** means:

- (a) an integrity testing controlled operations authority under Part IAB of the *Crimes Act 1914* authorising a controlled operation under that Part; or
- (b) an integrity testing authority under Part IABA of the *Crimes Act 1914* authorising an integrity testing operation under that Part.

**80 Subsection 5(1)**

Insert:

***integrity operation*** means:

- (a) a controlled operation authorised by an integrity testing controlled operation authority granted under Part IAB of the *Crimes Act 1914*; or
- (b) an integrity testing operation authorised by an integrity testing authority granted under Part IABA of the *Crimes Act 1914*.

**81 Subsection 5(1) (definition of *permitted purpose*)**

After “interception agency,”, insert “Customs,”.

**82 Subsection 5(1) (paragraph (a) of the definition of *permitted purpose*)**

After “in any case”, insert “(except in the case of Customs)”.

**83 Subsection 5(1) (after paragraph (a) of the definition of *permitted purpose*)**

Insert:

- (aaa) in the case of a Commonwealth agency or Customs—a purpose mentioned in the table in section 6S in relation to the agency or Customs; or

#### 84 After paragraph 5B(1)(ea)

Insert:

- (eb) a proceeding in so far as it is, or relates to, disciplinary or legal action (within the meaning of section 6S) that is in relation to an eligible staff member (within the meaning of that section) of the Australian Federal Police or the ACC; or

#### 85 After section 6R

Insert:

#### 6S Permitted purposes—integrity purposes

- (1) For the purposes of paragraph (aaa) of the definition of *permitted purpose* in subsection 5(1), a purpose mentioned in column 2 of an item in the following table is a *permitted purpose* in relation to a Commonwealth agency, or Customs, as mentioned in column 1 of that item.

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Permitted purposes—integrity purposes		
Item	Column 1—Commonwealth agency or Customs	Column 2—Permitted purpose
1	(a) Australian Federal Police; or (b) ACC; or (c) Australian Commission for Law Enforcement Integrity; or (d) Customs.	A purpose connected with: (a) a decision about whether to apply for an integrity authority; or (b) designing, but not conducting, an integrity operation; or (c) an application for an integrity authority; or (d) granting an integrity authority.
2	(a) Australian Federal Police; or (b) ACC; or (c) Australian Commission for Law Enforcement Integrity.	A purpose connected with an application for any warrant, authorisation or order, under a law of the Commonwealth, that is made for the purposes of an integrity operation.
3	(a) Australian Federal Police; or (b) ACC.	A purpose connected with disciplinary or legal action in relation to an eligible staff member of that agency, if arising out of, or otherwise related to, an integrity operation.

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Note: The *Commonwealth agencies* are the ACC, the Australian Federal Police and the Australian Commission for Law Enforcement Integrity (see subsection 5(1)).

(2) In this section:

***disciplinary or legal action***, in relation to an eligible staff member of the Australian Federal Police or the ACC, means any of the following:

- (a) action in respect of alleged misconduct of the staff member;
- (b) termination of the employment or appointment of the staff member;
- (c) a disciplinary proceeding (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*) in relation to the staff member, or a report of such a proceeding;
- (d) the investigation of an offence suspected to have been committed by the staff member;
- (e) a legal proceeding in relation to the staff member, or a report of such a proceeding.

***Disciplinary or legal action*** also includes the consideration of whether an action or proceeding covered by this definition should be taken or brought.

***eligible staff member***, of the Australian Federal Police or the ACC, means a staff member of that agency within the meaning of the *Law Enforcement Integrity Commissioner Act 2006* (see section 10 of that Act).

