

Queensland



CRIME AND MISCONDUCT ACT 2001

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(includes amendments up to Act No. 35 of 2002)**

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- **when provisions commenced**
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Queensland



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CRIME AND MISCONDUCT ACT 2001

[as amended by all amendments that commenced on or before 27 September 2002]

An Act to provide for the establishment and operation of a Crime and Misconduct Commission, and a Parliamentary Crime and Misconduct Committee, and for other purposes

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

1 Short title

This Act may be cited as the *Crime and Misconduct Act 2001*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Act binds all persons

(1) This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) Subsection (1) does not make the State, the Commonwealth or another State liable to be prosecuted for an offence.

PART 2—PURPOSE

4 Act's purposes

The purposes of this Act are—

- (a) to combat and reduce the incidence of major crime; and
- (b) to continuously improve the integrity of, and to reduce the incidence of misconduct in, the public sector.

5 How Act's purposes are to be achieved

(1) The Act's purposes are to be achieved primarily by establishing a permanent commission to be called the Crime and Misconduct Commission.

(2) The commission is to have investigative powers, not ordinarily available to the police service, that will enable the commission to effectively investigate particular cases of major crime.

(3) Also, the commission is to help units of public administration to deal effectively, and appropriately, with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly more serious cases of misconduct.

PART 3—OVERVIEW

6 Purpose of pt 3

The purpose of this part is to briefly outline the responsibilities of relevant entities under this Act.

7 Crime and Misconduct Commission

The Crime and Misconduct Commission has primary responsibility for the achievement of the Act's purposes.

8 Crime Reference Committee

The Crime Reference Committee has responsibility for referring major crime to the commission for investigation and has a coordinating role for investigations into major crime conducted by the commission in cooperation with any other law enforcement agency.

9 Parliamentary Crime and Misconduct Committee

The Parliamentary Crime and Misconduct Committee is a standing committee of the Legislative Assembly with particular responsibility for monitoring and reviewing the commission's performance.

10 Parliamentary Crime and Misconduct Commissioner

The Parliamentary Crime and Misconduct Commissioner is an officer of the Parliament who helps the Parliamentary Crime and Misconduct Committee in the performance of its functions.

11 Public Interest Monitor

The Public Interest Monitor has a right of appearance before a court hearing an application by the commission for a surveillance warrant or covert search warrant and is entitled to test the appropriateness and validity of the application before the court.

PART 4—INTERPRETATION

Division 1—Definitions

12 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

13 Notes in text

A note in the text of this Act is part of the Act.

*Division 2—Official misconduct***14 Definitions for div 2**

In this division—

“conduct” means—

- (a) for a person, regardless of whether the person holds an appointment—conduct, or a conspiracy or attempt to engage in conduct, of or by the person that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial performance of functions or exercise of powers of—
 - (i) a unit of public administration; or
 - (ii) any person holding an appointment; or
- (b) for a person who holds or held an appointment—conduct, or a conspiracy or attempt to engage in conduct, of or by the person that is or involves—
 - (i) the performance of the person’s functions or the exercise of the person’s powers, as the holder of the appointment, in a way that is not honest or is not impartial; or
 - (ii) a breach of the trust placed in the person as the holder of the appointment; or
 - (iii) a misuse of information or material acquired in or in connection with the performance of the person’s functions as the holder of the appointment, whether the misuse is for the person’s benefit or the benefit of someone else.

“hold an appointment” means hold an appointment in a unit of public administration.

15 Meaning of “official misconduct”

“Official misconduct” is conduct that could, if proved, be—

- (a) a criminal offence; or
- (b) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.

16 Conduct happening over time, or at any time, may be official misconduct

(1) Conduct may be official misconduct even though—

- (a) it happened before the commencement of this Act; or
- (b) some or all of the effects or elements necessary to constitute official misconduct happened before the commencement of this Act; or
- (c) a person involved in the conduct is no longer the holder of an appointment.

(2) Conduct engaged in by, or in relation to, a person at a time when the person is not the holder of an appointment may be official misconduct, if the person becomes the holder of an appointment.

17 Conduct outside Queensland may be official misconduct

Conduct may be official misconduct regardless of—

- (a) where the conduct happens; or
- (b) whether the law relevant to the conduct is a law of Queensland or of another jurisdiction.

18 Conspiracy or attempt to engage in conduct may be official misconduct

A conspiracy or an attempt to engage in conduct is not excluded from being official misconduct if, had the conspiracy or attempt been brought to fruition by the taking of a further step, the further step could constitute or involve—

- (a) an offence; or
- (b) grounds for terminating a person's services in a unit of public administration, if the person is or were the holder of an appointment in the unit.

19 Official misconduct not affected by time limitations

Conduct does not stop being official misconduct only because a proceeding or an action for an offence to which the conduct is relevant can

no longer be brought or continued or that action for termination of services because of the conduct can no longer be taken.

Division 3—Units of public administration

20 Meaning of “unit of public administration”

- (1) Each of the following is a “unit of public administration”—
- (a) the Legislative Assembly, and the parliamentary service;
 - (b) the Executive Council;
 - (c) a department;
 - (d) the police service;
 - (e) a corporate entity established by an Act or that is of a description of a corporate entity provided for by an Act which, in either case, collects revenues or raises funds under the authority of an Act;
 - (f) a noncorporate entity, established or maintained under an Act, that—
 - (i) is funded to any extent with State moneys; or
 - (ii) is financially assisted by the State;
 - (g) a State court, of whatever jurisdiction, and its registry and other administrative offices;
 - (h) another entity prescribed under a regulation.
- (2) However, none of the following is a unit of public administration—
- (a) the commission;
 - (b) the parliamentary commissioner;
 - (c) the entity consisting of—
 - (i) the parliamentary commissioner; and
 - (ii) officers and employees of the parliamentary service assigned to the parliamentary commissioner; and
 - (iii) persons engaged to provide the parliamentary commissioner with services, information or advice;
 - (d) an entity declared by an Act not to be a unit of public administration.

21 Holding appointment in unit of public administration

A person holds an appointment in a unit of public administration if the person holds any office, place or position in the unit, whether the appointment is by way of election or selection.

Division 4—References to major crime and misconduct

22 References to major crime or misconduct include suspected major crime or suspected misconduct

(1) A reference to major crime includes, in the context of a crime investigation, suspected major crime.

(2) A reference to misconduct includes, in the context of a complaint or a misconduct investigation, suspected misconduct.

CHAPTER 2—COMMISSION FUNCTIONS, INVESTIGATIONS AND REPORTING

PART 1—PREVENTION

23 Commission’s prevention function

The commission has a function (its “**prevention function**”) of helping to prevent major crime and misconduct.

24 How commission performs its prevention function

Without limiting the ways the commission may perform its prevention function, the commission performs the function by—

- (a) analysing the intelligence it gathers in support of its investigations into major crime and misconduct; and

- (b) analysing the results of its investigations and the information it gathers in performing its functions; and
- (c) analysing systems used within units of public administration to prevent misconduct; and
- (d) using information it gathers from any source in support of its prevention function; and
- (e) providing information to, consulting with, and making recommendations to, units of public administration; and
- (f) providing information relevant to its prevention function to the general community; and
- (g) ensuring that in performing all of its functions it has regard to its prevention function; and
- (h) generally increasing the capacity of units of public administration to prevent misconduct by providing advice and training to the units and, if asked, to other entities; and
- (i) reporting on ways to prevent major crime and misconduct.

PART 2—MAJOR CRIME

Division 1—Major crime function

25 Commission’s major crime function

The commission has a function (its “**crime function**”) to investigate major crime referred to it by the reference committee.

26 How commission performs its crime function

Without limiting the ways the commission may perform its crime function, the commission performs its crime function by—

- (a) investigating major crime referred to it by the reference committee; and
- (b) when conducting investigations under paragraph (a), gathering evidence for—

- (i) the prosecution of persons for offences; and
- (ii) the recovery of the proceeds of major crime; and
- (c) liaising with, providing information to, and receiving information from, other law enforcement agencies and prosecuting authorities, including agencies and authorities outside the State or Australia, about major crime.

Division 2—Referrals by reference committee

27 Referrals to commission

(1) The reference committee may refer major crime to the commission for investigation—

- (a) on its own initiative; or
- (b) if asked by—
 - (i) the commissioner of police; or
 - (ii) the assistant commissioner, crime.

(2) The referral must be written.

28 Matters about which the reference committee must be satisfied before making a referral

(1) The reference committee may, on its own initiative, refer major crime to the commission for investigation only if it is satisfied—

- (a) an investigation into the major crime is unlikely to be effective using powers ordinarily available to the police service; and
- (b) it is in the public interest to refer the major crime to the commission.

(2) The reference committee may, if asked by the police commissioner, refer major crime to the commission for investigation only if it is satisfied—

- (a) the police service has carried out an investigation into the major crime that has not been effective; and
- (b) further investigation into the major crime is unlikely to be effective using powers ordinarily available to police officers; and

- (c) it is in the public interest to refer the major crime to the commission.

(3) Without limiting the matters to which the reference committee may have regard in deciding whether it is in the public interest to refer major crime to the commission, the reference committee may have regard to the following matters—

- (a) the number of persons that may be involved;
- (b) the degree of planning and organisation likely to be involved;
- (c) the seriousness of, or the consequences of, the major crime;
- (d) the person or persons likely to be responsible for planning and organising the major crime;
- (e) the likely involvement of the person or persons in similar activities;
- (f) the financial or other benefits likely to be derived by any person;
- (g) whether investigation by the commission is a justifiable use of resources.

29 Reference committee may give commission directions about investigations

(1) The reference committee may give the commission directions imposing limitations on a crime investigation, including limitations on the exercise of the commission's powers for the investigation.

(2) The reference committee may also direct the commission to end a particular crime investigation if the committee considers—

- (a) it may be more appropriate for another entity to undertake the investigation; or
- (b) it may be more effective for another entity to undertake the investigation; or
- (c) investigation by the commission is not a justifiable use of resources.

(3) The commission must comply with a direction given under subsection (1) or (2).

30 Amendment of referral to investigate

The reference committee may amend the terms of a referral to the commission to investigate major crime on its own initiative or if asked by the assistant commissioner, crime.

31 Referrals to police service

(1) The reference committee may refer criminal activity to the commissioner of police for investigation if it is satisfied that the matter is not appropriate for investigation or continued investigation by the commission.

(2) The referral must be written.

(3) The commissioner of police must, if asked by the reference committee, report to the committee on the referral.

(4) The commissioner of police must consider any comments about the referral made by the reference committee.

Division 3—Dealing with major crime**32 Police task forces and other operational agreements**

(1) The chairperson may make arrangements with the commissioner of police for the establishment of a police task force to help the commission to carry out a crime investigation.

(2) A police task force is under the control and direction of the commissioner of police.

(3) The commission may enter into operational agreements with other entities, including an entity mentioned in section 275(b).¹

¹ Section 275 (Functions of reference committee)

PART 3—MISCONDUCT

Division 1—Misconduct functions

33 Commission’s misconduct functions

The commission has the following functions for misconduct (its “**misconduct functions**”)—

- (a) to raise standards of integrity and conduct in units of public administration;
- (b) to ensure a complaint about, or information or matter involving, misconduct is dealt with in an appropriate way, having regard to the principles set out in section 34.

34 Principles for performing misconduct functions

It is the Parliament’s intention that the commission apply the following principles when performing its misconduct functions—

- (a) **Cooperation**
 - to the greatest extent practicable, the commission and units of public administration should work cooperatively to prevent misconduct
 - the commission and units of public administration should work cooperatively to deal with misconduct
- (b) **Capacity building**
 - the commission has a lead role in building the capacity of units of public administration to prevent and deal with cases of misconduct effectively and appropriately
- (c) **Devolution**
 - subject to the cooperation and public interest principles and the capacity of the unit of public administration, action to prevent and deal with misconduct in a unit of public administration should generally happen within the unit

(d) **Public interest**

- the commission has an overriding responsibility to promote public confidence—
 - in the integrity of units of public administration and
 - if misconduct does happen within a unit of public administration, in the way it is dealt with
- the commission should exercise its power to deal with particular cases of misconduct when it is appropriate having primary regard to the following—
 - the capacity of, and the resources available to, a unit of public administration to effectively deal with the misconduct
 - the nature and seriousness of the misconduct, particularly if there is reason to believe that misconduct is prevalent or systemic within a unit of public administration
 - any likely increase in public confidence in having the misconduct dealt with by the commission directly.

35 How commission performs its misconduct functions

(1) Without limiting how the commission may perform its misconduct functions, it performs its misconduct functions by doing 1 or more of the following—

- (a) expeditiously assessing complaints about, or information or matters (also “**complaints**”) involving, misconduct made or notified to it;
- (b) referring complaints about misconduct within a unit of public administration to a relevant public official to be dealt with by the public official;
- (c) performing its monitoring role for police misconduct as provided for under section 47(1);²

2 Section 47 (Commission’s monitoring role for police misconduct)

- (d) performing its monitoring role for official misconduct as provided for under section 48(1);³
- (e) dealing with complaints about official misconduct, by itself or in cooperation with a unit of public administration;
- (f) investigating and otherwise dealing with, on its own initiative, the incidence, or particular cases, of misconduct throughout the State;
- (g) assuming responsibility for, and completing, an investigation, by itself or in cooperation with a unit of public administration, if the commission considers that action to be appropriate having regard to the principles set out in section 34;⁴
- (h) when conducting or monitoring investigations, gathering evidence for or ensuring evidence is gathered for—
 - (i) the prosecution of persons for offences; or
 - (ii) disciplinary proceedings against persons.

(2) In performing its misconduct functions in a way mentioned in subsection (1), the commission should, whenever possible, liaise with a relevant public official.

Division 2—How to make a complaint

36 Complaining about misconduct

(1) A person may complain about, or give information or matter involving, misconduct to the commission.

(2) Subsection (1) does not limit to whom a person can complain about misconduct.

Examples—

1. A person may complain directly to the commissioner of police about misconduct.
2. A person may complain directly to the chief executive of a government department about misconduct happening within the department.

3 Section 48 (Commission's monitoring role for official misconduct)

4 Section 34 (Principles for performing misconduct functions)

Division 3—Duty to notify**37 Duty to notify commission of police misconduct**

(1) This section applies if the commissioner of police reasonably suspects that a complaint, or information or matter (also a “**complaint**”), involves police misconduct.

(2) The commissioner of police must notify the commission of the complaint, subject to section 40.

38 Duty to notify commission of official misconduct

(1) This section applies if a public official suspects that a complaint, or information or matter (also a “**complaint**”), involves, or may involve, official misconduct.

(2) The public official must notify the commission of the complaint, subject to section 40.

39 Duty to notify is paramount

(1) The duty of a public official to notify the commission of a complaint under section 37⁵ or 38⁶ must be complied with despite—

- (a) the provisions of any other Act, other than the *Police Service Administration Act 1990*, section 7.2(3);⁷ or
- (b) any obligation the person has to maintain confidentiality about a matter to which the complaint relates.

(2) Subsection (1) does not affect an obligation under another Act to notify misconduct.

5 Section 37 (Duty to notify commission of police misconduct)

6 Section 38 (Duty to notify commission of official misconduct)

7 *Police Service Administration Act 1990*, section 7.2 (Duty concerning misconduct or breaches of discipline)

40 Commission may issue directions about how notifications are to be made

(1) The commission may issue directions about how and when a public official must notify the commission of complaints under section 37 or 38.

(2) Before issuing a direction, the commission must consult with, and consider the views of, the relevant public official.

(3) In particular, if a direction would require the commissioner of police to disclose information otherwise protected by the *Police Powers and Responsibilities Act 2000*, section 192 or the *Drugs Misuse Act 1986*, section 119, the commission may issue the direction, but before doing so must have regard to the desirability of protecting confidentiality.

(4) A public official must comply with a direction given under subsection (1).

(5) The commission may use or disclose information mentioned in subsection (3) in the administration of this Act, but must maintain the confidentiality of the information to the greatest practicable extent.

Division 4—Dealing with complaints

Subdivision 1—Commissioner of police

41 Responsibility of commissioner of police

(1) The commissioner of police has primary responsibility for dealing with complaints about, or information or matter the commissioner of police reasonably suspects involves, police misconduct.

(2) The commissioner of police also has a responsibility to deal with a complaint about, or information or matter involving, official misconduct that is referred to the commissioner of police by the commission.

42 Dealing with complaints—commissioner of police

(1) The commissioner of police must expeditiously assess complaints, or information or matter (also a “**complaint**”) made or notified to, or otherwise coming to the attention of, the commissioner of police.

(2) The commissioner of police must deal with a complaint about police misconduct in the way the commissioner of police considers most appropriate, subject to the commission's monitoring role.

(3) If the commissioner of police is satisfied that—

(a) a complaint—

(i) is frivolous or vexatious; or

(ii) lacks substance or credibility; or

(b) dealing with the complaint would be an unjustifiable use of resources;

the commissioner of police may take no action or discontinue action taken to deal with the complaint.

(4) The commissioner of police may, in an appropriate case, ask the commission to deal with a complaint about police misconduct or to deal with the complaint in cooperation with the commissioner of police.

(5) If the commission refers a complaint about official misconduct to the commissioner of police to be dealt with, the commissioner of police must deal with the complaint in the way the commissioner of police considers most appropriate, subject to the commission's monitoring role.

(6) Without limiting how the commissioner of police may deal with a complaint about official misconduct, the commissioner of police may ask the commission to deal with the complaint in cooperation with the commissioner of police.

(7) If a person makes a complaint that is dealt with by the commissioner of police, the commissioner of police must give the person a response stating—

(a) if no action is taken on the complaint by the commissioner of police or action to deal with the complaint is discontinued by the commissioner of police—the reason for not taking action or discontinuing the action; or

(b) if action is taken on the complaint by the commissioner of police—

(i) the action taken; and

(ii) the reason the commissioner of police considers the action to be appropriate in the circumstances; and

(iii) any results of the action that are known at the time of the response.

(8) However, the commissioner of police is not required to give a response to the person—

- (a) if the person has not given his or her name and address or does not require a response; or
- (b) if the response would disclose information the disclosure of which would be contrary to the public interest.

Subdivision 2—Other units of public administration

43 Responsibility of public officials, other than the commissioner of police

A public official, other than the commissioner of police, has a responsibility to deal with a complaint about, or information or matter involving, official misconduct that is referred to it by the commission.

44 Dealing with complaints—public officials other than the commissioner of police

(1) This section does not apply to the police service.

(2) A public official must deal with a complaint about, or information or matter (also a “**complaint**”) involving, official misconduct in the way the public official considers most appropriate, subject to the commission’s monitoring role.

(3) If the public official is satisfied that—

- (a) a complaint—
 - (i) is frivolous or vexatious; or
 - (ii) lacks substance or credibility; or
- (b) dealing with the complaint would be an unjustifiable use of resources;

the public official may take no action or discontinue action taken to deal with the complaint.

(4) A public official may, in an appropriate case, ask the commission to deal with a complaint in cooperation with the public official.

(5) If a person makes a complaint that is dealt with by the public official, the public official must give the person a response stating—

- (a) if no action is taken on the complaint by the public official or action to deal with the complaint is discontinued by the public official—the reason for not taking action or discontinuing the action; or
- (b) if action is taken on the complaint by the public official—
 - (i) the action taken; and
 - (ii) the reason the public official considers the action to be appropriate in the circumstances; and
 - (iii) any results of the action that are known at the time of the response.

(6) However, the public official is not required to give a response to the person—

- (a) if the person has not given his or her name and address or does not require a response; or
- (b) if the response would disclose information the disclosure of which would be contrary to the public interest.

Subdivision 3—Commission

45 Responsibility of commission

(1) The commission has primary responsibility for dealing with complaints about, or information or matter involving, official misconduct.

(2) The commission is responsible for monitoring how the commissioner of police deals with police misconduct.

46 Dealing with complaints—commission

(1) The commission deals with a complaint about, or information or matter (also a “**complaint**”) involving, misconduct by—

- (a) expeditiously assessing each complaint about misconduct made or notified to it, or otherwise coming to its attention; and

- (b) taking the action the commission considers most appropriate in the circumstances having regard to the principles set out in section 34.⁸

(2) The commission may take the following action—

- (a) deal with each complaint about official misconduct that it considers should not be referred to a public official to be dealt with;
- (b) refer a complaint about official misconduct to a public official to be dealt with by the public official or in cooperation with the commission, subject to the commission's monitoring role;
- (c) without limiting paragraph (b), refer a complaint about official misconduct of a person holding an appointment in a unit of public administration that may involve criminal activity to the commissioner of police to be dealt with;
- (d) if it is a complaint about police misconduct notified to the commission by the commissioner of police—allow the commissioner of police to continue to deal with the complaint, subject to the commission's monitoring role;
- (e) if it is a complaint about police misconduct made to the commission by someone other than the commissioner of police—give the complaint to the commissioner of police to be dealt with, subject to the commission's monitoring role;
- (f) if a public official asks the commission to deal with a complaint or to deal with a complaint in cooperation with the public official—
 - (i) deal with the complaint; or
 - (ii) deal with the complaint in cooperation with the public official; or
 - (iii) advise the public official that the commission considers that it is appropriate that the public official continue to deal with the complaint, subject to the commission's monitoring role;
- (g) if the commission is satisfied that—
 - (i) the complaint—
 - (A) is frivolous or vexatious; or

8 Section 34 (Principles for performing misconduct functions)

Crime and Misconduct Act 2001

(B) lacks substance or credibility; or

- (ii) dealing with the complaint would be an unjustifiable use of resources;

take no action or discontinue action.

(5) If a person makes a complaint that is dealt with by the commission, the commission must give the person a response stating—

- (a) if no action is taken by the commission on the complaint or action to deal with the complaint is discontinued by the commission—the reason for not taking action or discontinuing the action; or
- (b) if action is taken on the complaint by the commission—
- (i) the action taken; and
- (ii) the reason the commission considers the action to be appropriate in the circumstances; and
- (iii) any results of the action that are known at the time of the response.

(6) However, the commission is not required to give a response—

- (a) to the person if—
- (i) the person has not given his or her name and address or does not require a response; or
- (ii) the commission has given a notice, or is entitled to give a notice, under section 216⁹ to the person in relation to the complaint; or
- (b) that discloses information the disclosure of which would be contrary to the public interest.

(7) Nothing in this part limits the commission from providing information about the conduct of a person to a public official for use in the proper performance of the public official's functions.

9 Section 216 (Frivolous or vexatious complaint)

47 Commission's monitoring role for police misconduct

(1) The commission may, having regard to the principles stated in section 34¹⁰—

- (a) issue advisory guidelines for the conduct of investigations by the commissioner of police into police misconduct; or
- (b) review or audit the way the commissioner of police has dealt with police misconduct, in relation to either a particular complaint or a class of complaint; or
- (c) assume responsibility for and complete an investigation by the commissioner of police into police misconduct.

(2) The commissioner of police must give the commission reasonable help to undertake a review or audit or to assume responsibility for an investigation.

(3) If the commission assumes responsibility for an investigation, the commissioner of police must stop his or her investigation or any other action that may impede the investigation if directed to do so by the commission.

(4) In this section—

“complaint”, about police misconduct, includes information or matter involving police misconduct.

48 Commission's monitoring role for official misconduct

(1) The commission may, having regard to the principles stated in section 34—

- (a) issue advisory guidelines for the conduct of investigations by public officials into official misconduct; or
- (b) review or audit the way a public official has dealt with official misconduct, in relation to either a particular complaint or a class of complaint; or
- (c) require a public official—
 - (i) to report to the commission about an investigation into official misconduct in the way and at the times the commission directs; or

10 Section 34 (Principles for performing misconduct functions)

- (ii) to undertake the further investigation into the official misconduct that the commission directs; or
 - (d) assume responsibility for and complete an investigation by a public official into official misconduct.
- (2) The public official must—
- (a) give the commission reasonable help to undertake a review or audit or to assume responsibility for an investigation; and
 - (b) comply with a requirement made under subsection (1)(c).
- (3) If the commission assumes responsibility for an investigation, the public official must stop his or her investigation or any other action that may impede the investigation if directed to do so by the commission.
- (4) In this section—
- “complaint”**, about official misconduct, includes information or matter involving official misconduct.

Division 5—Action following investigation

49 Reports about complaints dealt with by the commission

(1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, misconduct and decides that prosecution proceedings or disciplinary action should be considered.

(2) The commission may report on the investigation to any of the following as appropriate—

- (a) the director of public prosecutions, or other appropriate prosecuting authority, for the purposes of any prosecution proceedings the director or other authority considers warranted;
- (b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;
- (c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;

- (d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;
- (e) the Chief Magistrate, if the report relates to conduct of a magistrate;
- (f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.

(3) A report made under subsection (2) must contain, or be accompanied by, all relevant information known to the commission that—

- (a) supports a charge that may be brought against any person as a result of the report; and
- (b) supports a defence that may be available to any person liable to be charged as a result of the report.

(4) If the director of public prosecutions requires the commission to make further investigation or supply further information relevant to a prosecution, whether started or not, the commission must take all reasonable steps to further investigate the matter or provide the further information.

50 Commission may prosecute official misconduct

(1) This section applies if the commission reports to the chief executive officer of a unit of public administration under section 49¹¹ that—

- (a) a complaint, matter or information involves, or may involve, official misconduct by a prescribed person in the unit; and
- (b) there is evidence supporting a charge of a disciplinary nature of official misconduct against the prescribed person.

(2) The commission may charge the prescribed person with the relevant official misconduct by way of a disciplinary charge.

(3) The charge may be dealt with only by a misconduct tribunal.

11 Section 49 (Reports about complaints dealt with by the commission)

(4) For the definition “prescribed person”, paragraph (b), a regulation may not declare a court or the police service to be a unit of public administration that is subject to the jurisdiction of a misconduct tribunal.

(5) In this section—

“prescribed person” means—

- (a) a member of the police service; or
- (b) a person (other than a judge or holder of judicial office or a member of the police service) who holds an appointment in a unit of public administration, which appointment or unit is declared by regulation to be subject to the jurisdiction of a misconduct tribunal.

51 Other action for misconduct

(1) Nothing in this part limits the action that may lawfully be taken by the commission or a unit of public administration to discipline or otherwise deal with a person for misconduct.

Example—

The commissioner of police may bring a disciplinary charge against a police officer under the *Police Service Administration Act 1990*.

(2) Subsection (1) is subject to sections 47 and 48.¹²

PART 4—RESEARCH, INTELLIGENCE AND OTHER FUNCTIONS

Division 1—Research

52 Research functions

(1) The commission has the following functions—

¹² Sections 47 (Commission’s monitoring role for police misconduct) and 48 (Commission’s monitoring role for official misconduct)

- (a) to undertake research to support the proper performance of its functions;
- (b) to undertake research into the incidence and prevention of criminal activity;
- (c) to undertake research into any other matter relating to the administration of criminal justice or relating to misconduct referred to the commission by the Minister;
- (d) to undertake research into any other matter relevant to any of its functions.

(2) Without limiting subsection (1)(a), the commission may undertake research into—

- (a) police service methods of operations; and
- (b) police powers and the use of police powers; and
- (c) law enforcement by police; and
- (d) the continuous improvement of the police service.

Division 2—Intelligence

53 Intelligence functions

The commission has the following functions—

- (a) to undertake intelligence activities to support the proper performance of its functions;
- (b) to analyse the intelligence data collected to support its functions;
- (c) to minimise unnecessary duplication of intelligence data;
- (d) to ensure that intelligence data collected and held to support its functions is appropriate for the proper performance of its functions.

54 Database of intelligence information

The commission must build up a database of intelligence information for use in support of all of its functions using for the purpose information acquired by it from any source available to it, including, for example—

- (a) its own operations; and

- (b) the police service; and
- (c) sources of the Commonwealth or any State supplying intelligence information to it.

55 Sharing of intelligence information

(1) The commissioner of police must give the chairperson access to intelligence information held by the police service as required by the chairperson as soon as possible after receiving the request.

(2) The commission must, in the performance of all of its functions, give intelligence information to the entities it considers appropriate in the way it considers appropriate.

(3) The commission must limit access to information in its database of intelligence information to those persons the chairperson considers have a legitimate need to access the information.

Division 3—Other functions

56 Commission's other functions

The commission also has the following functions—

- (a) a function of undertaking witness protection;¹³
- (b) a function conferred under another Act.

PART 5—PERFORMANCE OF FUNCTIONS

57 Commission to act independently etc.

The commission must, at all times, act independently, impartially and fairly having regard to the purposes of this Act and the importance of protecting the public interest.

13 See also the *Witness Protection Act 2000*.

58 Independence of holders of judicial office

(1) The commission, when performing its functions or exercising its powers in relation to the procedures and operations of State courts or in relation to the conduct of a judicial officer, must proceed having proper regard for, and proper regard for the importance of preserving, the independence of judicial officers.

(2) To the extent that a commission investigation is, or would be, in relation to the conduct of a judicial officer—

- (a) the commission’s authority to conduct the investigation is limited to investigating misconduct of a kind that, if established, would warrant the judicial officer’s removal from office; and
- (b) the investigation must be exercised in accordance with appropriate conditions and procedures settled in continuing consultations between the chairperson and the Chief Justice.

(3) A commission hearing in relation to the conduct of the judicial officer must be conducted by the chairperson.

