

## Schedule 4

- 4.1 The *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) establishes the Australian Commission for Law Enforcement Integrity (ACLEI) and the position of the Integrity Commissioner and provides them with powers to prevent, detect and investigate corrupt conduct within Australian Government law enforcement agencies.
- 4.2 The purpose of Schedule 4 of the Crimes Legislation Amendment (Powers and Offences) Bill (the Bill) is to amend the LEIC Act to enhance the ability of ACLEI to investigate corruption.
- 4.3 Other amendments to the LEIC Act aim to improve the operation of provisions relating to arrest warrants, search warrants, Notices to Produce and Summons Notices, and provide consistency between non-disclosure regimes in the *Privacy Act 1988* (Cth) and the LEIC Act.

### **Existing laws and practices**

- 4.4 ACLEI's primary role is to investigate law enforcement-related corruption issues, giving priority to serious and systemic corruption.
- 4.5 Those agencies subject to the Integrity Commissioner's jurisdiction are the Australian Crime Commission (ACC), the Australian Customs and Border Protection Service (Customs), the Australian Federal Police (AFP) and the former National Crime Authority. Other agencies with a law enforcement function may also be added by regulation.

- 4.6 The Integrity Commissioner considers the nature and scope of corruption revealed by investigations, and reports annually on any patterns and trends in corruption in Australian Government law enforcement and other Government agencies which have law enforcement functions. Accordingly, ACLEI collects intelligence about corruption in support of the Integrity Commissioner's functions.<sup>1</sup>
- 4.7 One of the goals of ACLEI is to understand corruption and prevent it. When, as a consequence of performing his or her functions, the Integrity Commissioner identifies laws of the Commonwealth or administrative practices of government agencies that might contribute to corrupt practices or prevent their early detection, he or she may make recommendations for these laws or practices to be changed.<sup>2</sup>

## Proposed legislative amendments

### *Law Enforcement Integrity Commissioner Act 2006 (Cth)*

- 4.8 In summary, Schedule 4 amends the LEIC Act to:
- change terminology and some rules relating to the provision of information, documents or things to the Integrity Commissioner;
  - allow an arrest warrant issued by the Integrity Commissioner to be executed by a nominated authorised officer;
  - clarify the use of force and what items can be seized when executing search warrants issued by the Integrity Commissioner;
  - provide ACLEI with contempt power in line with that exercisable by the Australian Crime Commission; and
  - make minor amendments to fix drafting errors in the LEIC Act.

---

1 Australian Commissioner for Law Enforcement Integrity, 'About Us', <[http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About\\_Us](http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About_Us)> accessed 30 January 2012.

2 Australian Commissioner for Law Enforcement Integrity, 'About Us', <[http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About\\_Us](http://www.aclei.gov.au/www/aclei/aclei.nsf/Page/About_Us)> accessed 30 January 2012.

## Notices to Produce

- 4.9 Under the changes introduced by the Bill, there would no longer be any difference between Notices to Produce issued to staff of law enforcement agencies and Notices to Produce issued to other persons. Information could be delivered to an ACLEI officer other than the Integrity Commissioner, thus eliminating delay.
- 4.10 Other amendments require that a person served with a Notice to Produce must comply within the specified time period. The Integrity Commissioner is required to provide written acknowledgement to a person confirming they have produced all things specified in a Notice to Produce. This is crucial, because a failure to produce is an offence. Additionally, a defence is created where it is not reasonably practicable to comply with the Notice within the time required.
- 4.11 A non-disclosure regime is proposed, ensuring that the Integrity Commissioner can effectively control the disclosure of sensitive information. A disclosure of Notice to Produce, or of the nature of the material sought in the Notice, can be damaging to an investigation.
- 4.12 The Integrity Commissioner must prohibit disclosure where it would be reasonably expected to prejudice a person's safety or reputation, or prejudice the fair trial of a person or the investigation of corruption or any action taken as a result of the investigation.
- 4.13 Additionally, the Integrity Commissioner may prohibit disclosure where it would be contrary to the public interest or might prejudice a person's safety or reputation, the fair trial of a person or the investigation of corruption or any action taken as a result of the investigation.
- 4.14 Such notifications would be accompanied by a statement setting out the rights and obligations conferred or imposed on the person served with the Notice. It would be an offence to disclose the existence of the Notice or any official connected matter within five years of serving the Notice.
- 4.15 Disclosure would be permitted to the person's lawyer or if the person is a body corporate, to an officer or agent to ensure compliance. The lawyer or officer/agent could not disclose the notification, with the same time limit and penalty applying.
- 4.16 However, a lawyer could disclose existence of the notification if it is for the purpose of advising or representing a person served with a Notice. An

officer/agent can disclose knowledge it was to ensure compliance with the Notice.