## 86 At the end of section 68

Add:

- ; and (m) to the chief officer of the Australian Federal Police or the ACC, if the information relates, or appears to relate, to either of the following:
- (i) a matter in relation to which an application for an integrity authority may be made, is intended to be made or has been made in relation to that agency;
  - (ii) a matter in relation to which that agency has conducted, or is conducting, an integrity operation; and
- (n) to the chief officer of the Australian Commission for Law Enforcement Integrity, if the information relates, or appears to relate, to either of the following:
-

- (i) a matter in relation to which an application for an integrity authority may be made, is intended to be made or has been made in relation to the Australian Federal Police, the ACC or Customs;
- (ii) a matter in relation to which the Australian Commission for Law Enforcement Integrity has conducted, or is conducting, an integrity operation; and
- (o) if the originating agency is the Australian Commission for Law Enforcement Integrity—to the Chief Executive Officer of Customs, in the case of information that relates, or appears to relate, to either of the following:
  - (i) a matter in relation to which an application for an integrity authority may be made, is intended to be made or has been made in relation to Customs;
  - (ii) a matter in relation to which Customs is conducting an integrity operation.

### **87 Subsection 139(1)**

After “and for no other purpose”, insert “(other than a purpose referred to in subsection 139A(2), if applicable)”.

### **88 After section 139**

Insert:

### **139A Dealing for integrity purposes**

- (1) An officer or staff member of a Commonwealth agency may, for one or more purposes referred to in subsection (2), and for no other purpose (other than a purpose referred to in subsection 139(2), if applicable), communicate to another person, make use of, or make a record of the following:
  - (a) lawfully accessed information other than foreign intelligence information;
  - (b) stored communications warrant information.
- (2) The purposes are:
  - (a) a permitted purpose mentioned in the table in section 6S in relation to the agency or another Commonwealth agency; or
  - (b) purposes connected with the keeping of records by the agency under Part 3-5.

## 89 Section 142

After “139”, insert “or 139A”.

## 90 Paragraph 150(1)(b)

After “subsection 139(2)” insert “or 139A(2)”.

## 91 Application of amendments in Part 3

### *Amendments of the Surveillance Devices Act 2004*

- (1) Subsections 14(3B) and 39(3A) of the *Surveillance Devices Act 2004*, as inserted by this Part, apply in relation to an integrity operation for which the integrity authority was granted on or after the commencement of this Part, whether the act or omission constituting the suspected offence to which the operation relates occurred (or is alleged to have occurred) before, on or after that commencement.
- (2) Section 45A of the *Surveillance Devices Act 2004*, as inserted by this Part, applies in relation to protected information whether the information was obtained or created before, on or after the commencement of this Part.

### *Amendments of the Telecommunications (Interception and Access) Act 1979*

- (3) The amendments of the definition of *permitted purpose* in subsection 5(1) of the *Telecommunications (Interception and Access) Act 1979*, and section 6S of that Act, as made and inserted by this Part, apply in relation to the communication, use and recording of lawfully intercepted information or interception warrant information on or after the commencement of this Part, whether the information was obtained, or the interception warrant was issued, before, on or after that commencement.
  - (4) Paragraphs 68(m), (n) and (o) of the *Telecommunications (Interception and Access) Act 1979*, as added by this Part, apply in relation to the communication of lawfully intercepted information or interception warrant information on or after the commencement of this Part, whether the information was obtained, or the interception warrant was issued, before, on or after that commencement.
  - (5) Section 139A of the *Telecommunications (Interception and Access) Act 1979*, as inserted by this Part, applies in relation to the communication,
-

use or recording of lawfully accessed information or stored communications warrant information for a permitted purpose referred to in section 6S of that Act (as inserted by this Part) on or after the commencement of this Part, whether the information was obtained, or the stored communications warrant was issued, before, on or after that commencement.

- (6) Sections 74 and 143 of the *Telecommunications (Interception and Access) Act 1979* apply to the giving of information in evidence in a proceeding referred to in paragraph 5B(1)(eb) of that Act (as inserted by this Part) that is, or that relates to, disciplinary or legal action on or after the commencement of this Part, whether the information was obtained, or the interception warrant or stored communications warrant was issued, before, on or after that commencement.