(4) The functions and powers of the commission are to be performed and exercised by the chairperson who is to be taken to constitute the commission for the investigation.

(5) In this section—

“judicial officer” means—

- (a) a judge of, or other person holding judicial office in, a State court; or
- (b) a member of a tribunal that is a court of record.

59 Commission to cooperate with other entities

(1) The commission and units of public administration are to work cooperatively to achieve optimal use of available resources.

(2) In performing its functions, the commission must—

- (a) liaise with, and coordinate its activities with the activities of, units of public administration to avoid needless duplication of the work of the units for the purpose of performing the commission’s functions; and

- (b) have regard to the activities, findings and recommendations of entities outside the State, including outside Australia, that have functions similar to the commission—
 - (i) to relate and adapt the activities, findings and recommendations of the entities to the needs of the State; and
 - (ii) to avoid needless duplication of the work of the entities for the purpose of performing the commission's functions.

60 Commission may give evidence or information to other entities

(1) The commission may give evidence of, or information about, a possible offence against a law of the State, the Commonwealth or another State to an entity or a law enforcement agency the commission considers appropriate.

(2) Also, the commission may give information coming to its knowledge, including by way of a complaint, to a unit of public administration if the commission considers that the unit has a proper interest in the information for the performance of its functions.

Example—

The commission may consider that information in the commission's possession should be given to the Auditor-General or the ombudsman for consideration in the performance of the entity's functions.

(3) Subsection (1) does not limit anyone's right to start a prosecution for an offence.

(4) This section is subject to section 62.

61 Commission's functions not to limit proper performance of similar functions by other entities

(1) The conferral of functions on the commission does not limit police power or the power of another entity to perform similar functions.

(2) Subsection (1) is subject to sections 47 and 48.¹⁴

¹⁴ Sections 47 (Commission's monitoring role for police misconduct) and 48 (Commission's monitoring role for official misconduct)

62 Restriction on access

(1) Any information, document or thing in the commission's possession may be used and dealt with in performing the commission's functions, but otherwise must not be given to or made available for inspection by any person without the commission's express written authorisation.

(2) Subsection (1) is subject to sections 293 and 317.¹⁵

PART 6—REPORTING*Division 1—Application***63 Application of pt 6**

This part does not apply in relation to the performance of crime functions.

*Division 2—Commission reports***64 Commission's reports—general**

(1) The commission may report in performing its functions.

(2) The commission must include in each of the reports—

- (a) any recommendations, including, if appropriate and after consulting with the commissioner of police, a recommendation that the Police Minister give a direction to the commissioner of police under the Police Service Administration Act, section 4.6;¹⁶ and
- (b) an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations.

15 Sections 293 (Powers) and 317 (Powers of the parliamentary commissioner)

16 Police Service Administration Act, section 4.6 (Communications between Minister and commissioner)

(3) If the Police Minister decides not to give a direction under the Police Service Administration Act, section 4.6 following a recommendation made under subsection (2)(a), the Police Minister must table in the Legislative Assembly, after giving the reasons—

- (a) a copy of the recommendation; and
- (b) the Minister's reasons for not giving the direction.

(4) The commission may also include in a report any comments it may have on the matters mentioned in subsection (2)(b).

(5) In this section—

“Police Service Administration Act” means the *Police Service Administration Act 1990*.

“Police Minister” means the Minister administering the Police Service Administration Act.

65 Commission reports—court procedures

(1) This section applies to a commission report about—

- (a) the procedures and operations of a State court; or
- (b) the procedures and practices of the registry or administrative offices of a State court.

(2) The report may be given only to—

- (a) the Chief Justice, if the report deals with matters relevant to the Supreme Court; or
- (b) the Chief Judge of the District Court, if the report deals with matters relevant to the District Court; or
- (c) the President of the Childrens Court, if the report deals with matters relevant to the Childrens Court; or
- (d) the Chief Magistrate, if the report deals with matters relevant to the Magistrates Courts; or
- (e) the judicial officer, or the principal judicial officer if there is more than 1 judicial officer, in the court, or the system of courts, to which the matters dealt with in the report are relevant.

Division 3—Confidential information**66 Maintaining confidentiality of information**

(1) Despite any other provision of this Act about reporting, if the commission considers that confidentiality should be strictly maintained in relation to information in its possession (“**confidential information**”)—

- (a) the commission need not make a report on the matter to which the information is relevant; or
- (b) if the commission makes a report on the matter, it need not disclose the confidential information or refer to it in the report.

(2) If the commission decides not to make a report to which confidential information is relevant or, in a report, decides not to disclose or refer to confidential information, the commission—

- (a) may disclose the confidential information in a separate document to be given to—
 - (i) the Speaker; and
 - (ii) the Minister; and
- (b) must disclose the confidential information in a separate document to be given to the parliamentary committee.

(3) A member of the parliamentary committee or a person appointed, engaged or assigned to help the committee must not disclose confidential information disclosed to the parliamentary committee or person under subsection (2)(b) until the commission advises the committee there is no longer a need to strictly maintain confidentiality in relation to the information.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(4) Despite subsection (2)(b), the commission may refuse to disclose information to the parliamentary committee if—

- (a) a majority of the commissioners considers confidentiality should continue to be strictly maintained in relation to the information; and
- (b) the commission gives the committee reasons for the decision in as much detail as possible.

67 Register of confidential information

(1) The commission must maintain a register of information withheld under section 66(4) and advise the parliamentary committee immediately after the need to strictly maintain confidentiality in relation to the information ends.

(2) The parliamentary committee or a person appointed, engaged or assigned to help the committee who is authorised for the purpose by the committee may, at any time, inspect in the register information the commission has advised the committee is no longer required to be strictly maintained as confidential.

(3) The parliamentary commissioner may inspect information on the register at any time, regardless of whether the commission has advised the parliamentary committee the information is no longer required to be strictly maintained as confidential.

(4) The parliamentary committee may not require the parliamentary commissioner to disclose to the committee information inspected by the commissioner on the register, unless the commission has advised the committee the information is no longer required to be strictly maintained as confidential.

68 Giving of reasons

Information or reasons mentioned in section 66(2) or (4) or 67(1)¹⁷—

- (a) may be given in writing or orally; and
- (b) are not a report or part of a report for section 69.

*Division 4—Tabling requirements***69 Commission reports to be tabled**

(1) This section applies to the following commission reports—

- (a) a report on a public hearing;
- (b) a research report or other report that the parliamentary committee directs be given to the Speaker.

¹⁷ Section 66 (Maintaining confidentiality of information) or 67 (Register of confidential information)

(2) However, this section does not apply to the commission's annual report, or a report under section 49 or 65,¹⁸ or a report to which section 66¹⁹ applies.

(3) A commission report, signed by the chairperson, must be given to—

- (a) the chairperson of the parliamentary committee; and
- (b) the Speaker; and
- (c) the Minister.

(4) The Speaker must table the report in the Legislative Assembly on the next sitting day after the Speaker receives the report.

(5) If the Speaker receives the report when the Legislative Assembly is not sitting, the Speaker must deliver the report and any accompanying document to the clerk of the Parliament.

(6) The clerk must authorise the report and any accompanying document to be printed.

(7) A report printed under subsection (6) is to be taken, for all purposes, to have been tabled in and printed by order of the Legislative Assembly and is to be granted all the immunities and privileges of a report so tabled and printed.

(8) The commission, before giving a report under subsection (1), may—

- (a) publish or give a copy of the report to the printer authorised to print the report; and
- (b) arrange for the preprinting by the printer of copies of the report for this section.

Division 5—General

70 Giving material to tribunal inquiring into judge's misbehaviour or incapacity

(1) This section applies if a tribunal established under the *Constitution of*

18 Section 49 (Reports about complaints dealt with by the commission) or 65 (Commission reports—court procedures)

19 Section 66 (Maintaining confidentiality of information)

Queensland 2001, section 61²⁰ is inquiring into whether a Supreme Court judge or a District Court judge has misbehaved in a way that justifies removal from a judicial office or is incapable of performing the duties of a judicial office.

(2) At the tribunal's request, the commission must give the tribunal all material in the commission's possession relevant to the subject of the tribunal's inquiry, including any relevant report of the commission.

71 Giving other information to parliamentary committee

The commission may, with the parliamentary committee's consent, give the parliamentary committee information, orally or in writing, whether or not at the request of the committee, that is not included in a report under section 69.²¹

CHAPTER 3—POWERS

PART 1—PARTICULAR POWERS TO REQUIRE INFORMATION OR ATTENDANCE

Division 1—Particular powers in relation to units of public administration

Subdivision 1—Crime investigations

72 Power to require information or documents

(1) This section applies only for a crime investigation.

20 *Constitution of Queensland 2001*, section 61 (Removal from office for misbehaviour or incapacity)

21 Section 69 (Commission reports to be tabled)

Crime and Misconduct Act 2001

(2) The chairperson may, by notice given to a person holding an appointment in a unit of public administration, require the person, within the reasonable time and in the way stated in the notice, to give an identified commission officer—

- (a) an oral or written statement of information of a stated type relevant to a crime investigation that is in the possession of the unit; or
- (b) a stated document or other stated thing, or a copy of a stated document, relevant to a crime investigation that is in the unit's possession; or
- (c) all documents of a stated type, or copies of documents of the stated type, containing information relevant to a crime investigation that are in the unit's possession.

(3) The chairperson may, by notice given to a person holding an appointment in a unit of public administration, require the person—

- (a) to attend before an identified commission officer at a reasonable time and place stated in the notice; and
- (b) at the time and place stated in the notice, to give to the officer a document or thing stated in the notice that—
 - (i) relates to the performance by the unit of the unit's functions; and
 - (ii) is relevant to a crime investigation.

(4) The person must comply with a notice under subsection (2) or (3), unless the person has a reasonable excuse.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(5) A person who fails to comply with a notice under subsection (2) or (3) does not commit an offence if—

- (a) the information, document or thing is subject to privilege; or
- (b) a provision of another Act prescribed under a regulation for this subsection excuses compliance with the requirement.

Note—

If a claim of privilege is made, the commission officer is required to consider the claim under section 77²² and, if the requirement is not withdrawn, the person may be required to attend at a commission hearing to establish the claim.

(6) A person does not, by complying with a notice under subsection (2) or (3) in relation to the information, document or thing—

- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the information, document or thing; or
- (b) incur any civil liability in relation to the information, document or thing.

(7) The notice must—

- (a) for a notice requiring a statement of information—indicate briefly the general nature of the information by reference to a particular matter or to the type of information sought; and
- (b) for a notice requiring the giving of a document or other thing—identify the document or thing sufficiently to enable the person to know what is required.

Subdivision 2—Misconduct investigations

73 Power to enter etc.

(1) This section applies only for a misconduct investigation.

(2) The chairperson may, by notice, authorise a commission officer to exercise powers under this section.

(3) A commission officer authorised under subsection (2) may—

- (a) enter and search official premises; or
- (b) inspect any document or thing found in or on official premises that is, or might be, relevant to the misconduct investigation; or
- (c) seize and remove from official premises any document or thing found in or on the premises that is relevant to a misconduct investigation; or
- (d) make copies of or extracts from a document mentioned in paragraph (b) or (c); or
- (e) require a person holding an appointment in a unit of public administration to give the officer reasonable help to exercise the powers mentioned in paragraphs (b) to (d).

(4) A person does not, by allowing the exercise of a power under subsection (3) in relation to a document or thing—

- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the document or thing; or
- (b) incur any civil liability in relation to the document or thing.

(5) However, the commission officer must not exercise a power under subsection (3)(b), (c) or (d) if the chief executive officer of the unit, or a person authorised by the chief executive officer for the purpose, claims that the document or thing is subject to privilege.

Note—

If a claim of privilege is made, the commission officer is required to consider the claim under section 80²³ and, if the requirement is not withdrawn, the person may be required to attend at a commission hearing to establish the claim.

(6) A commission officer exercising powers under this section must, if asked by the occupier of the official premises, or a person acting for the occupier, produce for inspection by the occupier or person the chairperson’s authority under which the officer purports to act.

(7) In this section—

“**official premises**” means premises occupied or used by, or for the official purposes of, a unit of public administration, but does not include any part of premises that is occupied or used by or for the purposes of any State court.

Division 2—Notice to produce or discover

Subdivision 1—Crime investigations

74 Notice to produce

(1) This section applies only for a crime investigation.

(2) The chairperson may, by notice (“**notice to produce**”) given to a person, require the person, within the reasonable time and in the way stated in the notice, to give an identified commission officer a stated document or

23 Section 80 (Commission officer to consider claim of privilege)

thing that the chairperson believes, on reasonable grounds, is relevant to a crime investigation.

(3) A notice to produce may be given whether or not the commission is conducting a hearing for the investigation.

(4) The notice to produce may require the immediate production of a document or thing to a stated commission officer if the chairperson believes, on reasonable grounds, that delay in the production of the document may result in—

- (a) its destruction, removal or concealment; or
- (b) serious prejudice to the conduct of the investigation.

(5) The person must comply with the notice to produce, unless the person has a reasonable excuse.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(6) A person does not, by complying with the notice to produce in relation to the document or thing—

- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the document or thing; or
- (b) incur any civil liability in relation to the document or thing.

(7) A person who fails to comply with a notice does not commit an offence if the document or thing is subject to privilege.

Note—

If a claim of privilege is made, the commission officer is required to consider the claim under section 77²⁴ and, if the requirement is not withdrawn, the person may be required to attend at a commission hearing to establish the claim.

(8) A document produced under this section is taken to have been seized under a warrant under part 2.²⁵

Subdivision 2—Misconduct investigations

75 Notice to discover information

(1) This section applies—

24 Section 77 (Commission officer to consider claim)

25 Part 2 (Search warrants generally)

Crime and Misconduct Act 2001

- (a) only for a misconduct investigation; and
- (b) only if the chairperson reasonably suspects that a person, whether or not the person holds an appointment in a unit of public administration, has information, or possession of a document or thing, relevant to the investigation.

(2) The chairperson may, by notice (“**notice to discover**”) given to the person, require the person, within the reasonable time and in the way stated in the notice, to give an identified commission officer—

- (a) an oral or written statement of information of a stated type relevant to the investigation that is in the person’s possession; or
- (b) a stated document or other stated thing, or a copy of a stated document, relevant to the investigation that is in the person’s possession; or
- (c) all documents of a stated type, or copies of documents of the stated type, containing information relevant to the investigation that are in the person’s possession.

(3) The person must comply with the notice.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(4) A person does not, by complying with the notice to discover in relation to the information, document or thing—

- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the information, document or thing; or
- (b) incur any civil liability in relation to the information, document or thing.

(5) A person who fails to comply with the notice does not commit an offence if the information, document or thing—

- (a) is subject to privilege; or
- (b) is a secret process of manufacture applied by the person solely for a lawful purpose.

Note—

If a claim of privilege is made, the commission officer is required to consider the claim under section 80²⁶ and, if the requirement is not withdrawn, the person may be required to attend at a commission hearing to establish the claim.

(6) The chairperson may require the person to give an oral statement of information under oath and a written statement of information by way of statutory declaration.

(7) The notice to discover must—

- (a) if it requires a statement of information—indicate briefly the general nature of the information the person is suspected of having, by reference to a particular matter or to the type of information sought; and
- (b) if it requires the giving of a document or other thing—identify the document or thing sufficiently to enable the person to know what is required.

(8) The notice—

- (a) may provide that its requirement may be met by some person acting for the person to whom it is directed; and
- (b) may specify the person or class of person who may so act.

(9) The chairperson must not give a notice to discover to a person who is subject to a disciplinary charge of official misconduct before a misconduct tribunal (or any of the person's witnesses or prospective witnesses) in relation to information, documents or things relevant to the charge.

Division 3—Procedure on claim of privilege

Subdivision 1—Crime investigations

76 Application of subdiv 1

This subdivision applies if a person claims privilege under section 72 or 74 in relation to information or a document or thing.²⁷

77 Commission officer to consider claim

The commission officer must consider the claim and may withdraw the requirement in relation to which the claim is made or advise the person that

²⁷ Section 72 (Power to require information or documents) or 74 (Notice to produce)

the person may be required to attend before a commission hearing to establish the claim.

Note—

If the requirement is not withdrawn, the person may be given an attendance notice under section 82²⁸ to attend at a commission hearing to establish the claim.

78 Procedure for documents subject to claim of privilege

(1) If—

- (a) the claim is made in relation to a document or thing the person is required to give or produce to the commission; and
- (b) the person acknowledges that the document or thing is in the person's possession; and
- (c) the commission officer does not withdraw the requirement;

the commission officer must require the person to immediately seal the document or thing and give it to the commission officer for safe keeping.

(2) The person must immediately seal the document or thing and give it to the commission officer for safe keeping.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(3) The commission officer must—

- (a) give the person a receipt for the sealed document or thing; and
- (b) place it in safe custody at the commission's place of business at the earliest reasonable opportunity.

(4) A person must not open the sealed document or thing unless authorised to open it under this Act or a court order.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(5) The commission must return any sealed document or thing given to the commission officer by a person under subsection (1) within 7 days if the commission has not by the end of that period given the person an attendance notice under section 82(1)(d).²⁹

28 Section 82 (Notice to attend hearing—general)

29 Section 82 (Notice to attend hearing—general)

Subdivision 2—Misconduct investigations**79 Application of subdiv 2**

This subdivision applies if a person claims privilege under section 73, 75, 94 or 111³⁰ in relation to information or a document or thing.

80 Commission officer to consider claim of privilege

The commission officer must consider the claim and may withdraw the requirement in relation to which the claim is made or advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the privilege under section 196.³¹

81 Procedure for documents subject to claim of privilege**(1) If—**

- (a) the claim is made in relation to a document or thing the person is required to give or produce to the commission; and
- (b) the document or thing is in the person's possession or the person acknowledges that the document or thing is in the person's possession; and
- (c) the commission officer does not withdraw the requirement;

the commission officer must require the person to immediately seal the document or thing and give it to the commission officer for safe keeping.

(2) The person must immediately seal the document or thing (the **“sealed evidence”**) under the supervision of the commission's representative.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(3) The person and the commission's representative must immediately deliver the sealed evidence to a registrar of the Supreme Court to be held in safe custody.

30 Section 73 (Power to enter etc.), 75 (Notice to discover information), 94 (Limitation on search warrant powers for misconduct investigations) or 111 (General power to seize evidence—misconduct investigation)

31 Section 196 (Supreme Court to decide claim of privilege or reasonable excuse)

Maximum penalty—85 penalty units or 1 year’s imprisonment.

- (4) The registrar must keep the sealed evidence in safe custody until—
- (a) application is made to a Supreme Court judge to decide the claim of privilege; or
 - (b) the end of 3 court days after the day on which the document or thing is given to the registrar, if an application has not been made under paragraph (a); or
 - (c) the registrar is told by the person and commission representative that agreement has been reached on the disposal of the sealed evidence.
- (5) The registrar must—
- (a) if an application is made to a Supreme Court judge to decide the claim of privilege—dispose of the sealed evidence in the way ordered by the judge; or
 - (b) if an application is not made by end of 3 court days after the day on which the document or thing is given to the registrar—return the sealed evidence to the person; or
 - (c) if the person and commission representative give the registrar notice that an agreement on the disposal of the sealed evidence has been reached—dispose of the sealed evidence in the way agreed.

Division 4—Notice to attend

82 Notice to attend hearing—general

(1) The chairperson may issue a notice (“**attendance notice**”) requiring a person to attend at a commission hearing at a stated time and place for 1 or more of the following purposes until excused—

- (a) to give evidence;
- (b) to produce a stated document or thing;

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- (c) to establish a reasonable excuse or claim of privilege under section 72, 73, 74 or 75.³²

Note—

If an attendance notice is issued, the person must attend at a commission hearing to establish the claim under section 194.³³

(2) An attendance notice must state—

- (a) whether it is issued in the context of a crime investigation or a misconduct investigation; and
- (b) so far as reasonably practicable, the general nature of the matters about which the person may be questioned at the commission hearing.

(3) A person does not, by giving evidence or producing a stated document or thing at a hearing in compliance with an attendance notice—

- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the evidence, document or thing; or
- (b) incur any civil liability in relation to the evidence, document or thing.

(4) A failure to comply with subsection (2)(b) does not prevent the commission from questioning the person about any matter that relates to an investigation.**(5)** A person given an attendance notice must not—

- (a) fail, without reasonable excuse, to attend as required by the notice; or
- (b) fail, without reasonable excuse, to continue to attend as required by the presiding officer until excused from further attendance.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(6) This section is subject to section 85.³⁴

³² Section 72 (Power to require information or documents), 73 (Power to enter etc.), 74 (Notice to produce) or 75 (Notice to discover information)

³³ Section 194 (Presiding officer to decide whether refusal to answer questions or produce documents or things is justified)

³⁴ Section 85 (Notices requiring immediate attendance may be issued only by or with the approval of a Supreme Court judge)

83 Notice to attend hearing—prisoner or patient

(1) If the attendance before the commission of a prisoner is required, the chairperson may, by notice given to the chief executive (corrective services), direct that chief executive to produce the prisoner named in the notice at a stated time and place.

(2) If the attendance before the commission of a patient detained in a hospital under the Mental Health Act is required, the chairperson may, by notice given to the appropriate hospital administrator, direct the hospital administrator to produce the patient named in the notice at a stated time and place.

(3) A direction mentioned in subsection (1) or (2) is lawful authority to the chief executive (corrective services) or hospital administrator for production of the prisoner or patient as directed.

(4) The chief executive (corrective services) or hospital administrator must comply with a direction given to the chief executive or administrator.

(5) A prisoner or patient produced under this section remains in the custody of the chief executive (corrective services) or hospital administrator.

(6) In this section—

“administrator” means—

- (a) hospital administrator within the meaning of the *Mental Health Act 1974*, section 5(1); or
- (b) administrator within the meaning of the *Mental Health Act 2000*, schedule 2.

“Mental Health Act” means—

- (a) *Mental Health Act 1974*; or
- (b) *Mental Health Act 2000*.

“patient” means—

- (a) patient within the meaning of the *Mental Health Act 1974*, section 5(1); or
- (b) patient within the meaning of the *Mental Health Act 2000*, schedule 2.

“prisoner” means a person in the custody of the chief executive (corrective services).

Division 5—Confidential documents**84 Notice may be a confidential document**

(1) A notice given by the chairperson under this part may provide that it is a confidential document.

(2) A person must not disclose the existence of a confidential document to anyone else, unless the person has a reasonable excuse.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(3) It is a reasonable excuse for a person to disclose the existence of a confidential document if—

- (a) the disclosure is made for the purpose of—
 - (i) seeking legal advice in relation to the document or an offence against subsection (2); or
 - (ii) obtaining information in order to comply with the document; or
 - (iii) making a complaint to the parliamentary committee about the document; or
 - (iv) the administration of this Act; and
- (b) the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the document to anyone else unless the person has a reasonable excuse.

Division 6—Restriction on power**85 Notices requiring immediate attendance may be issued only by or with the approval of a Supreme Court judge**

(1) The chairperson may issue an attendance notice requiring a person to attend immediately at a commission hearing at a stated place only with the approval of a Supreme Court judge.

(2) The judge may approve the issue of the attendance notice only if the judge is satisfied, on reasonable grounds, that delay in attendance might result in—

- (a) the commission of an offence; or

- (b) an offender or suspected offender absconding; or
- (c) the loss or destruction of evidence; or
- (d) serious prejudice to the conduct of an investigation being conducted by the commission.

(3) The attendance notice need not state the general nature of the matters about which the person may be questioned if the chairperson is satisfied that, in the particular circumstances of the investigation, stating the matters would prejudice the effectiveness of the investigation.

PART 2—SEARCH WARRANTS GENERALLY

86 Search warrant applications

(1) An authorised commission officer may apply for a warrant to enter and search a place (“**search warrant**”) to obtain evidence of the commission of major crime or misconduct being investigated by the commission.

(2) The application may be made to a magistrate or Supreme Court judge, unless the application must be made to a Supreme Court judge under subsection (3).

(3) The application must be made to a Supreme Court judge if, when entering and searching the place, it is intended to do anything that may cause structural damage to a building.

(4) An application under this section—

- (a) must be sworn and state the grounds on which the warrant is sought; and
- (b) fully disclose all matters, of which the authorised commission officer is aware, both favourable and adverse to the issuing of the warrant sought; and
- (c) must include information required under a regulation about any search warrants issued within the previous year in relation to the place or a person suspected of being involved in the commission of the major crime or misconduct to which the application relates.

(5) Subsection (4)(c) applies only to—

- (a) information kept in a register that the commission officer may inspect; and
- (b) information the officer otherwise actually knows.

(6) The magistrate or judge (the “**issuer**”) may refuse to consider the application until the commission officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

Example—

The issuer may require additional information supporting the application to be given by statutory declaration.

87 Issue of search warrant

(1) The issuer may issue the search warrant only if satisfied there are reasonable grounds for suspecting evidence of the commission of major crime or misconduct—

- (a) is at the place; or
- (b) is likely to be taken to the place within the next 72 hours.

(2) The issuer may provide in the warrant that the warrant is a confidential document.

88 Order in search warrants about documents

The issuer may, in the search warrant, order the person in possession of documents at the place to give to a commission officer all documents of a type stated in the warrant.

89 Search warrant may be a confidential document

(1) If the search warrant provides that it is a confidential document, a person must not disclose the existence of the warrant to anyone else unless the person has a reasonable excuse.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(2) It is a reasonable excuse for a person to disclose the existence of the warrant if—

- (a) the disclosure is made—

- (i) for the purpose of seeking legal advice in relation to the warrant or an offence against subsection (1); or
 - (ii) for the purpose of obtaining information in order to comply with the warrant; or
 - (iii) for the purpose of making a complaint to the commission or the parliamentary committee about the warrant; or
 - (iv) in the course of the administration of this Act; and
- (b) the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the warrant to anyone else unless the person has a reasonable excuse.

90 When search warrant ends

(1) A search warrant issued because there are reasonable grounds for suspecting there is evidence of the commission of major crime or misconduct at a place ends 7 days after it is issued.

(2) A search warrant issued because there are reasonable grounds for suspecting evidence of the commission of major crime or misconduct is likely to be taken to a place within the next 72 hours ends 72 hours after it is issued.

91 What search warrant must state

(1) A search warrant must state—

- (a) that a stated commission officer or all commission officers may enter the place and exercise search warrant powers at the place; and
- (b) brief particulars of the major crime or misconduct for which the warrant is issued; and
- (c) the evidence, if any, that may be seized under the warrant; and
- (d) if the warrant is to be executed at night, the hours when the place may be entered; and
- (e) the day and time the warrant ends.

(2) If the issuer makes an order under section 88,³⁵ the warrant must also state that failure, without reasonable excuse, to comply with the order may be dealt with under the Criminal Code, section 205.³⁶

92 Powers under search warrants

(1) An authorised commission officer has the following powers under a search warrant (“**search warrant powers**”)—

- (a) power to enter the place stated in the warrant (the “**relevant place**”) and to stay on it for the time reasonably necessary to exercise powers authorised under the warrant and this section;
- (b) power to pass over, through, along or under another place to enter the relevant place;
- (c) power to search the relevant place for anything sought under the warrant;
- (d) power to open anything in the relevant place that is locked;
- (e) power to detain anyone at the relevant place for the time reasonably necessary to find out if the person has anything sought under the warrant;
- (f) power to detain a person found at the relevant place for the time taken to search the place if the officer reasonably suspects the person has been involved in the unlawful activity;
- (g) power to dig up land;
- (h) power to seize a thing found at the relevant place, or on a person found at the relevant place, that the officer reasonably suspects may be evidence of the commission of the unlawful activity or an indictable offence;
- (i) power to muster, hold and inspect any animal the officer reasonably suspects may be evidence of the commission of the unlawful activity;
- (j) power to photograph anything the officer reasonably suspects may be evidence of the commission of the unlawful activity;

35 Section 88 (Order in search warrants about documents)

36 Criminal Code, section 205 (Disobedience to lawful order issued by statutory authority)

- (k) power to remove wall or ceiling linings or floors of a building, or panels of a vehicle, to search for evidence of the commission of the unlawful activity.

(2) Also, an authorised commission officer has the following powers if authorised under a search warrant (also “**search warrant powers**”)—

- (a) power to search anyone found at the relevant place for anything sought under the warrant that can be concealed on the person;
- (b) power to do whichever of the following is authorised—
 - (i) to search anyone or anything in or on or about to board, or be put in or on, a vehicle;
 - (ii) to take a vehicle to, and search for evidence of the commission of the unlawful activity that may be concealed in a vehicle at, a place with appropriate facilities for searching the vehicle.

(3) Power to do anything at the relevant place that may cause structural damage to a building may be exercised only if the warrant—

- (a) authorises the exercise of the power; and
- (b) is issued by a Supreme Court judge.

(4) In this section—

“**unlawful activity**”, for a search warrant, means the major crime or misconduct to which the warrant relates.

93 Copy of search warrant to be given to occupier

(1) If a commission officer executes a search warrant for a place that is occupied, the officer must—

- (a) if the occupier of the place is present—give to the occupier a copy of the warrant and a statement summarising the person’s rights and obligations under the warrant; or
- (b) if the occupier is not present—leave the copy in a conspicuous place.

