

AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY

GUIDELINES ON NOTICES TO PRODUCE

SEPTEMBER 2009

SUMMARY

1. These guidelines apply when the Integrity Commissioner issues a request (commonly called a 'notice to produce') under section 75 or 76 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act). Separate guidelines apply when the Integrity Commissioner conducts a hearing of a witness.
2. When conducting a corruption investigation, the Integrity Commissioner has the power to issue a written request requiring a person to give him or her information, a document or a thing, if the Integrity Commissioner thinks it may be relevant to the investigation.
3. A staff member of a law enforcement agency may be required to give information either orally or in writing, and may be required to do so as soon as reasonably practicable (ie immediately, unless there is a compelling reason for delay). Other people can only be required to give information in writing and within a period of not less than 14 days.
4. It is a criminal offence to fail to comply within the time required. Reasonable applications for extension of time for compliance will be considered, provided they are made well before the deadline, but delaying tactics will not be tolerated.
5. The fact that the required information, document or thing is in the hands of a third party will only be accepted as an excuse for non-compliance if the third party is not subject to direction by the person to whom the request was addressed.
6. A requirement by the Integrity Commissioner under section 75 or 76 overrides any legal professional privilege (client legal privilege) that the Commonwealth may have in information, a document or a thing, but it does not override legal professional privilege that any other person has. If a person wants to claim this privilege (either on their own behalf or on behalf of a third party) for anything they are required to give to the Integrity Commissioner, they should provide the information, document or thing in a sealed and marked envelope together with statutory declaration setting out the reasons for the claim and any other relevant information. The Integrity Commissioner will consider the claim and, if the claim is rejected, will give the person an opportunity to challenge the decision in the Federal Court. The fact that the Integrity Commissioner is given access to privileged information in this situation does not mean that the privilege is lost for other purposes.
7. A requirement by the Integrity Commissioner under section 75 or 76 overrides the privilege against self-incrimination. If, before providing the required information, document or thing, the person claims that it would tend to incriminate him or her, the person will have direct use indemnity. That is, the information, document or thing must be given to the Integrity Commissioner, but it cannot be used as evidence in support of a prosecution of the person. However, evidence the Integrity Commissioner obtains as a result of having the information, document or thing provided (eg testimony by a person mentioned as a witness to a crime in information

or a document) may be used in such a prosecution. The indemnity is only available where the person would have been entitled not to give evidence before a court on grounds of self-incrimination, so it is not available where information, or a document or thing is given by a person in their capacity as an officer of a corporation.

8. As a general rule, a person cannot rely on public interest immunity or a secrecy provision in any law as a reason for refusing to provide information, or a document or thing. For example, the Integrity Commissioner is entitled, in principle, to require production of classified official documents. However, in rare cases it may be appropriate to obtain a certificate from the Attorney-General under section 149 of the LEIC Act to ensure that, for public interest reasons, requested information, documents or things must not be disclosed to, or in some cases by, the Integrity Commissioner. Where a person considers section 149 may be applicable, the person should consult with ACLEI contact staff to decide whether their concerns can be addressed effectively without obtaining a section 149 certificate.

9. The Integrity Commissioner takes the preliminary view that all other forms of privilege or immunity that might apply in court proceedings are overridden by a requirement made under sections 75 and 76.

10. If a document or thing is given to the Integrity Commissioner under section 75 or 76, the Integrity Commissioner can keep it for as long as necessary for the purposes of the investigation. The Integrity Commissioner considers this entitles him or her to subject the document or thing to forensic tests, if this may assist the investigation.

11. On application, the Integrity Commissioner will allow a third party to access a document or view a thing, if satisfied that the person would otherwise have been entitled to do so. In special circumstances, the Integrity Commissioner may also agree to allow the person who provided the information, document or thing to have access to it or be provided with a copy.

12. Once the investigation is completed documents and things provided under sections 75 and 76 will be returned, on request or if they are clearly of significant value, to the person or agency who provided them unless the LEIC Act or another law provides otherwise. For example, documents will not be returned if they have been passed on to an appropriate authority for use as evidence in a prosecution, civil penalty proceedings, a criminal proceeds action, a disciplinary/misconduct proceeding or to facilitate consideration whether there may have been a wrongful conviction, or if the Integrity Commissioner is satisfied that a third party has a better right to possession of the document or thing. In any case where a document or thing is returned ACLEI will retain such records of the document or thing (eg copies, electronic records, photographs, reports of forensic analysis) as it considers necessary to document the relevant investigation fully.