## **Schedule 2—Other amendments relating to the Australian Customs and Border Protection Service**

### *Customs Administration Act 1985*

#### **1 Section 3**

Insert:

*alcohol blood test* means a test of a person's blood to determine the amount of alcohol (if any) in the person's blood.

#### **2 Section 3**

Insert:

*alcohol breath test* means a test of a person's breath to determine the amount of alcohol (if any) in the person's blood.

#### **3 Section 3**

Insert:

*alcohol screening test* means a test of a person's breath to determine whether alcohol is present in the person's breath.

#### **4 Section 3**

Insert:

*authorised officer*, in relation to a particular provision of this Act, means an officer of Customs authorised under section 3B to exercise the powers or perform the functions of an authorised officer under that provision.

#### **5 Section 3**

Insert:

*body sample* means any of the following:

- (a) any human biological fluid;
- (b) any human biological tissue (whether alive or otherwise);

(c) any human breath.

**6 Section 3**

Insert:

*CEO's Orders* means orders under section 4B.

**7 Section 3**

Insert:

*corrupt conduct*: see *engages in corrupt conduct*.

**8 Section 3**

Insert:

*Customs vessel* means a vessel used, or for use, for the purposes of the Australian Customs and Border Protection Service.

**9 Section 3**

Insert:

*Customs worker* means:

- (a) an officer of Customs; or
  - (b) a person who is:
    - (i) an employee of an Agency (within the meaning of the *Public Service Act 1999*); or
    - (ii) an officer or employee of a State or Territory; or
    - (iii) an officer or employee of an authority of the Commonwealth, a State or a Territory; and whose services are made available to the Australian Customs and Border Protection Service; or
  - (c) a person who is:
    - (i) engaged as a consultant or contractor to perform services for the Australian Customs and Border Protection Service; and
    - (ii) specified in a determination made by the CEO under section 3C; or
  - (d) a person who is:
    - (i) engaged or employed by a person to whom paragraph (c) or this paragraph applies; and
-

- (ii) specified in a determination made by the CEO under section 3C.

### 10 Section 3

Insert:

***engages in corrupt conduct***: a Customs worker ***engages in corrupt conduct*** if the Customs worker, while a Customs worker, engages in:

- (a) conduct that:
  - (i) involves; or
  - (ii) is engaged in for the purpose (or for purposes including the purpose) of;  
the Customs worker abusing his or her position as a Customs worker; or
- (b) conduct that:
  - (i) perverts; or
  - (ii) is engaged in for the purpose (or for purposes including the purpose) of perverting;  
the course of justice; or
- (c) conduct that, having regard to the duties and powers of the Customs worker as a Customs worker:
  - (i) involves; or
  - (ii) is engaged in for the purpose (or for purposes including the purpose) of;  
corruption of any other kind.

### 11 Section 3

Insert:

***officer of Customs*** has the same meaning as in the *Customs Act 1901*.

### 12 Section 3

Insert:

***prohibited drug*** means:

- (a) a narcotic substance (within the meaning of the *Customs Act 1901*); or

- (b) any drug specified in a legislative instrument under section 16H.

### **13 Section 3**

Insert:

*prohibited drug test* means a test of a body sample of a person to determine the presence (if any) of a prohibited drug in the sample.

### **14 Section 3**

Insert:

*serious misconduct*, by a Customs worker, means:

- (a) corruption, a serious abuse of power, or a serious dereliction of duty, by the Customs worker; or
- (b) any other seriously reprehensible act or behaviour by the Customs worker, whether or not acting, or purporting to act, in the course of his or her duties as such a Customs worker.

### **15 After section 3A**

Insert:

#### **3B Authorised officers**

The CEO may, in writing, authorise an officer of Customs to perform or exercise the functions or powers of an authorised officer under a particular provision of this Act.