(2) However, if the search warrant is a confidential document and the occupier is not present, the officer—

- (a) is not required to comply with subsection (1)(b); and

- (b) must give to the occupier a copy of the warrant and a statement summarising the person's rights and obligations under the warrant as soon as practicable after executing the warrant.

(3) If the officer reasonably suspects giving the person the copy may frustrate or otherwise hinder the investigation or another investigation, the officer may delay complying with subsection (1), but only for so long as—

- (a) the officer continues to have the reasonable suspicion; and
- (b) that officer or another officer involved in the investigation remains in the vicinity of the place to keep the place under observation.

94 Limitation on search warrant powers for misconduct investigations

(1) This section applies if—

- (a) an authorised commission officer who is exercising search warrant powers for a misconduct investigation wishes to inspect, photograph or seize a document or thing under the warrant; and
- (b) a person who is entitled to claim the privilege claims the document or thing is subject to privilege.

(2) The authorised commission officer must consider the claim and may withdraw the requirement in relation to which the claim is made or advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the privilege under section 196.³⁷

(3) If the commission officer does not withdraw the requirement, section 81³⁸ applies.

(4) In this section—

“privilege” does not include privilege on the ground of confidentiality.

37 Section 196 (Supreme Court to decide claim of privilege or reasonable excuse)

38 Section 81 (Procedure for documents subject to claim of privilege)

PART 3—SEARCH OF PLACE TO PREVENT LOSS OF EVIDENCE

95 Application of part

This part applies only for a crime investigation.

96 Search to prevent loss of evidence

(1) This section applies if an authorised commission officer reasonably suspects—

- (a) a thing at or about a place, or in the possession of a person at or about a place, is evidence of the commission of major crime being investigated by the commission; and
- (b) unless the place is immediately entered and searched—
 - (i) the evidence may be concealed or destroyed; or
 - (ii) the forensic value of the evidence may be diminished.

(2) An authorised commission officer may enter the place and exercise search warrant powers, other than power to do something that may cause structural damage to a building, at the place as if they were conferred under a search warrant.

97 Post-search approval

(1) As soon as reasonably practicable after exercising powers under section 96, the authorised commission officer must apply to a magistrate in writing for an order approving the search (“**post-search approval order**”).

(2) The application must be sworn and state the grounds on which it is sought.

(3) The applicant need not appear at the consideration of the application, unless the magistrate otherwise requires.

(4) The magistrate may refuse to consider the application until the authorised commission officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

98 Making of post-search approval order

(1) The magistrate may make a post-search approval order only if satisfied the search was conducted in the context of a crime investigation and either of the following apply—

- (a) in the circumstances existing before the search, there were grounds for the authorised commission officer to reasonably suspect—
 - (i) a thing at or about the place, or in the possession of a person at or about the place, was evidence of the commission of major crime being investigated by the commission; and
 - (ii) unless the place was immediately entered and searched—
 - (A) the evidence may have been concealed or destroyed; or
 - (B) the forensic value of the evidence may have been diminished;
- (b) having regard to the nature of the evidence found during the search, it is in the public interest to make the order.

(2) The magistrate may also make an order under section 118 or 119,³⁹ whether or not a post-search approval order is made.

99 Appeal

(1) Within 28 days after either of the following happens, the authorised commission officer may appeal against the order to the Supreme Court—

- (a) a magistrate refuses to make a post-search approval order;
- (b) a magistrate makes an order under section 98(2).

(2) If the authorised commission officer appeals, the officer must retain any thing seized until the appeal is decided.

39 Section 118 (Application by owner etc. for return of things) or 119 (Application by commission officer for order if ownership dispute)

(3) The court may make an order under section 118 or 119, whether or not the appeal is upheld.

PART 4—SEARCHING PERSONS

Division 1—General provisions

100 General provisions about searches of persons

(1) An authorised commission officer lawfully searching a person under this Act must—

- (a) ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person; and
- (b) take reasonable care to protect the person’s dignity; and
- (c) unless an immediate and more thorough search of the person is necessary, restrict a search of the person in public to an examination of outer clothing; and
- (d) if a more thorough search of the person is necessary but does not have to be conducted immediately, conduct a more thorough search of the person out of public view, for example, in a room of a shop or, if a police station is nearby, in the police station.

Example for paragraph (c)—

A more thorough search may be immediately necessary because the officer reasonably suspects the person to be searched may have a bomb strapped to his or her body or has a concealed firearm or knife.

(2) Unless an immediate search is necessary, the person conducting the search must be either—

- (a) an authorised commission officer of the same sex as the person to be searched; or
- (b) if there is no authorised commission officer of the same sex available to search the person, someone acting at the direction of an authorised commission officer and of the same sex as the person to be searched; or

- (c) a doctor acting at the direction of an authorised commission officer.

Example—

An immediate search by a person of the opposite sex may be necessary because the person searched has a concealed firearm or knife.

101 Taking a person to another place for search

(1) If it is impracticable to search for a thing that may be concealed on a person where the person is, the authorised commission officer may take the person to a place with adequate facilities for conducting the search.

Example—

To search a person out of public view and cause minimal embarrassment to the person, a person in a casino may be taken to another room in the casino.

(2) Before taking a person to another place for a search because it is impracticable to search for a thing that may be concealed on the person where the person is, the authorised commission officer must consider the following—

- (a) whether the thing sought may be concealed on the person;
- (b) whether, for an effective search, the search should be conducted somewhere else;
- (c) the need to protect the dignity of the person.

102 Limitation on period of detention for search

An authorised commission officer who detains a person for a search must not detain the person any longer than is reasonably necessary for the purpose.

103 Dealing with persons who obstruct search of person

(1) If a person (the “**obstructing person**”) obstructs an authorised commission officer conducting a lawful search of the obstructing person or another person, an authorised commission officer must, if reasonably practicable—

- (a) warn the obstructing person it is an offence to obstruct an authorised commission officer in the performance of the officer’s duties; and

- (b) give the obstructing person a reasonable opportunity to stop obstructing the search.

(2) It may not be reasonably practicable for an authorised commission officer to comply with subsection (1) if, for example—

- (a) there is an immediate or sudden need to use force because, for example, the person is struggling with an authorised commission officer; or
- (b) there is a reasonable expectation that, if warned, the person may immediately dispose of, or destroy, evidence; or
- (c) an immediate search is necessary to protect the safety of any person.

Division 2—Searches involving removal of clothing

104 Application of division

This division applies only for a crime investigation.

105 Removal of clothing for search

An authorised commission officer conducting the search of a person under this Act may require a person to remove all items of clothing or all items of outer clothing from—

- (a) if the person is a female—the upper or lower part of the body; or
- (b) if the person is a male—the lower part of the body.

106 Protecting the dignity of persons during search

(1) If reasonably practicable—

- (a) the authorised commission officer must, before conducting the search—
 - (i) tell the person he or she will be required to remove clothing during the search; and
 - (ii) tell the person why it is necessary to remove the clothing; and
 - (iii) ask for the person's cooperation; and

- (b) the person must be given the opportunity to remain partly clothed during the search, for example, by allowing the person to dress his or her upper body before being required to remove items of clothing from the lower part of the body.

(2) The search must be conducted in a way providing reasonable privacy for the person.

Example for subsection (2)—

Reasonable privacy may be provided by conducting the search in a way that ensures, as far as reasonably practicable, the person being searched can not be seen by anyone of the opposite sex and by anyone who does not need to be present.

(3) Also, the search must be conducted as quickly as reasonably practicable and the person searched must be allowed to dress as soon as the search is finished.

(4) A regulation may prescribe other requirements and procedures for ensuring the effective carrying out of the search.

107 Special requirements for searching children and persons with impaired capacity

(1) If a person to be searched is a child, or a person with impaired capacity, who may not be able to understand the purpose of the search, the authorised commission officer must conduct the search in the presence of a support person.

(2) However, the officer may search the person in the absence of a support person if the officer reasonably suspects—

- (a) delaying the search is likely to result in evidence being concealed or destroyed; or
- (b) an immediate search is necessary to protect the safety of a person.

108 If video cameras monitor place where person is searched

(1) If a video camera monitors the area where the person is searched, the authorised commission officer must, unless the person viewing the monitor is an authorised commission officer of the same sex as the person being searched—

- (a) ensure the camera is turned off; or

(b) conduct the search out of view of the camera.

(2) If the video camera is not turned off, a recording of the search must not be shown to anyone other than—

- (a) the person searched or his or her lawyer; or
- (b) a doctor treating the person searched; or
- (c) a person deciding if a proceeding is to be started against the person for an offence; or
- (d) an authorised commission officer investigating an offence involving the person; or
- (e) an authorised commission officer, police officer, lawyer, public prosecutor or witness involved in a proceeding against the person; or
- (f) a court.

PART 5—SEIZING PROPERTY

109 Definitions for pt 5

In this part—

“**court**” includes misconduct tribunal.

“**prosecution**” includes bringing a charge, of a disciplinary nature, of official misconduct.

110 General power to seize evidence—crime investigation

(1) This section applies if a commission officer conducting a crime investigation lawfully enters a place, or is at a public place, and finds at the place a thing the officer reasonably suspects is evidence of the commission of major crime that the commission is investigating.

(2) The officer may seize the thing, whether or not as evidence under a warrant and, if the place is entered under a warrant, whether or not the warrant was issued for the major crime.

(3) Also, the officer may—

- (a) photograph the thing seized or the place from which the thing was seized; and
- (b) stay at the place and re-enter it for the time reasonably necessary to remove the thing from the place.

(4) If the thing is seized at a place entered under a covert search warrant, section 117⁴⁰ applies as if the thing had been seized under the warrant.

(5) Otherwise, sections 113 to 115⁴¹ apply as if the thing had been seized under a warrant under part 2.⁴²

111 General power to seize evidence—misconduct investigation

(1) This section applies if a commission officer conducting a misconduct investigation who lawfully enters a place under a search warrant—

- (a) finds at the place a thing the officer reasonably suspects is admissible evidence of an indictable offence against the law of the Commonwealth or of any State; and
- (b) reasonably believes that it is necessary to seize the thing—
 - (i) to prevent its loss, destruction, mutilation or concealment; or
 - (ii) to prevent its use for committing an offence of a kind mentioned in paragraph (a).

(2) The officer may seize the thing.

(3) However, if a person who is entitled to claim the privilege claims the document or thing is subject to privilege, the authorised commission officer must consider the claim and may—

- (a) withdraw the requirement in relation to which the claim is made; or

40 Section 117 (Return of seized things)

41 Sections 113 (Application for order in relation to seized things), 114 (Orders magistrate may make in relation to seized thing) and 115 (Disposal of seized things at end of proceeding)

42 Part 2 (Search warrants generally)

- (b) advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the privilege under section 196.⁴³

(4) If a claim of privilege is made and the commission officer does not withdraw the requirement, section 81⁴⁴ applies.

(5) In this section—

“**privilege**” does not include privilege on the ground of confidentiality.

112 Receipt for seized property

(1) If a commission officer seizes anything under this chapter, other than under a covert search warrant, the officer must, as soon as is reasonably practicable after seizing the thing—

- (a) if the person from whom it is seized is present—give to the person a receipt for the thing; or
- (b) otherwise—leave a receipt for the thing in a conspicuous place.

(2) The receipt must describe the thing seized and include any other information required under a regulation.

(3) However, if the officer reasonably suspects giving the person the receipt may frustrate or otherwise hinder the investigation or another investigation, the officer may delay complying with subsection (1), but only for so long as—

- (a) the officer continues to have the reasonable suspicion; and
- (b) the officer or another officer involved in the investigation remains in the vicinity of the place to keep it under observation.

(4) Also, this section does not apply if the officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned.

(5) The officer must ensure the details of the search and anything seized are recorded in the warrants register.

43 Section 196 (Supreme Court to decide claim of privilege or reasonable excuse)

44 Section 81 (Procedure for documents subject to claim of privilege)

113 Application for order in relation to seized things

(1) Within 30 days after a commission officer seizes anything under this chapter (other than section 165),⁴⁵ the officer must apply to a magistrate for an order under section 114⁴⁶ about the thing seized, unless—

- (a) a proceeding has been started in which the thing may be relevant; or
- (b) consent to the continued keeping of the thing has been given by the owner or the person who had lawful possession of the thing before it was seized; or
- (c) it is destroyed or dealt with under the authority of another Act.

(2) The commission officer must also make an application to a magistrate for an order under section 114 about the thing seized within 30 days after either of the following happens—

- (a) a proceeding started about the thing is discontinued without any order being made in relation to the thing;
- (b) the consent of the owner of the thing or the person who had lawful possession of the thing before it was seized is withdrawn.

(3) An application under subsection (1) or (2) must be accompanied by any warrant under which the thing is seized, with a record on it under section 339.⁴⁷

114 Orders magistrate may make in relation to seized thing

The magistrate may, in relation to the seized thing, order—

- (a) that it be kept in the possession of the commission or another law enforcement agency—
 - (i) until the end of any investigation in relation to which the thing may be relevant and for a reasonable time afterwards to enable the commission to decide whether a charge is to be laid; or
 - (ii) until the end of any proceeding in which the thing may be relevant; or

45 Section 165 (Powers under additional powers warrant)

46 Section 114 (Orders magistrate may make in relation to seized thing)

47 Section 339 (Record of execution of warrant)

- (iii) until the end of any appeal against a decision in a proceeding in which the thing is relevant; or
- (b) that it be returned, or photographed and returned, to its owner or the person who had lawful possession of it before it was seized on condition that the owner or person undertakes to produce it before a court in any later proceeding involving the thing; or
- (c) that it be returned to the person who the magistrate believes is lawfully entitled to possess it; or
- (d) if the person entitled to possess the thing is unknown, that the thing be disposed of; or
- (e) that it be disposed of or destroyed; or
- (f) that it be dealt with by way of a proceeding under section 118 or 119;⁴⁸ or
- (g) that it be dealt with by way of proceeding under the *Justices Act 1886*, section 39;⁴⁹ or
- (h) that it be disposed of or destroyed in the way the magistrate orders.

115 Disposal of seized things at end of proceeding

(1) At the end of a proceeding, a court may make any of the following orders in relation to a thing seized—

- (a) an order for the return, forfeiture, destruction or disposal of the thing;
- (b) an order that the thing be dealt with by way of a proceeding under the *Justices Act 1886*, section 39;
- (c) an order that the commission retain the thing until it is dealt with according to law.

(2) A thing that is forfeited under an order under this Act becomes the property of the State.

48 Section 118 (Application by owner etc. for return of things) or 119 (Application by commission officer for order if ownership dispute)

49 *Justices Act 1886*, section 39 (Power of court to order delivery of certain property)

116 Right to inspect seized documents

(1) Unless a justice otherwise orders, the commission, or another law enforcement agency in whose possession it is, must allow a person who would be entitled to a document in the possession of the commission or an agency—

- (a) to inspect it at any reasonable time and from time to time; and
- (b) to take extracts from or make copies of it.

(2) The commission or the other law enforcement agency may refuse to comply with subsection (1) if the commission or agency reasonably suspects complying with the subsection will enable the person to repeat or continue an offence of which the document is evidence or to commit another offence.

117 Return of seized things

The commission, or another law enforcement agency in whose possession it is, must return a seized thing in the possession of the commission or agency to its owner—

- (a) if the thing is required as evidence for a prosecution and subject to any order made by a court—at the end of the prosecution and any appeal from the prosecution; or
- (b) immediately the commission or agency stops being satisfied its retention as evidence is necessary.

118 Application by owner etc. for return of things

(1) This section applies to a thing that has been in the possession of the commission for at least 30 days.

(2) A person who claims to have a legal or equitable interest in the thing may apply to a magistrate for an order that the thing be delivered to the person.

(3) The person must give each of the following a copy of the application and notice of the day, time and place fixed for hearing the application—

- (a) the chairperson;
- (b) anyone else the person reasonably believes has a legal or equitable interest in the thing.

(4) The magistrate may order that the thing be delivered to a person on any conditions the magistrate considers appropriate if satisfied—

- (a) the person may lawfully possess the thing; and
- (b) it is appropriate that the thing be delivered to the person.

(5) However, the magistrate must not order the delivery of a thing to the person if the magistrate is reasonably satisfied the thing—

- (a) may be evidence in a proceeding started in relation to the thing; or
- (b) is a thing used in or for manufacturing a dangerous drug; or
- (c) may be subject to a forfeiture proceeding, including a forfeiture proceeding relating to an interstate serious offence under the Confiscation Act.

119 Application by commission officer for order if ownership dispute

(1) This section applies if there is a question about the ownership of a thing that has been in the possession of the commission for at least 30 days.

(2) A commission officer may apply to a magistrate for an order declaring who is the owner of the thing.

(3) The officer must give anyone the officer reasonably believes has a legal or equitable interest in the thing a copy of the application and notice of the day, time and place fixed for hearing the application.

(4) The magistrate may make the order the magistrate considers appropriate.

(5) If the magistrate can not decide who owns the thing, the magistrate may make the orders the magistrate considers appropriate for the disposal of the thing.

PART 6—SURVEILLANCE DEVICES

Division 1—Non-application of particular Acts

120 Acts that do not apply to divs 2–5

The *Libraries and Archives Act 1988* and the *Freedom of Information Act 1992* do not apply to activities or records under divisions 2 to 5.

Division 2—Use of surveillance devices under warrant of Supreme Court judge

121 Surveillance warrant applications

(1) This section applies if the chairperson reasonably believes a person has been, is, or is likely to be, involved in major crime or misconduct being investigated by the commission.

(2) An authorised commission officer may, with the chairperson's approval, apply to a Supreme Court judge for a warrant (“**surveillance warrant**”) authorising the use of a surveillance device.

(3) For subsection (2), an authorised commission officer who is a police officer must be of at least the rank of inspector.

(4) The application must—

- (a) be sworn and state the grounds on which the warrant is sought; and
- (b) state whether authorisation for the use of a class A or a class B surveillance device is sought; and
- (c) state whether the surveillance device is to be used in a crime investigation or a misconduct investigation; and
- (d) fully disclose all matters, of which the authorised commission officer is aware, both favourable and adverse to the issuing of the warrant sought; and
- (e) include information stated under a regulation about any warrants issued within the previous year in relation to the person or the place specified in the application.

Note—

A class B surveillance device is available only for a crime investigation. See the definition “surveillance device” in the dictionary.

(5) Subsection (4)(e) only applies to—

- (a) information kept in a register that the officer may inspect; and
- (b) information the officer otherwise actually knows.

(6) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.

(7) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

122 Who may be present at consideration of application for surveillance warrant

(1) The judge must hear an application for a surveillance warrant in the absence of anyone other than the following—

- (a) the applicant;
- (b) a monitor;
- (c) someone the judge permits to be present;
- (d) a lawyer representing anyone mentioned in paragraphs (a) to (c).

(2) Also, the judge must hear the application—

- (a) in the absence of the person proposed to be placed under surveillance (the “**relevant person**”) or anyone likely to inform the relevant person of the application; and
- (b) without the relevant person having been informed of the application.

123 Consideration of application for surveillance warrant

Before deciding an application for a surveillance warrant, the judge must, in particular, and being mindful of the highly intrusive nature of using a surveillance device, consider the following—

- (a) the nature and seriousness of the major crime or misconduct;
- (b) if authorisation for the use of a class A surveillance device is sought, the likely extent of interference with the privacy of—
 - (i) the relevant person; or
 - (ii) any other occupant of the place;if the warrant is issued;
- (c) the extent to which issuing the warrant would help prevent, detect, or provide evidence of the commission of, the major crime or misconduct;
- (d) the benefits derived from the issue of any previous surveillance warrants in relation to the relevant person;
- (e) the extent to which officers investigating the major crime or misconduct have used or can use conventional ways of investigation;
- (f) how much the use of conventional ways of investigation would be likely to help in the investigation of the major crime or misconduct;
- (g) how much the use of conventional ways of investigation would prejudice the investigation of the major crime or misconduct because of delay or for another reason;
- (h) any submissions made by a monitor.

124 Issue of surveillance warrant

(1) After considering an application, the judge may issue a surveillance warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing the relevant person—

- (a) has been, is, or is likely to be, involved in the major crime or misconduct; and
- (b) is likely to be—

- (i) at a place, including a public place, mentioned in the application; or
- (ii) at a class of place mentioned in the application.

(2) The judge may issue a surveillance warrant authorising the use of a class A surveillance device in the office of a practising lawyer only if the application for the warrant relates to the lawyer's involvement in major crime or misconduct.

(3) The judge may impose any conditions on the warrant that the judge considers are necessary in the public interest including, but not limited to—

- (a) a condition requiring regular reporting to a judge on activities under the warrant; and
- (b) a condition requiring that, if a listening device is to be used in a public place or class of place, the officer, before installing or using the device, must have a reasonable belief that the relevant person is or will be in the place where the device is to be used.

Example for subsection (3)(b)—

The warrant may be issued for any motel in a stated area because the officer may have a reasonable belief that the relevant person may be in a motel in the area but not know in advance which one. The condition may be that the device may only be installed if the officer reasonably believes the person is likely to be in the place.

125 What surveillance warrant must state

A surveillance warrant must state the following—

- (a) that a commission officer or any commission officer may exercise surveillance powers under the warrant;
- (b) the name of the relevant person, if known;
- (c) the place or class of place where the surveillance device authorised under the warrant may be used;
- (d) the type of surveillance device that may be used under the warrant;
- (e) for a visual surveillance device that is to be installed in a dwelling, the parts of the dwelling in which the device may be installed;

- (f) any conditions the judge imposes under section 140(4);⁵⁰
- (g) the day and time the warrant starts and when the warrant ends.

126 Report on use of surveillance devices

(1) This section applies if, because of a condition of a surveillance warrant, a commission officer gives to a judge a report on activities under the warrant.

(2) The judge may, after considering the report, require the destruction of any recording made that is not related to the major crime or misconduct mentioned in the warrant, unless the recording relates to the investigation by the commission of another major crime or other misconduct.

127 Duration and extension of surveillance warrants

(1) A surveillance warrant is in force until the earlier of the following—

- (a) the day stated in the warrant;
- (b) the day the investigation under the warrant ends.

(2) However, despite the investigation ending, the warrant continues in force until the day stated in the warrant if, as a result of using the surveillance device, evidence is gained of other major crime or misconduct.

(3) The warrant may be extended from time to time on application and the provisions of this division for an application for a warrant apply to an application for an extension, with necessary changes.

(4) Despite the ending of the warrant under subsection (1) or (2), the commission officer may continue to exercise powers under the warrant, but only to the extent necessary to remove the surveillance device to which the warrant relates.

128 Power under surveillance warrants

A commission officer to whom a surveillance warrant is directed may, subject to the warrant, lawfully exercise any of the following powers under the warrant (“**surveillance powers**”)—

⁵⁰ Section 140 (Issue of surveillance warrant)

Crime and Misconduct Act 2001

- (a) for a class A surveillance device—power to enter a stated place or class of place, covertly or through subterfuge, to install a surveillance device;
- (b) for a class B surveillance device—
 - (i) power to enter a vehicle or another moveable object, or to open a thing, to install a tracking device; and
 - (ii) power to remove a vehicle or another moveable object to another place to install a tracking device in the vehicle or object;
- (c) for a listening device—
 - (i) power to install and use the device to intercept and record private conversations; and
 - (ii) power to remove a thing to another place to install a listening device in the thing; and
 - (iii) power to use an assistant to translate or interpret conversations intercepted under the warrant;
- (d) for a visual surveillance device—
 - (i) power to install and use the device to monitor and record visual images; and
 - (ii) power to remove a thing to another place to install a visual surveillance device in the thing; and
 - (iii) power to use an assistant to translate or interpret visual images intercepted under the warrant;
- (e) for another surveillance device—
 - (i) power to install and use the device for the purpose for which the device is designed, including, for example, tracking the location of a person or moveable object; and
 - (ii) power to use an assistant to translate or interpret data or other material intercepted under the warrant;
- (f) power to take electricity for using a surveillance device;
- (g) power to use reasonable force—
 - (i) to enter a place to install a surveillance device; or
 - (ii) to install a surveillance device;

- (h) power to use 1 or more surveillance devices, whether of the same or a different kind, in the same place;
- (i) power to pass through, over, under or along a place to get to the place where the surveillance device is to be used.

Division 3—Emergency use of surveillance devices for a crime investigation

129 Application of div 3

This division applies only for a crime investigation.

130 Emergency use of surveillance devices

- (1) This section applies if the chairperson reasonably believes—
- (a) there is a risk of serious injury to a person from major crime being investigated by the commission; and
 - (b) using a surveillance device may help reduce the risk.

Examples for subsection (1)—

1. An act of deprivation of liberty in which the victim's life may be in danger.
2. An act of extortion involving a threat of imminent injury to someone else.

(2) With the chairperson's approval, an authorised commission officer may authorise the use of a surveillance device.

(3) For subsection (2), an authorised commission officer who is a police officer must be of at least the rank of inspector.

(4) A commission officer acting under an authority under subsection (2) may exercise any of the powers a commission officer may exercise under a surveillance warrant.

131 Application for approval of emergency use of surveillance device

(1) Within 2 business days after authorising the use of the surveillance device, the authorised commission officer who authorised its use must apply to a Supreme Court judge for approval of the exercise of the powers.

(2) The application must be sworn and state the grounds on which the approval is sought.

(3) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.

(4) The judge may refuse to consider the application until the commission officer gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

132 Who may be present at consideration of application

(1) The judge must hear an application under section 131 in the absence of anyone other than the following—

- (a) the applicant;
- (b) a monitor;
- (c) someone the judge permits to be present;
- (d) a lawyer representing anyone mentioned in paragraphs (a) to (c).

(2) Also, the judge must hear the application—

- (a) in the absence of the person who is alleged to have caused or be causing the risk or anyone likely to inform the person of the application; and
- (b) without that person having been informed of the application.

133 Consideration of application

Before deciding an application for an approval, the judge must, in particular, and being mindful of the highly intrusive nature of using a surveillance device, consider the following—

- (a) the nature of the risk of serious injury to a person;
- (b) the extent to which issuing a surveillance warrant authorising the use of the surveillance device would have helped reduce or avoid the risk;
- (c) the extent to which commission officers or police officers could have used conventional ways of investigation to help reduce or avoid the risk;

- (d) how much the use of conventional ways of investigation could have helped reduce or avoid the risk;
- (e) how much the use of conventional ways of investigation would have prejudiced the safety of the person because of delay or for another reason;
- (f) any submissions made by a monitor.

134 Judge may approve emergency use of powers

(1) After considering the application, the judge may approve the application if satisfied there were reasonable grounds to believe—

- (a) there was a risk of serious injury to a person from major crime being investigated by the commission; and
- (b) using a surveillance device may have helped reduce the risk.

(2) Also, the judge may require the destruction of any recordings made that were not related to the purpose for which the surveillance device was used.

135 Use of evidence and information

(1) Evidence obtained because of the exercise of powers approved under section 134 is admissible in a proceeding for an offence.

(2) Also, information obtained under this division may be given to any person or organisation involved in helping prevent or reduce the risk of serious injury to a person.

(3) Subsection (2) does not apply to information from recordings ordered to be destroyed by a judge.

Division 4—Use of surveillance devices for a crime investigation under magistrates warrant

136 Application of div 4

This division applies only for a crime investigation.

137 Surveillance warrant applications

(1) This section applies if the chairperson reasonably believes a person has been, is, or is likely to be, involved in major crime.

(2) With the chairperson's approval, an authorised commission officer may apply to a magistrate for a warrant ("**surveillance warrant**") authorising the use of a class B surveillance device.

(3) For subsection (2), an authorised commission officer who is a police officer must be of at least the rank of inspector.

(4) The application must—

- (a) be sworn and state the grounds on which the warrant is sought; and
- (b) fully disclose all matters, of which the authorised commission officer is aware, both favourable and adverse to the issuing of the warrant sought; and
- (c) include information required under a regulation about any warrants issued within the previous year in relation to the person or the place specified in the application.

(5) Subsection (4)(c) only applies to—

- (a) information kept in a register that the commission officer may inspect; and
- (b) information the commission officer otherwise actually knows.

(6) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.

(7) The magistrate may refuse to consider the application until the applicant gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

138 Who may be present at consideration of application

(1) The magistrate must hear an application for a surveillance warrant in the absence of anyone other than the following—

- (a) the applicant;

- (b) a monitor;
 - (c) someone the magistrate permits to be present;
 - (d) a lawyer representing anyone mentioned in paragraphs (a) to (c).
- (2) Also, the magistrate must hear the application—
- (a) in the absence of the person proposed to be placed under surveillance (the “**relevant person**”) or anyone likely to inform the relevant person of the application; and
 - (b) without the relevant person having been informed of the application.

139 Consideration of application

Before deciding an application for a surveillance warrant, the magistrate must, in particular, and being mindful of the highly intrusive nature of using a surveillance device, consider the following—

- (a) the nature and seriousness of the major crime;
- (b) the extent to which issuing the warrant would help prevent, detect, or provide evidence of the commission of, the major crime;
- (c) the benefits derived from the issue of any previous surveillance warrants in relation to the relevant person;
- (d) the extent to which commission officers investigating the major crime have used or can use conventional ways of investigation;
- (e) how much the use of conventional ways of investigation would be likely to help in the investigation of the major crime;
- (f) how much the use of conventional ways of investigation would prejudice the investigation of the major crime because of delay or for another reason;
- (g) any submissions made by a monitor.