13. A person who complies in good faith with a requirement under section 75 or 76 to provide the Integrity Commissioner with information, or a document or thing, is protected against civil or criminal legal action on account of that compliance. In addition, the Integrity Commissioner has authority to take measures for the physical protection of a person whose safety is at risk, or who may be intimidated or harassed, because the person has given, or is to give, information, or a document or thing, in

compliance with a requirement made by the Integrity Commissioner under section 75 or 76.

14. ACLEI's rigorous confidentiality regime is explained in the separate ACLEI Information Guidelines.

GUIDELINES

1. Purpose of Guidelines

1.1 These Guidelines are intended to inform a person who receives a written request (commonly called a ‘notice to produce’) under section 75 or 76 of the *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act), and a legal practitioner who represents such a person, of the person’s rights and obligations and of the manner in which applications relating to those rights and obligations should be made to the Integrity Commissioner.

2. Requirement to give information or to produce a document or thing

2.1 The Integrity Commissioner may, for the purposes of investigating a corruption issue, request a staff member of a law enforcement agency, or any other person, to give the Integrity Commissioner specified information or produce to the Integrity Commissioner specified documents or things.¹ The request must be made in writing signed by the Integrity Commissioner and served on the person.²

2.2 A request may be made at any time, whether or not the Integrity Commissioner is conducting a hearing.³

2.3 In the case of a request to a staff member of a law enforcement agency, the Integrity Commissioner may require that requested information be provided in writing.⁴ If the Integrity Commissioner does not require the staff member to provide the information in writing, arrangements will normally be made to make a record of the staff member’s oral statement.

2.4 If a request for information is made to a person who is not a staff member of a law enforcement agency, the person will be required to produce a written statement of the information.⁵

2.5 It is a criminal offence to fail to comply with a request. The maximum penalty is two years’ imprisonment.⁶

¹ Subsections 75(1) and 76(1), LEIC Act.

² Subsections 75(2) and 76(2), LEIC Act.

³ Subsections 75(3) and 76(3), LEIC Act.

⁴ Subsection 75(1), LEIC Act.

⁵ Paragraph 76(4)(a), LEIC Act.

⁶ Section 78, LEIC Act.

3. Time for compliance

Staff members of law enforcement agencies

3.1 If a request is made to a staff member of a law enforcement agency, the staff member must comply with the request as soon as is reasonably practicable.⁷ Unless there are reasons to the contrary, this would normally mean that the staff member should comply, or start preparing to comply, immediately.

3.2 Examples of reasons to justify a short delay in compliance could include illness or urgent and significant law enforcement duties (such as appearing as a witness in court or executing a time-sensitive warrant) that cannot be performed by another staff member.

3.3 In any such case the staff member should immediately advise the contact officer named in the request that immediate compliance is not practicable and indicate when compliance should be possible. When complying, or as soon as possible afterwards, the staff member should provide the Integrity Commissioner with supporting evidence such as a medical certificate or a signed statement by the staff member's supervisor confirming that the staff member could not be spared from specified duties.

3.4 Any indication that a staff member is seeking pretexts to delay responding will be fully investigated and consideration will be given to recommending prosecution for failure to comply.

Persons other than staff members of law enforcement agencies

3.5 If a request is made to a person other than a staff member of a law enforcement agency, the request will specify a period of not less than 14 days from service of the request during which the person must comply with the request.⁸ Subject to the following comments, strict adherence to this deadline will be expected and immediate consideration will be given to proposing prosecution in all cases of non-compliance.

3.6 The Integrity Commissioner may allow additional time for compliance⁹ if satisfied that there are good reasons for doing so. Applications for additional time should set out in full the reasons why the request cannot be complied with within the specified period.

3.7 An application for an extension of time for compliance should be made as early as possible in order to allow time for the Integrity Commissioner to give proper consideration to the application. Applications received on or after the day on which the specified period expires will only be considered in extraordinary circumstances.