#### **3C Determination of consultants, contractors and subcontractors as Customs workers**

- (1) The CEO may, by writing, determine that:
  - (a) a specified consultant or contractor engaged to perform services for the Australian Customs and Border Protection Service; or
  - (b) a specified person who is engaged or employed by a person to whom paragraph (c) or (d) of the definition of *Customs worker* applies;is a Customs worker.

- (2) A determination under subsection (1) is not a legislative instrument.

## **16 After section 4A**

Insert:

### **4B CEO's Orders**

*CEO may issue orders*

- (1) In the exercise of his or her powers under subsection 4(2), the CEO may, by writing, issue orders with respect to the control of the Australian Customs and Border Protection Service.
- (2) Without limiting subsection (1), the CEO may issue CEO's Orders relating to the reporting, by Customs workers, of any of the following:
- (a) serious misconduct by a Customs worker;
  - (b) corrupt conduct engaged in by a Customs worker;
  - (c) criminal activity involving a Customs worker;
- where the serious misconduct, corrupt conduct or criminal activity affects, or is likely to affect, the operations and responsibilities of the Australian Customs and Border Protection Service.
- (3) Subsection (1) does not limit subsection 4(4).

*Compliance with CEO's Orders*

- (4) A Customs worker must comply with CEO's Orders.

*CEO's Orders are not legislative instruments*

- (5) CEO's Orders are not legislative instruments.

### **4C Self-incrimination—CEO's Orders relating to the reporting of serious misconduct etc.**

- (1) If a Customs worker is required by a CEO's Order of the kind referred to in subsection 4B(2) to give information, answer a question or produce a document, the Customs worker is not excused from giving the information, answering the question or producing the document on the ground that the information, the

answer to the question or the production of the document might tend to incriminate the Customs worker or expose the Customs worker to a penalty.

- (2) However, the information given, the answer given or the document produced is not admissible in evidence against the Customs worker in any proceedings.
- (3) Subsection (2) has effect subject to section 16G.

**17 Application—CEO’s Orders relating to the reporting of serious misconduct etc.**

A CEO’s Order of the kind referred to in subsection 4B(2) of the *Customs Administration Act 1985*, as inserted by this Schedule, applies to serious misconduct, corrupt conduct and criminal activity, whether engaged in before, on or after the commencement of this item.

**18 At the end of subsection 14(1)**

Add “(other than a function or power under section 15A)”.

**19 After section 15**

Insert:

**15A Termination of employment of member of staff for serious misconduct**

*CEO may make declaration*

- (1) This section applies if the CEO terminates the employment of a member of the staff referred to in subsection 15(1) and the CEO believes, on reasonable grounds, that the staff member’s conduct or behaviour, or any part of it:
  - (a) amounts to serious misconduct by the staff member; and
  - (b) is having, or is likely to have, a damaging effect on:
    - (i) the professional self-respect or morale of some or all of the members of the staff of the Australian Customs and Border Protection service; or
    - (ii) the reputation of the Australian Customs and Border Protection Service with the public, or any section of the public, or with an Australian or overseas government, or with a person or body (however described) to whom the

CEO may authorise disclosure of information under section 16.

Note: See section 29 of the *Public Service Act 1999* for termination of the employment of a member of the staff referred to in subsection 15(1) of this Act.

- (2) The CEO may, in accordance with subsection (5), make a declaration that he or she has the belief referred to in subsection (1) in relation to the staff member.

*Effect of declaration on Fair Work Act*

- (3) If the CEO makes the declaration for the staff member, the *Fair Work Act 2009* (other than Part 3-1 and Division 9 of Part 3-3 of that Act) does not apply in relation to:

- (a) the termination of the staff member's employment; or
- (b) the making of the declaration.

Note 1: This means, for example, that the provisions of the *Fair Work Act 2009* dealing with unfair dismissal, and notice of termination or payment in lieu, do not apply in relation to the staff member.