140 Issue of surveillance warrant

(1) After considering the application, the magistrate may issue the warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing the relevant person—

- (a) has been, is, or is likely to be, involved in the commission of the major crime; and
- (b) is likely to be—
 - (i) at a place, including a public place, mentioned in the application; or
 - (ii) at a class of place mentioned in the application.

(2) The magistrate may impose any conditions on the warrant that the magistrate considers are necessary in the public interest.

141 What warrant must state

The warrant must state the following—

- (a) that a stated commission officer or any commission officer may exercise surveillance powers under the warrant using a class B surveillance device;
- (b) the name of the relevant person, if known;
- (c) the place where the surveillance device authorised under the warrant may be used;
- (d) any conditions imposed under section 124(2);⁵¹
- (e) the day and time the warrant starts and when the warrant ends.

142 Duration and extension of surveillance warrants

(1) A surveillance warrant is in force until the earlier of the following—

- (a) when the warrant is stated to end;
- (b) the day the investigation under the warrant ends.

(2) However, despite the investigation ending, the warrant continues in force until it is stated to end if, as a result of using the surveillance device, evidence is gained of another major crime.

(3) The warrant may be extended from time to time on application and the provisions of this division for an application for a warrant apply to an application for an extension, with necessary changes.

51 Section 124 (Issue of surveillance warrant)

(4) Despite the ending of the warrant under subsection (1) or (2), the commission officer may continue to exercise powers under the warrant, but only to the extent necessary to remove the surveillance device to which the warrant relates.

143 Powers under surveillance warrants

A commission officer to whom a surveillance warrant is directed may, subject to the warrant, lawfully exercise the following powers under the warrant—

- (a) power to enter a place to install a tracking device without covert entry to a building;
- (b) power to pass through, over, under or along a place to get to the place where the tracking device is to be used;
- (c) power to enter a vehicle or another moveable object, or to open a thing, to install a tracking device;
- (d) power to remove a vehicle or another moveable object to another place to install a tracking device in the vehicle or object;
- (e) power to use reasonable force to install a tracking device;
- (f) power to use a tracking device or more than 1 device, whether of the same or a different kind, in the same place;
- (g) power to take electricity for using a tracking device.

Examples for paragraph (a)—

- 1. Installing a tracking device on a vehicle located in a public undercover car park where entry is gained by any member of the public by paying a fee, or on a vehicle on a street.
- 2. Installing a tracking device on a parcel inside a shipping container located in a storage yard, if the parcel is reasonably believed to contain unlawful drugs.

Division 5—Other provisions about surveillance devices

144 Restriction about records and access to surveillance warrant applications etc.

(1) This section applies to the following (“**relevant proceeding**”)—

- (a) an application to a Supreme Court judge or a magistrate for—

- (i) a surveillance warrant; or
- (ii) the extension of a surveillance warrant;
- (b) an application to a Supreme Court judge for approval of the emergency use of a surveillance device;
- (c) an order made or approval given under an application mentioned in paragraph (a) or (b).

(2) Despite the *Recording of Evidence Act 1962*, a transcript of a relevant proceeding must not be made.

(3) Also, no record of the application or of any order made in a relevant proceeding is to be available for search by any person, except by direction of a Supreme Court judge.

(4) A person must not publish a report of a relevant proceeding.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(5) A person is not entitled to search information in the custody of a court in relation to a relevant proceeding, unless a Supreme Court judge otherwise orders in the interests of justice.

(6) Nothing in this section prevents a person who was present at a relevant proceeding from giving oral evidence to a court about things that happened at the proceeding.

145 Disclosure of information obtained using surveillance warrant

(1) This section applies to information that has not been disclosed in a proceeding in open court and was obtained by using a surveillance warrant (the “**relevant information**”).

(2) A commission officer who obtained relevant information must not disclose the information to someone other than—

- (a) the judge or magistrate who issued the warrant; or
- (b) a judge hearing an application for—
 - (i) an extension of the warrant; or
 - (ii) approval of the emergency use of a surveillance device; or
 - (iii) a warrant in relation to the same or a different person; or

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- (c) a magistrate hearing an application for an extension of the warrant or a warrant in relation to the same or a different person; or
- (d) a court taking evidence about a charge of an offence in which the relevant information is evidence; or
- (e) the chairperson or a person authorised by the chairperson; or
- (f) a commission officer, police officer or other law enforcement officer involved in—
 - (i) the investigation into the major crime or misconduct for which the powers were exercised; or
 - (ii) an investigation of any indictable offence started because of information obtained under the warrant or linked to the offence under investigation; or
 - (iii) a proceeding in which the information is evidence; or
- (g) a declared law enforcement agency; or
- (h) a public prosecutor, but only for—
 - (i) use in a proceeding in which the information is evidence; or
 - (ii) an application for an extension of the warrant; or
 - (iii) an application under section 131;⁵² or
 - (iv) the issue of another surveillance warrant; or
- (i) a public official, but only for taking disciplinary action; or
- (j) a lawyer representing a person in a proceeding in which the information is evidence; or
- (k) a monitor; or
- (l) a person transcribing or making copies of recordings.

Maximum penalty—85 penalty units or 1 year's imprisonment.

52 Section 131 (Application for approval of emergency use of surveillance device)

146 Destruction of records

(1) The commission must keep all information obtained under a surveillance warrant and transcripts of recordings or photographs made or taken under the warrant in a secure place.

(2) The commission must ensure any recording made or photograph taken under the surveillance warrant or a transcript or copy made from information obtained under the warrant is destroyed as soon as practicable after it is no longer required.

(3) Subsection (2) does not prevent information or other matter being preserved for any period or indefinitely if, in the chairperson's opinion, it is relevant to—

- (a) any offence of which someone has been convicted if there is a possibility that an issue about the conviction may arise; or
- (b) an ongoing investigation.

PART 7—COVERT SEARCHES FOR CRIME INVESTIGATIONS

147 Application of pt 7

This part applies only for a crime investigation.

148 Covert search warrant applications

(1) An authorised commission officer, with the chairperson's approval, may apply to a Supreme Court judge for a warrant ("**covert search warrant**") to enter and search a place for evidence of the commission of major crime being investigated by the commission.

(2) For subsection (1), an authorised commission officer who is a police officer must be of at least the rank of inspector.

(3) The application must—

- (a) be sworn and state the grounds on which the warrant is sought; and

- (b) state that the covert search warrant is being sought to enter and search a place for evidence of the commission of major crime being investigated by the commission; and
- (c) fully disclose all matters, of which the authorised commission officer is aware, both favourable and adverse to the issuing of the warrant sought; and
- (d) include information required under a regulation about any warrants issued within the previous year in relation to the place or person suspected of being involved in the major crime to which the application relates.

(4) Subsection (3)(d) applies only to—

- (a) information kept in a register that the officer may inspect; and
- (b) information the officer otherwise actually knows.

(5) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.

(6) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

149 Who may be present at consideration of application

(1) The judge must hear an application for a covert search warrant in the absence of anyone other than the following—

- (a) the applicant;
- (b) a monitor;
- (c) someone the judge permits to be present;
- (d) a lawyer representing anyone mentioned in paragraphs (a) to (c).

(2) Also, the judge must hear the application—

- (a) in the absence of the person the subject of the application (the “**relevant person**”) or anyone likely to inform the relevant person of the application; and

- (b) without the relevant person having been informed of the application.

150 Consideration of application

Before deciding the application, the judge must, in particular, and being mindful of the highly intrusive nature of the exercise of power under a covert search warrant, consider the following—

- (a) the nature and seriousness of the major crime being investigated;
- (b) the extent to which issuing the warrant would help prevent, detect, or provide evidence of the commission of, the major crime;
- (c) the benefits derived from any previous covert search warrants, search warrants or surveillance warrants in relation to the relevant person or place;
- (d) the extent to which commission officers investigating the matter have used or can use conventional ways of investigation;
- (e) how much the use of conventional ways of investigation would be likely to help in the investigation of the matter;
- (f) how much the use of conventional ways of investigation would prejudice the investigation of the matter;
- (g) any submissions made by a monitor.

151 Issue of covert search warrant

(1) After considering the application, the judge may issue the warrant if satisfied there are reasonable grounds for believing evidence of the commission of the major crime—

- (a) is at the place; or
- (b) is likely to be taken to the place within the next 72 hours.

(2) The judge may impose any conditions on the warrant that the judge considers are necessary in the public interest.

152 What covert search warrant must state

A covert search warrant must state the following—

- (a) that a stated commission officer, or any commission officer, may, with reasonable help and force, enter the place, covertly or by subterfuge and exercise covert search powers under the warrant;
- (b) the major crime for which the warrant was issued;
- (c) any evidence or samples of evidence that may be seized under the warrant;
- (d) that the warrant may be executed at any time of the day or night;
- (e) that, if practicable, the search must be videotaped;
- (f) the day and time the warrant starts and when the warrant ends, being not more than 30 days after the warrant starts.

153 Duration and extension of covert search warrant

(1) A covert search warrant is in force until the earlier of the following—

- (a) when the warrant is stated to end;
- (b) when the initial search is complete.

(2) However, the warrant may be extended from time to time on application.

(3) The provisions of this part for an application for a covert search warrant apply to an application for an extension, with all necessary changes.

154 Restriction about records and access to covert search warrant applications

(1) Despite the *Recording of Evidence Act 1962*, a transcript of an application for a covert search warrant or an extension of a covert search warrant and any order made on the application must not be made.

(2) A person must not publish a report of a proceeding on an application for a covert search warrant or an extension of a covert search warrant.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(3) A person is not entitled to search information in the custody of the Supreme Court in relation to an application for a covert search warrant, unless a Supreme Court judge otherwise orders in the interests of justice.

(4) Nothing in this section prevents a person who was present at a proceeding on an application for a covert search warrant or an extension of a covert search warrant from giving oral evidence to a court about things that happened at the proceeding.

155 Powers under covert search warrant

A commission officer to whom a covert search warrant is directed may, subject to the warrant, lawfully exercise the following powers under the warrant (“**covert search powers**”)—

- (a) power to enter the place stated in the warrant (the “**relevant place**”), covertly or through subterfuge, as often as is reasonably necessary for the purposes of the warrant and stay at the place for the time reasonably necessary;
- (b) power to pass over, through, along or under another place to enter the relevant place;
- (c) power to search the relevant place for anything sought under the warrant;
- (d) power to open anything at the relevant place that is locked;
- (e) power to seize a thing or part of a thing found at the relevant place that the commission officer reasonably believes is evidence of the commission of major crime stated in the warrant;
- (f) power to photograph anything the commission officer reasonably believes may provide evidence of the commission of major crime stated in the warrant;
- (g) power to inspect or test anything found at the place.

156 Report on covert search

(1) A commission officer must give to the Supreme Court judge who issued the covert search warrant and a monitor a report containing information required under a regulation on the exercise of the powers under the warrant.

(2) The report must be given to the judge and a monitor within 7 days after the warrant is executed or, if that is impracticable because of the unavailability of the judge, as soon as practicable after the warrant is executed.

(3) The officer must, if practicable, also take before the judge anything seized under the warrant and any photograph taken during the search.

(4) The judge may, in relation to a thing mentioned in subsection (3), order that it—

- (a) be held by the commission until any proceeding in which the thing may be evidence ends; or
- (b) be dealt with in the way the judge orders.

PART 8—ADDITIONAL POWERS WITH COURT’S APPROVAL

157 Application of pt 8

This part applies only for a misconduct investigation.

158 Additional powers warrant applications

(1) With the chairperson’s approval, an authorised commission officer may apply to a Supreme Court judge for a warrant (“**additional powers warrant**”) authorising the use of powers under this part.

(2) For subsection (1), an authorised commission officer who is a police officer must be of at least the rank of inspector.

(3) The application must—

- (a) be sworn and state the grounds on which the warrant is sought; and
- (b) state the powers sought; and
- (c) fully disclose all matters, of which the applicant is aware, both favourable and adverse to the issuing of the warrant sought by the applicant.

(4) The applicant must advise any person the judge directs is to be advised of the application.

(5) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

159 Who may be present at consideration of application

(1) The judge must hear an application for an additional powers warrant in the absence of anyone other than the following—

- (a) the applicant;
- (b) someone the judge permits or directs to be present;
- (c) a lawyer representing anyone mentioned in paragraphs (a) or (b).

(2) Also, the judge must hear the application—

- (a) in the absence of the person the subject of the application (the “**relevant person**”) or anyone likely to inform the relevant person of the application; and
- (b) without the relevant person having been informed of the application.

160 Consideration of application

Before deciding the application, the judge must, in particular, and being mindful of the highly intrusive nature of the exercise of power under an additional powers warrant, consider the following—

- (a) the nature and seriousness of the misconduct being investigated;
- (b) the significance to the commission’s purposes of the objects of the proposed exercise of authority;
- (c) the extent to which commission officers investigating the matter have used or can use other powers for the investigation;
- (d) how much the use of the additional powers would be likely to help in the investigation of the matter;
- (e) any submissions made by a monitor.

161 Issue of additional powers warrant

(1) After considering the application, the judge may issue the warrant for a period of not more than 30 days if satisfied there are reasonable grounds

for believing that the use of the additional powers sought is justified in the particular circumstances of the case.

(2) The judge may impose any conditions on the warrant that the judge considers are necessary in the public interest.

162 What additional powers warrant must state

An additional powers warrant must state the following—

- (a) that a stated commission officer, or any commission officer, may, with reasonable help and force, enter a place and exercise powers under the warrant;
- (b) brief particulars of the misconduct for which the warrant is issued;
- (c) any evidence or samples of evidence that may be seized under the warrant;
- (d) that the warrant may be executed at any time of the day or night;
- (e) the day and time the warrant starts and when the warrant ends.

163 Duration and extension of additional powers warrant

(1) An additional powers warrant is in force until the earlier of the following—

- (a) when the warrant is stated to end;
- (b) when the initial search is complete.

(2) However, the warrant may be extended from time to time on application.

(3) The provisions of this part for an application for an additional powers warrant apply to an application for an extension, with all necessary changes.

164 Restriction about records and access to additional powers warrant applications

(1) Despite the *Recording of Evidence Act 1962*, a transcript of an application for an additional powers warrant or an extension of an additional powers warrant and any order made on the application must not be made.

(2) A person must not publish a report of a proceeding on an application for an additional powers warrant or an extension of an additional powers warrant.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(3) A person is not entitled to search information in the custody of the Supreme Court in relation to an application for an additional powers warrant, unless a Supreme Court judge otherwise orders in the interests of justice.

(4) Nothing in this section prevents a person who was present at a proceeding on an application for an additional powers warrant or an extension of an additional powers warrant from giving oral evidence to a court about things that happened at the proceeding.

165 Powers under additional powers warrant

(1) A commission officer to whom an additional powers warrant is directed may, subject to the warrant, lawfully exercise the following powers under the warrant—

- (a) power, at any time during business hours—
 - (i) to enter premises at which records of a financial entity or a suspected associate of a person being investigated are held; and
 - (ii) to inspect and make copies of, or take extracts from, the records so far as they relate to the affairs of the person being investigated;
- (b) power to seize passports, other travel documents, instruments of title to property, securities and financial documents found in the possession or control of a person concerned in an investigation;
- (c) power to require any person to give to the commission or officer 1 or more sworn affidavits or statutory declarations relating to any of the following—
 - (i) the property of a person holding an appointment in a unit of public administration or of any person associated with the holder;
 - (ii) the financial transactions of a person holding an appointment in a unit of public administration or of any person associated with the holder; or

- (iii) the movements of money or other assets by a person holding an appointment in a unit of public administration or by any person associated with the holder.

(2) In this section—

“financial entity” means—

- (a) a financial institution; or
- (b) an insurance company; or
- (c) a stock and share broker; or
- (d) a person engaged in a business of—
 - (i) investing money for others; or
 - (ii) providing credit facilities.

“person being investigated” means a person to whom an investigation by the commission relates.

“suspected associate”, of a person being investigated, means a person suspected of having a relevant association with the person being investigated.

PART 9—WARRANTS REGISTER

166 Register of warrants, warrant applications etc.

(1) The commission must keep a register of prescribed information in the way the commission considers appropriate.

(2) The register is not open to inspection by anyone other than the following—

- (a) the commission;
- (b) a monitor;
- (c) the parliamentary commissioner.

(3) However, if the commission considers it appropriate, the commission may, in writing, authorise a person who may not otherwise inspect the register to inspect the register on conditions the commission considers appropriate.

(4) The commission may authorise a person to inspect the register under subsection (3) only if it is satisfied the inspection is necessary—

- (a) for an investigation into major crime or misconduct for which information in the register may be relevant; or
- (b) for maintaining the register; or
- (c) for preparing an application under part 2, or part 6, division 2 or 4, or part 7 for a warrant or for an extension of a warrant; or
- (d) to monitor compliance with this Act.

(5) A person authorised under subsection (3) to inspect the register may inspect it only to the extent necessary for the purpose for which the authority is given.

(6) In this section—

“prescribed information” means information prescribed under a regulation about—

- (a) applications for—
 - (i) search warrants; or
 - (ii) surveillance warrants; or
 - (iii) extensions of surveillance warrants; or
 - (iv) covert search warrants; or
 - (v) extensions of covert search warrants; or
 - (vi) additional powers warrants; or
 - (vii) extensions of additional powers warrants; or
- (b) a disclosure of information under section 145(2)(f)(ii) or (g).⁵³

53 Section 145 (Disclosure of information obtained using surveillance warrant)

PART 10—ARREST WARRANTS

167 Arrest warrant application

(1) An authorised commission officer, with the chairperson’s approval, may apply to a Supreme Court judge for a warrant for the apprehension of a person (“**arrest warrant**”) who has been given an attendance notice.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The judge may refuse to consider the application until the officer gives the judge all the information the judge requires about the application in the way the judge requires.

168 Issue of arrest warrant

(1) The judge may issue a warrant for the apprehension of the person if the judge is satisfied—

- (a) on sworn evidence before the judge—
 - (i) the person—
 - (A) has been given the attendance notice; and
 - (B) has, without reasonable excuse, failed to attend at the commission hearing as required by the notice; or
 - (ii) the person has made a representation that the person intends not to attend at a commission hearing as required by the attendance notice; and
- (b) it is in the public interest that the person be compelled to attend at the hearing to avoid prejudice to the conduct of an investigation.

(2) For subsection (1)(a)(ii), an arrest warrant may be issued even though the time stated in the attendance notice for the person to attend has not yet passed.

(3) In this section—

“**representation**” includes—

- (a) an express or implied representation, whether oral or in writing; and

- (b) a representation inferred from conduct; and
- (c) a representation not intended by its maker to be communicated to or seen by another person.

169 What arrest warrant authorises

(1) The arrest warrant authorises any authorised commission officer or police officer (“**authorised officer**”) to whom it is addressed to enter a place, using the force reasonably necessary, and to stay for a reasonable time on the place to apprehend the person subject to the warrant.

(2) The person apprehended—

- (b) must be brought immediately before a commission hearing; and
- (c) may be detained in custody until excused from attendance at the hearing by the presiding officer at the hearing.

(3) The *Bail Act 1980* applies to a person taken into custody under an arrest warrant in the same way it applies to a person in custody charged with an offence.

(4) The arrest warrant may be executed by any authorised officer to whom it is addressed.

(5) An authorised officer executing the arrest warrant may use the force that is reasonably necessary, including force to enter premises, to execute the warrant.

(6) However, before the authorised officer uses force that may cause damage to a place to gain entry to the place, the authorised officer must, if reasonably practicable—

- (a) ask the occupier of the place to allow the authorised officer to enter the place; and
- (b) give the occupier a reasonable opportunity to allow the entry.

170 Provision for overnight detention

Unless the arrest warrant otherwise provides, if the person is required to be detained overnight, the commission must arrange for the person is to be provided with accommodation and meals to a standard comparable to that generally provided to jurors kept together overnight.

171 Person's liability for noncompliance with attendance notice unaffected by issue of arrest warrant

The issue of an arrest warrant for the apprehension of a person, or the apprehension of a person under the arrest warrant, does not relieve the person from any liability incurred by the person for noncompliance with an attendance notice.

PART 11—GENERAL**172 Commission officer may use assistance in exercising particular powers**

(1) It is lawful for a commission officer exercising a power under this Act—

- (a) to seek the assistance of another person (an “assistant”) the officer reasonably requires for performing a function of the commission; or
- (b) to take onto a place any assistant, equipment, vehicle, animal or material the officer reasonably requires for exercising the power.

Examples—

1. A commission officer may seek the help of an electrician to install a listening device under a surveillance warrant.
2. A commission officer may seek the help of a translator to interpret conversations and visual images recorded using a surveillance device.

(2) The commission officer may authorise the assistant—

- (a) to take stated action at the place; and
- (b) to exercise stated powers the commission officer is authorised to exercise.

(3) However, the commission officer can not authorise the assistant to apprehend a person.

(4) The commission officer must, if practicable, tell the assistant—

- (a) of the action the assistant is authorised to take; and
- (b) of the assistant's powers under this section.

(5) Subsection (1) applies, in relation to animals, despite any other Act or law.

173 Protection for assistants from liability

(1) An assistant does not incur civil liability for an act done, or omission made, honestly and without negligence, while acting as an assistant.

(2) If subsection (1) prevents a liability attaching to an assistant, liability attaches instead to the State.

174 Commission's powers generally

(1) Without limiting the commission's specific powers under this or another Act,⁵⁴ the commission has power to do all things necessary or convenient to be done for or in connection with, or reasonably incidental to, the performance of its functions.

(2) A person who is a member of a relevant office whose services are seconded to the commission under section 255⁵⁵ retains, and may exercise, all powers had by the person as a member of the office.

(3) In this section—

“relevant office” means a unit of public administration or an office within a unit of public administration.

175 Supplying officer's details

(1) This section applies if a commission officer—

- (a) searches a place under a warrant, other than a covert search warrant, under this chapter; or
- (b) seizes any property, other than under a covert search warrant, under this chapter.

(2) The officer must, as soon as is reasonably practicable, inform the person the subject of the power of the following—

- (a) the fact that the officer is a commission officer;

54 See, for example, *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled operations and controlled activities)

55 Section 255 (Secondment of officers)

(b) the officer's name;

(c) if the officer is a police officer, his or her rank and station.

(3) If the officer is not a police officer in uniform, the officer must also produce for inspection his or her identity card.

(4) If 2 or more officers are searching a place, only the officer in charge of the search is required to comply with subsections (2) and (3), unless a person asks another officer for the information.

CHAPTER 4—HEARINGS AND DECIDING CLAIMS OF PRIVILEGE AND EXCUSE

PART 1—PROCEEDINGS

176 Commission may hold hearings

The commission may authorise the holding of a hearing in relation to any matter relevant to the performance of its functions.

177 Whether hearings are to be open or closed

(1) Generally, a hearing is not open to the public.

(2) However—

(a) for a hearing for a crime investigation, the commission may open the hearing to the public ("**public hearing**") if it—

(i) considers opening the hearing will make the investigation to which the hearing relates more effective and would not be unfair to a person or contrary to the public interest; and

(ii) approves that the hearing be a public hearing; or

(b) for a hearing other than for a crime investigation, the commission may open the hearing to the public if it considers—

- (i) closing the hearing to the public would be unfair to a person or contrary to the public interest; and
- (ii) approves that the hearing be a public hearing.

(3) A decision about whether a hearing should be a public hearing must not be delegated.

(4) If the commission decides to open a hearing to the public, the presiding officer for the hearing may close the hearing for a particular purpose.

178 Who must conduct hearings

(1) The chairperson must conduct a public hearing.

(2) If, for any reason, the chairperson is unable to conduct a public hearing, the Governor in Council must appoint a person qualified to be the chairperson to conduct the public hearing.

(3) A closed hearing may be conducted by any of the following as decided by the chairperson—

- (a) the chairperson;
- (b) an assistant commissioner;
- (c) another person qualified for appointment as the chairperson.

(4) If, under subsection (2), the Governor in Council appoints a person to conduct a public hearing—

- (a) the person appointed to conduct the hearing is also the acting chairperson for the period stated in the instrument of the person's appointment; and
- (b) the chairperson must stand down for that period.

(5) The chairperson is entitled to be paid full remuneration and allowances for the period the chairperson stands down.

(6) The acting chairperson is entitled to the remuneration decided by the Governor in Council.

(7) Sections 227 and 228⁵⁶ do not apply to the appointment under subsection (2) of a person to act as the chairperson.

56 Sections 227 (Advertising and nominations for appointment) and 228 (Consultation before nominating persons for appointment)

179 Who may be present at closed hearings

(1) The presiding officer conducting a closed hearing may give a direction about who may be present at the hearing.

(2) A person must not knowingly contravene a direction under subsection (1).

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(3) In this section—

“**hearing**” includes part of a hearing.

180 Conduct of hearings

(1) When conducting a hearing, the presiding officer—

- (a) must act quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before the presiding officer; and
- (b) is not bound by the rules of evidence; and
- (c) may inform himself or herself of anything in the way he or she considers appropriate; and
- (d) may decide the procedures to be followed for the hearing.

(2) The presiding officer or a person nominated by the presiding officer for the purpose may administer an oath, or take a statutory declaration, required by the presiding officer.

(3) The presiding officer may, by order, prohibit the publication of—

- (a) an answer given, or document or thing produced, at a commission hearing or anything about the answer, document or thing; or
- (b) information that might enable the existence or identity of a person who is about to give or has given evidence before the commission at a hearing to be ascertained.

(4) The presiding officer is taken, for the purposes of the hearing, to be the commission.

181 Legal representation and examination

(1) A witness at a commission hearing may be legally represented at the hearing.

(2) A witness may be examined, cross-examined or re-examined on any matter the presiding officer considers relevant by—

- (a) the presiding officer; or
- (b) counsel assisting the commission at the hearing; or
- (c) a person authorised by the presiding officer; or
- (d) a lawyer representing the witness.

(3) The presiding officer may allow a person who is not giving sworn evidence at the hearing to be legally represented at the hearing if the presiding officer considers there are special circumstances.

182 Right to interpreter

(1) This section applies if the presiding officer at a commission hearing reasonably suspects a witness is unable, because of inadequate knowledge of the English language or a physical disability, to understand what is being said or to speak with reasonable fluency in English.

(2) Before the witness is questioned, the presiding officer must arrange for the presence of an interpreter and delay the questioning until the interpreter is present.

**PART 2—REFUSALS AND CLAIMS OF PRIVILEGE
AND REASONABLE EXCUSE*****Division 1—Refusal to be sworn*****183 Refusal to take oath**

A person attending at a commission hearing to give sworn evidence must not fail to take an oath when required by the presiding officer.

Maximum penalty—85 penalty units or 1 year's imprisonment.

Division 2—Refusal to produce***Subdivision 1—Crime investigations*****184 Application of subdiv 1**

This subdivision applies only in the context of a crime investigation.

185 Refusal to produce—claim of reasonable excuse

(1) A person required to produce a stated document or thing at a commission hearing under an attendance notice must—

- (a) in all cases, bring the document or thing to the hearing if the document or thing is in the person’s possession; and
- (b) produce the document or thing at the hearing, unless the person has a reasonable excuse.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(2) A claim of privilege, other than legal professional privilege, is not a reasonable excuse for subsection (1)(b).

Note—

A refusal to produce a document or thing under a claim of legal professional privilege is considered under section 194.⁵⁷

(3) A claim of legal professional privilege is not a reasonable excuse for subsection (1)(b) if—

- (a) the person has authority to waive the privilege and waives it; or
- (b) the privilege is waived by a person having authority to waive it.

(4) The presiding officer must decide a claim of reasonable excuse mentioned in subsection (1)(b) under section 194.

(5) Subsection (6) applies if the person—

- (a) at the hearing, refuses to produce the document or thing on the ground that legal professional privilege attaches to the document or thing; and

⁵⁷ Section 194 (Presiding officer to decide whether refusal to answer questions or produce documents or things is justified)

(b) has no authority to waive the privilege.

(6) The person must, if required by the presiding officer—

- (a) tell the presiding officer the name and address of the person entitled to waive the privilege; and
- (b) seal the document or thing and, at the hearing, give it to the commission for safe keeping.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(7) The commission must—

- (a) give the person a receipt for the sealed document or thing (the “**sealed evidence**”); and
- (b) place it in safe custody at the commission’s place of business at the earliest reasonable opportunity.

(8) A person must not open the sealed evidence unless authorised to open it under this Act or a court order.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(9) The commission must return the sealed evidence to the person who gave it to the commission if the commission has not, within 3 months after the day on which the sealed evidence was given to the commission, given the person entitled to waive the privilege a notice to attend a hearing and to produce the sealed evidence.

186 Return of sealed documents or things for decision on claim of privilege at hearing

(1) If—

- (a) a person has given to a commission officer under section 78 or 81⁵⁸ a sealed document or thing (the “**sealed evidence**”); and
- (b) the commission has given the person a notice to attend a hearing to produce the sealed evidence;

the commission must return the sealed evidence to the person at the hearing before the person is required at the hearing to produce the sealed evidence.

(2) If—

58 Section 78 (Procedure for documents subject to claim of privilege) or 81 (Procedure for documents subject to claim of privilege)

- (a) a person has given the commission under section 185(6)(b)⁵⁹ a sealed document or thing (also the “**sealed evidence**”); and
- (b) the commission has given another person a notice to attend a hearing to produce the sealed evidence;

the commission must give the sealed evidence to the person attending the hearing before the person is required at the hearing to produce the sealed evidence.

