

Queensland



CRIME COMMISSION ACT 1997

Act No. 68 of 1997

Queensland



CRIME COMMISSION ACT 1997

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	10
2	Commencement	10
3	Act binds all persons	10
4	Objects	10
5	Dictionary	11
6	Meaning of “criminal paedophilia”	11
7	Meaning of “major crime”	11
8	Meaning of “organised crime”	11
9	Meaning of “relevant criminal activity”	12
10	References to criminal activity include suspected criminal activity	12
PART 2—QUEENSLAND CRIME COMMISSION AND CRIME COMMISSIONER		
<i>Division 1—Queensland crime commission</i>		
11	Establishment	12
12	QCC is a body corporate etc.	12
<i>Division 2—Crime commissioner and assistant commissioners</i>		
13	Crime commissioner and assistant crime commissioners	13
14	Appointment of crime commissioner and assistant crime commissioners	13
15	Establishment of selection panel	14
16	Nomination for appointment as commission member	15
17	Duration of appointment	15
18	Terms of appointment	15
19	Preservation of rights	15

20	Leave of absence	16
21	Resignation	16
22	Termination of appointment	16
23	Acting commission members	17
24	Disclosure of pecuniary interests by commission members	17
	<i>Division 3—QCC staff and agents</i>	
25	QCC staff	18
26	Engagement of agents	18
27	Counsel assisting	18
	<i>Division 4—QCC Functions</i>	
28	QCC's functions	18
29	Crime commissioner may ask for reference or change to reference	19
	<i>Division 5—QCC's interaction with other entities</i>	
30	Police task forces to assist QCC	20
31	Liaison with other entities	20
32	QCC may give information to other entities	20
33	CJC to be advised of official misconduct	21
	<i>Division 6—Public sittings</i>	
34	Public sittings	21
	<i>Division 7—Delegations and authorised QCC officers</i>	
35	Delegation	21
36	Authorised QCC officer	22
37	Annual report	23
	PART 3—MANAGEMENT COMMITTEE	
	<i>Division 1—Establishment of management committee</i>	
38	Establishment of management committee	24
39	Membership of management committee	24
40	Deputy committee member	25
41	Duration of appointment of appointed member	26
42	Terms of appointment of appointed member	26
43	Resignation of appointed member	26
44	Termination of appointment of appointed member	26

<i>Division 2—Functions</i>	
45	Management committee’s functions 27
<i>Division 3—Referrals</i>	
46	Referrals to QCC 27
47	Management committee may give QCC directions about investigations . . 29
48	Referrals to police service 29
<i>Division 4—Management committee powers and associated QCC duties</i>	
49	Management committee may obtain information from QCC 29
50	Management committee may give directions and guidelines to QCC 30
<i>Division 5—Complaints</i>	
51	Complaints 30
<i>Division 6—Meetings and other business of management committee</i>	
52	Meaning of “required minimum number” of committee members 31
53	Conduct of meetings and other business 31
54	Times and places of meetings 31
55	Presiding at meetings 31
56	Quorum and voting at meetings 31
57	Participation in meetings by telephone etc. 32
58	Resolutions without meetings 32
59	Minutes 33
PART 4—PARLIAMENTARY COMMISSIONER	
<i>Division 1—Functions</i>	
60	Functions of parliamentary commissioner for this Act 33
<i>Division 2—Reviews</i>	
61	Intelligence data review 33
62	CJC access review 34
63	Parliamentary commissioner to decide whether access to be given 35
<i>Division 3—Powers</i>	
64	Powers—general 35
65	Powers—intelligence data 36
66	Powers—CJC access review 36

Division 4—General

67	Confidentiality obligations not to apply	37
68	Protection of parliamentary commissioner	37

PART 5—PUBLIC INTEREST MONITOR

69	Public interest monitor	38
70	Monitor's functions	38
71	Monitor's annual report	39
72	Secrecy	40

PART 6—POWERS***Division 1—Units of public administration***

73	Commission member may require information etc. from units of public administration	40
----	--	----

Division 2—Search warrants generally

74	Search warrant	42
75	Powers for search warrants	43
76	Search to prevent loss of evidence	45
77	Supplying warrant copy, officer's details, receipt for seized thing etc.	46
78	Requirements after property is seized	47
79	Access to seized things	48
80	Return of seized things	49

Division 3—Surveillance powers

81	Certain Acts do not apply to this part	49
82	Surveillance warrants	49
83	Emergency use of surveillance devices	53
84	Powers under surveillance warrant	54
85	Disclosure of information obtained using surveillance warrant	54
86	Register to be kept	55
87	Destruction of records	56
88	Covert search warrants	56
89	Powers for covert search warrant	59
90	Report on covert search	60
91	Application of the Invasion of Privacy Act	60

<i>Division 4—Warrants register</i>	
92	Register of warrants and applications for warrants 61
<i>Division 5—Notice to produce</i>	
93	Notice to produce 61
94	Notice to produce—claim of privilege 62
<i>Division 6—Attendance notice</i>	
95	Attendance notice 63
96	Offence not to attend hearing 64
<i>Division 7—Arrest</i>	
97	Arrest warrant 64
<i>Division 8—General</i>	
98	QCC’s powers generally 66
99	General power to seize evidence 66
PART 7—HEARINGS	
100	QCC may hold hearings 67
101	Conduct of hearings 68
102	Hearings are closed 68
103	Legal representation and examination 69
104	Right to interpreter 69
105	Refusal to produce—claim of reasonable excuse 69
106	Return of sealed documents or things for decision on claim of privilege at hearing 71
107	Refusal to take oath or affirmation or to answer question 72
108	Presiding member to decide whether refusal to answer questions or produce documents or things is justified 72
109	Appeals to Supreme Court 74
110	Restriction on use of privileged answers, documents and things disclosed or produced under compulsion 75
111	Publication of names, evidence etc. 76
112	QCC must give evidence to defence unless court certifies otherwise 77
113	Protection of members, legal representatives and witnesses 77
114	Contempt of commission member 78
115	Punishment of contempt 78

116	Conduct that is contempt and offence	79
117	Allowances for witness	80
118	Legal assistance	80

PART 9—OFFENCES

119	Disclosures about QCC notices	80
120	False or misleading statements or documents	82
121	Obstruction of QCC etc.	83
122	Injury or detriment to witness etc.	83
123	Pretending to be a QCC officer	83
124	Indictable and summary offences	84
125	Proceedings for indictable offence	84

PART 10—GENERAL

126	Secrecy	85
127	Protecting officials from liability	86
128	Protection of witnesses etc.	86
129	Record of execution of warrant	87
130	Regulation-making power	87
131	Expiry	87

PART 11—TRANSITIONAL PROVISIONS

132	Audit of investigations	87
-----	-----------------------------------	----

PART 12—AMENDMENT OF CRIMINAL JUSTICE ACT 1989

133	Act amended in pt 12	89
134	Amendment of s 2 (Objects of Act)	89
135	Amendment of s 3 (Definitions)	89
136	Amendment of s 23 (Responsibilities)	89
137	Amendment of s 29 (Role and functions)	90
138	Amendment of s 56 (Role and functions)	90
139	Amendment of s 58 (Role and functions)	90
140	Amendment of s 82 (Authority to use listening devices)	91
141	Insertion of new pt 3, div 1A	91

Division 1A—Public interest monitor

84A	Public interest monitor	91
-----	-----------------------------------	----

84B	Monitor's functions	92
84C	Monitor's annual report	93
84D	Secrecy	93
142	Amendment of s 88 (Publication of evidence)	93
143	Amendment of s 123 (Application pursuant to s 82)	94
PART 13—AMENDMENT OF JUDICIAL REVIEW ACT 1991		
144	Act amended in pt 13	94
145	Amendment of sch 2 (Decisions for which reasons need not be given) ...	94
PART 14—AMENDMENT OF PUBLIC SERVICE ACT 1996		
146	Act amended in pt 14	95
147	Amendment of s 109 (Who is a "term appointee")	96
PART 15—AMENDMENT OF CRIMINAL JUSTICE LEGISLATION AMENDMENT ACT 1997		
148	Act amended in pt 15	96
149	Amendment of s 41 (Insertion of new ss 118A to 118F and new pt 4A) ...	96
SCHEDULE		97
DICTIONARY		

Queensland



Crime Commission Act 1997

Act No. 68 of 1997

An Act to establish the Queensland Crime Commission, and for other matters

[Assented to 1 December 1997]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Crime Commission Act 1997*.

Commencement

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

Act binds all persons

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

Objects

- 4.(1) The objects of this Act are to provide for—

- (a) the establishment of a permanent crime commission to investigate criminal activity referred to it and, in particular, criminal paedophilia and major and organised crime; and
- (b) the establishment of a management committee to oversight the activities of the crime commission and to refer matters to the crime commission for investigation; and
- (c) the accountability of the crime commission to the Minister and the Legislative Assembly; and
- (d) a mechanism for the investigation of complaints against the crime commission or members or officers of the crime commission.

- (2) It is Parliament's intention that the investigation of criminal activity be conducted by the crime commission and other law enforcement agencies working cooperatively as partners to achieve optimal use of available law enforcement resources.

(3) However, Parliament recognises that the investigation of official misconduct should be undertaken independently of general law enforcement, and that the need for cooperation between law enforcement agencies may be subordinate to the need for independent investigation of official misconduct.

Dictionary

5. The dictionary in the schedule defines particular words used in this Act.

Meaning of “criminal paedophilia”

6.(1) “**Criminal paedophilia**” means activities involving—

- (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.

Meaning of “major crime”

7. “**Major crime**” means criminal activity, other than relevant criminal activity, that involves an indictable offence punishable on conviction by a term of imprisonment not less than 14 years.

Meaning of “organised crime”

8. “**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
- (c) substantial planning and organisation or systematic and continuing activity; and
- (d) a purpose to obtain profit, gain, power or influence.

Meaning of “relevant criminal activity”

9. A thing is “**relevant criminal activity**” if it involves—

- (a) criminal paedophilia; or
- (b) organised crime; or
- (c) 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.

References to criminal activity include suspected criminal activity

10. A reference to criminal paedophilia, major crime, organised crime or relevant criminal activity includes, in the context of investigation, suspected criminal paedophilia, suspected major crime, suspected organised crime and suspected relevant criminal activity.

**PART 2—QUEENSLAND CRIME COMMISSION AND
CRIME COMMISSIONER***Division 1—Queensland crime commission***Establishment**

11. The Queensland Crime Commission (“**QCC**”) is established.

QCC is a body corporate etc.

12.(1) QCC—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and

(c) may sue and be sued in its corporate name.