⁷ Subsection 75(4), LEIC Act.

⁸ Subsections 76(2) and (4), LEIC Act.

⁹ Subsection 76(4), LEIC Act.

4. Information, document or thing not held by the requested person

4.1 If the person to whom a request is directed does not have in his or her possession or control information, a document or a thing requested by the Integrity Commissioner, the person should apply to the Integrity Commissioner, in good time before the expiry of the specified period for compliance, for a variation of the request to exclude that information, document or thing. The application should set out all relevant circumstances, including, where known, the identity of a person who has control of the information, document or thing.

4.2 If the information, document or thing is in the possession or control of an agent or other third party who is subject to direction by the person to whom the request was addressed, the Integrity Commissioner will insist on production unless satisfied that in practice the person cannot obtain the information, document or thing by means of any lawful and practicable action. Where demonstrably necessary, the Integrity Commissioner may grant an extension of time to allow for recovery of the information, document or thing.

5. Legal advice

5.1 There is no statutory requirement for the Integrity Commissioner to give a person on whom a request is served an opportunity to obtain legal advice before complying with the request.

5.2 A person other than a staff member of a law enforcement agency would normally have sufficient time to seek any legal advice the person thought necessary, because the period for compliance must not be less than 14 days from service.¹⁰ A staff member of a law enforcement agency, who is required to comply with a request as soon as reasonably practicable,¹¹ would not have such an opportunity.

5.3 In either case, a person on whom a request is served may consider that he or she is unfairly disadvantaged by the issue of a request, rather than of a summons to appear as a witness at a hearing, by the Integrity Commissioner, in which case the person would be entitled to legal representation. In such a case, the person should consult as a matter of urgency with the Integrity Commissioner or the contact officer specified in the request.

6. Legal professional privilege (client legal privilege)

Extent of preservation of the privilege

6.1 It is important in this context to distinguish between communications in which the Commonwealth holds professional legal privilege and those in which an individual holds the privilege.

¹⁰ Subsection 76(2), LEIC Act.

¹¹ Subsection 75(4), LEIC Act.

6.2 A person is not entitled to refuse to give information, or to produce a document or thing, to the Integrity Commissioner in response to a request on the basis that to do so would disclose legal advice given to a Minister or a Commonwealth government agency or any other communication between an officer of a Commonwealth government agency and another person or body that is otherwise protected against disclosure by legal professional privilege.¹²

6.3 Legal professional privilege in communications not made in an official capacity is preserved and is a ground for refusing to comply with a request.¹³

6.4 A legal practitioner cannot be compelled by a request served on him or her to give information, or produce a document or thing, if to do so would disclose a communication to which legal professional privilege attaches.¹⁴ However, the practitioner may be required to disclose the address of the person by or to whom the communication was made.¹⁵ If the privilege holder agrees to waive the privilege the practitioner must comply with the request.¹⁶

6.5 The LEIC Act states that the foregoing provisions do not affect the law relating to legal professional privilege.¹⁷ The Integrity Commissioner takes the view, subject to any cogent submission the Integrity Commissioner may receive to a different effect, that this means that a person who holds legal professional privilege in relation to a communication cannot be compelled by a request to disclose the content of that communication or to authorise another person to do so except in the specified cases and that the fact that a person has been compelled to disclose the content of a communication in such a case does not preclude the person from asserting legal professional privilege in relation to the communication in any other proceedings.

6.6 A person who receives a request under section 75 or 76 may assert legal professional privilege on behalf of a third party. The Integrity Commissioner is not expressly required to notify a third party that the request may affect documents in which the third party might wish to assert legal professional privilege and will act on the basis that it is for the recipient of the request, where necessary, to seek instructions from a third party as to whether to assert legal professional privilege in a document covered by the request.¹⁸

Procedure for asserting the privilege

6.7 If a person (including a staff member of a law enforcement agency) has received a request that, on its face, would require the person to give information, or produce a document or thing, that would reveal the content of a communication to the Integrity Commissioner, being a communication in which the person believes that he or she holds legal professional privilege, and the person is not prepared to disclose

¹² Paragraph 80(5)(c), LEIC Act.