Subdivision 2—Misconduct investigations

187 Application of subdiv 2

This subdivision applies only in the context of a misconduct investigation.

188 Refusal to produce—self-incrimination

(1) This section applies if a person is required to produce a stated document or thing at a commission hearing because the person claims that production of the document may incriminate the person.

(2) A person required to produce the document or thing at a commission hearing under an attendance notice must—

- (a) in all cases, bring the document or thing to the hearing if the document or thing is in the person’s possession; and
- (b) produce the document or thing at the hearing, unless the person has a reasonable excuse.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(3) It is not a reasonable excuse for subsection (2)(b) to fail to produce the document or thing because producing the document or thing might tend to incriminate the person.

59 Section 185 (Refusal to produce—claim of reasonable excuse)

Division 3—Refusal to answer***Subdivision 1—Crime investigations*****189 Application of subdiv 1**

This subdivision applies only in the context of a crime investigation.

190 Refusal to answer question

(1) A witness at a commission hearing must answer a question put to the person at the hearing by the presiding officer.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(2) The person is not entitled—

- (a) to remain silent; or
- (b) to refuse to answer the question on a ground of privilege, other than legal professional privilege.

(3) If—

- (a) the person refuses to answer a question on the ground the answer to the question would disclose a communication to which legal professional privilege attaches; and
- (b) the person has no authority to waive the privilege;

the person must, if required by the presiding officer, tell the officer the name and address of the person to whom or by whom the communication was made.

Maximum penalty for subsection (3)—85 penalty units or 1 year's imprisonment.

Subdivision 2—Misconduct investigations**191 Application of subdiv 2**

This subdivision applies only in the context of a misconduct investigation.

192 Refusal to answer question

(1) A witness at a commission hearing must answer a question put to the person at the hearing by the presiding officer.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(2) The person is not entitled—

- (a) to remain silent; or
- (b) to refuse to answer the question on a ground of privilege, other than—
 - (i) legal professional privilege; or
 - (ii) public interest immunity; or
 - (iii) parliamentary privilege.

(3) If—

- (a) the person refuses to answer a question on the ground the answer to the question would disclose a communication to which legal professional privilege attaches; and
- (b) the person has no authority to waive the privilege;

the person must, if required by the presiding officer, tell the officer the name and address of the person to whom or by whom the communication was made.

Maximum penalty for subsection (3)—85 penalty units or 1 year’s imprisonment.

Division 4—Deciding claims***Subdivision 1—Crime investigations*****193 Application of subdiv 1**

This subdivision applies only in the context of a crime investigation.

194 Presiding officer to decide whether refusal to answer questions or produce documents or things is justified

(1) This section applies if a person claims to have a reasonable excuse, including a reasonable excuse based on a claim of legal professional privilege, for not complying with a requirement made of the person at a commission hearing—

- (a) to answer a question put to the person; or
- (b) to produce a document or thing that the person was required to produce.

(2) If the presiding officer decides, after hearing the person's submissions, that the person has a reasonable excuse for not complying with the requirement—

- (a) the presiding officer may require the person to comply with the requirement; and
- (b) section 197⁶⁰ applies in relation to the answer, document or thing given or produced.

(3) If the presiding officer decides the person did not have a reasonable excuse for not complying with the requirement, the presiding officer must—

- (a) give the person reasons for the decision; and
- (b) require the person to answer the question, or to produce the document or thing as required by the attendance notice, subject to the person's right of appeal under section 195;⁶¹ and
- (c) advise the person that the person may appeal the presiding officer's decision to the Supreme Court within the time allowed under section 195.

Note—

A refusal to comply with the requirement to answer the question or produce the document or thing is an offence against section 185 or 192.⁶²

60 Section 197 (Restriction on use of privileged answers, documents and things disclosed or produced under compulsion)

61 Section 195 (Appeals to Supreme Court)

62 Section 185 (Refusal to produce—claim of reasonable excuse) or 192 (Refusal to answer question)

(4) If—

- (a) the person is required to produce a document or thing under subsection (3); and
- (b) the person informs the presiding officer that the person wishes to appeal or consider an appeal under section 195;

the person must immediately seal the document or thing and give it to the commission for safekeeping.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(5) The commission must—

- (a) give the person a receipt for the sealed document or thing (the “**sealed evidence**”); and
- (b) place it in safe custody at the commission’s place of business at the earliest reasonable opportunity.

(6) A person must not open the sealed evidence unless authorised to open it under this Act or a court order.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(7) If the person fails to apply for leave to appeal within the time allowed under section 195, or leave to appeal is refused under that section, the commission may access the sealed evidence.

195 Appeals to Supreme Court

(1) A person may appeal against a decision of a presiding officer given under section 194(3)(b) if—

- (a) the person applies for leave to appeal the decision within 7 court days after the person is given the presiding officer’s reasons for decision; and
- (b) the Supreme Court grants leave to appeal.

(2) The Supreme Court may grant leave to appeal only if the court is satisfied—

- (a) if the appeal relates to a document or thing—the document or thing has been given to the commission and placed in safe custody; and
- (b) in all cases—the appeal has a significant prospect of success or there is some important question of law involved.

(3) An application for leave to appeal must state the grounds of the application.

(4) The Supreme Court must deal with an application for leave to appeal and the appeal expeditiously.

(5) On hearing the appeal, the Supreme Court may make an order—

- (a) affirming the presiding officer's decision; or
- (b) setting aside the presiding officer's decision.

(6) If the court affirms the presiding officer's decision about a document or thing, the commission may access the document or thing.

(7) If the court sets aside the decision about a document or thing, the court must make an order directing that the document or thing be delivered to the person.

(8) A person may appeal only once under subsection (1) in relation to a particular reasonable excuse claimed by the person for not answering a question or producing a document or thing at a commission hearing.

(9) An application for leave to appeal, and an appeal, under this section are to be heard in closed court.

Subdivision 2—Misconduct investigations

196 Supreme Court to decide claim of privilege or reasonable excuse

(1) This section applies if a person makes a claim of privilege under section 73, 75, 94 or 111⁶³ in relation to information or a document or thing.

(2) The chairperson or the person making the claim of privilege may apply to a Supreme Court judge to decide whether the claim is established and, if established, whether it is to be upheld.

(3) The burden of proof on the application is on the person who seeks to withhold the information, document or thing or to prevent the exercise of authority.

63 Section 73 (Power to enter etc.), 75 (Notice to discover information), 94 (Limitation on search warrant powers for misconduct investigations) or 111 (General power to seize evidence—misconduct investigation)

(4) The judge must consider submissions and decide whether the claim is established.

(5) If the judge decides that the claim is established on a ground of public interest immunity, the judge may order the person to give the information or produce the document or thing to the commission if the judge decides that, on balance, the public interest is better served by giving the information or producing the document or thing.

(6) If the judge decides that the claim is established on a ground of confidentiality, the judge must order the person to give the information or produce the document or thing to the commission unless the judge decides that to give the information or produce the document or thing would be against the public interest.

(7) Costs of an application made in relation to a claim of privilege are to be borne by the commission, unless otherwise ordered by the judge on the ground that the claim is frivolous or vexatious.

Division 5—Restrictions on use

197 Restriction on use of privileged answers, documents and things disclosed or produced under compulsion

(1) This section applies if—

- (a) before answering a question or producing a document or thing put to the person by the commission or a commission officer, the person claims that answering the question or producing the document or thing might tend to incriminate the person; and
- (b) apart from this Act, the person would not be required to answer the question or produce the document or thing in a proceeding if the person claimed the answer or production would tend to incriminate the person; and
- (c) the person is required to answer the question or produce the document or thing.

(2) The answer, document or thing given or produced is not admissible in evidence against the person in any civil, criminal or administrative proceeding.

(3) However, the answer, document or thing is admissible in a civil, criminal or administrative proceeding—

- (a) with the person's consent; or
- (b) if the proceeding is about—
 - (i) the falsity or misleading nature of the answer, document or thing; or
 - (ii) an offence against this Act; or
 - (iii) a contempt of a person conducting the hearing.

(4) Also, the document is admissible in a civil proceeding about a right or liability conferred or imposed by the document.

(5) In a commission hearing, the presiding officer may order that all answers or a class of answer given by a person or that all documents or things or a class of document or thing produced by a person is to be regarded as having been given or produced on objection by the person.

(6) If the presiding officer makes an order under subsection (5), the person is taken to have objected to the giving of each answer, or to the producing of each document or thing, the subject of the order.

PART 3—CONTEMPT

198 Contempt of person conducting commission hearing

(1) A person is in contempt of the presiding officer conducting a commission hearing if the person—

- (a) insults the member while the member is conducting the hearing; or
- (b) deliberately interrupts the hearing; or
- (c) at the hearing, contravenes a provision of this Act relating to the hearing; or
- (d) creates or continues or joins in creating or continuing, a disturbance in or near a place where the presiding officer is conducting the hearing; or
- (e) does anything at the hearing or otherwise that would be contempt of court if the presiding officer were a judge acting judicially.

(2) The presiding officer may order that a person who under subsection (1) is in contempt of the commission at a hearing be excluded from the place where the hearing is being conducted.

(3) A commission officer, acting under the presiding officer's order, may, using necessary and reasonable help and force, exclude the person from the place.

199 Punishment of contempt

(1) A person's contempt of the presiding officer conducting a commission hearing may be punished under this section.

(2) The presiding officer may certify the contempt in writing to the Supreme Court (the "**court**").

(3) For subsection (2), it is enough for the presiding officer to be satisfied that there is evidence of contempt.

(4) The presiding officer may issue a warrant directed to a police officer or all police officers for the apprehension of the person to be brought before the Supreme Court to be dealt with according to law.

(5) The *Bail Act 1980* applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence.

(6) The court must inquire into the alleged contempt.

(7) The court must hear—

- (a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and
- (b) any statement given by the person in defence.

(8) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in relation to proceedings in the court.

(9) The *Uniform Civil Procedure Rules 1999* apply to the court's investigation, hearing and power to punish, with necessary changes.

(10) The presiding officer's certificate of contempt is evidence of the matters contained in the certificate.

(11) The person is not excused from attending before a commission hearing in obedience to an attendance notice only because the person is punished or liable to punishment under this section for contempt of the presiding officer.

200 Conduct that is contempt and offence

(1) If conduct of an offender is both contempt of the presiding officer conducting a commission hearing and an offence, the offender may be proceeded against for the contempt or for the offence, but the offender is not liable to be punished twice for the same conduct.

(2) In this section—

“**offender**” means a person guilty, or alleged to be guilty, of contempt of the presiding officer conducting a commission hearing.

PART 4—GENERAL**201 Commission must give evidence to defence unless court certifies otherwise**

(1) This section applies if a person is charged with an offence before a court and anything stated at, or a document or thing produced at, a commission hearing (the “**evidence**”) is relevant evidence for the defence against the charge.

(2) On being asked by the defendant or the defendant’s lawyer, the commission must give the evidence to the defendant or the defendant’s lawyer unless the court makes an order under subsection (4).

(3) A request under subsection (2) may generally identify evidence to be given to the defendant or defendant’s lawyer.

(4) On application by an authorised commission officer, the court must order that the evidence not be given to the defendant or defendant’s lawyer if the court considers that it would be unfair to a person or contrary to the public interest to do so.

(5) Evidence given to a defendant or a defendant’s lawyer under subsection (2) may be used only for the defence to the charge.

(6) A person who uses the evidence as permitted under subsection (5) does not contravene section 202.

202 Publication of names, evidence etc.

(1) A person must not, without the commission's written consent or contrary to the commission's order, publish—

- (a) an answer given, or document or thing produced, at a commission hearing, or anything about the answer, document or thing; or
- (b) information that might enable the existence or identity of a person who is about to give or has given evidence before the commission (“**witness**”) at a hearing to be ascertained.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(2) A person does not contravene subsection (1) if any of the following applies to the publication—

- (a) the answer given, or document or thing produced, was given or produced at a public hearing and the publication is not contrary to the commission's order;
- (b) the witness appeared at a public hearing and the publication is not contrary to the commission's order;
- (c) the publication is made—
 - (i) for the purpose of defending a charge of an offence and is relevant to the defence; and
 - (ii) to a person charged with the offence or a lawyer representing a person charged with the offence;
- (d) the publication is made for the purpose of making a submission to the parliamentary committee about the conduct of the commission's investigation;
- (e) the publication is made for the purposes of a disciplinary charge or to start a prosecution for an offence.

(3) Also, a person does not contravene subsection (1)(b) if—

- (a) the person is the witness, or the publication is made with the witness's implied or express consent; or
- (b) the information mentioned in the provision has been generally made known by the witness or by the commission.

(4) The commission may apply to a Supreme Court judge for an order prohibiting a publication mentioned in subsection (2)(e).

(5) In this section—

“**publish**” includes publish to a single person, whether the publication is made orally or in writing.

203 Protection of members, legal representatives and witnesses

(1) The presiding officer of a commission hearing has, in the performance of the presiding officer’s duties for the hearing, the same protection and immunity as a Supreme Court judge.

(2) A lawyer or other person when appearing for someone at a commission hearing has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

(3) A person required to attend or appearing at a commission hearing as a witness has the same protection as a witness in a proceeding in the Supreme Court.

(4) No criminal or civil liability, other than liability under this Act, attaches to a person for compliance, or purported compliance in good faith, with a requirement made under this Act.

(5) In particular, if a person produces a document or thing under a notice to discover or a notice to produce, no civil liability attaches to the person for producing the document or thing, whether the liability would arise under a contract or otherwise.

204 Allowances for witness

(1) A person attending a commission hearing under an attendance notice, or otherwise as a witness at the request of the commission, is entitled to be paid the allowances and expenses that would be payable to the person if the person were appearing as a witness in a hearing before a Magistrates Court.

(2) The allowances and expenses are payable by the commission.

205 Legal assistance for crime investigations

(1) This section applies to a person who—

- (a) has been given a notice to attend a commission hearing for a crime investigation; or

- (b) wishes to appeal, or has appealed, to the Supreme Court under section 195 against a decision of the presiding officer at a hearing for a crime investigation.⁶⁴

(2) The person may apply to the Attorney-General for financial help to enable the person to obtain legal services in connection with the hearing or appeal.

(3) The Attorney-General may approve the financial help if the Attorney-General considers—

- (a) a person may suffer substantial hardship if help is not given; or
 (b) in the particular circumstances, help should be given.

(4) The Attorney-General may decide the level of financial help and the conditions on which it is to be provided.

(5) The cost of the financial help must be met by the commission.

CHAPTER 5—OFFENCES

206 Application of Criminal Code

(1) The Criminal Code, sections 120, 123, 123A, 124, 125, 126, 127, 128, 129 and 130⁶⁵ (“**identified provisions**”) apply, with necessary changes, to commission hearings under this Act.

(2) Without limiting subsection (1), for applying the identified provisions to a commission hearing—

- (a) the hearing is a judicial proceeding; and
 (b) the presiding officer conducting the hearing is the holder of a judicial office; and

64 Section 195 (Appeals to Supreme Court)

65 The Criminal Code, sections 120 (Judicial corruption), 123 (Perjury), 123A (Perjury—contradictory statements), 124 (Punishment of perjury), 125 (Evidence on charge of perjury), 126 (Fabricating evidence), 127 (Corruption of witnesses), 128 (Deceiving witnesses), 129 (Destroying evidence) and 130 (Preventing witnesses from attending)

- (c) a reference to judicial capacity is a reference to capacity as a presiding officer conducting a hearing; and
- (d) a reference to the giving or withholding of testimony is a reference to the giving or withholding of information; and
- (e) a reference to a witness is a reference to a person from whom the presiding officer conducting the hearing may obtain information; and
- (f) a reference to being required or used in evidence is a reference to being required or used for the obtaining of information; and
- (g) a reference to being summoned to attend as a witness is a reference to being asked or required to attend to give information; and
- (h) a reference to a tribunal is a reference to the presiding officer conducting the hearing.

207 Pretending to be a commission officer

A person must not pretend to be a commission officer.

Maximum penalty—85 penalty units or 1 year's imprisonment.

208 Abuse of office in commission

(1) A commission officer who corruptly asks for, receives or obtains, or agrees or attempts to receive or obtain, property or a benefit of any kind with a view to the officer neglecting his or her duty, or being influenced in the discharge of his or her duty commits a crime.

Maximum penalty—595 penalty units or 7 years imprisonment.

(2) A commission officer who uses or takes advantage of his or her office to improperly gain benefit or advantage for himself or herself or someone else or to facilitate the commission of an offence commits a crime.

Maximum penalty—595 penalty units or 7 years imprisonment.

(3) A person contravening subsection (1) or (2) can not be arrested without warrant.

209 Bribery of commission officer

(1) A person who corruptly gives to, confers on, or procures for, a commission officer property or a benefit of any kind, or promises to do so, with a view to—

- (a) the officer neglecting the officer's duty; or
- (b) influencing the officer in the discharge of the officer's duty; or
- (c) the officer using or taking advantage of his or her office to facilitate the commission of an offence;

commits a crime.

Maximum penalty—595 penalty units or 7 years imprisonment.

(2) A person contravening subsection (1) can not be arrested without warrant.

210 Obstruction or delay of commission procedures

A person who, with intent to obstruct or delay the performance of a function by the commission or the exercise of a power by a commission officer—

- (a) fabricates any relevant record or thing; or
- (b) destroys or alters any relevant record or thing; or
- (c) sends any relevant record or thing out of the State;

commits a misdemeanour.

Maximum penalty—255 penalty units or 3 years imprisonment.

211 Injury or detriment to witness

A person who injures or threatens to injure, or causes or threatens to cause detriment of any kind, to another person because—

- (a) the person, or someone else, appeared as a witness before the commission; or
- (b) the person, or someone else, gave, or is to give, evidence before the commission; or

- (c) the person, or someone else, complied with, or is about to comply with, a notice under section 75;⁶⁶

commits a misdemeanour.

Maximum penalty—255 penalty units or 3 years imprisonment.

212 Offence of victimisation

A person must not—

- (a) prejudice, or threaten to prejudice, the safety or career of any person;
- (b) intimidate or harass, or threaten to intimidate or harass, any person;
- (c) do an act that is, or is likely to be, to the detriment of any person;

because the person mentioned in paragraph (a), (b) or (c), or someone else, gave evidence to, or helped, the commission in the performance of its functions.

Maximum penalty—85 penalty units.

213 Secrecy

(1) This section applies to a person who is or was—

- (a) a relevant official; or
- (b) a member of the reference committee; or
- (c) a person to whom information is given either by the commission or by a person mentioned in paragraph (a) or (b) on the understanding, express or implied, that the information is confidential.

(2) A person must not make a record of, or wilfully disclose, information that has come to the person's knowledge because the person is or was a person to whom this section applies.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(3) However, a person does not contravene subsection (2) if—

66 Section 75 (Notice to discover information)

- (a) in the case of a record—
 - (i) the record is made for the purposes of the commission, this Act, the parliamentary committee, the parliamentary commissioner or an investigation of an alleged contravention of this section; or
 - (ii) the making of the record was lawful under a repealed Act; or
- (b) in the case of a disclosure—
 - (i) the disclosure is made—
 - (A) for the purposes of the commission, this Act, the parliamentary committee, the parliamentary commissioner or an investigation of an alleged contravention of this section; or
 - (B) at the direction of the parliamentary commissioner under chapter 6, part 4;⁶⁷ or
 - (ii) the disclosure was lawful under a repealed Act; or
- (c) in the case of a record or a disclosure—the information was publicly available.

(4) A person may not be required to produce in any court a document that has come into the person's possession, or to disclose to any court a matter or thing that has come to the person's notice, because the person is or was a person to whom this section applies, unless—

- (a) the commission, or a commissioner in the commissioner's official capacity, is a party to the relevant proceeding; or
- (b) it is necessary to produce the document or disclose the matter or thing—
 - (i) to give effect to this Act; or
 - (ii) for a prosecution started as a result of an investigation.

(5) In this section—

“court” includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

“produce” includes permit access to.

⁶⁷ Chapter 6 (Administration), part 4 (Parliamentary crime and misconduct commissioner)

“relevant official” means a person who is or was one of the following—

- (a) a commission officer;
- (b) a member of the parliamentary committee;
- (c) the parliamentary commissioner;
- (d) an officer of the parliamentary service;
- (e) a person appointed, engaged or assigned to help the parliamentary committee or the parliamentary commissioner;
- (f) the public interest monitor;
- (g) a person mentioned in section 132 of the repealed *Criminal Justice Act 1989*;
- (h) a person to whom section 126 of the repealed *Crime Commission Act 1997* applied.

“repealed Act” means—

- (a) repealed *Criminal Justice Act 1989*;
- (b) repealed *Crime Commission Act 1997*.

214 Unauthorised publication of commission reports

A person must not publish or give a commission report to which section 69⁶⁸ applies to anyone unless—

- (a) the report has been printed by order of the Legislative Assembly or is taken to have been so printed; or
- (b) its publication is otherwise authorised under this Act.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

215 Resisting exercise of powers

A person must not wilfully obstruct a commission officer in the exercise of a power conferred on the officer by this Act.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

68 Section 69 (Commission reports to be tabled)

216 Frivolous or vexatious complaint

(1) The commission may give notice to a person that a complaint about, or information or matter (also a “**complaint**”) involving, misconduct made by the person to the commission will not be investigated or further investigated by the commission because it appears—

- (a) to concern frivolous matter; or
- (b) to have been given or made vexatiously.

(2) The notice must advise the person that if the person again makes the same or substantially the same complaint to the commission the person commits an offence punishable by a fine of 85 penalty units or 1 year’s imprisonment or both.

(3) A person who, after receiving the notice mentioned in subsection (2), again makes the same or substantially the same information to the commission commits an offence.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(4) It is a defence to prove that the complaint did not concern frivolous matter and was not given or made vexatiously.

(5) Without limiting the ways a person may make a complaint to the commission, a person makes a complaint to the commission if the person makes the complaint to an entity that is under an obligation to refer the complaint to the commission.

(6) In this section—

“**make**”, a complaint to the commission, includes cause a complaint to be referred to the commission.

217 False or misleading statements

(1) A person must not state anything to the commission the person knows is false or misleading in a material particular.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was ‘false or misleading’ to the person’s knowledge, without specifying which.

(3) A court may order that a person who contravenes subsection (1) must pay an amount of compensation to the commission, whether or not the court also imposes a penalty for the contravention.

(4) The amount of the compensation must be a reasonable amount for the cost of any investigation made or other action taken by the commission because of the false statement.

(5) Without limiting the ways a person may state a thing to the commission, a person states a thing to the commission if the person states the thing to an entity that is under an obligation to advise the commission of the thing, whether or not the person intended that the commission be advised of the statement.

218 False or misleading documents

(1) A person must not give the commission a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the commission, to the best of the person’s ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

(3) It is enough for a complaint for an offence against subsection (1) to state the document was ‘false or misleading’ to the person’s knowledge, without specifying which.

(4) A court may order that a person who contravenes subsection (1) must pay an amount of compensation to the commission, whether or not the court also imposes a penalty for the contravention.

(5) The amount of the compensation must be a reasonable amount for the cost of any investigation made or other action taken by the commission because of the false document.

(6) Without limiting the ways a person may give a document to the commission, a person gives a document to the commission if the person gives the document to an entity that is under an obligation to give the document to the commission, whether or not the person intended that the document be given to the commission.

(7) In this section—

“**give**”, a document to the commission, includes cause the document to be given to the commission.

219 Proceedings for an offence

(1) Subject to subsection (2), a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following—

- (a) 1 year after the offence is committed;
- (b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

(2) A proceeding for an indictable offence may, at the election of the prosecution, be taken—

- (a) by way of summary proceedings under subsection (1); or
- (b) on indictment.

(3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—

- (a) for the summary conviction of the person; or
- (b) for an examination of witnesses in relation to the charge.

(4) If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(5) If—

- (a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment; or
- (b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment;

the magistrate—

- (c) must not decide the charge as a summary offence; and
- (d) must proceed by way of a committal proceeding.

(6) If a magistrate acts under subsection (5)—

- (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and

- (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (5) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).⁶⁹

(7) The maximum penalty that may be imposed on a summary conviction of an indictable offence is 85 penalty units or 1 year's imprisonment.

CHAPTER 6—ADMINISTRATION

PART 1—CRIME AND MISCONDUCT COMMISSION

Division 1—Establishment of Crime and Misconduct Commission

220 Establishment

The bodies corporate known as the Criminal Justice Commission (established under the repealed *Criminal Justice Act 1989*) and the Queensland Crime Commission (established under the repealed *Crime Commission Act 1997*) are merged into a single body corporate and continued in existence under this Act under the name 'Crime and Misconduct Commission'.

221 Commission has common seal etc.

(1) The Crime and Misconduct Commission, as established under this Act—

⁶⁹ *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

- (a) has a common seal; and
- (b) may sue and be sued in its corporate name.

(2) Judicial notice must be taken of the imprint of commission's seal appearing on a document and the document must be presumed to have been properly sealed, unless the contrary is proved.

222 Excluded matter for Corporations Act

The commission is declared to be an excluded matter for the Corporations Act, section 5F,⁷⁰ in relation to the following provisions of the Corporations Act—

- (a) parts 2D.1 and 2D.6;
- (b) chapters 2K and 2L;
- (c) parts 5.7, 5.7B, 5.9 and 5B.2.⁷¹

Division 2—Commissioners

Subdivision 1—Membership and appointment

223 Membership of the commission

The commission is to consist of the following 5 commissioners—

- (a) a full-time commissioner who is the chairperson;
- (b) 4 part-time commissioners who are community representatives.

224 Qualifications for appointment as the chairperson

A person is qualified for appointment as the chairperson if the person has served as, or is qualified for appointment as, a judge of—

70 Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter)

71 Corporations Act, parts 2D.1 (Duties and powers) and 2D.6 (Disqualification from managing corporations), chapters 2K (Charges) and 2L (Debentures), parts 5.7 (Winding up bodies other than companies), 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company), 5.9 (Miscellaneous) and 5B.2 (Registrable bodies)

- (a) the Supreme Court of Queensland; or
- (b) the Supreme Court of another State; or
- (c) the High Court of Australia; or
- (d) the Federal Court of Australia.

225 Qualifications for appointment as a part-time commissioner

A person is qualified for appointment as a part-time commissioner if the person—

- (a) is in actual practice as a lawyer and has a demonstrated interest in civil liberties; or
- (b) has 1 or more of the following—
 - (i) qualifications or expertise in—
 - (A) public sector management and review; or
 - (B) criminology; or
 - (C) sociology; or
 - (D) research related to crime or crime prevention;
 - (ii) community service experience, or experience of community standards and expectations, relating to public sector officials and public sector administration.

226 Disqualification as commissioner

An ineligible person can not be appointed as, or continue as, a commissioner.

227 Advertising and nominations for appointment

(1) The Minister must advertise nationally for applications from suitably qualified persons to be considered for selection as the chairperson.

(2) The Minister must advertise throughout the State for applications from suitably qualified persons to be considered for selection as part-time

commissioners, other than the commissioner mentioned in section 225(a)⁷² (the “**civil liberties commissioner**”).

(3) The Minister must ask the Bar Association of Queensland and the Queensland Law Society to each nominate 2 persons having appropriate qualifications for appointment as the civil liberties commissioner.

(4) Subsections (1), (2) and (3) do not apply to the reappointment of a person as a commissioner.

228 Consultation before nominating persons for appointment

(1) Before nominating a person for appointment as a commissioner, the Minister must first consult with—

- (a) the parliamentary committee; or
- (b) if there is no parliamentary committee at the relevant time, the Leader of the Opposition and the Leader in the Legislative Assembly of any other political party represented in the Assembly by at least 5 members.

(2) If the appointment is as a part-time commissioner, the Minister must also consult with the chairperson about the proposed appointment.

(3) If the Minister consults the parliamentary committee about a proposed appointment, the Minister may nominate a person for appointment as a commissioner only if the nomination is made with the bipartisan support of the parliamentary committee.

229 Appointment of chairperson

(1) The chairperson is to be appointed on a full-time basis by the Governor in Council.

(2) The chairperson is to be appointed under this Act, and not under the *Public Service Act 1996*.

230 Appointment of part-time commissioners

(1) The part-time commissioners are to be appointed by the Governor in Council.

⁷² Section 225 (Qualifications for appointment as a part-time commissioner)

(2) One of the part-time commissioners must have the qualification mentioned in section 225(a)⁷³ where the applicant has a demonstrated interest in civil liberties.

(3) The remaining part-time commissioners must have 1 or more of the qualifications mentioned in section 225(b).

(4) At least 1 of the part-time commissioners must be a woman.

(5) The part-time commissioners are to be appointed under this Act, and not under the *Public Service Act 1996*.

Subdivision 2—Other provisions about appointment

231 Duration of appointment

(1) A commissioner holds office for the term, not longer than 5 years, stated in the instrument of the commissioner's appointment.

(2) A commissioner must not hold office in the commission as a commissioner for more than 5 years in total.

(3) Subsection (2) has effect despite the *Acts Interpretation Act 1954*, section 25(1)(c).⁷⁴

232 Terms of appointment

(1) A commissioner is to be paid the remuneration and allowances decided by the Governor in Council.