(2) QCC consists of the following members—

- (a) the crime commissioner who is the chairperson;
- (b) each assistant crime commissioner.

(3) QCC is—

- (a) a unit of public administration under—
 - (i) the *Criminal Justice Act 1989*; and
 - (ii) the *Public Sector Ethics Act 1994*; and
- (b) a statutory body under the *Financial Administration and Audit Act 1977*; and
- (c) an exempt public authority under the Corporations Law.

(4) Judicial notice must be taken of the imprint of QCC's seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

Division 2—Crime commissioner and assistant commissioners

Crime commissioner and assistant crime commissioners

13.(1) There is to be a crime commissioner and there may be 1 or more assistant crime commissioners.

(2) The crime commissioner is the chief executive officer of QCC and the accountable officer of QCC for the *Financial Administration and Audit Act 1977*.

Appointment of crime commissioner and assistant crime commissioners

14.(1) The crime commissioner and assistant crime commissioners are to be appointed by the Governor in Council.

(2) A person is qualified for appointment as the crime 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.

(3) A person is qualified for appointment as an assistant crime commissioner if the person is nominated for appointment by the Minister.

(4) However, a person is not qualified for appointment as a commission member if the person has been found guilty of an indictable offence.¹

(5) The *Criminal Law (Rehabilitation of Offenders) Act 1986*, sections 6, 8 and 9,² do not apply in relation to the appointment of a commission member.

(6) The commission members are to be appointed under this Act, and not under the *Public Service Act 1996*.

(7) The crime commissioner must be appointed on a full-time basis.

(8) An assistant crime commissioner may be appointed on a full-time or part-time basis.

Establishment of selection panel

15.(1) The Minister must establish a selection panel to consider applicants for appointment as commission members.

(2) The panel must include—

(a) the Minister; and

(b) 3 persons appointed by the Minister, at least 2 of whom have expertise in the commission's functions.

(3) The Minister must invite the person recognised in the Legislative Assembly as the Leader of the Opposition to be a panel member or to nominate another member of the Assembly to be a panel member in place

¹ Under the *Acts Interpretation Act 1954*, section 36, “indictable offence” is defined as follows—

‘ “**indictable offence**” includes an act or omission committed outside Queensland that would be an indictable offence if it were committed in Queensland.’

² *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)

of the leader.

(4) If the leader accepts the Minister's invitation, the leader or the leader's nominee is a panel member.

Nomination for appointment as commission member

16. The Minister may nominate a person for appointment as a commission member only after—

- (a) advertising for applications; and
- (b) consulting with the other selection panel members.

Duration of appointment

17. A commission member holds office for the term, not longer than 5 years, stated in the instrument of appointment.

Terms of appointment

18.(1) A commission member is to be paid the remuneration and allowances decided by the Governor in Council.

(2) A commission member holds office on the terms, not provided for in this Act, decided by the Governor in Council.

Preservation of rights

19.(1) This section applies if a public service officer is appointed as a commission member.

(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 a commission member 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 a commission member; and

- (b) the person's service as a commission member 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.

Leave of absence

20. The Minister may grant leave of absence to a commission member on the terms the Minister considers appropriate.

Resignation

21. A commission member may resign by signed notice given to the Minister.

Termination of appointment

22.(1) The Governor in Council may terminate the appointment of a commission member if the member—

- (a) becomes incapable of satisfactorily performing the member's duties; or
- (b) is guilty of misconduct that could warrant dismissal from the public service if the member were a public service officer; or
- (c) is an undischarged bankrupt or is taking advantage of the laws in force relating to bankrupt debtors; or
- (d) is absent from duty or from the State, without the Minister's leave and without reasonable excuse, for 7 consecutive days or 14 days in a year.

(2) The Governor in Council must terminate a commission member's appointment if the commission member—

- (a) is found guilty of an indictable offence; or
- (b) engages in paid employment outside the duties of office without the Minister's approval.

Acting commission members

23.(1) The Governor in Council may appoint a person, who is qualified for appointment as the crime commissioner, to act as the crime commissioner—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the crime commissioner 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, who is qualified for appointment as an assistant crime commissioner, to act as an assistant crime commissioner—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when an assistant crime commissioner is absent from duty or from the State or, for another reason, can not perform the duties of the office.

Disclosure of pecuniary interests by commission members

24.(1) QCC must keep a register of each commission member's pecuniary interests at the time of the member's appointment as a commission member or acquired by the member during his or her term of office as a commission member.

(2) Each commission member must give to QCC, the Minister and the management committee—

- (a) as soon as practicable after the member's appointment as a commission member—a written summary of the member's pecuniary interests at the time of the member's appointment; and
- (b) within 30 days after any substantial change in the member's pecuniary interests—written information of the change.

(3) The register and record kept under subsection (1) must be updated at least once during each 12 month period of a commissioner member's term of office.

Division 3—QCC staff and agents

QCC staff

25.(1) QCC staff are to be employed under the *Public Service Act 1996*.

(2) QCC 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 to it.

Engagement of agents

26.(1) To meet temporary circumstances, QCC may engage suitably qualified persons (each a “**QCC agent**”) to provide it with services, information or advice.

(2) A person engaged under subsection (1) is engaged on the terms and conditions decided by QCC and not under the *Public Service Act 1996*.

Counsel assisting

27. With the approval of the management committee, QCC may engage, under section 26, a lawyer to assist it as counsel, either generally or in relation to a particular matter or matters.

Division 4—QCC Functions

QCC’s functions

28.(1) QCC has the following functions—

- (a) to investigate relevant criminal activity or major crime referred to it by the management committee;
- (b) when conducting investigations, to gather evidence for—
 - (i) the prosecution of persons for offences; and
 - (ii) the recovery of the proceeds of relevant criminal activity or major crime;
- (c) to refer evidence of official misconduct in its possession to the

CJC;

- (d) to undertake tasks the management committee may lawfully ask QCC to undertake;
- (e) to maintain an effective intelligence service about relevant criminal activity and major crime, and to monitor the intelligence data collected with a view to forecasting trends in relevant criminal activity and major crime;
- (f) to liaise with, provide information to, and receive information from, other law enforcement agencies, including agencies outside the State or Australia, about relevant criminal activity and major crime.

(2) The conferral of functions on QCC under subsection (1) does not limit the power of the police service or another law enforcement agency to perform the functions, but each law enforcement agency, including QCC, is to use its best endeavours to work cooperatively with each other law enforcement agency to achieve optimal use of available resources.

Crime commissioner may ask for reference or change to reference

29.(1) The crime commissioner may, if he or she considers it appropriate, ask the management committee to refer to QCC for investigation—

- (a) relevant criminal activity; or
- (b) a major crime.

(2) The request must be written and may be supported by any written submission the crime commissioner considers appropriate.

(3) The crime commissioner may, if he or she considers it appropriate, ask the management committee to change the terms of an existing reference.

Division 5—QCC's interaction with other entities

Police task forces to assist QCC

30.(1) The management committee may make arrangements with the police commissioner for the establishment of a police task force to help QCC carry out an investigation.

(2) The task force is, subject to subsection (3), under the control and direction of the police commissioner.

(3) The management committee may give directions or guidelines to QCC and the police commissioner for the establishment of the task force, and QCC and the police commissioner must comply with the directions or guidelines.

Liaison with other entities

31.(1) QCC may liaise with, give information about criminal activity to, and receive information about criminal activity from—

- (a)** other law enforcement agencies, including agencies outside the State or Australia; or
- (b)** if the management committee approves—other entities, including entities outside the State or Australia.

(2) With the approval of the management committee, QCC may enter into operational agreements with other entities, including an entity mentioned in section 45(1)(b)(ii)³, for the giving of information to help QCC perform its investigative function.

QCC may give information to other entities

32. Without limiting anyone's right to start a prosecution for an offence, if QCC has evidence of an offence against a law of the State, the Commonwealth or another State, QCC may give the evidence to the law enforcement agency QCC considers appropriate.

³ Section 45 (Management committee's functions)

CJC to be advised of official misconduct

33.(1) If QCC has evidence of official misconduct, QCC must advise the CJC of the official misconduct as soon as practicable.

(2) If the advice is likely to prejudice an investigation QCC is conducting, QCC need not advise the CJC until QCC is satisfied the advice is not likely to prejudice the investigation.

(3) QCC must advise the parliamentary commissioner of a decision under subsection (2) not to advise the CJC of evidence of official misconduct.

(4) The parliamentary commissioner must monitor the delay in giving the evidence to the CJC and decide when it must be given to the CJC.

Division 6—Public sittings**Public sittings**

34.(1) With the approval of the management committee, QCC may hold sittings in public to inform the public of, or receive submissions about, the general conduct of its operations.

(2) The sitting must be conducted by 1 or more commission members.

(3) QCC must not divulge in the course of a sitting any matter the disclosure of which to members of the public could prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

Division 7—Delegations and authorised QCC officers**Delegation**

35.(1) The crime commissioner may delegate QCC's powers to—

- (a) an assistant crime commissioner; or
- (b) an appropriately qualified QCC officer.

(2) Subsection (1) does not apply to a QCC power that, under the

provision of an Act conferring the power, is to be exercised by a stated person.

(3) The crime commissioner may delegate the crime commissioner's powers to—

- (a) an assistant crime commissioner; or
- (b) an appropriately qualified QCC officer.

(4) In this section—

“appropriately qualified” means having the qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

The level at which a person is employed in QCC.

Authorised QCC officer

36.(1) The crime commissioner may authorise an appropriately qualified officer or employee of QCC to perform the functions of, exercise the powers of, or for any purpose to be, an authorised QCC officer under a provision of this Act or another Act.

(2) An authorisation may be given on conditions.

(3) The crime commissioner, an assistant crime commissioner and a police officer who is a member of a police task force is an authorised QCC officer for all purposes.

(4) A reference in a provision of this or another Act to an authorised QCC officer is a reference to a person who is an authorised QCC officer under this section.

(5) In this section—

“appropriately qualified” includes having the qualifications, experience or standing appropriate to perform the function of, exercise the power of, or to be, an authorised QCC officer.

Example of ‘standing’—

The level at which a person is employed in or engaged by QCC.

Division 8—QCC’s annual report**Annual report**

37.(1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the crime commissioner must prepare and give to the Minister a written report about the operation of QCC during the year.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

(3) Each annual report of QCC must include the following—

- (a) a description of the matters that were referred during the year to QCC for investigation;
- (b) a description, which may include statistics, of relevant criminal activity or major crime that has come to the attention of QCC during the year;
- (c) the extent to which its investigations have resulted in the prosecution in the year of persons for offences;
- (d) particulars of any arrest warrants issued under this Act during the year;
- (e) particulars of the number and results of—
 - (i) applications to appeal and appeals under section 109⁴; and
 - (ii) other court proceedings involving QCC; that were decided, or otherwise disposed of, during the year;
- (f) another matter decided by the management committee.