Note 2: Part 3-1 of the *Fair Work Act 2009* deals with general protections, and Division 9 of Part 3-3 of that Act deals with payments relating to periods of industrial action.

- (4) To avoid doubt, subsection (3) applies despite section 8 of the *Public Service Act 1999*.

*Procedural requirements*

- (5) The declaration must be:
- (a) in writing; and
  - (b) made within 24 hours of the CEO's decision to terminate the staff member's employment.
- (6) The CEO must give the staff member a copy of the declaration.

*CEO to give report after making declaration*

- (7) The CEO must give the Minister a written report containing the following, as soon as practicable after making the declaration:
- (a) the grounds for the CEO's belief referred to in subsection (1) in relation to the staff member;

- (b) the nature and findings of any investigation of, or inquiry into, the staff member's conduct or behaviour;
- (c) details of any other matter the CEO considers relevant.

*Declaration not a legislative instrument*

- (8) A declaration under subsection (2) is not a legislative instrument.

**20 Application—termination for serious misconduct**

Section 15A of the *Customs Administration Act 1985*, as inserted by this Schedule, applies in relation to a decision to terminate the employment of a member of staff that is made after the commencement of this item.

**21 After section 16AA**

Insert:

**16B Authorised officers may require Customs workers to undergo alcohol screening tests etc.**

- (1) An authorised officer may require a Customs worker to undergo an alcohol screening test if:
  - (a) the Customs worker is in the course of performing his or her duties as a Customs worker; and
  - (b) the authorised officer reasonably suspects that the Customs worker is under the influence of alcohol.

*Compliance with direction*

- (2) The Customs worker must comply with the requirement given to him or her under subsection (1).

*Test results*

- (3) If the result of the alcohol screening test shows that alcohol is not present in the Customs worker's breath, the Customs worker may return to his or her duties immediately.
- (4) This section does not limit the operation of section 16C.

**16C Authorised officers may require Customs workers to undergo alcohol screening tests, alcohol breath tests or prohibited drug tests etc.**

- (1) An authorised officer may give a Customs worker who is in the course of performing his or her duties as a Customs worker a written direction requiring the Customs worker to do one or more of the following:
- (a) undergo an alcohol screening test;
  - (b) undergo an alcohol breath test;
  - (c) provide a body sample, of a kind specified in the direction, for a prohibited drug test;
- in accordance with the regulations.

*Providing blood sample if alcohol breath test indicates the presence of alcohol*

- (2) If:
- (a) a Customs worker undergoes an alcohol breath test in accordance with a direction under subsection (1); and
  - (b) the alcohol breath test indicates the presence of alcohol;
- he or she may provide a sample of his or her blood for the purpose of an alcohol blood test, in accordance with the regulations.

*Compliance with direction*

- (3) A Customs worker must comply with a direction given to him or her under this section.

**16D Alcohol screening tests, alcohol breath tests and prohibited drug tests after certain incidents**

*Person killed or seriously injured in an incident involving a motor vehicle or vessel or while detained*

- (1) An authorised officer may give a Customs worker a direction under subsection (3) if:
- (a) either:
    - (i) a person is killed or seriously injured as a result of an incident involving a motor vehicle or vessel; or

- (ii) an incident occurs in which a person is killed or seriously injured while the person is held in custody in relation to an arrest under the *Customs Act 1901* or otherwise detained under that Act; and
- (b) the Customs worker is directly involved in the incident in the course of performing his or her duties as a Customs worker.

*Person killed or seriously injured by a firearm discharging or physical force*

- (2) An authorised officer may give a Customs worker a direction under subsection (3) if:
  - (a) all of the following apply:
    - (i) the Customs worker is an officer authorised to carry arms within the meaning of section 189A of the *Customs Act 1901*;
    - (ii) an incident occurs in which a person is killed or seriously injured as a result of the discharge of a firearm by the Customs worker;
    - (iii) the incident occurs in the course of the Customs worker performing his or her duties as a Customs worker; or
  - (b) all of the following apply:
    - (i) the Customs worker is an officer of Customs;
    - (ii) an incident occurs in which a person is killed or seriously injured as a result of the application of physical force by the Customs worker;
    - (iii) the incident occurs in the course of the Customs worker performing his or her duties as a Customs worker.