(2) To the extent that a commissioner's terms and conditions are not provided for by this Act, a commissioner holds office on the terms and conditions decided by the Governor in Council.

233 Preservation of rights

(1) This section applies if—

(a) a person is appointed as the chairperson; and

73 Section 225 (Qualifications for appointment as a part-time commissioner)

74 *Acts Interpretation Act 1954*, section 25 (Powers of appointment imply certain incidental powers)

- (b) the person resigns the person's role as a public service officer in order to accept the appointment.

(2) The person retains and is entitled to all rights that have accrued to the person because of the person's employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as the chairperson were a continuation of service as a public service officer.

(3) At the end of the person's term of office or on resignation—

- (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as the chairperson; and
- (b) the person's service as the chairperson is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

234 Leave of absence

(1) The commission may grant leave to a commissioner in accordance with entitlements available to the commissioner under the commissioner's conditions of office.

(2) However, only the Minister may grant extended leave to a commissioner.

(3) In this section—

“extended leave” means—

- (a) for the chairperson—leave of more than 10 business days; or
- (b) for a part-time commissioner—leave of more than 20 business days.

235 Resignation

A commissioner may resign by signed notice given to the Minister.

236 Termination of appointment

(1) The Governor in Council may terminate the appointment of a commissioner if the commissioner—

- (a) becomes incapable of satisfactorily performing the duties of office; or
- (b) is absent from 3 consecutive meetings of the commission, without the commission's prior leave and without reasonable excuse.

(2) The Governor in Council must terminate the appointment of the chairperson if the chairperson engages in paid employment outside the chairperson's duties of office without the Minister's approval.

(3) The Governor may terminate the appointment of a commissioner if—

- (a) a recommendation to the Legislative Assembly to terminate the appointment is made with the bipartisan support of the parliamentary committee; and
- (b) the Legislative Assembly, by resolution, approves the termination of the appointment.

(4) The office of a commissioner is vacated if the commissioner becomes an ineligible person.

237 Acting chairperson

(1) The Governor in Council may appoint a person qualified for appointment as the chairperson to act as the chairperson—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chairperson is absent from duty or from the State or, for another reason, can not perform the duties of the office.

(2) Sections 227 and 228⁷⁵ do not apply to the appointment of a person to act as the chairperson.

238 Disclosure of interests by commissioners

(1) The commission must keep a register of each commissioner's pecuniary interests and personal or political associations.

(2) Each commissioner must give to the commission and the Minister—

⁷⁵ Sections 227 (Advertising and nominations for appointment) and 228 (Consultation before nominating persons for appointment)

- (a) as soon as practicable after the person's appointment—a written summary of the person's pecuniary interests and personal or political associations at the time of the person's appointment; and
- (b) within 30 days after any substantial change in the person's pecuniary interests or personal or political associations—notice of the change and an updated written summary of the person's pecuniary interests and personal or political associations.

(3) The register kept under subsection (1) must be updated at least once during each 12 month period of a commissioner's term of office.

(4) In this section—

“personal or political association”, of a commissioner, means a personal or political association that might influence the commissioner in the discharge of the commissioner's duties.

Division 3—Assistant commissioners and senior officers

Subdivision 1—Appointment

239 Assistant commissioner, crime and assistant commissioner, misconduct

There is to be an assistant commissioner, crime and an assistant commissioner, misconduct.

240 Qualifications for appointment as an assistant commissioner

A person is qualified for appointment as an assistant commissioner if the person is qualified to be appointed as the chairperson.

241 Disqualification as an assistant commissioner

An ineligible person can not be appointed as, or continue as, an assistant commissioner.

242 Advertising and nominations for appointment

(1) The Minister must advertise nationally for applications from suitably qualified persons to be considered for selection as the assistant commissioner, crime or the assistant commissioner, misconduct.

(2) Subsection (1) does not apply to the reappointment of a person as an assistant commissioner.

243 Consultation before nominating persons for appointment

Before nominating a person for appointment as an assistant commissioner, the Minister will consult with the Leader of the Opposition and the chairperson about the proposed appointment.

244 Appointment of assistant commissioners

(1) The assistant commissioners are to be appointed on a full-time basis by the Governor in Council.

(2) The assistant commissioners are to be appointed under this Act and not under the *Public Service Act 1996*.

245 Senior officers

(1) The commission may employ the senior officers necessary to enable the commission to perform its functions.

(2) Senior officers are to be employed under this Act and not under the *Public Service Act 1996*.

246 Disqualification as a senior officer

An ineligible person can not be appointed as, or continue as, a senior officer.

Subdivision 2—Other provisions about appointment**247 Duration of appointment**

(1) An assistant commissioner or senior officer holds office for the term, not longer than 5 years, stated in the person's contract of employment.

(2) A person appointed as an assistant commissioner or senior officer may be appointed for a further term if the commission considers that—

- (a) the person's performance as an assistant commissioner or senior officer has been of the highest standard; and
- (b) the person is likely to continue to contribute at a high standard to the commission's performance.

(3) However, an assistant commissioner or senior officer must not hold office in the commission as an assistant commissioner or senior officer for more than 8 years in total.

(4) Subsection (3) has effect despite the *Acts Interpretation Act 1954*, section 25(1)(c).⁷⁶

(5) In this section—

“senior officer” means a senior officer whose principal duties relate directly to the performance of the commission's prevention, crime, misconduct, research or intelligence functions or the giving of legal advice to the commission, but does not include a senior officer whose duties support the commission's functions.

Examples of senior officers whose duties support the commission's functions—

1. An officer whose principal duties relate to information technology matters.
2. An officer whose principal duties relate to financial matters.
3. An officer whose principal duties relate to human resource management matters.

248 Basis of employment for assistant commissioners or senior officers

(1) Each person appointed as an assistant commissioner or senior officer must enter into a written contract of employment with the commission.

(2) The conditions of the person's contract must be approved by the Minister.

(3) The person's conditions of employment are governed by this Act and the contract.

(4) The contract of employment must state—

⁷⁶ *Acts Interpretation Act 1954*, section 25 (Powers of appointment imply certain incidental powers)

- (a) subject to section 247, the term, not longer than 5 years, of the person's employment; and
- (b) the person's duties; and
- (c) that the person must meet any performance standards set by the chairperson; and
- (d) the remuneration to which the person is entitled; and
- (e) that the person may resign by signed notice of resignation given to the chairperson at least 1 month before the notice is to take effect; and
- (f) that the person's appointment and contract of employment may be terminated by the chairperson by notice signed by the chairperson and given to the person at least 1 month before it is to take effect.

249 Preservation of rights

(1) This section applies if—

- (a) a person is appointed as an assistant commissioner or senior officer; and
- (b) the person resigns the person's role as a public service officer in order to accept the appointment.

(2) The person retains and is entitled to all rights that have accrued to the person because of the person's employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as an assistant commissioner or senior officer were a continuation of service as a public service officer.

(3) At the end of the person's term of office or on resignation—

- (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as an assistant commissioner or senior officer; and
- (b) the person's service as an assistant commissioner or senior officer is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

250 Acting assistant commissioner

(1) The Minister may appoint a person qualified for appointment as the chairperson to act as an assistant commissioner—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when an assistant commissioner is absent from duty or from the State or, for another reason, can not perform the duties of the office.

(2) Sections 242 and 243⁷⁷ do not apply to the appointment of a person to act as an assistant commissioner.

Division 4—Roles of chairperson and assistant commissioners**251 Role of chairperson**

(1) *The chairperson is the commission's chief executive officer and its accountable officer for the Financial Administration and Audit Act 1977.*⁷⁸

(2) Without limiting the chairperson's responsibilities, functions or powers, the chairperson, subject to this Act and the commission, is responsible for the administration of the commission and the proper performance of the commission's functions.

252 Role of assistant commissioner, crime

The assistant commissioner, crime is responsible to the chairperson for the proper performance of the commission's crime functions.

253 Role of assistant commissioner, misconduct

The assistant commissioner, misconduct is responsible to the chairperson for the proper performance of the commission's misconduct functions.

77 Sections 242 (Advertising and nominations for appointment) and 243 (Consultation before nominating persons for appointment)

78 This provision had not commenced on or before the reprint date.

*Division 5—Commission staff and agents***254 Commission staff**

(1) The commission may employ the staff necessary to enable the commission to perform its functions.

(2) The staff are to be employed under this Act and not under the *Public Service Act 1996*.

(3) The staff are to be paid the remuneration and allowances decided by the Minister.

(4) Staff employed at or above a level decided by the commission in consultation with the Minister must be employed under a written contract of employment with the commission.

(5) Staff employed under a written contract of employment are not subject to any industrial instrument under the *Industrial Relations Act 1999* or any determination or rule of an industrial tribunal.

(6) The staff are subject to the direction and control of the chairperson.

255 Secondment of officers

(1) The chairperson may arrange with the chief executive of a department, or with another unit of public administration, for the services of officers or employees of the department or other unit to be made available (“**seconded**”) to the commission.

(2) However, an arrangement under subsection (1) is not effective unless the Minister and the Minister responsible for the relevant unit of public administration or, if the relevant unit is the parliamentary service, the Speaker, approve the arrangement.

(3) An officer or employee seconded to the commission under this section is subject to the direction and control of the chairperson.

(4) However, if police officers are seconded to the commission, their efficient deployment is to be the joint responsibility of the chairperson and the most senior police officer seconded to the commission.

(5) This section does not apply to the establishment of a police task force or to police officers who are part of a police task force.

256 Engagement of agents

(1) To meet temporary circumstances, the commission may engage suitably qualified persons to provide it with services, information or advice.

(2) A person engaged under subsection (1) is engaged on the terms and conditions decided by the commission and not under the *Public Service Act 1996*.

257 Commission officers

(1) This section applies to commission officers who are employed by the commission under section 254 or seconded to the commission under section 255.

(2) The commission may issue directions for the performance of duties by the commission officers.

(3) A person who is a member of a relevant office and who is seconded to the commission under section 255 remains a member of the office from which the person was seconded.

(4) Subsection (3) is subject to subsection (2) and section 255(4).

(5) A person mentioned in subsection (3)—

- (a) is entitled to the person's existing and accruing rights as if employment as an officer of the commission were a continuation of employment in the relevant office; and
- (b) continues to be required to contribute to any superannuation scheme to which the person is required to contribute as a member of the office.

258 Superannuation schemes

(1) The commission may—

- (a) establish or amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

(2) Subsection (1) does not apply to commission officers seconded under section 255 or engaged under section 256.

(3) The auditor-general must audit the schemes.

(4) Subsection (3) is subject to the *Financial Administration and Audit Act 1977*, part 6.⁷⁹

Division 6—Performance accountability

259 Budget and performance

(1) For each financial year, the commission must develop, adopt and submit to the Minister a budget not later than the day the Minister directs.

(2) A budget has no effect until approved by the Minister.

(3) During a financial year the commission may develop, adopt and submit to the Minister amendments to its budget.

(4) An amendment has no effect until approved by the Minister.

(5) The commission must comply with its budget.

260 Performance

(1) The Minister has a responsibility to ensure that the commission operates to best practice standards.

(2) To help the Minister discharge that responsibility, the commission must report to the Minister, when and in the way required by the Minister, on the efficiency, effectiveness, economy and timeliness of the commission and its systems and processes, including operational processes.

(3) The report must be accompanied by any financial or other reports the Minister requires to enable the Minister to assess the efficiency, effectiveness, economy or timeliness of the commission, including, in particular, the timeliness with which the commission deals with complaints.

(4) The commission must comply with a Ministerial request under this section.

⁷⁹ *Financial Administration and Audit Act 1977*, part 6 (Audit of consolidated fund and public sector entities)

(5) This section does not require the commission to give the Minister any details that would, if given, prejudice a current sensitive operation of or investigation by the commission.

Division 7—Meetings and other business of commission

261 Conduct of business

Subject to this division, the commission may conduct its business, including its meetings, in the way it considers appropriate.

262 Assistant commissioners to attend meetings

The assistant commissioners may attend commission meetings, but are not entitled to vote at a meeting.

263 Times and places of meetings

(1) Commission meetings are to be held at the times and places the chairperson decides.

(2) However, the chairperson must call a meeting if asked, in writing, to do so by the Minister or at least the number of commissioners forming a quorum for the commission.

264 Quorum

(1) A quorum for a commission meeting is any 3 commissioners.

(2) However, if a report is to be presented to the commission for adoption, the quorum for the meeting is any 4 commissioners.

265 Presiding at meetings

(1) The chairperson is to preside at all commission meetings at which the chairperson is present.

(2) If the chairperson is absent from a commission meeting, the commissioner chosen by the commissioners present is to preside.

266 Conduct of meetings

(1) A question at a commission meeting is decided by a majority of the votes of the commissioners present.

(2) Each commissioner present at the meeting has a vote on each question to be decided and, if the votes are equal, the person presiding also has a casting vote.

(3) A commissioner present at the meeting who abstains from voting is taken to have voted for the negative.

(4) The commission may hold meetings, or allow commissioners or assistant commissioners to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting.

Example of 'technology allowing reasonably contemporaneous and continuous communication'—

Teleconferencing.

(5) A person who takes part in a commission meeting under subsection (4) is taken to be present at the meeting.

(6) A resolution is validly made by the commission, even if it is not passed at a commission meeting, if—

- (a) a majority of the commissioners gives written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the commission.

267 Disclosure of interests

(1) This section applies to a commissioner (the “**interested person**”) if—

- (a) the interested person has a material personal interest in an issue being considered, or about to be considered, by the commission; and
- (b) the interest could conflict with the proper performance of the person’s duties about the consideration of the issue.

(2) As soon as practicable after the relevant facts come to the interested person’s knowledge, the person must disclose the nature of the interest to a commission meeting.

(3) Unless the commission otherwise directs, the interested person must not—

- (a) be present when the commission considers the issue; or
- (b) take part in a decision of the commission about the issue.

(4) The interested person must not be present when the commission is considering whether to give a direction under subsection (3).

(5) If there is another person who must, under subsection (2), also disclose a material personal interest in the issue, the other person must not—

- (a) be present when the commission is considering whether to give a direction under subsection (3) about the interested person; or
- (b) take part in making the decision about giving the direction.

(6) If—

- (a) because of this section, a commissioner is not present at a commission meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
- (b) there would be a quorum if the member were present;

the remaining persons present are a quorum of the commission for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.

(7) A disclosure under subsection (2) must be recorded in the commission's minutes.

(8) A failure to disclose a material personal interest does not, of itself, invalidate a commission decision.

(9) In this section—

“material personal interest” means—

- (a) a direct or indirect interest relating to the personal affairs of the commissioner that may have, or be seen to have, a significant influence on the conduct of the commissioner at the meeting; or
- (b) a personal or political association that might influence the commissioner in the discharge of the commissioner's duties.

268 Minutes

(1) The commission must keep—

- (a) minutes of its meetings; and
- (b) a record of any resolutions made under section 266(6).⁸⁰

(2) Subsection (3) applies if a resolution is passed at a commission meeting by a majority of the commissioners present.

(3) If asked by a commissioner who voted against the passing of the resolution, the commission must record in the minutes of the meeting that the commissioner voted against the resolution.

Division 8—Delegations and authorised commission officers**269 Delegation—commission**

(1) The commissioners may, by resolution, delegate the commission's powers under this or another Act to an appropriately qualified commission officer.

(2) However, the commission's powers under the provisions mentioned in column 1 of the following table may only be delegated to the commission officer or officers mentioned in column 2 of the table—

Provision	Commission officer
section 60 (Commission may give evidence or information to other entities)	chairperson or assistant commissioner
section 50 (Commission may prosecute official misconduct)	chairperson or assistant commissioner
section 62 (Restriction on access)	chairperson or assistant commissioner
section 254 (Commission staff)	chairperson
section 256 (Engagement of agents)	chairperson
section 257(2) (Commission officers)	chairperson

⁸⁰ Section 266 (Conduct of meetings)

270 Delegation—chairperson

(1) The chairperson may delegate the chairperson's powers under this or another Act, other than under the *Police Powers and Responsibilities Act 2000*, section 407,⁸¹ to an appropriately qualified commission officer.

(2) However, the chairperson's powers under section 272 may be delegated only to an assistant commissioner.

(3) Also, the chairperson's powers under chapter 3⁸² may be delegated only with the approval of the commissioners by resolution.

271 Delegation—assistant commissioner

An assistant commissioner may delegate the assistant commissioner's powers under this Act to an appropriately qualified commission officer.

272 Authorised commission officer

(1) The chairperson may authorise an appropriately qualified officer or employee of the commission to perform the functions of, exercise the powers of, or for any purpose to be, an authorised commission officer under a provision of this Act or another Act.

(2) The chairperson may authorise a police officer who is a member of a police task force established under section 32⁸³ that is undertaking an investigation in cooperation with the commission to perform the functions of, exercise the powers of, or for any purpose to be, an authorised commission officer under a provision of this Act or another Act.

(3) An authorisation may be given on conditions and may impose limitations on the exercise of powers.

(4) A reference in a provision of this or another Act to an authorised commission officer is a reference to a person who is an authorised commission officer under this section.

81 *Police Powers and Responsibilities Act 2000*, section 407 (Who may inspect CJC's register)

82 Chapter 3 (Powers)

83 Section 32 (Police task forces and other operational agreements)

273 Commission officer's identity card

(1) The chairperson must give each commission officer an identity card.

(2) The identity card must—

- (a) contain a recent photo of the officer; and
- (b) contain a copy of the commission officer's signature; and
- (c) identify the person as a commission officer under this Act; and
- (d) state an expiry date for the card.

(3) A person who stops being a commission officer must return the person's identity card to the chairperson as soon as possible (but within 21 days) after the person stops being a commission officer, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this Act and other purposes.

(5) In this section—

“**commission officer**” does not include—

- (a) a police officer who is a member of a police task force established under section 32;⁸⁴ or
- (b) a person engaged under section 256.⁸⁵

PART 2—CRIME REFERENCE COMMITTEE*Division 1—Establishment of crime reference committee***274 Establishment**

The Crime Reference Committee is established.

84 Section 32 (Police task forces and other operational agreements)

85 Section 256 (Engagement of agents)

Division 2—Functions and support**275 Functions of reference committee**

The reference committee has the following functions—

- (a) to refer, as provided under this Act, major crime to the commission for investigation;
- (b) to coordinate, to the extent the committee considers appropriate, investigations into major crime conducted by the commission in cooperation with a police task force or another entity.

276 Commission to give committee administrative support

The commission must give the reference committee reasonable administrative services and support to enable the committee to perform its functions.

Division 3—Oversighting role**277 Reference committee may obtain information from commission**

(1) The assistant commissioner, crime must keep the reference committee informed of the general conduct of the assistant commissioner's operations in the performance of the commission's functions in relation to major crime.

(2) If the reference committee asks the assistant commissioner, crime to give to it information concerning a matter relating to the commission's operations in relation to major crime, the assistant commissioner must comply with the request and give the help the reference committee needs to consider the information.

(3) Information provided to the reference committee is confidential.

Division 4—Provisions about membership**278 Membership of reference committee**

(1) The reference committee consists of the following members—

- (a) the assistant commissioner, crime who is the chairperson of the reference committee;
- (b) the chairperson of the commission;
- (c) the commissioner of police;
- (d) the commissioner for children and young people;
- (e) the chairperson of the national crime authority;
- (f) 2 persons appointed by the Governor in Council as community representatives (each of whom is an **“appointed member”**), of whom 1 at least must have a demonstrated interest in civil liberties and 1 at least must be a female.

(2) The Minister must advertise throughout the State for applications from suitably qualified persons to be considered for selection as community representatives.

(3) Subsection (2) does not apply to the reappointment of a person as a community representative.

(4) Before nominating a person to the Governor in Council for appointment as a community representative, the Minister must consult with the Leader of the Opposition.

(5) An ineligible person or a commission officer can not be appointed, or continue, as a community representative.

279 Deputy committee member

(1) The chairperson of the commission may appoint as the chairperson’s deputy for a reference committee meeting another commissioner or the assistant commissioner, misconduct (**“deputy committee member”**).

(2) The commissioner of police may appoint as the commissioner’s deputy for a reference committee meeting an officer holding rank at least equal to assistant commissioner (also a **“deputy committee member”**).

(3) The commissioner for children and young people may appoint as the commissioner’s deputy for a reference committee meeting an appropriately qualified person nominated by the commissioner (also a **“deputy committee member”**).

(4) The chairperson of the national crime authority may appoint as the chairperson’s deputy for a reference committee meeting an appropriately

qualified person nominated by the chairperson (also a “**deputy committee member**”).

(5) A person appointed as a deputy committee member for a reference committee meeting under this section is, for the purposes of the meeting, taken to be the committee member for whom the person is deputy.

280 Duration of appointment of appointed member

An appointed member holds office for the term, not longer than 3 years, stated in the instrument of appointment.

281 Terms of appointment of appointed member

(1) An appointed member is appointed on a part-time basis.

(2) To the extent that appointed member’s terms and conditions are not provided for by this Act, the appointed member holds office on the terms and conditions decided by the Governor in Council.

282 Resignation of appointed member

An appointed member may resign by signed notice given to the Minister.

283 Termination of appointment of appointed member

(1) The Governor in Council may terminate the appointment of a person as an appointed member, if the person—

- (a) stops being eligible for appointment as an appointed member; or
- (b) becomes incapable of satisfactorily performing the member’s duties; or
- (c) is guilty of misconduct that could warrant dismissal from the public service if the member were a public service officer.

(2) The office of an appointed member is vacated if the person becomes an ineligible person.

Division 5—Meetings and other business**284 Conduct of meetings and other business**

Subject to this division, the reference committee may conduct its business, including its meetings, in the way it considers appropriate.

285 Times and places of meetings

(1) Reference committee meetings are to be held at the times and places the assistant commissioner, crime decides.

(2) However, the assistant commissioner, crime must call a meeting if asked, in writing, to do so by the Minister or at least the number of members forming a quorum for the reference committee.

286 Quorum

A quorum for a reference committee meeting is any 4 members.

287 Presiding at meetings

(1) The assistant commissioner, crime is to preside at all meetings at which the assistant commissioner is present.

(2) If the assistant commissioner, crime is absent from a meeting, the chairperson of the commission is to preside at the meeting.

(3) If both the assistant commissioner, crime and the chairperson are absent from a meeting, the committee member chosen by the committee members present at the meeting is to preside.

288 Conduct of meetings

(1) A question at a reference committee meeting is decided by a majority of the votes of the members present.

(2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

(3) A member present at the meeting who abstains from voting is taken to have voted for the negative.

(4) The reference committee may hold meetings, or allow members to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

Example of ‘technology allowing reasonably contemporaneous and continuous communication—

Teleconferencing.

(5) A member who takes part in a reference committee meeting under subsection (4) is taken to be present at the meeting.

(6) A resolution is validly made by the reference committee, even if it is not passed at a reference committee meeting, if—

- (a) a majority of the members gives written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the reference committee.

289 Disclosure of interests

(1) This section applies to a member of the reference committee (the “interested person”) if—

- (a) the interested person has a material personal interest in an issue being considered, or about to be considered, by the committee; and
- (b) the interest could conflict with the proper performance of the person’s duties about the consideration of the issue.

(2) As soon as practicable after the relevant facts come to the interested person’s knowledge, the person must disclose the nature of the interest to a committee meeting.

(3) Unless the reference committee otherwise directs, the interested person must not—

- (a) be present when the committee considers the issue; or
- (b) take part in a decision of the committee about the issue.

(4) The interested person must not be present when the reference committee is considering whether to give a direction under subsection (3).

(5) If there is another person who must, under subsection (2), also disclose a material personal interest in the issue, the other person must not—

- (a) be present when the committee is considering whether to give a direction under subsection (3) about the interested person; or
- (b) take part in making the decision about giving the direction.

(6) If—

- (a) because of this section, a committee member is not present at a reference committee meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and
- (b) there would be a quorum if the member were present;

the remaining persons present are a quorum of the committee for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.

(7) A disclosure under subsection (2) must be recorded in the committee's minutes.

(8) A failure to disclose a material personal interest does not, of itself, invalidate a committee decision.

(9) In this section—

“material personal interest” means a direct or indirect interest relating to the personal affairs of the member that may have, or be seen to have, a significant influence on the conduct of the member at the meeting.

290 Minutes

(1) The reference committee must keep—

- (a) minutes of its meetings; and
- (b) a record of any resolutions made under section 288(6).⁸⁶

(2) Subsection (3) applies if a resolution is passed at a commission meeting by a majority of the members present.

⁸⁶ Section 288 (Conduct of meetings)

(3) If asked by a member who voted against the passing of the resolution, the commission must record in the minutes of the meeting that the member voted against the resolution.

PART 3—PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

Division 1—Establishment of parliamentary committee

291 Establishment of parliamentary committee

A committee of the Legislative Assembly called the Parliamentary Crime and Misconduct Committee is established.

Division 2—Functions

292 Functions

The parliamentary committee has the following functions—

- (a) to monitor and review the performance of the commission's functions;
- (b) to report to the Legislative Assembly, commenting as it considers appropriate, on either of the following matters the committee considers should be brought to the Assembly's attention—
 - (i) matters relevant to the commission;
 - (ii) matters relevant to the performance of the commission's functions or the exercise of the commission's powers;
- (c) to examine the commission's annual report and its other reports and report to the Legislative Assembly on any matter appearing in or arising out of the reports;
- (d) to report on any matter relevant to the commission's functions that is referred to it by the Legislative Assembly;
- (e) to participate in the selection of commissioners and the removal from office of a commissioner as provided under this Act;

- (f) to review the activities of the commission at a time near to the end of 3 years from the appointment of the committee's members and to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission;
- (g) to issue guidelines and give directions to the commission as provided under this Act.

Division 3—Powers

293 Powers

(1) The parliamentary committee has power to call for persons, documents and other things.⁸⁷

(2) Also, the parliamentary committee has the power—

- (a) necessary to enable the committee to properly perform its functions, including power to appoint persons having special knowledge or skill to help the committee perform its functions; or
- (b) conferred on it by resolution of the Legislative Assembly with a view to the proper performance by the committee of its functions.

(3) Further, the parliamentary committee or a person appointed, engaged or assigned to help the parliamentary committee may—

- (a) inspect any non-operational record or thing in the commission's possession; and
- (b) make copies or extracts of the record or thing for use in connection with the parliamentary committee's functions to which the record or thing is relevant.

(4) In this section—

“non-operational record or thing” does not include a record or thing that relates to an investigation by the commission that is not finalised.

⁸⁷ See also the *Parliament of Queensland Act 2001*, chapter 3 (Powers, rights and immunities), part 1 (Powers to require attendance and production)

294 Directions by parliamentary committee to undertake investigation

(1) The parliamentary committee may, by notice, direct the commission to investigate a matter involving misconduct stated in the notice.

(2) A direction under subsection (1) is effective only if it is made with the bipartisan support of the parliamentary committee.

(3) The commission must—

- (a) investigate the matters stated in the direction diligently and in a way reasonably expected of a law enforcement agency; and
- (b) report the results of its investigation to the committee.

295 Referral of concerns by parliamentary committee

(1) This section applies if the parliamentary committee—

- (a) receives a complaint, or has other concerns (including concerns arising out of a recommendation made by the parliamentary commissioner), about the conduct or activities of—
 - (i) the commission; or
 - (ii) a commission officer or former commission officer; or
- (b) is notified by the chairperson of conduct of a commission officer or former commission officer that the chairperson suspects involves, or may involve, improper conduct.

(2) If the committee decides to take action on the complaint, concern or notification (the “**matter**”), the committee may do 1 or more of the following—

- (a) ask the commission to give a report on the matter to the committee;
- (b) ask the commission to investigate and give a report on the matter to the committee;
- (c) ask the police service or another law enforcement agency to investigate and give a report on the matter to the committee;
- (d) ask the parliamentary commissioner to investigate and give a report on the matter to the committee;
- (e) refer the matter to the director of public prosecutions;
- (f) take other action the committee considers appropriate.

(3) A decision under subsection (2) is effective only if it is made with the bipartisan support of the parliamentary committee.

(4) The commission, police service, parliamentary commissioner or another investigative agency must investigate and report on matters as asked by the committee.

296 Guidelines on operation of commission

(1) The parliamentary committee may issue guidelines to the commission about the conduct and activities of the commission.

(2) Before issuing a guideline, the committee must consult with the commission on the proposed guideline.

(3) The committee may issue a guideline only with the bipartisan support of the parliamentary committee.

(4) The commission must comply with the guidelines.

297 Guidelines to be tabled

(1) The chairperson of the parliamentary committee must table each guideline issued under section 296 in the Legislative Assembly within 14 sitting days after it is issued to the commission.

(2) If a guideline is not tabled under subsection (1), it stops having effect.

298 Disallowance of guideline

(1) The Legislative Assembly may pass a resolution disallowing a guideline under section 296 if notice of a disallowance motion is given by a member within 14 sitting days after the guideline is tabled in the Legislative Assembly.

(2) On the day set down for its consideration under the standing rules and orders of the Legislative Assembly, the Speaker must put the question that the Legislative Assembly resolve to disallow the guideline.

(3) If the resolution is passed, the guideline stops having effect.

299 Limited saving of operation of guideline that ceases to have effect

The fact that a guideline stops having effect under section 297(2) or 298(3) does not affect anything done or suffered under the guideline before it stopped having effect.