(4) A report by QCC under this section must not—

- (a) identify persons as being suspected of having committed offences; or
- (b) identify persons as having committed offences, unless the persons have been convicted of the offences.

⁴ Section 109 (Appeals to Supreme Court)

(5) QCC must take reasonable care to ensure in an annual report the identity of a person is not revealed if to reveal it might, having regard to any material appearing in the report, prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

(6) A report containing particulars of arrest warrants must not reveal the identity of persons against whom the warrants were issued.

PART 3—MANAGEMENT COMMITTEE

Division 1—Establishment of management committee

Establishment of management committee

38. The Queensland Crime Commission Management Committee (“**management committee**”) is established.

Membership of management committee

39.(1) The management committee consists of the following committee members—

- (a) the crime commissioner who is the chairperson of the management committee;
- (b) the police commissioner;
- (c) the chairperson of the CJC;
- (d) the chairperson of the national crime authority;
- (e) the chairperson of the parliamentary committee;
- (f) the deputy chairperson of the parliamentary committee;
- (g) the Queensland Children’s commissioner;
- (h) 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) For an appointment of a person as a community representative, the Minister must cause notification of the Minister's intention to make a nomination to the Governor in Council to be advertised statewide, calling for applications from suitably qualified persons to be considered for nomination.

(3) Before making the nomination to the Governor in Council, the Minister must consult with the person recognised in the Legislative Assembly as the Leader of the Opposition.

(4) The following persons are not eligible to be appointed as a community representative—

- (a) a police officer;
- (b) a member or officer of the CJC;
- (c) another person holding an office or appointment in a unit of public administration;
- (d) a person who has been convicted of an indictable offence;
- (e) a person who is an undischarged bankrupt or is taking advantage of the laws in force relating to bankrupt debtors.

Deputy committee member

40.(1) The police commissioner may appoint as the commissioner's deputy for a management committee meeting an officer holding rank equal to or higher than assistant commissioner ("**deputy committee member**").

(2) The chairperson of the CJC may appoint as the chairperson's deputy for a management committee meeting another member of the CJC (also a "**deputy committee member**").

(3) The chairperson of the national crime authority may appoint as the chairperson's deputy for a management committee meeting a person nominated by the chairperson (also a "**deputy committee member**").

(4) If the police commissioner or either chairperson appoints a deputy committee member for a management committee meeting, the deputy is

taken to be the committee member for whom the person is deputy at the meeting.

Duration of appointment of appointed member

41. An appointed member holds office for the term, not longer than 3 years, stated in the instrument of appointment.

Terms of appointment of appointed member

42.(1) An appointed member is appointed on a part-time basis.

(2) An appointed member holds office on the terms, not provided for in this Act, decided by the Governor in Council.

Resignation of appointed member

43. An appointed member may resign by signed notice given to the Minister.

Termination of appointment of appointed member

44.(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 committee 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 Governor in Council must terminate the appointment of a person as an appointed member, if the person is convicted of an indictable offence.

Division 2—Functions

Management committee's functions

45.(1) The management committee has the following functions—

- (a) to refer, as provided under this Act, relevant criminal activity and major crime to QCC for investigation;
- (b) to arrange for, and coordinate to the extent the committee considers appropriate, joint investigations into relevant criminal activity or major crime by—
 - (i) QCC; and
 - (ii) a police task force or another entity;
- (c) to receive complaints made against, or concerns expressed about, the conduct or activities of QCC or a QCC officer;
- (d) to review and monitor generally the work of QCC.

(2) The crime commissioner must give the management committee reasonable administrative services and support to enable the committee to perform its functions.

Division 3—Referrals

Referrals to QCC

46.(1) The management committee may refer relevant criminal activity to QCC for investigation—

- (a) on its own initiative; or
- (b) at the request of the police commissioner; or
- (c) at the request of the crime commissioner.

(2) The management committee may refer major crime to QCC for investigation at the request of the police commissioner.

(3) The referral must be written.

(4) The committee may, on its own initiative, refer relevant criminal

activity to QCC for investigation only if it is satisfied—

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

(5) The committee may, at the request of the police commissioner, refer suspected relevant criminal activity or a major crime to QCC for investigation only if it is satisfied—

- (a) the police service has carried out an investigation into the relevant criminal activity or major crime that has not been effective; and
- (b) further investigation into the relevant criminal activity or 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 relevant criminal activity or major crime to QCC.

(6) Without limiting the matters to which the committee may have regard in deciding whether it is in the public interest to refer the relevant criminal activity or major crime to QCC, the committee may have regard to the following matters—

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

(7) Despite this section, QCC is taken to have a standing reference from the management committee to investigate criminal paedophilia.

Management committee may give QCC directions about investigations

47.(1) The management committee may give QCC directions imposing limitations on an investigation, including limitations on the exercise of QCC's powers for the investigation.

(2) The committee may also direct QCC to end a particular 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 QCC is an unjustifiable use of resources.

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

Referrals to police service

48.(1) The management committee may refer criminal activity to the police commissioner for investigation if it is satisfied that the complaint is not appropriate for investigation or continued investigation by QCC.

(2) The referral must be written.

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

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

Division 4—Management committee powers and associated QCC duties

Management committee may obtain information from QCC

49.(1) QCC must keep the management committee informed of the

general conduct of its operations in the performance of its functions.

(2) If the management committee asks QCC to give to it information concerning a matter relating to QCC's operations in the performance of its functions, QCC must comply with the request and give the help the committee needs to consider the information.

(3) Information provided to the management committee is provided on a confidential basis.

Management committee may give directions and guidelines to QCC

50.(1) The management committee may give directions or guidelines to QCC about—

- (a) the performance of its functions; or
- (b) its internal management.

(2) QCC must comply with the directions or guidelines.

Division 5—Complaints

Complaints

51.(1) If the management committee receives a complaint that provides evidence of official misconduct against QCC or a QCC officer, the management committee must refer the complaint to the CJC.

(2) If the management committee receives a complaint against QCC or a QCC officer about a matter other than official misconduct, the management committee may take action about the complaint it considers appropriate, including—

- (a) making inquiries; and
- (b) referring the complaint to another entity for action.

Division 6—Meetings and other business of management committee**Meaning of “required minimum number” of committee members**

52. In this division—

“**required minimum number**” of committee members means the number that is half the number of committee members of which the management committee for the time being consists or, if that number is not a whole number, the next higher whole number.

Conduct of meetings and other business

53. Subject to this division, the management committee may conduct its business, including its meetings, in the way it considers appropriate.

Times and places of meetings

54.(1) Meetings of the management committee are to be held at the times and places the committee decides.

(2) However, the crime commissioner—

- (a) may at any time convene a meeting; and
- (b) must convene a meeting when asked by at least the required minimum number of committee members.

Presiding at meetings

55.(1) The crime commissioner is to preside at all meetings at which the crime commissioner is present.

(2) If the crime commissioner is not present at a meeting, the committee member chosen by the committee members present at the meeting is to preside.

Quorum and voting at meetings

56. At a management committee meeting—

- (a) the required minimum number of committee members constitute

a quorum; and

- (b) a question is to be decided by a majority of the votes of the committee members present and voting; and
- (c) each committee member present has a vote on each question arising for decision and, if the votes are equal, the committee member presiding also has a casting vote.

Participation in meetings by telephone etc.

57.(1) The management committee may permit its members to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed circuit television; or
- (c) another means of communication permitting contemporaneous communication with other committee members.

(2) A committee member who participates in a committee meeting under a permission under subsection (1) is taken to be present at the meeting.

Resolutions without meetings

58.(1) If at least a majority of committee members sign a document containing a statement that they are in favour of a resolution stated in the document, a resolution in those terms is taken to have been passed at a committee meeting held—

- (a) on the day on which the document is signed; or
- (b) if the committee members do not sign it on the same day, the day on which the last of the members constituting the majority signs the document.

(2) If a resolution is, under subsection (1), taken to have been passed at a committee meeting, each committee member must be advised immediately of the matter and given a copy of the terms of the resolution.

(3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more committee members, are taken to constitute a single document.

Minutes

59. The committee must keep minutes of its proceedings.

PART 4—PARLIAMENTARY COMMISSIONER*Division 1—Functions***Functions of parliamentary commissioner for this Act**

60. The parliamentary commissioner has the following functions for this Act—

- (a) to conduct an annual review of intelligence data in the possession of QCC, the police service and the CJC;
- (b) to review a QCC decision to deny access to the CJC to information, a document or a thing in QCC's possession;
- (c) to advise the management committee on the results of performing the functions mentioned in paragraph (a) or (b);
- (d) other functions expressly stated in any provisions of this Act.

*Division 2—Reviews***Intelligence data review**

61.(1) The parliamentary commissioner must conduct an annual review of intelligence data in the possession of QCC, the police service and the CJC (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 other agencies.

(3) The parliamentary commissioner must—

- (a) prepare written advice on the review containing the commissioner's findings and recommendations; and
- (b) give the advice to the management committee.

(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 his or her advice, have regard to the need for the investigation of official misconduct to be undertaken independently of general law enforcement.⁵

(6) The parliamentary commissioner must conduct the first annual review under this section within 12 months of the later of the following days—

- (a) the day this section commences;
- (b) the day the first parliamentary commissioner is appointed.

(7) Each subsequent 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.

CJC access review

62.(1) This section applies if—

- (a) the CJC asks QCC for access to information, a document or thing in the possession of QCC relating to official misconduct; and

⁵ See, for example, the *Criminal Justice Act 1989*, section 58(2)(c).

- (b) QCC decides to deny access to the information, document or thing; and
- (c) the parliamentary commissioner is satisfied that the information, document or thing may be relevant to a CJC investigation.

(2) The parliamentary commissioner may, at the CJC's request, review QCC's decision to deny access.

Parliamentary commissioner to decide whether access to be given

63. The parliamentary commissioner must decide whether the CJC is to be given access, wholly or partly, to the information, document or thing for its investigation.

Division 3—Powers

Powers—general

64.(1) The parliamentary commissioner has power to do all things necessary or convenient for the performance of his or her functions under this Act.