¹³ Subsections 79(1), (2) and (5), LEIC Act.

¹⁴ Subsection 79(3), LEIC Act.

¹⁵ Subsection 79(4), LEIC Act.

¹⁶ Subsection 79(3), LEIC Act.

¹⁷ Subsection 79(5), LEIC Act.

¹⁸ *MM v Australian Crime Commission* [2007] FCA 2026, at paragraphs 30-39.

that communication to the Integrity Commissioner voluntarily, the person should act in accordance with the following procedure.

6.8 The person should, in compliance with the time limits discussed above, provide to the Integrity Commissioner a statement or statements of all the information requested, together with all the documents and/or things requested. Any document (including a statement of information) or thing for which the person wishes to claim legal professional privilege should be provided in a sealed envelope marked with the words 'Response to Request No. [X] of [year]—Claim for Legal Privilege'.

6.9 The documents or things that are the subject of the claim should be accompanied by:

- (a) a list identifying each such document or thing;
- (b) a written submission to the Integrity Commissioner to the effect that the request purports to require production of documents or things that are subject to legal professional privilege and that the person is not prepared to disclose voluntarily; and
- (c) a statutory declaration by the applicant in support of the claim of legal professional privilege, setting out particulars of the grounds for the claim and whether or not they have sought legal advice as to the validity of their claim

6.10 The Integrity Commissioner will consider the claim on the basis of the submission and the statutory declaration. If, on the basis of that consideration, the Integrity Commissioner is satisfied that the person has legal professional privilege in the documents and/or things, the sealed envelope will be returned unopened to the person.

6.11 If, on the basis of consideration of the submission and statutory declaration, the Integrity Commissioner is not satisfied that the person has legal professional privilege in all of the documents and/or things, the Integrity Commissioner will invite the person to make oral submissions to the Integrity Commissioner as to why the claim of legal professional privilege in respect of the documents and/or things in contention should not be rejected. The person may be legally represented during this process. If, on the basis of this process, the Integrity Commissioner is satisfied that the documents and/or things in contention are privileged, the sealed envelope will be returned to the person unopened.

6.12 If the Integrity Commissioner finds against the claim, the Integrity Commissioner will direct that the sealed envelope not be opened before the expiry of a specified period. This direction is intended to give the claimant a reasonable opportunity to initiate any legal action to vindicate the claim of legal professional privilege, so the specified period would normally be 28 days, consistent with the period for making an application prescribed in subparagraph 11(3)(b)(iii) of the *Administrative Decisions (Judicial Review) Act 1977*. If the time for taking any such action expires without the action being initiated, the sealed envelope will be opened and the contents examined. If action is initiated, the sealed envelope will be dealt with in accordance with the directions of the court.

6.13 If the Integrity Commissioner decides that client legal privilege attaches to only some of the documents in the sealed envelope and the decision is not subject to

further challenge, ACLEI legal personnel will make mutually acceptable arrangements for the opening of the envelope in circumstances where the documents found to be privileged can be removed, and the identity of those documents confirmed, including an undertaking by ACLEI legal personnel involved that they will not disclose the identity or nature of any documents in the envelope.

7. Privilege against self-incrimination

7.1 The LEIC Act expressly provides that a person is not excused from compliance with a request on the ground that compliance would tend to incriminate the person or expose the person to a penalty.¹⁹ As compensation for the loss of this privilege, the Act provides that the information given, or the document or thing produced, in compliance with the request cannot be admitted in evidence against the person in criminal proceedings, or any other proceedings for imposition or recovery of a penalty.²⁰ There are three important points to note about this ‘use indemnity’.

7.2 First, the indemnity is not automatic. To receive the indemnity, the person must make a claim to the Integrity Commissioner that giving the information, or producing the document or thing, might tend to incriminate the person or expose the person to a penalty. The claim may either be made before compliance or in a written statement accompanying the information (if given in writing), document or thing when it is produced to the Integrity Commissioner.²¹ Claims made before compliance are not required to be in writing as a matter of law but, except in cases where a person is to give information orally and a record is being made of the statement, it is recommended that the claim be made in writing.