Division 4—Membership**300 Membership of parliamentary committee**

(1) The parliamentary committee must consist of 7 members nominated as follows—

- (a) 4 members nominated by the Leader of the House;
- (b) 3 members nominated by the Leader of the Opposition.

(2) The chairperson of the parliamentary committee must be the member nominated as chairperson by the Leader of the House.

301 Membership of parliamentary committee continues despite dissolution

(1) Despite section 300, from the dissolution of the Legislative Assembly, the parliamentary committee consists of its members immediately before the dissolution.

(2) A member under subsection (1) continues to be a member of the parliamentary committee until whichever of the following first happens—

- (a) the member resigns by notice given to the clerk of the Parliament;
- (b) the member dies;
- (c) the returning officer for the electoral district in which the member was nominated as a candidate for the election notifies the electoral commission that a person other than the member has been elected for the electoral district;
- (d) fresh members are appointed by the Legislative Assembly.

(3) If a member stops being a member of the parliamentary committee under subsection (2)(c), the person recognised as the leader of the political party that nominated the member to the committee may nominate another

person as a member of the committee until fresh members are appointed by the Legislative Assembly.

Division 5—Meetings

302 Quorum and voting at meetings of parliamentary committee

At a meeting of the parliamentary committee—

- (a) a quorum consists of 4 members appointed to the committee; and
- (b) a question is decided by a majority of the votes of the members of the committee present and voting; and
- (c) each member of the committee has a vote on each question to be decided and, if the votes are equal, the chairperson of the committee has a casting vote.

PART 4—PARLIAMENTARY CRIME AND MISCONDUCT COMMISSIONER

Division 1—Establishment of office of parliamentary commissioner

303 Office of parliamentary crime and misconduct commissioner

(1) There must be appointed a commissioner to be known as the parliamentary crime and misconduct commissioner.

(2) The parliamentary commissioner is an officer of the Parliament.

Division 2—Provisions about appointment

304 Qualification for appointment as parliamentary commissioner

A person is qualified for appointment as the parliamentary commissioner if the person has served as, or is qualified for appointment as, a judge of—

- (a) the Supreme Court of Queensland; or

- (b) the Supreme Court of another State; or
- (c) the High Court of Australia; or
- (d) the Federal Court of Australia.

305 Disqualifications as parliamentary commissioner

(1) An ineligible person can not be appointed as the parliamentary commissioner.

(2) An ineligible person, other than a person who is an ineligible person only because the person holds office as the parliamentary commissioner, can not continue as the parliamentary commissioner.

306 Selection for appointment of parliamentary commissioner

(1) The Speaker must advertise nationally for applications from suitably qualified persons to be considered for selection as the parliamentary commissioner.

(2) Subsection (1) does not apply to the reappointment of a person as the parliamentary commissioner.

(3) The Speaker may appoint a person as the parliamentary commissioner only if the appointment is made with the bipartisan support of the parliamentary committee.

307 Appointment of parliamentary commissioner

(1) The parliamentary commissioner must be appointed by the Speaker as an officer of the parliamentary service under the *Parliamentary Service Act 1988*.

(2) However—

- (a) the parliamentary commissioner can not be dismissed or suspended without the bipartisan support of the parliamentary committee; and
- (b) the *Parliamentary Service Act 1988*, sections 43 and 44⁸⁸ do not apply to the position of parliamentary commissioner.

88 *Parliamentary Service Act 1988*, sections 43 (Appeals against promotional appointments and disciplinary action) and 44 (Reinstatement following dismissal)

(3) Within 7 sitting days after the appointment of the parliamentary commissioner, the Speaker must table in the Legislative Assembly notice of the appointment.

308 Acting parliamentary commissioner

(1) The Speaker must appoint a person qualified to be appointed as the parliamentary commissioner to act as the parliamentary commissioner—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the parliamentary commissioner is absent from duty or from the State or, for another reason, can not perform the duties of the office.

(2) A person may be appointed to act as the parliamentary commissioner only if the appointment is made with the bipartisan support of the parliamentary committee.

309 Duration of parliamentary commissioner's appointment

(1) The parliamentary commissioner holds office for the term, not less than 2 years and no longer than 5 years, stated in the instrument of the parliamentary commissioner's appointment.

(2) The parliamentary commissioner must not hold office for more than 5 years in total.

(3) Subsection (2) has effect despite the *Acts Interpretation Act 1954*, section 25(1)(c).⁸⁹

310 Terms of parliamentary commissioner's appointment

(1) Appointment as the parliamentary commissioner is on a part-time basis.

(2) The parliamentary commissioner is to be paid the remuneration and allowances decided by the Speaker.

(3) To the extent that the parliamentary commissioner's terms and conditions are not provided for by this Act, the parliamentary

⁸⁹ *Acts Interpretation Act 1954*, section 25 (Powers of appointment imply certain incidental powers)

commissioner holds office on the terms and conditions decided by the Speaker.

311 Resignation

The parliamentary commissioner may resign by signed notice given to the Speaker.

312 Termination of appointment

(1) The Governor in Council may terminate the appointment of the parliamentary commissioner if the parliamentary commissioner—

- (a) becomes incapable of satisfactorily performing the parliamentary commissioner's duties; or
- (b) is guilty of conduct that could warrant dismissal from the public service if the parliamentary commissioner were a public service officer.

(2) The Governor in council may terminate the appointment of the parliamentary commissioner if—

- (a) a recommendation to the Legislative Assembly to terminate the appointment is made with the bipartisan support of the parliamentary committee; and
- (b) the Legislative Assembly, by resolution, approves the termination of the appointment.

(3) The office of the parliamentary commissioner is vacated if the parliamentary commissioner becomes an ineligible person for a reason other than holding office as the parliamentary commissioner.

313 Oath of parliamentary commissioner

(1) Before entering on the performance of functions as parliamentary commissioner, the commissioner must take an oath that he or she—

- (a) will faithfully and impartially perform the functions of the office; and
- (b) will not, except as provided under this Act, disclose any information received under this Act.

(2) The oath is to be administered by the Speaker.

Division 3—Functions and support**314 Functions of parliamentary commissioner**

(1) The parliamentary commissioner has the functions given to the parliamentary commissioner under this or another Act.

(2) The parliamentary commissioner has the functions, as required by the parliamentary committee, to do the following—

- (a) audit records kept by the commission and operational files and accompanying documentary material held by the commission, including current sensitive operations, including for the purpose of deciding the following—
 - (i) whether the commission has exercised power in an appropriate way;
 - (ii) whether matters under investigation are appropriate for investigation by the entity investigating or are more appropriately the responsibility of another entity;
 - (iii) whether registers are up to date and complete and all required documentation is on the file and correctly noted on the registers;
 - (iv) whether required authorisations for the exercise of power have been obtained;
 - (v) whether any policy or procedural guidelines set by the commission have been strictly complied with;
- (b) investigate, including by accessing operational files of the commission to which the parliamentary committee is denied access, complaints made against, or concerns expressed about, the conduct or activities of—
 - (i) the commission; or
 - (ii) a commission officer;
- (c) independently investigate allegations of possible unauthorised disclosure of information or other material that, under this Act, is confidential;

- (d) inspect the register of confidential information kept under section 67⁹⁰ to verify the commission's reasons for withholding information from the parliamentary committee;
- (e) review reports given by the commission to the parliamentary committee to verify their accuracy and completeness, particularly in relation to an operational matter;
- (f) report, and make recommendations, to the parliamentary committee on the results of performing the functions mentioned in paragraphs (a) to (e);
- (g) perform other functions the parliamentary committee considers necessary or desirable.

(3) A requirement under subsection (2) is effective only if it is made with the bipartisan support of the parliamentary committee.

315 Administrative and support services for parliamentary commissioner

(1) To help the parliamentary commissioner in performing the parliamentary commissioner's functions under this or another Act, by arrangement with the Speaker, officers or employees of the parliamentary service may be assigned and other administrative and support services may be provided to the parliamentary commissioner.

(2) If asked by the parliamentary committee, the Speaker may engage legal practitioners and other suitably qualified persons to provide the parliamentary commissioner with services, information or advice.

(3) Before a person first acts under subsection (1) or (2), the person must take an oath, to be administered by the parliamentary commissioner, that the person will not, except as provided under this Act, disclose any information received under this part while helping the parliamentary commissioner.

316 Parliamentary commissioner can not be required to disclose particular information

The parliamentary commissioner can not be required by the parliamentary committee to disclose to the committee information lawfully

90 Section 67 (Register of confidential information)

withheld from the committee by the commission under section 66⁹¹ or otherwise.

Division 4—Powers

317 Powers of the parliamentary commissioner

(1) The parliamentary commissioner has power to do all things necessary or convenient for the performance of the parliamentary commissioner's functions.

(2) For the performance of the parliamentary commissioner's functions, the parliamentary commissioner may, by giving written notice to the chairperson, require a commission officer to do 1 or more of the following—

- (a) produce to the parliamentary commissioner, or allow the parliamentary commissioner access to, all records, files and other documents in the commission's possession;
- (b) give the parliamentary commissioner all reasonable help in connection with the parliamentary commissioner performing his or her functions.

(3) Also, for the performance of the parliamentary commissioner's functions, the parliamentary commissioner may, by giving written notice to a public official, require the public official to do 1 or more of the following—

- (a) produce to the parliamentary commissioner, or allow the parliamentary commissioner access to, all records, files and other documents in the possession of the unit of public administration in which the public official holds an appointment;
- (b) give the parliamentary commissioner all reasonable help in connection with the parliamentary commissioner performing his or her functions.

(4) If documents are produced to the parliamentary commissioner under this part, the parliamentary commissioner may—

91 Section 66 (Maintaining confidentiality of information)

- (a) keep the documents for the period the parliamentary commissioner considers necessary for the proper performance of the parliamentary commissioner's functions; or
- (b) make copies or extracts of the documents for use in connection with the parliamentary commissioner's functions to which the document is relevant.

(5) While the parliamentary commissioner has possession of a document under subsection (4), the parliamentary commissioner must permit a person who would be entitled to inspect the document if it were in the possession of the commission to inspect it at all reasonable times.

(6) A person required by a notice under subsection (2) or (3) to do something must comply with the requirement.

Maximum penalty for subsection (6)—85 penalty units or 1 year's imprisonment.

318 Parliamentary commissioner may conduct hearings in limited circumstances

(1) This section applies if—

- (a) the parliamentary commissioner has used all reasonable means to obtain information about a matter without success; and
- (b) the parliamentary committee authorises the parliamentary commissioner to hold a hearing to obtain the information.

(2) The parliamentary committee may give the authorisation only if it receives the bipartisan support of the parliamentary committee.

(3) The parliamentary commissioner may hold a hearing to obtain the information.

(4) The parliamentary commissioner may, by notice, require any named commission officer or person who holds or held an appointment in a unit of public administration (the “**person**”) to appear at the hearing to be examined on oath or to produce a document or thing.

(5) The person must comply with the notice.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(6) The parliamentary commissioner may administer an oath for the purposes of the hearing.

(7) The person must answer a question put to the person by the parliamentary commissioner at the hearing or produce a document or thing if required to do so by the parliamentary commissioner.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(8) The person is not entitled—

- (a) to remain silent; or
- (b) to refuse to answer a question or to fail to give an answer to the parliamentary commissioner’s satisfaction; or
- (c) to fail to produce the document or thing;

because compliance with the notice, answering the question or giving an answer to the parliamentary commissioner’s satisfaction, or producing the document or thing might tend to incriminate the person.

(9) However, if the person’s answer or the document or thing might tend to incriminate the person, the answer, document or thing is not admissible in evidence against the person in a civil or criminal proceeding, other than—

- (a) a proceeding for an offence about the falsity of the answer; or
- (b) a disciplinary action brought against the person.

(10) A hearing under this section is closed to the public.

(11) In this section—

“**commission officer**” includes—

- (a) a former commission officer; and
- (b) a person who was a commissioner or officer of the commission under the repealed *Criminal Justice Act 1989*; and
- (c) a person who was engaged by the commission under section 66 of the repealed *Criminal Justice Act 1989*.

319 Notice may be a confidential document

(1) A notice given by the parliamentary commissioner under this division may provide that it is a confidential document.

(2) A person must not disclose the existence of a confidential document to anyone else, unless the person has a reasonable excuse.

Maximum penalty—85 penalty units or 1 year’s imprisonment.

(3) It is a reasonable excuse for a person to disclose the existence of a confidential document if—

- (a) the disclosure is made—
 - (i) for the purpose of seeking legal advice in relation to the document or an offence against subsection (2); or
 - (ii) for the purpose of obtaining information in order to comply with the document; or
 - (iii) for the purpose of making a complaint to the parliamentary committee about the document; or
 - (iv) in the course of the administration of this Act; and
- (b) the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the document to anyone else unless the person has a reasonable excuse.

320 Intelligence data review

(1) The parliamentary commissioner must conduct an annual review of intelligence data in the possession of the commission and the police service (each an “agency”).

(2) The purposes of the review are—

- (a) to consider whether intelligence data held by each agency is appropriately held by the agency having regard to the agency’s functions; and
- (b) to consider whether there is unnecessary duplication of intelligence data held by the agencies; and
- (c) to consider whether the agencies are working cooperatively as partners to achieve optimal use of—
 - (i) available intelligence data; and
 - (ii) the resources used to collect, collate or record the data; and
- (d) to consider whether an agency is placing inappropriate restrictions on access to intelligence data by the other agency.

(3) The parliamentary commissioner—

- (a) must prepare written advice on the review containing the parliamentary commissioner’s findings and recommendations, including, if appropriate, a recommendation about removing a

restriction placed by an agency on access to intelligence data by the other agency; and

- (b) must give the advice to the chairperson of the commission, the commissioner of police and the parliamentary committee; and
- (c) may authorise the chairperson of the commission or the commissioner of police to disclose the advice or relevant parts of the advice to officers of the agencies for discussion and implementation at officer level.

(4) The advice must be prepared in general terms in a way that does not disclose intelligence data or other confidential information.

(5) The parliamentary commissioner must, when preparing the advice, have regard to the need for the investigation of official misconduct to be undertaken independently of general law enforcement.

(6) A review must be done as soon as practicable after the end of each financial year, and within 4 months after the end of the financial year.

Division 5—General

321 Confidentiality obligations not to apply

(1) An obligation to maintain secrecy in relation to, or that otherwise restricts, the disclosure of information or the production of documents in the possession of the commission, a unit of public administration or a relevant person, whether imposed under this or another Act or by a rule of law, does not apply to the disclosure of information or the production of a document under this part.

(2) In this section—

“commission officer” includes a person who was—

- (a) a commissioner or officer of the commission under the repealed *Criminal Justice Act 1989*; or
- (b) a person engaged by the commission under section 66 of the repealed *Criminal Justice Act 1989*.

“relevant person” means a person who is or was—

- (a) a commission officer; or

- (b) a person holding an appointment in a unit of public administration.

322 Commission not entitled to privilege

(1) This section applies in relation to—

- (a) an investigation under this part; and
(b) the production of documents or the giving of evidence.

(2) The commission is not entitled to any privilege.

(3) A commission officer is not entitled to any privilege, other than legal professional privilege relating to legal representation for the investigation.

(4) In this section—

“**privilege**” means any privilege of a type allowed by law in legal proceedings.

323 Parliamentary commissioner’s report subject to Parliamentary privilege

It is declared that a report prepared by the parliamentary commissioner at the request of the parliamentary committee is an act done for the purposes of transacting business of a parliamentary committee under the *Parliamentary Papers Act 1992*.

PART 5—PUBLIC INTEREST MONITOR

Division 1—Appointment of public interest monitor

324 Public interest monitor

(1) The Governor in Council may appoint a person (the “**public interest monitor**”) to monitor applications for, and the use of, surveillance warrants and covert search warrants.

(2) The Governor in Council may also appoint as many deputy public interest monitors as the Minister considers necessary.

(3) The Governor in Council may, in the appointment, fix the terms and conditions of the appointment.

(4) A monitor is to be appointed under this Act, and not under the *Public Service Act 1996*.

(5) A monitor must not be a person who is, or who is a member of, or who is employed in or by or to assist, any of the following—

- (a) the Commissioner for Children and Young People;
- (b) the commission;
- (c) the director of public prosecutions;
- (d) the office of the director of public prosecutions;
- (e) the police service.

325 Acting monitor

(1) The Governor in Council may appoint a person qualified to be appointed as the public interest monitor to act as the public interest monitor—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the public interest monitor is absent from duty or from the State or, for another reason, can not perform the duties of the office.

(2) The Governor in Council may appoint a person qualified to be appointed as a deputy public interest monitor to act as a deputy public interest monitor—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when a deputy public interest monitor is absent from duty or from the State or, for another reason, can not perform the duties of the office.

Division 2—Functions

326 Monitor's functions

(1) The public interest monitor has the following functions for surveillance warrants and covert search warrants—

- (a) to monitor compliance by the commission with this Act in relation to matters concerning applications for surveillance warrants and covert search warrants;
- (b) to appear at any hearing of an application to a Supreme Court judge or a magistrate for a surveillance warrant or covert search warrant, or under section 131,⁹² to test the validity of the application, and for that purpose at the hearing—
 - (i) to ask questions of the applicant and to examine or cross-examine any witness; and
 - (ii) to make submissions on the appropriateness of granting the application; and
- (c) to gather statistical information about the use and effectiveness of surveillance warrants and covert search warrants; and
- (d) whenever the public interest monitor considers it appropriate—to give to the commission a report on noncompliance by the commission with this Act.

(2) Subject to the direction of the public interest monitor, a deputy public interest monitor has the functions mentioned in subsection (1)(a), (b) and (c).

327 Minister's guidelines

The Minister may issue guidelines about how the public interest monitor and deputy public interest monitor are to perform their functions.

Division 3—General

328 Monitor's annual report

(1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the public interest monitor must prepare and give to the Minister a written report on the use of surveillance warrants and covert search warrants for the previous year.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

92 Section 131 (Application for approval of emergency use of surveillance device)

- (3) The annual report must not contain information that—
- (a) discloses or may lead to the disclosure of the identity of any person who has been, is being, or is to be, investigated; or
 - (b) indicates a particular investigation has been, is being, or is to be conducted.
- (4) The public interest monitor’s report may form part of another annual report the monitor is required to prepare under another Act.

CHAPTER 7—GENERAL

329 Duty of chairperson to notify improper conduct to the parliamentary committee

(1) The chairperson must notify the parliamentary committee, in the way, and within the time, required by the committee, of all conduct of a commission officer that the chairperson suspects involves, or may involve, improper conduct.

(2) In this section—

“**commission officer**” includes former commission officer.

“**improper conduct**”, of a commission officer, means—

- (a) disgraceful or improper conduct in an official capacity; or
- (b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission; or
- (c) conduct that would, if the officer were an officer in a unit of public administration, be official misconduct.

330 Persons subject to criminal history check

(1) A person can not be appointed as a commission officer, the parliamentary commissioner or a monitor if the person does not consent to a criminal history check.

(2) Also, a person can not be assigned to the parliamentary commissioner if the person does not consent to a criminal history check.

(3) The *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6, 8 and 9,⁹³ do not apply in relation to the appointment of a commission officer.

331 Effect of pending proceedings

(1) The commission may do any or all of the following, despite any proceeding that may be in or before a court, tribunal, warden, coroner, magistrate, justice or other person—

- (a) commence, continue, discontinue or complete an investigation or hearing or any part or aspect of the investigation or hearing;
- (b) give a report in relation to the investigation or hearing or any part or aspect of the investigation or hearing;
- (c) an act or thing that is necessary or expedient for a purpose mentioned in paragraph (a) or (b).

(2) If the proceeding is a proceeding for an indictable offence and is conducted by or for the State, the commission may, to the extent to which the commission considers it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced—

- (a) conduct any hearing relating to an investigation as a closed hearing during the currency of the proceeding; or
- (b) give a direction under section 202⁹⁴ to have effect during the currency of the proceeding.

(3) Subsection (2) does not apply—

- (a) if the proceeding is a committal proceeding—before any evidence for the prosecution is taken in the committal proceeding; or
- (b) otherwise—after the proceeding stops being a proceeding for the trial of a person before a jury.

(4) This section has effect whether or not the proceeding commenced before or after the commission's investigation started and has effect

93 *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6 (Non-disclosure of convictions upon expiration of rehabilitation period), 8 (Lawful to deny certain convictions) and 9 (Duty to disregard certain convictions)

94 Section 202 (Publication of names, evidence etc.)

whether or not the commission or a commission officer is a party to the proceeding.

332 Judicial review of commission's activities in relation to official misconduct

(1) A person who claims—

- (a) that a commission investigation into official misconduct is being conducted unfairly; or
- (b) that the complaint or information on which a commission investigation into official misconduct is being, or is about to be, conducted does not warrant an investigation;

may apply to a Supreme Court judge for an order in the nature of a mandatory or restrictive injunction addressed to the commission.

(2) The judge may, on the commission's application, hear submissions from the commission relating to the investigation in the absence of the person or the person's lawyer.

(3) If an application (the "**costs application**") is made to the court by a person (the "**costs applicant**") who has applied under subsection (1), the court may order that—

- (a) the commission indemnify the costs applicant for costs properly incurred in the injunction proceeding, on the standard basis, from the time the costs application was made; or
- (b) a party to the injunction proceeding is to bear only that party's own costs of that proceeding, regardless of the outcome.

(4) In considering the costs application, the court must have regard to—

- (a) the financial resources of—
 - (i) the costs applicant; or
 - (ii) any person associated with the costs applicant who has an interest in the outcome of the injunction proceeding; and
- (b) whether the injunction proceeding involves an issue that affects, or may affect, the public interest, in addition to any personal right or interest of the costs applicant; and
- (c) whether the injunction proceeding discloses a reasonable basis for the application under subsection (1).

(5) The court may, at any time, on its own initiative or on the application of the costs applicant or the commission, revoke or vary, or suspend the operation of, an order made by it under this section after having regard to—

- (a) any conduct of the costs applicant, including a failure to diligently prosecute the injunction proceeding; or
- (b) any significant change affecting the matters mentioned in subsection (4).

(6) Subject to this section, the rules of court applying to the awarding of costs apply to the awarding of costs for the injunction proceeding.

(7) An appeal may be brought from an order under subsection (3) or (5) to the Court of Appeal, but only with the leave of that court.

(8) An application under this section is to be heard in closed court.

(9) In this section—

“**injunction proceeding**” means an application under subsection (1) and a proceeding on the application.

333 Effect of further factors on order

(1) An order made on an application under section 332⁹⁵ does not prevent or inhibit the conduct of the investigation in question if there have emerged further factors in light of which the order appears to be unjustified.

(2) If there have emerged further factors that put in question the appropriateness of the order, a Supreme Court judge may, on the commission’s application, revoke the order, or vary its terms as the judge considers appropriate.

(3) An application under subsection (2) is to be heard in closed court.

334 Application under s 332

(1) If the judge who hears an application under section 332 is satisfied as to the matter claimed by the applicant, the judge may, by order—

95 Section 332 (Judicial review of commission’s activities in relation to official misconduct)

- (a) require the assistant commissioner, misconduct to conduct the investigation in question in accordance with guidelines specified in the order; or
- (b) direct the assistant commissioner, misconduct to stop or not proceed with an investigation on the complaint or information to which the application relates.

(2) In proceedings on an application under section 332, made on the ground that information or a complaint does not warrant an investigation, the applicant is not entitled to be given particulars of the information or complaint or of the source of the information or complaint.

(3) A judge hearing an application under section 332, on the ground that information or a complaint does not warrant an investigation, may take or receive, in closed court, evidence from the commission on the basis for the investigation.

(4) The applicant and any person representing the applicant must not be present while evidence is being taken or received under subsection (3).

(5) Evidence taken or received by a court under subsection (3) must not be published or disclosed outside the court.

335 Protecting officials from liability

(1) The commission or an official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to the commission or an official, the liability attaches instead to the State.

(3) In a proceeding for defamation, there is a defence of absolute privilege for a publication by the commission or a commission officer made for the purpose of performing the commission's functions.

(4) This section does not limit protection given to a person under another provision of this Act.

(5) In this section—

“official” means—

- (a) a commission officer; or
- (b) a person acting under the direction of a commission officer.

336 Protection of parliamentary commissioner and officers etc.

(1) A parliamentary commissioner officer is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) No civil or criminal proceedings may be brought against a parliamentary commissioner officer for an act mentioned in subsection (1) without the leave of the Supreme Court.

(3) The Supreme Court may give leave under subsection (2) only if satisfied there is substantial ground for claiming that the person to be proceeded against has not acted honestly or has acted negligently.

(4) If subsection (1) prevents a civil liability attaching to a parliamentary commissioner officer, the liability attaches instead to the State.

(5) A parliamentary commissioner officer may not be called to give evidence or produce any document in any court, or in any judicial proceedings, in relation to any matter coming to the officer's knowledge while performing functions under this Act.

(6) In this section—

“parliamentary commissioner officer” means—

- (a) the parliamentary commissioner; or
- (b) an officer or employee of the parliamentary service assigned to the parliamentary commissioner; or
- (c) a person engaged to provide the parliamentary commissioner with services, information or advice.

337 Protection from liability

(1) The public interest monitor or a deputy public interest monitor does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to the public interest monitor or a deputy public interest monitor, the liability attaches instead to the State.

338 Protection of witnesses etc.

(1) This section applies if it appears to the commission the safety of a person may be at risk or the person may be subject to intimidation or harassment because the person—

- (a) is helping or has helped the commission in the performance of its functions; or
- (b) is to attend, is attending or has attended at a commission hearing to give evidence or to produce a document or thing; or
- (c) proposes to produce or has produced a document or thing to the commission otherwise than at a commission hearing.

(2) The commission may, with the person's consent, provide witness protection for the person under this Act or the *Witness Protection Act 2000*.

339 Record of execution of warrant

A commission officer who executes a warrant must, if reasonably practicable, write the following on the back of the original warrant or form of warrant and sign the document—

- (a) the date and time of execution;
- (b) the name of the person on whom it was executed;
- (c) if known, the name of the occupier of the place; and
- (d) the commission officer's name, and if the officer is a police officer, his or her rank and registered number.

340 Evidentiary aids

(1) This section applies to a proceeding before a court or tribunal.

(2) It is not necessary to prove the appointment of an appointed person or the power of an appointed person to do something, unless a party to the proceeding, by reasonable notice of at least 7 days, requires proof.

(3) A certificate purporting to be signed by the chairperson stating any of the following matters is evidence of the matter—

- (a) a person's appointment as an appointed person was, or was not, in force on a stated day or during a stated period;

- (b) a matter relevant to an investigation by the commission or the commission's operations;
- (c) a stated document is a copy of a document made under this Act;
- (d) a thing done by a person purporting to act under authority conferred by this Act;
- (e) the purpose for which an act was done, or omission made, by a person purporting to act for the purposes of the commission.

(4) A signature purporting to be the signature of an appointed person is evidence of the person's signature.

(5) Judicial notice must be taken of—

- (a) the official signature of a person who is, or has been, chairperson; and
- (b) the fact that the person is, or has been, chairperson.

(6) In this section—

“appointed person” means—

- (a) a commissioner; or
- (b) a commissioner officer.

341 Personnel changes do not affect commission's power to make findings or report

(1) The commission may make findings and report on the basis of all evidence presented to it regardless of any change in the constitution of the commission.

(2) To remove any doubt, it is declared that subsection (1) does not require the commission to make findings or report in relation to a crime investigation.

342 Inspection and use of material in commission's possession

(1) A commission officer may inspect and deal with any record or thing in the commission's possession relevant to the discharge of the officer's duties.

(2) A person authorised in writing by the chairperson may inspect any record or thing in the commission's possession and, for that purpose, may

retain it for the time necessary, and may make copies or extracts for use in connection with the commission's investigation to which the record or thing is relevant.

343 Information disclosure and privilege

(1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to a person, whether imposed by any Act or by a rule of law, applies to the disclosure of information to the commission for the performance of the commission's functions.

(2) A person who discloses information under subsection (1) does not, only because of the disclosure—

- (a) contravene a provision of an Act requiring the person to maintain confidentiality in relation to the disclosure of information; or
- (b) incur any civil liability, including liability for defamation; or
- (c) become liable to disciplinary action.

344 Injunctions

(1) The commission may apply to the Supreme Court for an injunction on the ground that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of section 212; or
- (b) attempting to contravene section 212; or
- (c) aiding, abetting, counselling or procuring a person to contravene section 212; or
- (d) being in any way, directly or indirectly, knowingly concerned in or a party to the contravention of section 212; or
- (e) conspiring with others to contravene section 212.⁹⁶

(2) If the court is satisfied that the ground is made out, the court may grant the injunction in the terms it considers appropriate.

(3) Subsection (2) has effect despite the provisions of the *Industrial Relations Act 1999*.

⁹⁶ Section 212 (Offence of victimisation)

(4) The court may grant an interim injunction until it decides the application.

(5) Before the court grants an injunction, it must be satisfied on the balance of probabilities that the person who gave evidence to or assisted the commission acted in good faith.

(6) The court may rescind or vary an injunction granted under subsection (2) or (4).

(7) The court may grant an injunction restraining a person from engaging in conduct—

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) whether or not the person has previously engaged in conduct of that kind; or
- (c) whether or not there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.