(2) For the performance of his or her functions, the parliamentary commissioner may, by order given to the crime commissioner, require a QCC officer to do 1 or more of the following—

- (a) produce to the parliamentary commissioner, or allow the parliamentary commissioner unrestricted access to, all records, files and documents in QCC's possession;
- (b) give to the parliamentary commissioner all reasonable help in connection with the parliamentary commissioner performing his or her functions.

(3) If documents are produced to the parliamentary commissioner under this division, the parliamentary commissioner may keep the documents for the period the parliamentary commissioner considers necessary for the proper performance of the parliamentary commissioner's functions.

(4) While the parliamentary commissioner has possession of a document under subsection (3), 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.

(5) A person to whom an order under subsection (2) is directed must comply with the order.

Powers—intelligence data

65.(1) The parliamentary commissioner may recommend that an agency remove a restriction it has placed on intelligence data in the agency's possession to allow another agency access to the data.

(2) The parliamentary commissioner must advise the management committee of the recommendation.

(3) In this section—

“agency” means QCC, the police service or the CJC.

Powers—CJC access review

66.(1) For section 63⁶, the parliamentary commissioner may, by order, give the CJC access to the information, document or thing mentioned in the section if the parliamentary commissioner is satisfied that—

- (a) the information, document or thing is relevant to the CJC's investigation; and
- (b) access to the information, document or thing will help the CJC in its investigation; and
- (c) on balance, the benefit in giving access to the information, document or thing outweighs the detriment that may result if access is given; and
- (d) giving access to the information, document or thing is not otherwise against the public interest.

(2) The parliamentary commissioner's order may authorise access to the information, document or thing subject to conditions, including, for example, a condition on who may have access to the information, document

⁶ Section 63 (Parliamentary commissioner to decide whether access to be given)

or thing.

(3) QCC must comply with an order under subsection (1).

(4) The parliamentary commissioner must advise the management committee of the order under subsection (1).

Division 4—General

Confidentiality obligations not to apply

67.(1) No obligation to maintain secrecy or other restriction on the disclosure of information, a document or thing in QCC’s possession, whether imposed under this or another Act or by a rule of law, applies to the disclosure of information, a document or thing under this part to—

- (a) the parliamentary commissioner; or
- (b) at the parliamentary commissioner’s order—the CJC.

(2) In this section—

“**disclosure**”, of an information, document or thing, includes giving, and giving access to, the information, document or thing.

“**QCC**” includes a QCC officer.

Protection of parliamentary commissioner

68.(1) The parliamentary commissioner is not liable, whether on the ground of want of jurisdiction or on another ground, to any civil or criminal proceeding to which the commissioner would be liable apart from this section for any act done or purportedly done under this part in good faith and without negligence.

(2) No civil or criminal proceeding may be brought against the parliamentary commissioner 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 parliamentary commissioner has not acted in good faith or has acted negligently.

(4) The parliamentary commissioner may not be called to give evidence

or produce any document or thing in any proceeding, about anything coming to the commissioner's knowledge while performing functions under this part.

PART 5—PUBLIC INTEREST MONITOR

Public interest monitor

69.(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) The *Public Service Act 1996* does not apply to the appointment of a monitor.

(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 Queensland Children's Commissioner;
- (b) QCC;
- (c) the CJC;
- (d) the director of public prosecutions;
- (e) the office of the director of public prosecutions;
- (f) the police service.

Monitor's functions

70.(1) The public interest monitor has the functions mentioned in subsection (2) for surveillance warrants and covert search warrants.

(2) The functions are—

- (a) to monitor compliance by QCC with this Act in relation to matters concerning applications for surveillance warrants and covert search warrants; and
- (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 83(5)⁷, to test the validity of the application, and for that purpose at the hearing—
 - (i) present questions for the applicant to answer and examine or cross examine any witness;
 - (ii) 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 management committee a report on noncompliance by QCC with this Act.

(3) Subject to the direction of the public interest monitor, a deputy public interest monitor has the functions mentioned in subsection (2)(a), (b) and (c).

Monitor's annual report

71.(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.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

(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

⁷ Section 83 (Emergency use of surveillance devices)

conducted.

(4) The public interest monitor's report may form part of another annual report the monitor is required to prepare under another Act.

Secrecy

72.(1) A person who is or was a monitor must not record, use or disclose information obtained under this Act and that came to the person's knowledge because of the person's involvement in the administration of this Act.

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

(2) Subsection (1) does not apply to a person's recording, use or disclosure of information in the performance of his or her functions under this Act.

(3) A person who is or was a monitor is not in any proceeding compellable to disclose information obtained under this Act and that came to the person's knowledge because of the person's involvement in the administration of this Act.

PART 6—POWERS

Division 1—Units of public administration

Commission member may require information etc. from units of public administration

73.(1) A commission member may, by written notice given to a person holding an appointment in a unit of public administration, require the person to give a stated QCC officer, within the reasonable time and in the way stated in the notice, information stated in the notice that—

- (a) is in the unit's possession; and
- (b) is relevant to an investigation being conducted by QCC.

(2) A commission member may, by written notice given to a person holding an appointment in a unit of public administration, require the person—

- (a) to attend, at a reasonable time and place stated in the notice, before a stated QCC officer; and
- (b) to produce at the time and place to the officer a document or thing stated in the notice that—
 - (i) relates to the exercise by the unit of its functions; and
 - (ii) is relevant to an investigation being conducted by QCC.

(3) The person must not fail to comply with a notice under subsection (1) or (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—85 penalty units or 1 year's imprisonment.

(4) If the person claims to the QCC officer to have a reasonable excuse mentioned in subsection (3), the officer must—

- (a) if satisfied that the claim is justified—inform the person that the requirement will not be insisted on; or
- (b) otherwise—inform the person that the officer is not satisfied the claim is justified and advise the person that the person may be required to attend before a QCC hearing to establish the reasonable excuse.

(5) For subsections (3) and (4), a claim of reasonable excuse includes a claim on the grounds of privilege.

(6) A failure to comply with a notice under subsection (1) or (2) is excused if a provision of another Act prescribed under a regulation for this subsection excuses it.

(7) In this section—

“holding an appointment”, in a unit of public administration, means holding an office, place or position in the unit, whether the appointment is by way of election or selection.

Division 2—Search warrants generally

Search warrant

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

(2) If it is intended to do anything that may cause structural damage to a building, the application must be made to a Supreme Court judge.

(3) The application must—

- (a) be sworn and state the grounds on which the warrant is sought; and
- (b) include information required under a regulation about any warrants issued within the previous year in relation to the place or a person suspected of being involved in the commission of the relevant criminal activity or the major crime to which the application relates.

(4) The magistrate or judge (the “**issuer**”) may refuse to consider the application until the applicant 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.

(5) The issuer may issue the warrant only if satisfied there are reasonable grounds for suspecting there is at the place, or is likely to be at the place within the next 72 hours, evidence of the commission of relevant criminal activity or a major crime .

(6) The warrant must state—

- (a) that a stated QCC officer, all QCC officers, or all police officers, may enter the place and exercise the powers under section 75; and
- (b) if the warrant is issued in relation to—
 - (i) a relevant criminal activity or a major crime—the relevant criminal activity or major crime for which the warrant is

issued; or

- (ii) a forfeiture proceeding—the Act under which the forfeiture proceeding is authorised; and
- (c) any evidence 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 warrant ends 7 days after it is issued or, if it relates to something likely to be at a place within the next 72 hours, 72 hours after it is issued.

(7) The issuer may, in the warrant, direct the person in possession of documents at the place to give to the QCC officer or police officer all documents that are evidence of the commission of the relevant criminal activity or the major crime.

(8) If the issuer gives a direction under subsection (7), the warrant must also state that failure, without reasonable excuse, to comply with the direction may be dealt with as contempt of the court.

(9) In this section—

“**place**” does not include a public place.

Powers for search warrants

75.(1) An authorised QCC officer or police officer has the following powers under a search warrant—

- (a) power to enter the place specified in the warrant (the “**relevant place**”) and to stay on it for the time reasonably necessary to exercise powers mentioned in paragraph (b) to (m);
- (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 on the relevant place for the time reasonably necessary to find out if the person has anything sought

under the warrant;

- (f) if the police officer reasonably suspects a person on the relevant place has been involved in the commission of the relevant criminal activity or the major crime to which the warrant relates (“**the relevant criminal activity or the major crime**”)—power to detain the person for the time taken to search the place;
- (g) power to dig up land;
- (h) if authorised under the warrant—power to search anyone found in the relevant place for anything sought under the warrant that can be concealed on the person;
- (i) power to seize a thing found at the relevant place, or on a person found at the relevant place, that the QCC officer or police officer reasonably suspects may be evidence of the commission of the relevant criminal activity or the major crime;
- (j) power to muster, hold and inspect any animal the QCC officer or police officer reasonably suspects may provide evidence of the commission of the relevant criminal activity or the major crime;
- (k) power to photograph anything the police officer reasonably suspects may provide evidence of the commission of the relevant criminal activity or the major crime;
- (l) 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 relevant criminal activity or the major crime;
- (m) if authorised under the warrant—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 relevant criminal activity or the major crime that may be concealed in a vehicle at, a place with appropriate facilities for searching the vehicle.

(2) Subsections (3) to (7) apply to a search of a person.

(3) An authorised QCC officer or police officer may require the person to remove items of clothing.

(4) However, if it is necessary for the person to remove all clothing other than underwear, or all clothing, the search must be conducted in a place providing reasonable privacy for the person.

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

- (a) an authorised QCC officer or police officer of the same sex as the person to be searched; or
- (b) if there is no authorised QCC officer or police officer of the same sex available to search the person—someone else acting at the direction of an authorised QCC officer or police officer and of the same sex as the person to be searched; or
- (c) a doctor acting at the direction of an authorised QCC officer or police officer.

Example—

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

(6) If the authorised QCC officer or police officer seizes clothing because of the search, the officer must ensure the person is left with or given reasonably appropriate clothing.

(7) Also, if it is impracticable to search for a thing that may be concealed on a person where the person is, the authorised QCC officer or police officer may take the person to a place with adequate facilities for conducting the search.

Search to prevent loss of evidence

76.(1) This section applies if an authorised QCC officer reasonably suspects that—

- (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 relevant criminal activity or a major crime being investigated by QCC; and
- (b) the thing may be concealed or destroyed unless the place is immediately entered and searched.

(2) The authorised QCC officer may enter the place and exercise the

powers under section 75 (other than power to do something that may cause structural damage to a building) as if they were conferred under a search warrant.

(3) As soon as reasonably practicable after exercising the powers, the authorised QCC officer must apply to a magistrate for an order approving the search.