7.3 Secondly, the indemnity is not available to a person in respect of a document the person is required to produce, if the document is or forms part of a business record (at least where the business is a corporation and the person is required to produce the document in the capacity of an officer of the corporation).²² The reason for this rule is that the person cannot make a claim of self-incrimination either on behalf of the corporation (because the privilege against self-incrimination is not available to a corporation) or on his or her own behalf (because the document belongs to the corporation, and the person is producing the document as an officer of the corporation, not in a private capacity).

7.4 Thirdly, there are a number of types of proceeding where, as an exception to the use indemnity, the information, document or thing may be admitted in evidence against the person.²³ These exceptions are:

- a prosecution for failure to comply with the request;²⁴
- a proceeding under Commonwealth or State/Territory law for confiscation of proceeds of crime;²⁵

¹⁹ Subsection 80(1), LEIC Act.

²⁰ Subsections 80(2) and (4), LEIC Act.

²¹ Subsection 80(2), LEIC Act.

²² Subsection 80(3), LEIC Act.

²³ Subsection 80(4), LEIC Act.

²⁴ Paragraph 80(4)(c), LEIC Act.

²⁵ Paragraph 80(4)(d), LEIC Act.

- a prosecution related to the LEIC Act for giving false or misleading information, producing a document that is false or misleading or obstructing a Commonwealth public official;²⁶ or
- disciplinary proceedings against the person, if the person is a staff member of the ACC or the AFP.²⁷

8. Public interest immunity and secrecy provisions

8.1 The LEIC Act expressly provides that a person is not excused from compliance with a request on the ground that compliance would breach a secrecy provision of or under any Commonwealth law or would be otherwise contrary to the public interest.²⁸

8.2 This rule expressly preserves two types of Commonwealth secrecy provision. These are taxation secrecy provisions and law enforcement secrecy provisions.²⁹ However, provisions of this type permit disclosures to be made for the purposes of the LEIC Act, so the exception does not mean that, as a rule, a person with access to official information and documents relating to taxation or law enforcement can refuse to give information or provide a document to the Integrity Commissioner in response to a request.

8.3 The effect of this rule is that, for example, the Integrity Commissioner is entitled to require production of national security classified documents and documents prepared for the purpose of advising a Minister or Cabinet, or of information about such documents. The one exception is that the Integrity Commissioner cannot require production of any document prepared by or for a Minister in relation to the performance of the Minister's functions in Parliament (eg a Question Time Brief in draft or final form). Where classified documents are produced to the Integrity Commissioner, arrangements will be made to ensure that, in accordance with the requirements of the Protective Security Manual, the documents will only be accessed by ACLEI staff who have appropriate security clearance.

Section 149 certificates

8.4 Certain public interests are protected by the procedure set out in Part 11 of the LEIC Act. This Part provides for the Attorney-General to issue a certificate to prohibit or restrict the disclosure of information or a document to the extent that disclosure would have any of the consequences listed in subsection 149(2).³⁰

8.5 The Integrity Commissioner would expect that it would rarely, if ever, be necessary to resort to the section 149 procedure in practice. It would normally be expected that interested agencies would be capable of reaching agreement on the secure handling of sensitive information in a case where access to the information was clearly necessary for the effective conduct of a corruption investigation.

²⁶ Paragraphs 80(4)(e) and (f), LEIC Act.

²⁷ Paragraph 80(4)(g), LEIC Act.

²⁸ Subsection 80(5), LEIC Act.

²⁹ Paragraph 80(5)(d), LEIC Act.

³⁰ Subsection 149(1), LEIC Act.

8.6 If a request is issued to a person and the person or their agency believes that the required disclosure to the Integrity Commissioner, or subsequent public or other onward disclosure, could have any of these consequences, the person or their agency should raise their concerns with the ACLEI contact officer nominated in the request as soon as possible with a view to seeking withdrawal of the request or, where appropriate, an undertaking by the Integrity Commissioner as to the security and further disclosure of the information or document.³¹

8.7 If agreement cannot be reached and the person/agency proposes to apply to the Attorney-General for issue of a section 149 certificate, the person should advise the contact officer of their intention. In such a case, the Integrity Commissioner will allow a reasonable extension of time for the application to be made and dealt with, subject to receiving regular advice of progress in the matter.