*Direction*

- (3) The authorised officer may give the Customs worker a written direction requiring the Customs worker:
  - (a) to undergo an alcohol screening test; or
  - (b) to undergo an alcohol breath test; or
  - (c) to provide a body sample of a kind specified in the direction for a prohibited drug test;in accordance with the regulations.

Note: Such a direction may be given whether or not the Customs worker is still performing his or her duties as a Customs worker: see subsection (4).

*Direction to be given as soon as practicable after the incident*

- (4) A direction under subsection (3) must be given by an authorised officer as soon as practicable after the incident concerned and may be given whether or not the Customs worker is still performing his or her duties as a Customs worker.

*Provision of blood or body sample while in hospital*

- (5) If a Customs worker involved in an incident referred to in subsection (1) or (2) attends or is admitted to a hospital for examination or treatment because of the incident, an authorised officer may give the Customs worker a written direction requiring him or her:
- (a) to provide a sample of his or her blood for an alcohol blood test; or
  - (b) to provide a body sample of a kind specified in the direction for a prohibited drug test;
- in accordance with the regulations.

*Compliance with direction*

- (6) A Customs worker must comply with a direction given to him or her under this section.

**16E Alcohol screening tests etc.—performing duties on board a Customs vessel**

If:

- (a) a Customs worker is on board a Customs vessel throughout a period (the *on board period*); and
- (b) at any time during the on board period, the Customs worker performs duties as a Customs worker;

the Customs worker is taken, for the purposes of sections 16B, 16C and 16D, to be in the course of performing his or her duties as a Customs worker throughout the on board period.

**16F Regulations**

For the purposes of sections 16B, 16C and 16D, the regulations may make provision for and in relation to the following:

- (a) the authorisation of persons:

- (i) to conduct alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests for the purpose of those sections; and
- (ii) to operate equipment for that purpose;
- (b) the provision of samples of blood for the purpose of alcohol blood tests under those sections;
- (c) the provision of body samples for the purpose of prohibited drug tests under those sections;
- (d) the conduct of alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests under those sections;
- (e) the devices used in conducting alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests under those sections, including the calibration, inspection and testing of those devices;
- (f) in the case of alcohol blood tests and prohibited drug tests—the accreditation of persons to conduct analyses in connection with such tests;
- (g) the procedure for the handling and analysis of:
  - (i) samples of blood taken in connection with alcohol blood tests under those sections; or
  - (ii) body samples taken in connection with prohibited drug tests under those sections;
- (h) the giving of the test results in certificates or other documents and the evidentiary effect of such certificates or other documents;
- (i) the confidentiality of the test results.

### **16G Admissibility of test results etc. in legal proceedings**

The following:

- (a) a certificate or other document recording the results of a test conducted under section 16B, 16C or 16D in relation to a Customs worker;
- (b) any other information, answer to a question or document relevant to conducting such a test;

is not admissible in evidence against the Customs worker in any proceedings other than the following:

- (c) proceedings in relation to a decision of the CEO to terminate the employment or engagement of the Customs worker;
-

- (d) proceedings under the *Safety, Rehabilitation and Compensation Act 1988*;
- (e) proceedings in tort against the Commonwealth that are instituted by the Customs worker.

### **16H CEO may specify prohibited drugs**

The CEO may, by legislative instrument, specify drugs for the purposes of the definition of *prohibited drug* in section 3.

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*[Minister's second reading speech made in—  
House of Representatives on 19 September 2012  
Senate on 30 October 2012]*