(4) The magistrate may make an order approving the search only if satisfied—

(a) in the circumstances existing before the search—

(i) the QCC officer, before exercising the powers, had a reasonable suspicion for exercising the powers; and

(ii) there was a reasonable likelihood that the evidence would be concealed or destroyed; or

(b) having regard to the nature of the evidence found during the search it is in the public interest to make the order.

(5) If the magistrate refuses to make an order under this section, the magistrate may order that the QCC officer retain, dispose of, return or destroy anything seized.

(6) Within 28 days after a magistrate orders the disposal, return or destruction of a thing, the authorised QCC officer may appeal against the order to the Supreme Court.

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

(8) The court may order the retention, disposal, return or destruction of the thing.

Supplying warrant copy, officer's details, receipt for seized thing etc.

77.(1) This section applies if a QCC officer or police officer—

(a) searches a place under a warrant under this division; or

(b) seizes any property under a warrant under this division.

(2) The officer must give to the occupier of the place a copy of the warrant and a statement summarising the person's rights and obligations

under the warrant.

(3) If the occupier is not present, the officer must leave the copy at the place in a reasonably secure way and in a conspicuous place.

(4) Also 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 QCC officer or police officer;
- (b) the officer's name; and
- (c) if the QCC officer is a police officer—his or her rank and station.

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

(6) If 2 or more officers are searching a place only the officer in charge of the search is required to comply with subsections (4) and (5), unless a person asks another officer for the information.

(7) As soon as practicable after a thing is seized under the warrant by a QCC officer or police officer, the officer must give a receipt for it to the person from whom it was seized.

(8) The receipt must describe the thing seized and include any information statement that may be required under a regulation.

(9) However, if for any reason it is not practicable to comply with subsection (7), the officer must leave the receipt at the place of seizure in a reasonably secure way and in a conspicuous position.

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

Requirements after property is seized

78.(1) Within 28 days after a QCC officer or police officer seizes anything under a warrant under this division, the officer must apply to a magistrate for an order under subsection (4) about the thing seized, unless—

- (a) a proceeding has been started about the thing seized; 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 under the authority of another Act.

(2) The QCC officer or police officer must also make an application to a magistrate for an order under subsection (4) about the thing seized within 28 days of either of the following happening—

(a) a proceeding started about the thing is discontinued without any order being made about it;

(b) the consent to the continued keeping of the thing, previously given by the owner or 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 129⁸

(4) The magistrate may, in relation to the thing, order—

(a) that it be kept in the possession of QCC or another law enforcement agency until the end of any proceeding involving the thing and any appeal; 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 dealt with by way of proceeding under the *Justices Act 1886*, section 39⁹ or a forfeiture proceeding; or

(d) that it be disposed of or destroyed in the way the magistrate orders.

Access to seized things

79. Until a seized thing is returned or otherwise finally dealt with, QCC, or another law enforcement agency in whose possession it is, must allow its

⁸ Section 129 (Record of execution of warrant)

⁹ *Justices Act 1886*, section 39 (Power of court to order delivery of certain property)

owner at any reasonable time—

- (a) to inspect it; or
- (b) if it is a document—to make copies of it.

Return of seized things

80. QCC, or another law enforcement agency in whose possession a seized thing is, must return the seized thing 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 QCC or the other law enforcement agency stops being satisfied its retention as evidence is necessary.

Division 3—Surveillance powers

Certain Acts do not apply to this part

81. The *Libraries and Archives Act 1988* and the *Freedom of Information Act 1992* do not apply to activities or records under this part.

Surveillance warrants

82.(1) This section applies if the crime commissioner reasonably believes a person (the “**suspect**”) is or has been involved in relevant criminal activity or a major crime being investigated by QCC.

(2) An authorised QCC officer may, with the crime commissioner’s approval, apply for a warrant (“**surveillance warrant**”) authorising the use of a surveillance device.

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

(4) If the application is for a surveillance warrant for—

- (a) a class A device or a class A and a class B device to be used together—the application must be made to a Supreme Court

judge; or

(b) a class B device—the application must be made to a magistrate.

(5) The application must—

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

(b) include information stated under a regulation about any warrants issued in relation to the place or suspect stated in the application within the previous year.

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

(7) The judge or magistrate (the “**issuer**”) may refuse to consider the application until the applicant 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.

(8) The issuer must hear the application in the absence of anyone other than the following—

(a) the applicant;

(b) a monitor;

(c) someone the issuer permits to be present;

(d) a lawyer representing anyone mentioned in paragraphs (a) to (c).

(9) Also, the issuer must hear the application—

(a) in the absence of the suspect or anyone likely to inform the suspect of the application; and

(b) without the suspect having been informed of the application.

(10) In particular, and being mindful of the highly intrusive nature of a surveillance warrant, the issuer must consider the following—

(a) the nature and seriousness of the relevant criminal activity or the major crime;

(b) for a class A device—if the warrant is issued, the likely extent of

interference with the privacy of—

- (i) the suspect; or
- (ii) any other occupant of the place;
- (c) the extent to which issuing the warrant would help prevent, detect or provide evidence of the relevant criminal activity or the major crime;
- (d) the benefits derived from the issue of any previous surveillance warrants in relation to the suspect;
- (e) the extent to which police officers investigating the offence 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 relevant criminal activity or the major crime;
- (g) how much the use of conventional ways of investigation would prejudice the investigation of the relevant criminal activity or the major crime because of delay or for another reason;
- (h) any submissions made by the monitor.

(11) The issuer may issue the warrant if satisfied there are reasonable grounds for believing a person at, in or on a place or likely to be at, in or on a public place or class of place mentioned in the application is or is likely to be involved in relevant criminal activity or a major crime being investigated by QCC mentioned in the application.

(12) However, if, under a surveillance warrant for a class A device, a visual surveillance device is to be installed in a dwelling, the issuer must specify in the warrant the parts of the dwelling in which the device may be installed.

(13) Also, the issuer must not issue a warrant for the use of a class A device in the office of a practising lawyer unless the application for the warrant relates to the lawyer's involvement in relevant criminal activity or a major crime being investigated by QCC.

(14) The warrant must authorise a stated QCC officer or all authorised

QCC officers to exercise the powers under section 84¹⁰.

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

- (a) a condition requiring regular reporting to the issuer or a monitor 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 suspect is or will be in the place where the device is to be used.

Example for subsection (15)(b)—

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

(16) The issuer may, after considering any report made under subsection (15)(a), require the destruction of any recordings made that are not related to the relevant criminal activity or the major crime mentioned in the warrant, unless the recording relates to an investigation by QCC of other relevant criminal activity or another major crime.

(17) A surveillance warrant is in force for 30 days or a shorter time stated in the warrant and may be extended from time to time on application.

(18) The provisions of this section for an application for a warrant apply to an application for an extension with all necessary changes.

(19) Despite subsection (17), the warrant stops having effect before the end of the period mentioned in subsection (17) if the investigation under the warrant ends, unless, while using the surveillance device under the warrant for the original investigation, evidence is gained of other relevant criminal activity or another major crime.

(20) Despite the *Recording of Evidence Act 1962*, a transcript of the application or any order made on it must not be made.

(21) A person must not publish a report of a proceeding on an application under subsection (2) or (17).

¹⁰ Section 84 (Powers under surveillance warrant)

Maximum penalty for subsection (21)—85 penalty units or 1 year's imprisonment.

(22) A person is not entitled to search information in the custody of a court in relation to an application under subsection (2) or (17), unless a judge otherwise orders.

Emergency use of surveillance devices

83.(1) This section applies if the crime commissioner reasonably believes—

- (a) there is a risk of serious injury to a person from relevant criminal activity or a major crime being investigated by QCC; and
- (b) using a surveillance device may help reduce the risk.

(2) With the approval of the crime commissioner, an authorised QCC officer may authorise the use of a surveillance device.

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

(4) For using a surveillance device under an authority under this section, QCC officer may exercise any of the powers a QCC officer may exercise under a surveillance warrant.

(5) Within 2 working days after authorising the use of a surveillance device, the authorised QCC officer must apply to a Supreme Court judge for approval of the exercise of the powers under subsection (2).

(6) Section 82(5) to (10) and (20) to (22) applies to the application with all necessary changes, including that a reference to a warrant is taken to be a reference to an approval.

(7) The judge may require the destruction of any recordings made that were not related to relevant criminal activity or major crime being investigated by QCC.

(8) After considering the application, the Supreme Court judge may approve the exercise of the powers under subsection (2).

(9) Evidence obtained because of the exercise of powers approved under subsection (8) is admissible in a proceeding for an offence.

(10) Information obtained under this section may be provided to any

person or organisation involved in helping reduce the risk of serious injury to a person.

Powers under surveillance warrant

84. A QCC officer who executes a surveillance warrant has the following powers under the warrant—

- (a) for a surveillance warrant—
 - (i) for a class A device—power to enter a place or class of place stated in the warrant, covertly or through subterfuge, to install, maintain, replace or remove a surveillance device; or
 - (ii) for a class B device—power to enter a vehicle or another moveable object, or open a thing, to install, maintain, replace or remove a tracking device;
- (b) for a listening device or visual surveillance device—power to intercept and record conversations and monitor and record visual images even though it may otherwise be an offence under the *Invasion of Privacy Act 1971*;
- (c) power to take electricity for using a surveillance device;
- (d) power to use reasonable force to install, maintain, replace or remove a surveillance device;
- (e) power to use 1 or more surveillance devices, whether of the same or a different kind, in the same place;
- (f) power to pass through, over, under or along a place to get to the place where the surveillance device is to be used.

Disclosure of information obtained using surveillance warrant

85.(1) This section applies to information that has not been disclosed in a proceeding in open court and was obtained by using a listening device or a visual surveillance device under the powers of a surveillance warrant (the “**relevant information**”).

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

- (a) the judge or magistrate who issued the warrant or who is hearing an application for an extension of the warrant or an application under section 83¹¹ or an application for a warrant in relation to the same or a different person; or
- (b) a court taking evidence about a charge of an offence in which the information is evidence; or
- (c) the crime commissioner or a person authorised by the crime commissioner;
- (d) a QCC officer, police officer or other law enforcement officer involved in—
 - (i) the investigation into the relevant criminal activity or the major crime 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
- (e) a declared law enforcement agency; or
- (f) a public prosecutor but only for use in a proceeding in which the information is evidence or for an application for an extension of the warrant or for an application under section 83 or for the issue of another surveillance warrant; or
- (g) a lawyer representing a person in a proceeding in which the information is evidence; or
- (h) a monitor; or
- (i) a person transcribing or making copies of recordings.

Register to be kept

86.(1) QCC must keep a register of information disclosed under section 85(2)(d)(ii) or (e).