8.8 Anyone proposing to make such an application should consult with the Attorney-General's Department and the office of the Minister for Home Affairs before submitting an application, as there is no standard procedure.

9. Other forms of privilege or immunity

9.1 The Integrity Commissioner takes the preliminary view that all forms of privilege and immunity other than those mentioned above are overridden by section 78 of the LEIC Act. However, the Integrity Commissioner will consider submissions on this point in relation to any request to which it is relevant. An application for this purpose should be made in the same manner as an application for recognition of legal professional privilege.

10. Power to retain documents and things produced

10.1 If a document or thing is produced to the Integrity Commissioner in response to a requirement made under section 75 or 76, the Integrity Commissioner is entitled to take possession of the document and retain it for as long as is necessary for the purposes of the corruption investigation to which the document or thing relates. In addition, the Integrity Commissioner may take a copy of a document or thing, or make an extract from a document.³²

10.2 The Integrity Commissioner takes the view that the power to retain a document or thing includes the power to submit it to forensic testing of any kind, or deal with it in any other lawful way, that serves the purposes of the relevant corruption investigation and does not cause the destruction of the document or thing.

³¹ There is no express provision for withdrawal of a request but subsection 33(3), *Acts Interpretation Act 1901* (Cwlth) provides authority for revocation of an instrument.

³² Subsection 77(1), LEIC Act.

Access to document or thing retained by the Integrity Commissioner

10.3 If the Integrity Commissioner keeps a document or thing and a person would normally be entitled to examine the document or view the thing, the Integrity Commissioner must allow the person do so at the times when the person would ordinarily be allowed to do so.³³

10.4 If a person claims to be entitled to examine a document, or view a thing, that the Integrity Commissioner has retained after it was produced, the person should make a written application to the Integrity Commissioner for access to the document or thing. The application should include the following information:

- the identity of the applicant;
- a description of the document or thing;
- the date when, and the person by whom, it was produced to the Integrity Commissioner;
- a statement of the legal basis for the applicant's claim to be entitled to examine the document or view the thing, together with any supporting documents; and
- a statement of the time or times at which the applicant wishes to examine the document or view the object.

10.5 The Integrity Commissioner takes the view that this provision does not concern the rights of the person who was entitled to immediate possession of the document or thing at the time of production (who would commonly be the person producing the document or thing), since those rights are to possession and not merely to access. However, the Integrity Commissioner will, on a discretionary basis, consider applications by such a person for a copy or return of, or access to, a document or thing that has been produced to the Integrity Commissioner under section 75 or 76. The application should include the following information:

- the identity of the applicant;
- a description of the document or thing;
- the date when, and the person by whom, it was produced to the Integrity Commissioner;
- a statement of the legal basis for the applicant's claim to be entitled to immediate possession the document or thing, together with any supporting documents;
- if return of the document or thing is sought—a statement of the reasons why provision of a copy would not meet the applicant's needs; and
- if access to the document or thing is sought—a statement of the time or times at which the applicant wishes to examine the document or view the object, and the reasons for the request.

10.6 Applications should be made when, or as soon as possible after, the document or thing is produced, or as soon as possible after the applicant becomes aware of the fact that the document or thing has been produced to and retained by the Integrity Commissioner. Any urgency should be clearly indicated in the application.

³³ Subsection 77(2), LEIC Act.

10.7 If a person produces a document or thing under section 75 or 76, there is nothing in the LEIC Act that would prevent the person from making a copy of the document or thing before producing it.

Return of document or thing retained by the Integrity Commissioner

10.8 The Integrity Commissioner has an implied obligation to return a document or thing that has been produced under section 75 or 76 when retention of the document or thing ceases to be necessary for the purposes of the corruption investigation to which it relates. That obligation may be displaced by the Integrity Commissioner's express obligations:

- to pass evidence that would be admissible in a criminal prosecution, civil penalty proceedings or a proceeds of crime action to the relevant police commissioner or an authority that can initiate the prosecution, proceedings or action;³⁴
- to bring evidence of a breach of duty or other misconduct by a staff member of an agency to the notice of the head of that agency and the head of any relevant integrity agency;³⁵ and
- to bring evidence of a wrongful conviction to the notice of the Minister administering the LEIC Act.³⁶

10.9 The Integrity Commissioner will assume, unless an application for return is made, that ACLEI can in practice retain things of low value, such as recording media, which may technically remain the property of the person or agency that provided them. However, items that are clearly of significant value will normally be returned as a matter of course where the implied obligation arises. In any case where an item is returned to the owner, ACLEI will retain such hard or electronic copies, photographs, forensic analysis reports or other records of the item as the Integrity Commissioner considers necessary for the adequate recording of the investigation.