(8) The court may grant an injunction requiring a person to do an act or thing—

- (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; or
- (b) whether or not the person has previously failed to do the act or thing; or
- (c) whether or not there is an imminent danger of substantial damage to someone else if the person fails to do the act or thing.

(9) If the commission applies for an injunction under this section, the court may not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking about damages.

(10) An application under this section is to be heard in closed court.

345 Authority to administer oaths

Any justice is authorised to administer an oath for the purposes of this Act.

346 Commissions of Inquiry Act 1950 prevails over this Act

(1) The *Commissions of Inquiry Act 1950* prevails over this Act.

(2) Without limiting subsection (1), the commission or a person who is, or was, a commission officer must comply with any summons or requirement of an inquiry chairperson under the *Commissions of Inquiry Act 1950*, section 5.

(3) For the *Commissions of Inquiry Act 1950*, section 5, 10(4) or 14(1)(b),⁹⁷ it is not a reasonable excuse for the commission or anyone else to fail to comply with the summons or requirement—

- (a) that compliance would disclose anything that is required not to be disclosed under this Act or would otherwise contravene this Act; or
- (b) that compliance would disclose anything that should not be disclosed because of its particular nature, content or subject matter.

(4) This section—

- (a) applies only for the purpose of a commission within the meaning of the *Commissions of Inquiry Act 1950*, section 3; and
- (b) applies despite another provision of this or another Act.

(5) In this section—

“inquiry chairperson” means the chairperson of a commission within the meaning of the *Commissions of Inquiry Act 1950*, section 3.

347 Review of Act and commission’s operational and financial performance

(1) The Minister must review this Act and the commission’s operational and financial performance.

(2) The review must start no sooner than 2 years after the commencement of this section.

⁹⁷ *Commissions of Inquiry Act 1950*, section 5 (Power to summon witness and require production of books etc.), 10 (Punishment of contempt of a commission) or 14 (Answers and documents)

348 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may provide for—

- (a) procedures to be followed in proceedings before the commission; or
- (b) procedures to be observed by commission officers and other persons in performing the commission's functions or exercising the commission's powers.

CHAPTER 8—REPEALS, TRANSITIONAL AND SAVINGS PROVISIONS

PART 1—REPEAL PROVISIONS

349 Repeals

The following Acts are repealed—

- Criminal Justice Act 1989 No. 111
- Crime Commission Act 1997 No. 68.

PART 2—TRANSITIONAL PROVISIONS

350 Definitions for pt 2

In this part—

“**commencement**” means the commencement of this section.

“**contract employee**” means a person who, immediately before the commencement, was employed by the criminal justice commission or

the Queensland crime commission under a written contract, whether or not for a fixed term.

“repealed Act” means the repealed *Criminal Justice Act 1989* or the repealed *Crime Commission Act 1997*.

351 References to repealed Acts and former titles

(1) In an Act or document, a reference to a repealed Act may, if the context permits, be taken as a reference to this Act.

(2) In an Act or document, a reference in column 1 of the following table may, if the context permits, be taken as the corresponding reference in column 2 of the table.

Column 1	Column 2
criminal justice commission	commission
CJC	commission
chairperson of the criminal justice commission	chairperson of the commission
director, official misconduct division	assistant commissioner, misconduct
official misconduct division	commission
Queensland crime commission	commission
QCC	commission
crime commissioner	assistant commissioner, crime
management committee	reference committee
parliamentary criminal justice commissioner	parliamentary crime and misconduct commissioner
parliamentary criminal justice committee	parliamentary crime and misconduct committee

352 Assets, rights and liabilities

To remove any doubt, it is declared that an asset, right or liability of the criminal justice commission or the Queensland crime commission is an asset, right or liability of the commission.

353 Proceedings

(1) To remove any doubt, it is declared that a proceeding that could have been started or continued by, or against, the criminal justice commission or the Queensland crime commission may be started or continued by, or against, the commission.

(2) Without limiting subsection (1), a disciplinary charge under section 39 of the repealed *Criminal Justice Act 1989* that could have been started or continued by the Criminal Justice Commission if that Act had not been repealed may be started or continued by the commission under section 50.

354 Continuation of complaints

(1) This section applies if a complaint made to the criminal justice commission under the repealed *Criminal Justice Act 1989* before the commencement had not been finally dealt with under that Act on the commencement.

(2) The complaint must be dealt with as if it had been made under this Act.

355 Continuation of references

(1) Each referral to the crime commission by the management committee under the repealed *Crime Commission Act 1997* is taken to be a referral of major crime to the commission by the reference committee under this Act subject to any limitations imposed by the management committee under the repealed *Crime Commission Act 1997*.

(2) However, the standing reference to investigate criminal paedophilia mentioned in section 46(7) of the repealed *Crime Commission Act 1997* ended on that Act's repeal.

356 Offences

(1) Proceedings for an offence against the repealed Act may be continued, or started despite the repeal of the repealed Act.

(2) For subsection (1), the *Acts Interpretation Act 1954*, section 20⁹⁸ applies, but does not limit the subsection.

(3) For subsection (1), in relation to an offence against the repealed *Criminal Justice Act 1989*, section 138(2) of that Act applies, despite its repeal as if—

- (a) the word ‘commission’ included “commission” as defined in this Act; and
- (b) the word ‘chairperson’ included “chairperson” as defined in this Act.

357 Chairperson of the criminal justice commission

(1) The chairperson of the criminal justice commission under the repealed *Criminal Justice Act 1989* goes out of office as the chairperson of the criminal justice commission and as a member of the criminal justice commission on the commencement.

(2) Subsection (3) applies if the chairperson of the Criminal Justice Commission under the repealed *Criminal Justice Act 1989*—

- (a) is offered appointment as the chairperson under this Act and accepts the appointment; or
- (b) is offered appointment as an assistant commissioner under this Act and accepts the appointment.

(3) The chairperson is not entitled to an amount that might otherwise be payable to the chairperson because the chairperson goes out of office under subsection (1).

(4) This section has no effect on superannuation or leave entitlements.

358 Commissioners of the criminal justice commission

A member, other than the chairperson, of the criminal justice commission under the repealed *Criminal Justice Act 1989* continues as a part-time commissioner under this Act.

98 *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

359 Crime commissioner

(1) The crime commissioner under the repealed *Crime Commission Act 1997* goes out of office as the crime commissioner and as a member of the crime commission on the commencement.

(2) Subsection (3) applies if the crime commissioner under the repealed *Crime Commission Act 1997*—

- (a) is offered appointment as the chairperson under this Act and accepts the appointment; or
- (b) is offered appointment as an assistant commissioner under this Act and accepts the appointment.

(3) The crime commissioner is not entitled to an amount that might otherwise be payable to the crime commissioner because the crime commissioner goes out of office under subsection (1).

(4) This section has no effect on superannuation or leave entitlements.

360 Management committee

(1) An appointed member of the management committee under the repealed *Crime Commission Act 1997* is taken to be an appointed member of the reference committee under this Act in accordance with the member's original conditions of appointment.

(2) In this section—

“member's original conditions of appointment” means the terms and conditions governing the member's appointment under the repealed *Crime Commission Act 1997* at the commencement.

361 Parliamentary committee

The members of the criminal justice committee established under the repealed *Criminal Justice Act 1989* holding office at the commencement are taken to be the members of the parliamentary committee under this Act.

362 Parliamentary commissioner

The person holding office as the parliamentary commissioner or acting parliamentary commissioner under the repealed *Criminal Justice Act 1989* at the commencement is taken to be the parliamentary commissioner or acting parliamentary commissioner under this Act.

363 Employees

(1) To remove any doubt, it is declared that on the commencement a person who, immediately before the commencement, was an employee of the criminal justice commission or the Queensland crime commission—

- (a) becomes an employee of the commission; and
- (b) has a right to a salary or wage rate not lower than the person's salary or wage rate immediately before the commencement.

(2) To remove any doubt, it is declared that for subsection (1)(a)—

- (a) a person who, immediately before the commencement was a permanent employee of the criminal justice commission or the Queensland crime commission is taken to be a permanent employee of the commission; and
- (b) a person who, immediately before the commencement was a temporary employee of the criminal justice commission or the Queensland crime commission is taken to be a temporary employee of the commission; and
- (c) a person who, immediately before the commencement was a casual employee of the criminal justice commission or the Queensland crime commission is taken to be a temporary employee of the commission on a casual basis.

(3) This section does not apply to a contract employee.

364 Right of return to public service

(1) This section applies to a person who, immediately before the commencement was an employee of the crime commission in a permanent or full-time capacity and an officer of the public service.

(2) The person is entitled to re-become an officer of the public service if the person elects to re-become an officer of the public service within 1 year after the commencement or any further period that the Minister allows.

(3) If the person re-becomes an officer of the public service under subsection (2)—

- (a) the person's initial terms of employment must not be less favourable than the terms of employment that applied to the person before the person became employed by the crime commission; and

- (b) for the purpose of calculating and providing the person's superannuation and leave entitlements, the person is to be treated as—
- (i) not having left the public service when the person became employed by the Crime and Misconduct Commission; and
 - (ii) having been an officer of the public service while the person was employed by the Crime and Misconduct Commission.

365 Contract employees

(1) To remove any doubt, it is declared that on the commencement a contract employee of the criminal justice commission or the Queensland crime commission becomes a contract employee of the commission.

(2) To remove any doubt, it is declared that the person's contract with the criminal justice commission or the Queensland crime commission is a contract with the commission.

366 Accrued entitlements

A person who becomes an employee of the commission under this part keeps all entitlements to recreation, sick, long service and other leave, superannuation and other benefits accrued by the person, immediately before the commencement, as an employee of the criminal justice commission or the Queensland crime commission.

367 Public interest monitor

The public interest monitor appointed under the repealed *Criminal Justice Act 1989* or the repealed *Crime Commission Act 1997* is, at the commencement, taken to be the public interest monitor appointed under this Act.

368 Special provisions for transitional office holders

For section 247(3),⁹⁹ a person holding office as a senior officer on the commencement is taken to have started holding office in the commission on the commencement.

⁹⁹ Section 247 (Duration of appointment)

369 Provision for selection processes started before the commencement

(1) This section applies if, before the commencement—

- (a) the criminal justice commission under the repealed *Criminal Justice Act 1989* or the crime commission under the repealed *Crime Commission Act 1997* advertised for applications from suitably qualified persons to be considered for selection to the role being advertised; and
- (b) the selection process had not been finalised.

(2) The commission may continue with the selection process and appoint a person to a role as a commission officer that is similar to the role advertised.

370 Provision for selection processes for roles of chairperson and assistant commissioners

(1) Section 228¹⁰⁰ does not apply to the first appointment of a person as the chairperson.

(2) Also, an appointment of a person as chairperson or assistant commissioner after the enactment of this Act is not to be taken to be invalid only because action was taken in relation to the filling of the role of chairperson or assistant commissioner before the enactment.

371 Warrants

A warrant issued under the repealed *Criminal Justice Act 1989* or the repealed *Crime Commission Act 1997* and in force immediately before the commencement is taken to be a warrant validly issued under this Act and continues in force, subject to any condition or limitation on its issue and with necessary changes.

372 Notices

A notice issued under the repealed *Criminal Justice Act 1989* or the repealed *Crime Commission Act 1997* and in force immediately before the

100 Section 228 (Consultation before nominating persons for appointment)

commencement is taken to be a notice validly issued under this Act and continues in force, with necessary changes.

373 Action taken by parliamentary commissioner

(1) An action started by the parliamentary commissioner before the commencement but not finished at the commencement may be continued as if the action had been started under this Act and this Act applies accordingly.

(2) In this section—

“**action**” means—

- (a) an investigation; or
- (b) an inquiry; or
- (c) a review.

374 Parliamentary commissioner to have possession of and deal with records of the CJC inquiry

(1) This section applies to the data and records of the CJC inquiry vested in the parliamentary commissioner.

(2) The parliamentary commissioner must secure the data and records in the parliamentary commissioner’s possession so that only persons who satisfy the parliamentary commissioner that they have a legitimate need of access to the data and the records are able to have access to them.

(3) In this section—

“**CJC inquiry**” means the commission within the meaning of the *Commissions of Inquiry Act 1950* constituted by order in council of 7 October 1996 published in the gazette of that date at pages 475 and 476.

375 Data and records of commission of inquiry

(1) This section applies to the commission of inquiry data and records of which the director of the intelligence division under the repealed *Criminal Justice Act 1989* assumed possession and control under that repealed Act.

(2) The commission must continue possession and control of the data and records and the provisions of the repealed *Special Prosecutor Act 1988*, sections 20 and 21 apply, with necessary changes, as if—

- (a) the commission of inquiry referred to in that Act were the commission; and
- (b) the chairperson referred to in that Act were the chairperson under this Act.

(3) In this section—

“commission of inquiry data and records” means the commission of inquiry data and records mentioned in the repealed *Criminal Justice Act 1989*, section 59.

376 Transitional regulation-making power

(1) A regulation (**“transitional regulation”**) may make provision about a matter for which—

- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Acts to the operation of this Act; and
- (b) this Act does not make provision or sufficient provision.

(2) A transitional regulation may have retrospective operation to a day not earlier than the commencement.

(3) A transitional regulation must declare it is a transitional regulation.

(4) This section and any transitional regulation expire 1 year after the commencement.

377 Transitional provision about change in way powers may be exercised

(1) *This section applies if, before the commencement, an officer of the criminal justice commission or the Queensland crime commission was authorised under any Act or law or rule of practice to exercise a power in relation to a person or thing and this Act—*

- (a) *changes the way the power may be exercised; or*
- (b) *provides that the power may be exercised by a commission officer, however described.*

(2) The exercise of the power after the commencement is not unlawful only because the officer—

- (a) exercises it in accordance with the Act, law or rule of practice in force immediately before the commencement; or*
- (b) has not been formally authorised or appointed under this Act to exercise the power as a commission officer.*

(3) This section expires 14 days after it commences.¹⁰¹

101 These provisions have expired and are included in this reprint for informational purposes only. They will be omitted in the next reprint.

SCHEDULE 2**DICTIONARY**

section 12

“affected by bankruptcy action”, for an individual, means the individual—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

“appropriately qualified”, for a delegation of power or committee membership under section 279,¹⁰² means having the qualifications, experience or standing appropriate to exercise the power or to be appointed.

Example of ‘standing’—

The level at which a person is employed in the commission.

“arrest warrant” see section 167(1).¹⁰³

“assistant commissioner” means the assistant commissioner, crime or the assistant commissioner, misconduct.

“assistant commissioner, crime” see section 239.

“assistant commissioner, misconduct” see section 239.

“at”, a place, includes in or on the place.

“attendance notice” see section 82.¹⁰⁴

“authorised commission officer” see section 272.¹⁰⁵

“bipartisan support”, of the parliamentary committee, means—

102 Section 279 (Deputy committee member)

103 Section 167 (Arrest warrant application)

104 Section 82 (Notice to attend hearing—general)

105 Section 272 (Authorised commission officer)

SCHEDULE 2 (continued)

- (a) support of the members of the parliamentary committee unanimously; or
- (b) support of a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Legislative Assembly.

“boat” includes a ship or other vessel of any size or type and however propelled or moved, including, for example, a rowing boat, a hovercraft and a submersible vessel.

“chairperson” means the chairperson of the commission.

“class A surveillance device” means—

- (a) a surveillance device installed—
 - (i) in a private place, or on a person’s clothing, without the person’s consent; or
 - (ii) if the device is a listening device, in a public place; or
- (b) a surveillance device that is a combination of a listening device and a tracking device.

“class B surveillance device” means a tracking device installed in or on a vehicle or other moveable object without covert entry to a building by the person installing it.

“commission” means the Crime and Misconduct Commission.

“commissioner” means a person appointed as a commissioner under this Act.

“commissioner of police” means the commissioner of the police service.

“commission hearing” means a hearing conducted by the commission under this Act.

“commission officer” means—

- (a) a commissioner; or
- (b) an assistant commissioner; or
- (c) a senior officer; or
- (d) a person employed under section 254 or seconded under section 255; or

SCHEDULE 2 (continued)

- (e) a person engaged under section 256; or
- (f) a police officer authorised by the chairperson under section 272(2).¹⁰⁶

“commission report” means a report prepared by the commission under chapter 2, part 6.

“confidentiality”, in relation to the ground of confidentiality, means a ground recognised at law that giving an answer or disclosing a communication or document, would be a breach of an oath taken or statutory or commercial obligation or restriction to maintain secrecy.

“Confiscation Act” means the *Crimes (Confiscation) Act 1989*.

“convicted”, of an offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

“court day” means a day on which the court registry is open for business.

“covert search warrant” see section 148.

“Crime and Misconduct Commission” means the Crime and Misconduct Commission established under section 220.

“crime function” see section 25.¹⁰⁷

“crime investigation” means an investigation conducted by the commission in the performance of its crime function.

“criminal history”, of a person, means—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act; and
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.

“criminal paedophilia”—

1. “Criminal paedophilia” means criminal activity that involves any of the following—

¹⁰⁶ Section 272 (Authorised commission officer)

¹⁰⁷ Section 25 (Commission’s major crime function)

SCHEDULE 2 (continued)

- (a) offences of a sexual nature committed in relation to children; or
 - (b) offences relating to obscene material depicting children.
2. It is immaterial whether the offence is committed in Queensland or elsewhere if the offender or the child is ordinarily resident in Queensland.

“data surveillance device” means any instrument, apparatus, equipment, program or other thing capable of being used to record or monitor, other than through visual recording or monitoring, the input of information into, or the output of information from, a computer.

“deal with”, a complaint about misconduct or information or matter involving misconduct, includes—

- (a) investigate the complaint, information or matter; and
- (b) gather evidence for—
 - (i) prosecutions for offences; or
 - (ii) disciplinary proceedings; and
- (c) refer the complaint, information or matter to an appropriate authority to start a prosecution or disciplinary proceeding; and
- (d) start a disciplinary proceeding; and
- (e) take other action, including managerial action, to address the complaint in an appropriate way.

“declared law enforcement agency” means an entity declared to be a law enforcement agency under a regulation.

“deputy public interest monitor” means a person appointed as a deputy public interest monitor under section 324.¹⁰⁸

“dwelling”—

- 1. A “dwelling” includes a building or other structure, or part of a building or other structure, kept by the owner or occupier (the **“owner”**) as a residence for the owner, a member of the owner’s family or an employee of the owner.

108 Section 324 (Public interest monitor)

SCHEDULE 2 (continued)

2. In deciding whether a building or other structure is a dwelling, it is immaterial that the building or other structure is from time to time uninhabited.
3. A building or other structure adjacent to, and occupied with, a dwelling is part of the dwelling if it is connected to the dwelling, whether directly or by a covered and enclosed passage leading from the one to the other, but not otherwise.
4. A “dwelling” also includes a boat (other than an external deck of the boat) used or kept as a residence for the owner, a member of the owner’s family or an employee of the owner.

“**enter**” a place, includes re-enter the place.

“**evidence**”, of the commission of major crime or misconduct, includes—

- (a) a thing or activity that is or may provide evidence of the commission of the major crime or misconduct; and
- (b) a thing that will, itself or by or on scientific examination, provide evidence of the commission of the major crime or misconduct; and
- (c) a thing that is intended to be used for the purpose of committing the major crime or misconduct; and
- (d) a thing that may be liable to forfeiture.

“**forfeiture proceeding**” means a proceeding for an order forfeiting or restraining the use of property under the *Crimes (Confiscation) Act 1989* or another Act.

“**ineligible person**” means any of the following—

- (a) a person who has been convicted of an indictable offence;
- (b) a person who is affected by bankruptcy action;
- (c) a person holding judicial appointment;
- (d) a member of the Legislative Assembly or the Executive Council;
- (e) the parliamentary commissioner;
- (f) a monitor;
- (g) the director of public prosecutions;

SCHEDULE 2 (continued)

- (h) a member of the police service, or, other than in relation to appointment as a senior officer, a person who has been a member of the police service within the 5 years before the time at which the person's qualification for appointment arises;
- (i) a public service employee;
- (j) a person who holds an appointment on the staff of a Minister;
- (k) a local government councillor;
- (l) a local government employee.

“install”, a surveillance device, includes maintain, replace and remove the device.

“investigate” includes examine and consider.

“Leader of the House” means the member who is recognised in the Legislative Assembly as the Leader of the House.

“Leader of the Opposition” means the member who is recognised in the Legislative Assembly as the Leader of the Opposition.

“listening device” means any instrument, apparatus, equipment or device capable of being used to overhear, record, monitor or listen to a private conversation when it is taking place.

“major crime” means—

- (a) criminal activity that involves an indictable offence punishable on conviction by a term of imprisonment not less than 14 years; or
- (b) criminal paedophilia; or
- (c) organised crime; or
- (d) something that is—
 - (i) preparatory to the commission of criminal paedophilia or organised crime; or
 - (ii) undertaken to avoid detection of or prosecution for criminal paedophilia or organised crime.

“member”, for a commission hearing, means person conducting the hearing.

“misconduct” means official misconduct or police misconduct.

SCHEDULE 2 (continued)

“**misconduct functions**” see section 33.¹⁰⁹

“**misconduct investigation**” means an investigation conducted by the commission in the performance of its misconduct function.

“**misconduct tribunal**” means a misconduct tribunal under the *Misconduct Tribunals Act 1997*.

“**monitor**” means the public interest monitor or a deputy public interest monitor.

“**national crime authority**” means the national crime authority established under the *National Crime Authority Act 1984* (Cwlth).

“**notice**” means written notice.

“**notice to discover**” see section 75.

“**notice to produce**” see section 74.

“**obscene material**”, depicting children, includes—

- (a) a child abuse computer game under the *Classification of Computer Games and Images Act 1995*; and
- (b) a child abuse publication or child abuse photograph under the *Classification of Publications Act 1991*; and
- (c) a child abuse film under the *Classification of Films Act 1991*.

“**obstruct**” includes the following—

- (a) hinder;
- (b) attempt to obstruct.

“**official misconduct**” see section 15.

“**ombudsman**” includes the Parliamentary Commissioner for Administrative Investigations under the *Parliamentary Commissioner Act 1974*.

“**organised crime**” means criminal activity that involves—

- (a) indictable offences punishable on conviction by a term of imprisonment not less than 7 years; and
- (b) 2 or more persons; and

¹⁰⁹ Section 33 (Commission’s misconduct functions)

SCHEDULE 2 (continued)

- (c) substantial planning and organisation or systematic and continuing activity; and
- (d) a purpose to obtain profit, gain, power or influence.

“parliamentary commissioner” means the Parliamentary Crime and Misconduct Commissioner appointed under section 303.¹¹⁰

“parliamentary committee” means the Parliamentary Crime and Misconduct Committee of the Legislative Assembly.

“parliamentary service” means the parliamentary service established under the *Parliamentary Service Act 1988*.

“part-time commissioner” means a commissioner other than the chairperson.

“photograph” includes photocopy, videotape and record an image.

“place” includes—

- (a) premises; and
- (b) vacant land; and
- (c) a vehicle; and
- (d) a place in Queensland waters; and
- (e) a place held under 2 or more titles or owners.

“police misconduct” means conduct, other than official misconduct, of a police officer that—

- (a) is disgraceful, improper or unbecoming a police officer; or
- (b) shows unfitness to be or continue as a police officer; or
- (c) does not meet the standard of conduct the community reasonably expects of a police officer.

“police service” means the Queensland Police Service.

“police task force” means a task force under the authority of the commissioner of police.

¹¹⁰ Section 303 (Office of parliamentary crime and misconduct commissioner)

SCHEDULE 2 (continued)

“possession” includes the following—

- (a) custody;
- (b) control.

“post-search approval order” see section 97.¹¹¹

“premises” includes—

- (a) a building or structure, or part of a building or structure, of any type; and
- (b) a group of buildings or structures, or part of a group of buildings or structures, of any type; and
- (c) the land or water where a building or structure, or a group of buildings or structures, is situated; and
- (d) a vehicle and a caravan; and
- (e) a tent or cave; and
- (f) premises held under 2 or more titles or owners.

“presiding officer”, for a commission hearing, means the person conducting the hearing.

“private conversation” means any words spoken by one person to another person in circumstances that indicate—

- (a) that those persons desire the words to be heard or listened to only by themselves; or
- (b) that either of those persons desires the words to be heard or listened to only by themselves and by some other person;

but does not include words spoken by one person to another person in circumstances in which either of those persons ought reasonably to expect the words may be overheard, recorded, monitored or listened to by some other person, not being a person who has the consent, express or implied, of either of those persons to do so.

“privilege”, in relation to an answer, information, communication or document, or thing means—

111 Section 97 (Post-search approval)

SCHEDULE 2 (continued)

- (a) in the context of a crime investigation—privilege recognised at law on the ground of—
 - (i) self-incrimination; or
 - (ii) legal professional privilege; or
- (b) in the context of a misconduct investigation—
 - (i) legal professional privilege; or
 - (ii) public interest immunity; or
 - (iii) parliamentary privilege;

and, in either context, includes a claim on the ground of confidentiality.

“public interest monitor” means the person appointed as the public interest monitor under section 324.¹¹²

“public official” means—

- (a) the ombudsman; or
- (b) the chief executive officer of a unit of public administration, including the commissioner of police; or
- (c) a person who constitutes a corporate entity that is a unit of public administration.

“public prosecutor” means the director, deputy director, or another lawyer appointed under the *Director of Public Prosecutions Act 1984*.

“reasonably suspects” means suspects on grounds that are reasonable in the circumstances.

“reference committee” means the Crime Reference Committee established under section 274.

“relevant person”—

- (a) in relation to an application to a judge for a surveillance warrant—see section 122; and
- (b) in relation to an application to a magistrate for a surveillance warrant—see section 138; and

¹¹² Section 324 (Public interest monitor)

SCHEDULE 2 (continued)

- (c) in relation to an application to a judge for a covert search warrant—see section 149; and
- (d) in relation to an application to a judge for an additional powers warrant—see section 159.¹¹³

“search warrant” see section 86.

“search warrant powers” means the powers under section 92.¹¹⁴

“senior officer”, in chapter 6, part 1, means a person who, in the chairperson’s opinion, is performing duties that would, if the person were a public service officer, be duties of a senior executive.

“surveillance device” means—

- (a) for a crime investigation—
 - (i) a listening device; and
 - (ii) a visual surveillance device; and
 - (iii) a tracking device; and
 - (iv) a device containing any combination of the devices mentioned in subparagraphs (i), (ii) and (iii); and
 - (v) a data surveillance device; and
- (b) for a misconduct investigation—a listening device.

“surveillance warrant”—

- (a) for a surveillance warrant authorising the use of a class A or class B surveillance device or both—see section 121(2); or
- (b) for a surveillance warrant authorising the use of a class B surveillance device—see section 137(2).

113 Section 122 (Who may be present at consideration of application for surveillance warrant)

Section 138 (Who may be present at consideration of application)

Section 149 (Who may be present at consideration of application)

Section 159 (Who may be present at consideration of application)

114 Section 92 (Powers under search warrants)

SCHEDULE 2 (continued)

“under this Act”, for an act or omission to which section 335, 336 or 337¹¹⁵ applies, includes an act done or omission made purportedly under this Act for the purposes of this Act.

“unit of public administration” see section 20.

“vehicle” includes aircraft and boat.

115 Section 335 (Protecting officials from liability), 336 (Protection of parliamentary commissioner and officers etc.) or 337 (Protection from liability)

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 27 September 2002. Future amendments of the Crime and Misconduct Act 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key**Key to abbreviations in list of legislation and annotations**

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

4 Table of earlier reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of earlier reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF EARLIER REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to Act No. 81 of 2001	1 January 2002	11 January 2002
1A	to Act No. 81 of 2001	6 June 2002	20 June 2002

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1

6 List of legislation

Crime and Misconduct Act 2001 No. 69

date of assent 8 November 2001

ss 1–2 commenced on date of assent

ss 3, 12, 224, 226–229, 231–233, 239–244, 247–249, 370, sch 2 commenced 22 November 2001 (2001 SL No. 221)

s 251(1) not yet proclaimed into force (see s 2)

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

amending legislation—

Constitution of Queensland 2001 No. 80 ss 1–2, 94 sch 2

date of assent 3 December 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 6 June 2002 (see s 2)

Parliament of Queensland Act 2001 No. 81 ss 1–2, ch 9 pt 4

date of assent 3 December 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 6 June 2002 (see s 2)

Drugs Misuse Amendment Act 2002 No. 35 ss 1–2, 13 sch

date of assent 16 August 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 27 September 2002 (2002 SL No. 253)

7 List of annotations

Commission may issue directions about how notifications are to be made
s 40 amd 2002 No. 35 s 13 sch

Giving material to tribunal inquiring into judge's misbehaviour or incapacity
s 70 sub 2001 No. 80 s 94 sch 2

Powers
s 293 amd 2001 No. 81 s 131

Transitional regulation-making power
s 376 exp 1 January 2003 (see s 376(4))

Transitional provision about change in way powers may be exercised
s 377 exp 15 January 2002 (see s 377(3))

CHAPTER 9—AMENDMENTS OF ACTS
ch hdg om R1 (see RA s 40)

Acts amended
s 378 om R1 (see RA s 40)

SCHEDULE 1—CONSEQUENTIAL AMENDMENTS
om R1 (see RA s 40)