(2) QCC must keep the register in a secure place.

¹¹ Section 83 (Emergency use of surveillance devices)

(3) The register must state—

- (a) the name of the person to whom the information is disclosed; and
- (b) brief particulars of the information disclosed and the reasons for disclosing it; and
- (c) when the information was disclosed.

(4) The register is not open to inspection by anyone other than—

- (a) a police officer or declared law enforcement agency conducting an investigation in which the information may be relevant; or
- (b) the monitor; or
- (c) the Supreme Court judge or the magistrate who issued or extended the warrant.

(5) This section does not apply to information that has been used in a proceeding as evidence.

Destruction of records

87.(1) QCC must keep all information obtained under the powers of a surveillance warrant and transcripts of recordings made under the powers in a secure place.

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

(3) Subsection (2) does not prevent information relevant to any offence of which anyone has been convicted being preserved for any period or indefinitely if there is any possibility that an issue about the conviction may arise.

Covert search warrants

88.(1) An authorised QCC officer, with the crime commissioner's approval, may apply to a Supreme Court judge for a warrant under this section (a "**covert search warrant**") to enter and search a place for evidence of relevant criminal activity or a major crime being investigated by

QCC.

(2) For subsection (1), an authorised QCC 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) include information about any warrants issued in relation to the place or suspect stated in the application within the previous year.

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

(5) The judge may refuse to consider the application until the QCC 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.

(6) The judge must hear the application 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).

(7) Also the judge must hear the application—

- (a) in the absence of the suspect or anyone likely to inform the suspect of the application; and
- (b) without the suspect having been informed of the application.

(8) Before issuing the warrant, and being mindful of the highly intrusive nature of a covert search warrant, the judge must consider the following—

- (a) the nature and seriousness of the relevant criminal activity or major crime;
- (b) the extent to which issuing the warrant would help prevent, detect

or provide evidence of, the relevant criminal activity or major crime;

- (c) the benefits derived from any previous covert search warrants, search warrants or the use of any surveillance device in relation to the suspect or place;
- (d) the extent to which anyone investigating the relevant criminal activity or the major crime has 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 relevant criminal activity or the major crime;
- (f) how much the use of conventional ways of investigation would prejudice the investigation of the relevant criminal activity or the major crime;
- (g) any submissions made by a monitor.

(9) The judge may issue the warrant only if satisfied there are reasonable grounds for believing there is, in or on a place, evidence of relevant criminal activity or a major crime that QCC is investigating.

(10) The warrant must state—

- (a) that a stated QCC officer, or all authorised QCC officers, may, with reasonable help and force, enter the place, covertly or by subterfuge and exercise the powers under section 89; and
- (b) the relevant criminal activity or the major crime for which the warrant was issued; and
- (c) any evidence or samples of evidence that may be seized under the warrant; and
- (d) that the warrant may be executed at any time of the day or night; and
- (e) that the search must be videotaped; and
- (f) the date when the warrant ends.

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

(12) A covert search warrant is in force for 30 days or a shorter period stated in the warrant, and may be extended from time to time on application, but ends immediately after the initial search ends.

(13) The provisions of this section for an application for a warrant apply to an application for an extension with all necessary changes.

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

(15) A person must not publish a report of a proceeding under this section.

Maximum penalty for subsection (15)—85 penalty units or 1 year’s imprisonment.

(16) 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.

Powers for covert search warrant

89. A QCC officer who executes a covert search warrant has the following powers under the warrant—

- (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 on it 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 in the relevant place that is locked;
- (e) power to seize a thing or part of a thing found on the relevant place that the QCC officer reasonably believes is evidence of the commission of relevant criminal activity or the major crime stated in the warrant; or
- (f) power to photograph anything the QCC officer reasonably

believes may provide evidence of the commission of relevant criminal activity or the major crime stated in the warrant;

- (g) power to inspect or test anything found on the place.

Report on covert search

90.(1) Within 7 days after executing a covert search warrant, the applicant must give to the Supreme Court judge who issued the warrant and a monitor a report containing information required under a regulation on the exercise of the powers under the warrant.

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

(3) The judge may, in relation to a thing mentioned in subsection (2), order that—

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

Application of the Invasion of Privacy Act

91. A listening device used for the interception of private conversations under the authority of a surveillance warrant—

- (a) for the *Invasion of Privacy Act 1971*, section 45(2) or 47—is to be taken to have been used under an authorisation given under section 43(2)(c)(i) of that Act; and
- (b) for the *Invasion of Privacy Act 1971*, part 4, other than section 45(2) or 47—is not to be taken to have been used in contravention of section 43¹² of that Act.

¹² *Invasion of Privacy Act 1971*, section 45 (Prohibition on communication or publication of private conversations by parties thereto), section 47 (Destruction of irrelevant records made by the use of a listening device), part 4 (Listening devices), section 43 (Prohibition on use of listening devices)

Division 4—Warrants register**Register of warrants and applications for warrants**

92.(1) QCC must keep a register of applications for warrants under division 2 or 3 in the way QCC considers appropriate.

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

- (a) QCC;
- (b) a QCC officer making an application for a warrant under division 2 or 3;
- (c) a monitor;
- (d) the parliamentary commissioner.

Division 5—Notice to produce**Notice to produce**

93.(1) The crime commissioner may, by notice (“**notice to produce**”) given to a person, require the person to produce, within a stated time, to a stated QCC officer a specified document or thing that the crime commissioner believes, on reasonable grounds, is relevant to an investigation being conducted by QCC.

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

(3) The notice to produce may require the immediate production of a document or thing to a stated QCC officer if the crime commissioner 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.

(4) The notice to produce may also provide that the person must not disclose information contained in the notice, as defined under

section 119(5)¹³, to anyone.

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

Maximum penalty for subsection (5)—85 penalty units or 1 year's imprisonment.

(6) For subsection (5), a claim of reasonable excuse includes a claim on the grounds of privilege.

(7) A document produced under this section is taken to have been seized under a warrant under division 2.

Notice to produce—claim of privilege

94.(1) This section applies if—

- (a) a person is given a notice to produce that requires the person to produce a stated document or thing to a stated QCC officer; and
- (b) the person acknowledges that the document or thing is in the person's possession; and
- (c) the person claims to have reasonable excuse for not complying with the notice.

(2) QCC's representative must—

- (a) advise the person that the person may be required to attend before a QCC hearing to establish the reasonable excuse; and
- (b) require the person to immediately seal the document or thing and give it to QCC's representative for safe keeping.

(3) The person must immediately seal the document or thing and give it to QCC's representative for safe keeping.

Maximum penalty for subsection (3)—85 penalty units or 1 year's imprisonment.

(4) QCC's representative must—

- (a) give the person a receipt for the sealed document or thing; and

¹³ Section 119 (Disclosures about QCC notices)

- (b) place it in safe custody at QCC's place of business at the earliest reasonable opportunity.

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

Maximum penalty for subsection (5)—85 penalty units or 1 year's imprisonment.

(6) QCC must return any sealed document or thing given to QCC's representative by a person under subsection (3) within 7 days if QCC has not by the end of that period given the person an attendance notice under section 95(1)(d).

(7) In this section—

“QCC's representative” means the QCC officer or other person who gives the notice to produce.

Division 6—Attendance notice

Attendance notice

95.(1) The crime commissioner may, by written notice (“**attendance notice**”), require a person to attend at a QCC hearing at a stated time and place until excused, for 1 or more of the following—

- (a) to give evidence;
- (b) to produce a stated document or thing;
- (c) to establish a reasonable excuse claimed in relation to stated information or document or thing the person is required to give or produce under a written notice under section 73¹⁴;
- (d) to establish a reasonable excuse claimed in relation to a stated document or thing the person is required to produce under a notice to produce.

(2) On application by an authorised QCC officer, made with the approval of the crime commissioner, a Supreme Court judge may by written notice

¹⁴ Section 73 (Commission member may require information etc. from units of public administration)

(also an “**attendance notice**”) require a person to attend immediately at a QCC hearing at a stated place 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 QCC.

(3) An attendance notice must state, so far as reasonably practicable, the general nature of the matters about which the person may be questioned at the QCC hearing.

(4) An attendance notice need not comply with subsection (3) if the issuer is satisfied that, in the particular circumstances of an investigation to which the hearing relates, stating the matters would prejudice the effectiveness of the investigation.

(5) A failure to comply with subsection (3) does not prevent QCC from questioning the person about any matter that relates to an investigation.

Offence not to attend hearing

96. A person served with an attendance notice to attend at a QCC hearing 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 member until excused from further attendance.

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

Division 7—Arrest

Arrest warrant

97.(1) An authorised QCC officer, with the crime commissioner’s approval, may apply to a Supreme Court judge for a warrant for the arrest

of a person (“**arrest warrant**”) who has been given an attendance notice.

(2) The judge may issue a warrant for the arrest 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 QCC hearing as required by the notice; or
 - (ii) the person has made a representation that the person intends not to attend at a QCC 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.

(3) For subsection (2)(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.

(4) The arrest warrant authorises—

- (a) the arrest of the person; and
- (b) the person being brought immediately before a QCC hearing; and
- (c) the person being detained for that purpose until excused from attendance at the hearing by the presiding member at the hearing.

(5) Unless the arrest warrant otherwise provides, if the person is required to be detained overnight, QCC 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.

(6) The arrest warrant may be executed by any police officer or by any person to whom it is addressed.

(7) A person executing the arrest warrant may use the force that is reasonably necessary, including force to enter premises, to execute the warrant.

(8) The issue of an arrest warrant for the arrest of the person, or the arrest of the person under the arrest warrant, does not relieve the person from any

liability incurred by the person for noncompliance with the attendance notice.

(9) 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.

Division 8—General

QCC’s powers generally

98.(1) Without limiting QCC’s specific powers under this or another Act, QCC 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) Without limiting section 35¹⁵, the crime commissioner may exercise any power that may be exercised by QCC.

General power to seize evidence

99.(1) This section applies if a QCC officer or police officer 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 relevant criminal activity or a major crime that QCC 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 relevant criminal activity or major crime.

(3) Also, the officer may—

- (a) photograph the thing seized or the place from which the thing was

¹⁵ Section 35 (Delegation)

seized; and

- (b) stay on 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 warrant, section 90¹⁶ applies as if the thing had been seized under the warrant.

(5) Otherwise, section 78¹⁷ applies as if the thing had been seized under a warrant under part 6, division 2¹⁸.

PART 7—HEARINGS

QCC may hold hearings

100.(1) QCC may hold a hearing for an investigation.