10.10 The Integrity Commissioner will not entertain an application for the return of a document or thing while its retention continues to be necessary for the purposes of the investigation to which it relates. If it becomes necessary to pass the document or thing to another authority for use in evidence, the Integrity Commissioner will normally advise the person who produced it that this has occurred.

10.11 In a case where there is uncertainty as to who has the immediate right to possession, the Integrity Commissioner will undertake such inquiries as seem reasonable in the circumstances and seek the views of all persons who, to the Integrity Commissioner's knowledge, may have a claim to possession, before making a decision as to who should receive the document or thing. In such a case, the Integrity Commissioner will notify all the affected persons of the decision at least seven days before putting it into effect. It will then be a matter for any person aggrieved by the decision to initiate proceedings in an appropriate court to prevent the Integrity Commissioner from carrying out the decision and to vindicate their claims.

³⁴ Sections 142 and 143, LEIC Act.

³⁵ Section 146, LEIC Act.

³⁶ Section 147, LEIC Act.

11. Protection of person required to give information or produce documents

11.1 A person who is required under section 75 or 76 to give information or to produce a document or thing is given certain protections in return for their assistance.

Protection from criminal liability

11.2 If the person makes a disclosure that would otherwise be a breach of a secrecy provision (except a taxation secrecy provision or a law enforcement secrecy provision), the person does not commit an offence, and does not become liable to any penalty, by doing so.³⁷ Taxation secrecy provisions and law enforcement secrecy provisions expressly permit disclosures to ACLEI for the purposes of corruption investigations.³⁸

Protection from civil liability, intimidation and victimisation

11.3 A person who gives information, or produces a document or thing, to the Integrity Commissioner in response to a request under section 75 or 76 has the same protection as a witness in proceedings in the High Court.³⁹ This general provision reinforces the more specific protections provided by other provisions of the LEIC Act and the *Crimes Act 1914*. The protection available to a witness in proceedings in the High Court consists of two principal elements, namely protection against intimidation or retaliation, and protection against civil action, on account of evidence the witness has given or may give. Protection against criminal conduct is provided independently by the existence of criminal offences under Part III of the *Crimes Act 1914*⁴⁰ and the offence of victimisation established by the LEIC Act⁴¹. The LEIC Act also provides that a person is not liable to any ‘action, suit or proceeding’ for harm suffered by another person merely because information was given, or a document or thing was produced, to the Integrity Commissioner.⁴²

11.4 In addition to these legal protections for witnesses, the Integrity Commissioner has broad authority to make arrangements for the physical protection of any person whose safety may be prejudiced, or who may be at risk of intimidation or harassment, because a person has produced, or is to produce, information or a document or thing to the Integrity Commissioner.⁴³ These powers are distinct from the protection that may be available in extreme cases under the National Witness Protection Plan.⁴⁴

³⁷ Subsection 80(7), LEIC Act.

³⁸ See the provisions listed in the definitions of ‘taxation secrecy provision’ and ‘law enforcement secrecy provision’ in subsection 5(1), LEIC Act.

³⁹ Subsection 81(1), LEIC Act.

⁴⁰ See particularly section 36A, Crimes Act.

⁴¹ Paragraphs 220(1)(d) and (e), LEIC Act.

⁴² Subsection 222(5), LEIC Act.

⁴³ Subsections 81(2) to (4), LEIC Act.

⁴⁴ Subsection 81(5), LEIC Act.

12. Confidentiality

12.1 All information obtained by the Integrity Commissioner is subject to a rigorous confidentiality regime. Details are set out in the separate ACLEI Information Guidelines.