## Privilege

- 4.17 The proposed amendments provide certainty that legal professional privilege can be claimed over the information, documents or things in other proceedings.
- 4.18 Currently, a person is required to expressly claim that giving information or producing a document or thing might tend to incriminate them or expose them to a penalty before that information or object will be inadmissible in evidence against the person in criminal proceedings. This must be claimed before the giving of any information or production of every document or thing which may incriminate the person.
- 4.19 This can result in inconsistent claims and impact on the timeliness of production, especially where people are confused about how the process works.
- 4.20 The amendment means that people will automatically be protected and do not have to make an express claim of privilege before immunity applies.
- 4.21 However, despite immunity, documents and things can still be used in evidence for certain purposes.
- 4.22 ACLEI is prevented from sharing information, documents or things that are subject to legal professional privilege with any other party. Also, privilege will continue to apply if the information, documents or things are the subject of other proceedings.

## Contempt

- 4.23 The proposed amendments introduce a contempt offence.
- 4.24 Currently there is no immediate threat of detention for failing to answer a question or failing to produce required documents. ACLEI investigations can be compromised by the delay in commencement of court proceedings and witnesses may not cooperate with ACLEI, knowing that no penalty will be imposed for 12-18 months.
- 4.25 ACLEI will be able to refer an uncooperative witness to a court to be dealt with as if that person was in contempt of court. This will give ACLEI similar powers to the Australian Crime Commission and ACLEI state counterparts.

- 4.26 Procedural requirements are set out in the amendments. People will be notified of their non-compliance and given a further opportunity to comply.
- 4.27 However, ACLEI does not ultimately determine whether a person is in contempt; this is the responsibility of a court.
- 4.28 ACLEI can direct the police to detain a person against whom the contempt is being alleged. ACLEI can withdraw an allegation of contempt at any time, providing witnesses with a further opportunity to cooperate.
- 4.29 To avoid double jeopardy, people can only be prosecuted in relation to contempt under the LEIC Act or another law.

### Applying for a warrant

- 4.30 The proposed amendment deals with the circumstances surrounding when an authorised officer can apply for a warrant. The effect of the amendment is that the officer does not need to have 'reasonable grounds to believe' that the suspect has been ordered to deliver their passport to ACLEI and is to be served with a summons, as this will be clear from ACLEI records.
- 4.31 In addition, the authorised officer that applied for the warrant does not need to execute the warrant. This is crucial where the arrest warrant needs to be executed in a different jurisdiction than the one where the warrant was issued.
- 4.32 Under the amendments, the warrants can now authorise seizures of anything that the authorised or assisting officer believes on reasonable grounds to be an 'eligible seizable item'. This is defined as anything that would present a danger to a person or could be used to assist a person to escape from lawful custody.

### Authorised officers

- 4.33 The amendments mean that ACLEI may authorise a person to be an 'authorised officer'. 'Authorised officers' must be a staff member of ACLEI and meet certain other criteria or be a member of the AFP.
- 4.34 Under the LEIC Act, only authorised officers may use reasonable force against persons when executing a search warrant. 'Assisting officers' can help, but may only use reasonable force against things, not people, and they cannot search people.

- 4.35 The amendments mean that ‘assisting’ members of the police, who are trained to use force, can assist an authorised officer to execute a search warrant and, search people and use necessary and reasonable force against things and people.

### *Privacy Act 1988 (Cth)*

- 4.36 The Privacy Act is amended so that a credit reporting agency must not keep a note on a person’s file about a Notice to Produce issued to that person if the Notice includes a notation that information about it is not to be disclosed.
- 4.37 A similar provision for a Summons Notice already exists.

### *Surveillance Devices Act 2007 (Cth)*

- 4.38 The definition of ‘federal law enforcement officer’ is amended to include the Integrity Commissioner, the Assistant Integrity Commissioner and staff members of ACLEI. This means these people can use optical surveillance for any purpose that is within the functions of the Integrity Commissioner, if they are acting within the course of their duties.

### **Extending the Integrity Commissioner’s term**

- 4.39 The amendments will extend the Integrity Commissioner’s total term from five to seven years.

### **Other minor and technical amendments**

- 4.40 Schedule 4 of the Bill will make a number of minor and technical amendments to the LEIC Act. The proposed amendments will simplify the language used in various sections of the Act and rectify a number of technical drafting issues and clarify terminology.

### **Committee comment**

- 4.41 No significant issues were raised in consultation regarding the amendments proposed in Schedule 4 of the Bill.
- 4.42 The Committee notes the importance of safeguards to ensure privacy and protect individual rights. The Committee also notes that law enforcement agencies act in the public interest, and require tools to effectively and

efficiently carry out their functions. In this instance, the Committee considers that an appropriate balance between these two objectives has been achieved.

### **Recommendation 5**

- 4.43 **The Committee recommends that Schedule 4 of the Crimes Legislation Amendment (Powers and Offences) Bill 2011 be passed by the House of Representatives.**