(2) A hearing may be conducted by 1 or more commission members as decided by the crime commissioner.

(3) If the hearing is conducted by 1 commission member, the member is the presiding member for the hearing.

(4) If a hearing is conducted before more than 1 commission member, the presiding member for the hearing is—

- (a) if the crime commissioner is 1 of the members conducting the hearing—the crime commissioner; or
- (b) otherwise—the member appointed by the crime commissioner as the presiding member.

(5) A commission member may be the presiding member for a hearing only if the member is a lawyer.

(6) A commission member conducting a hearing is taken, for the purposes of the hearing, to be QCC.

¹⁶ Section 90 (Report on covert search)

¹⁷ Section 78 (Requirements after property is seized)

¹⁸ Part 6 (Powers), division 2 (Search warrants generally)

Conduct of hearings

101.(1) When conducting a hearing, QCC—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself of anything in the way it considers appropriate; and
- (c) may decide the procedures to be followed for the proceeding.

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

Hearings are closed

102.(1) A QCC hearing is not open to the public, unless the hearing is open to the public under subsection (2).

(2) The presiding member may open the hearing to the public if the management committee approves.

(3) The management committee may approve a hearing to be open to the public if it considers—

- (a) opening the hearing to the public 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; or
- (b) closing the hearing to the public would be unfair to a person or contrary to the public interest.

(4) The presiding member may give directions about who may be present during the hearing or part of the hearing.

(5) However, a lawyer representing the person giving evidence is entitled to be present during the giving of that person's evidence.

(6) A person must not be present at a hearing or part of a hearing, unless the person is authorised to be present because of—

- (a) a direction under subsection (4); or
- (b) an entitlement under subsection (5).

Maximum penalty for subsection (6)—85 penalty units or 1 year’s imprisonment.

(7) The presiding member must ensure a record is made of the name of each person present at the hearing and the time the person was present at the hearing.

(8) Each person lawfully present at the hearing may examine the record of the names and times.

Legal representation and examination

103.(1) A person giving evidence at a QCC hearing (“**witness**”) may be legally represented at the hearing.

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

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

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

Right to interpreter

104.(1) This section applies if the presiding member at a QCC 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 person is questioned, the presiding member must arrange for the presence of an interpreter and delay the questioning until the interpreter is present.

Refusal to produce—claim of reasonable excuse

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

- (a) if the document or thing is in the person's possession, in all cases bring the document or thing to the hearing; 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).

(3) A claim of legal professional privilege is not a reasonable excuse for subsection (1) 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 member must decide a claim of reasonable excuse mentioned in subsection (1)(b) under section 108.¹⁹

(5) 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
- (b) has no authority to waive the privilege;

the person must, if required by the presiding member—

- (c) tell the member the name and address of the person entitled to waive the privilege; and
- (d) seal the document or thing and at the hearing give it to QCC for safe keeping

Maximum penalty for subsection (5)—85 penalty units or 1 year's imprisonment.

(6) QCC must—

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

¹⁹ Section 108 (Presiding member must decide whether refusal to answer questions or produce documents or things is justified)

reasonable opportunity.

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

Maximum penalty for subsection (7)—85 penalty units or 1 year's imprisonment.

(8) QCC must return the sealed document or thing to the person who gave it to QCC if QCC has not within 3 months given the person entitled to waive the privilege a notice to attend a hearing and to produce the document or thing.

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

106.(1) If—

- (a) a person has given to a QCC representative under section 94(3)²⁰ a sealed document or thing; and
- (b) QCC has given the person a notice to attend a hearing to produce the document or thing;

QCC must return the sealed document or thing to the person at the hearing before the person is required at the hearing to produce the document or thing.

(2) If—

- (a) a person has given QCC under section 105(5)(d) a sealed document or thing; and
- (b) QCC has given another person a notice to attend a hearing to produce the document or thing;

QCC must give the document or thing to the person attending the hearing before the person is required at the hearing to produce the document or thing.

²⁰ Section 94 (Notice to produce—claim of privilege)

Refusal to take oath or affirmation or to answer question

107.(1) A person attending as a witness at a QCC hearing must not fail to take an oath or make an affirmation when required by the presiding member.

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

(2) A person attending as a witness at a QCC hearing must answer a question put to the person at the hearing.

Maximum penalty for subsection (2)—85 penalty units or 1 year's imprisonment

(3) 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.

(4) If the person—

- (a) 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) has no authority to waive the privilege;

the person must, if required by the presiding member, tell the member the name and address of the person to whom or by whom the communication was made.

Maximum penalty for subsection (4)—85 penalty units or 1 year's imprisonment.

Presiding member to decide whether refusal to answer questions or produce documents or things is justified

108.(1) This section applies if a person claims to have a reasonable excuse for not complying with a requirement made of the person at a QCC hearing to answer a question put to the person, or to produce a document or thing that the person was required to produce.

(2) The presiding member must decide whether or not there is a reasonable excuse.

(3) The presiding member must, after hearing the person's submissions decide—

- (a) that the requirement will not be insisted on; or
- (b) that the member is not satisfied the claim is justified.

(4) If the presiding member is not satisfied the claim is justified, the member must—

- (a) give the person reasons for the decision; and
- (b) order 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 109; and
- (c) advise the person that the person may appeal the decision to the Supreme Court within the time allowed under section 109.

(5) Failure to comply with an order under subsection (4)(b) to produce a document or thing is an offence against section 105(1)(b)²¹, subject to subsection (6).

(6) If—

- (a) the person is ordered to produce a document or thing under subsection (4); and
- (b) the person informs the commission member conducting the hearing that the person wishes to appeal or consider an appeal under section 109;

the person must immediately seal the document or thing and give it to QCC for safekeeping.

Maximum penalty for subsection (6)—85 penalty units or 1 year's imprisonment.

(7) QCC must—

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

(8) A person must not open the sealed document or thing unless

²¹ Section 105 (Refusal to produce—claim of reasonable excuse)

authorised to open it under this Act or a court order.

Maximum penalty for subsection (8)—85 penalty units or 1 year's imprisonment.

(9) If the person fails to apply for leave to appeal within the time allowed under section 109, or leave to appeal is refused under that section, QCC may access the document or thing.

Appeals to Supreme Court

109.(1) A person may appeal against a decision of a presiding member given under section 108(3)(b) if—

- (a) the person applies for leave to appeal the decision within 7 court days after the person is given the presiding member'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 QCC 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 member's decision about a document or thing; or
- (b) setting aside the presiding member's decision about a document or thing.

(6) If the court affirms the QCC member's decision about a document or thing, QCC 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 only appeal 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 QCC hearing.

(9) In this section—

“**court day**” means a day on which the relevant registry of the Supreme Court is open for business.

Restriction on use of privileged answers, documents and things disclosed or produced under compulsion

110.(1) This section applies if, at a QCC hearing—

- (a) before answering a question or producing a document or thing, the person claims that answering the question or producing the document or thing might otherwise be excused on a stated ground of privilege; 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 him or her; and
- (c) the presiding member conducting the hearing directs the person to answer the question or produce the document or thing.

(2) The answer, document or thing given or produced at the direction of the presiding member 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 commission member.

(4) Also, the document is admissible in a civil proceeding about a right or liability conferred or imposed by the document.

(5) The presiding member 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 member 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.

Publication of names, evidence etc.

111.(1) A person must not, without QCC's written consent, publish—

- (a) an answer given or document or thing produced at a QCC 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 QCC (“**witness**”) to be ascertained.

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

(2) A person does not contravene subsection (1) if—

- (a) 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; or
- (b) the publication is made for the purpose of making a submission to the management committee about the conduct of the QCC's investigation.

(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 paragraph has been generally

made known by the witness or by QCC.

(4) In this section—

“**publish**” includes publish to a single person, whether the publication is made orally or in writing.

QCC must give evidence to defence unless court certifies otherwise

112.(1) This section applies if a person is charged with an offence before a court and anything stated at, or document or thing produced at, a QCC hearing (the “**evidence**”) is relevant evidence for the defence against the charge.

(2) On being asked by the defendant or the defendant’s lawyer, QCC 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 QCC 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 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 only be used for the defence to the charge.

(6) A person who uses the evidence as permitted under subsection (5) does not contravene section 111.²²

Protection of members, legal representatives and witnesses

113.(1) A commission member has, in the performance of the member’s duties for a QCC hearing, the same protection and immunity as a Supreme Court judge.

(2) A lawyer or other person when appearing for someone at a QCC hearing has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.

²² Section 111 (Publication of names, evidence etc.)

(3) A person required to attend or appearing at a QCC 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 produce, no civil liability attaches to the person for producing the document or thing, whether that liability would arise under a contract or otherwise.

Contempt of commission member

114. A person is in contempt of a commission member if the person—

- (a) insults the member while the member is conducting a QCC 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 member is conducting the hearing; or
- (e) does anything at the hearing or otherwise that would be contempt of court if the member were a judge acting judicially.

Punishment of contempt

115.(1) A person's contempt of a commission member conducting a QCC hearing may be punished under this section.

(2) The presiding member for the hearing may certify the contempt in writing to the Supreme Court (the "**court**").

(3) For subsection (2), it is enough for the presiding member to be satisfied that there is evidence of contempt.

(4) The presiding member may issue a warrant directed to a police

officer or all police officers for the arrest 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 Rules of the Supreme Court apply to the court's investigation, hearing and power to punish with all necessary changes.

(10) The presiding member's certificate of contempt is evidence of the matters contained in the certificate.

(11) The person is not excused from attending before a QCC hearing in obedience to an attendance notice merely because the person is punished or liable to punishment under this section for contempt of the commission member.

Conduct that is contempt and offence

116.(1) If conduct of an offender is both contempt of a commission member 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 a commission member.

Allowances for witness

117.(1) A person attending a QCC hearing under an attendance notice, or otherwise as a witness at the request of QCC, is entitled to be paid the allowances and expenses payable to a person appearing as a witness in a hearing before a Magistrates Court.

(2) The allowances and expenses are payable by QCC.

Legal assistance

118.(1) This section applies to a person who has been given a notice to attend a QCC hearing or who wishes to appeal, or has appealed, to the Supreme Court under section 109²³.

(2) The person may apply to the Attorney-General for financial assistance to enable the person to obtain legal services in connection with the hearing or appeal.

(3) The Attorney-General may approve the assistance if the Attorney-General considers—

- (a) a person may suffer substantial hardship if assistance is not given; or
- (b) in the particular circumstances, assistance should be given.

(4) The Attorney-General may decide the level of assistance and the conditions on which it is to be provided.

(5) The cost of the financial assistance must be met by QCC.

PART 9—OFFENCES**Disclosures about QCC notices**

119.(1) A person must not disclose any information contained in a QCC notice if the notice states the information must not be disclosed.

²³ Section 109 (Appeals to Supreme Court)

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

(2) Subsection (1) applies to the recipient or any person who has knowledge of the notice and the prohibition on disclosure mentioned in the subsection.

(3) A person does not contravene subsection (1) if—

- (a) the disclosure 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 the charged person’s lawyer; or
- (b) the disclosure is made for the purpose of—
 - (i) obtaining information from any person in compliance with the notice, if that person is advised by the discloser of any prohibition on disclosure stated in the QCC notice; or
 - (ii) making a submission to the management committee about the conduct of QCC’s investigation.

(4) Also, a person does not contravene subsection (1) by disclosing the identity of the recipient if—

- (a) the person is the recipient or the disclosure is made by a person with the recipient’s implied or express consent; or
- (b) the recipient’s identity has been made generally known by the recipient or by QCC.

(5) In this section—

“information contained in a QCC notice” means—

- (a) the recipient’s identity; or
- (b) a statement in the notice identifying—
 - (i) information, a document or thing, or an answer, the recipient is or may be required to give or produce in compliance with the notice; or
 - (ii) the purpose of the notice or the investigation to which it relates.

“QCC notice” means—

- (a) a notice under section 73²⁴; or
- (b) a notice to produce; or
- (c) an attendance notice.

“recipient” means the person to whom the QCC notice is given by QCC.

False or misleading statements or documents

120.(1) This section applies in relation to the performance of a function, or exercise of a power, by QCC or a QCC officer.

(2) A person must not state anything to QCC or a QCC officer that the person knows is false or misleading in a material particular.

Maximum penalty for subsection (2)—85 penalty units or 1 year’s imprisonment.

(3) A person must not give QCC or a QCC officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty for subsection (3)—85 penalty units or 1 year’s imprisonment.

(4) Subsection (3) does not apply to a person who, when giving the document—

- (a) informs QCC or the QCC officer, to the best of the person’s ability, how it is false or misleading; and
- (b) gives the correct information to QCC or the QCC officer if the person has, or can reasonably obtain, the correct information.

(5) It is enough for a complaint for an offence against subsection (2) or (3) to state the information or document was “false or misleading” to the person’s knowledge, without specifying which.

²⁴ Section 73 (Commission member may require information etc. from units of public administration)

Obstruction of QCC etc.

121.(1) A person must not obstruct QCC or a QCC officer in the performance of a function or the exercise of a power, unless the person has a reasonable excuse.

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

(2) In this section—

“**obstruct**” includes the following—

- (a) hinder;
- (b) resist;
- (c) attempt to obstruct.

Injury or detriment to witness etc.

122.(1) A person must not injure, or threaten to injure, or cause or threaten to cause detriment of any kind to, someone else because that other person, or any other person, or because he or she suspects that the other person or any other person—

- (a) attended as a witness before a QCC hearing; or
- (b) gave evidence, or is about to give evidence, before a QCC hearing; or
- (c) complied with, or is about to comply with, a notice under section 73²⁵, a notice to produce or attendance notice.

Maximum penalty—3 years imprisonment.

(2) An offence against subsection (1) is a misdemeanour.

Pretending to be a QCC officer

123. A person must not pretend to be a QCC officer.

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

²⁵ Section 73 (Commission member may require information etc. from units of public administration)

Indictable and summary offences

124. An offence against this Act, other than against section 122,²⁶ is a summary offence.

Proceedings for indictable offence

125.(1) A proceeding for an offence against section 122²⁷ may be taken, at the prosecution's election—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(2) A magistrate must not hear the offence summarily if—

- (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
- (b) the magistrate considers that the charge should be prosecuted on indictment.

(3) If subsection (2) applies—

- (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).²⁸

²⁶ Section 122 (Injury or detriment to witness etc.)

²⁷ Section 122 (Injury or detriment to witness etc.)

²⁸ *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

PART 10—GENERAL

Secrecy

126.(1) This section applies to—

- (a) a QCC officer; and
- (b) a member of the management committee; and
- (c) a person to whom information is given either by QCC 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 for subsection (2)—85 penalty units or 1 year's imprisonment.

(3) However, a person does not contravene subsection (2) if—

- (a) in the case of a record—the record is made for the purposes of QCC, this Act or an investigation of an alleged contravention of this section; or
- (b) in the case of a disclosure—the disclosure is made—
 - (i) for the purposes of QCC, this Act or an investigation of an alleged contravention of this section; or
 - (ii) at the direction of the parliamentary commissioner under part 4.

(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) QCC, or a commission member in the member'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.

Protecting officials from liability

127.(1) In this section—

“**official**” means—

(a) a QCC officer; or

(b) a person acting under the direction of a QCC officer.

(2) QCC or an official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(3) If subsection (2) prevents a civil liability attaching to QCC or an official, the liability attaches instead to the State.

(4) This section does not limit protection given to a person under another provision of this Act.

Protection of witnesses etc.

128.(1) This section applies if it appears to QCC the safety of a person may be at risk or the person may be subject to intimidation or harassment because the person—

(a) is to attend, is attending or has attended at a QCC hearing to give evidence or to produce a document or thing; or

(b) proposes to produce or has produced a document or thing to QCC otherwise than at a QCC hearing.

(2) QCC must, with the person’s consent, ask the CJC to provide witness protection for the person.

(3) If the CJC is satisfied that the person requires witness protection, the

CJC must provide the witness protection and the *Criminal Justice Act 1989*, part 2, division 10²⁹ applies accordingly.

Record of execution of warrant

129. A QCC 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 supplied—the name of the occupier of the place; and
- (d) his or her name, and if the QCC officer is a police officer, his or her rank and registered number.

Regulation-making power

130. The Governor in Council may make regulations under this Act.

Expiry

131. This Act expires 5 years after the date of assent.

PART 11—TRANSITIONAL PROVISIONS

Audit of investigations

132.(1) This section applies to any matter relating to relevant criminal activity or major crime that, as at the commencement of section 136(2)³⁰ has been investigated, is to be investigated, or is being considered for investigation, or intended to be considered for investigation, by the CJC.

²⁹ *Criminal Justice Act 1989*, part 2 (Criminal justice commission), division 10 (Witness protection division)

³⁰ Section 136 (Amendment of s 23 (Responsibilities))

(2) This section does not apply to any matter relating to official misconduct.

(3) The management committee has the function of deciding whether each current matter should be referred for investigation or continued investigation to—

- (a) the police commissioner; or
- (b) QCC; or
- (c) another law enforcement agency.

(4) The management committee has all necessary and convenient power to perform its function under subsection (3).

(5) The chairperson of the CJC must brief the management committee about each current matter to enable the management committee to perform its function under subsection (3).

(6) The chairperson of the CJC may recommend to the management committee the entity the chairperson considers most appropriate to undertake or continue the investigation.

(7) The management committee may also ask the parliamentary commissioner to consider a particular current matter and recommend the entity the commissioner considers most appropriate to undertake or continue the investigation.

(8) If the management committee decides to refer an investigation the CJC must give the entity to which the investigation is referred a full briefing on the investigation and the further help the entity reasonably requires to undertake or continue the investigation.

(9) The management committee may perform its function under subsection (3) before or after the commencement of section 136(2).

PART 12—AMENDMENT OF CRIMINAL JUSTICE ACT 1989

Act amended in pt 12

133. This part amends the *Criminal Justice Act 1989*.

Amendment of s 2 (Objects of Act)

134.(1) Section 2(a)(ii), after ‘inquiry’—

insert—

‘that relate to official misconduct or alleged or suspected misconduct by members of the police service’.

(2) Section 2(a)(iii) and (iv)—

omit.

Amendment of s 3 (Definitions)

135. Section 3—

insert—

‘**“monitor”** means the public interest monitor or a deputy public interest monitor.’.

Amendment of s 23 (Responsibilities)

136.(1) Section 23(d)—

omit, insert—

‘(d) undertaking intelligence activities to support its responsibilities in relation to official misconduct or alleged or suspected misconduct by members of the police service;’.

(2) Section 23(f)(iv)—

omit.

(3) Section 23(j), ‘(in particular, organised crime)’—
omit.

Amendment of s 29 (Role and functions)

137. Section 29(3)(b), after ‘1989’—

insert—

‘if the investigative work relates to official misconduct or alleged or suspected misconduct by members of the police service’.

Amendment of s 56 (Role and functions)

138. Section 56(3)(g)—

omit.

Amendment of s 58 (Role and functions)

139.(1) Section 58(1), from ‘commission’—

omit, insert—

‘commission responsible for providing an effective intelligence service for the commission.’.

(2) Section 58(2)(a), ‘criminal activities and persons concerned in criminal activities’—

omit, insert—

‘official misconduct and persons concerned in official misconduct or alleged or suspected misconduct by members of the police service’.

(3) Section 58(2)(b), ‘assume’—

omit, insert—

‘retain’.

(4) Section 58(2)(b), after ‘1989’—

insert—

‘that relate, wholly or partly, to official misconduct’.

(5) Section 58(2)(d) and (e)—
omit.

Amendment of s 82 (Authority to use listening devices)

140. Section 82—

insert—

‘(2A) The chairperson must advise the public interest monitor of the application under arrangements decided by the monitor.’.

Insertion of new pt 3, div 1A

141. Part 3—

insert—

‘Division 1A—Public interest monitor

‘Public interest monitor

‘**84A.(1)** The Governor in Council may appoint a person (the “**public interest monitor**”) to monitor applications under section 82(2)³¹ to approve the use of listening devices and monitor the use and effectiveness of the approvals.

‘(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) The *Public Service Act 1996* does not apply to the appointment of a monitor.

‘(5) A monitor must not be a person who is, or is a member of, or is employed in or by or to assist, any of the following—

- (a) the Queensland Children’s Commissioner;

³¹ *Criminal Justice Act 1989*, section 82 (Authority to use listening devices)

- (b) QCC;
- (c) the CJC;
- (d) the director of public prosecutions;
- (e) the office of the director of public prosecutions;
- (f) the police service.

‘Monitor’s functions

‘84B.(1) The public interest monitor has the functions mentioned in subsection (2) in relation to applications to approve the use of listening devices and those approvals.

‘(2) The functions are—

- (a) to monitor compliance by the commission with this Act in relation to matters concerning applications for approval for the use of listening devices; and
- (b) to appear at any hearing of an application to a Supreme Court judge for approval to use a listening device to test the validity of the application, and for that purpose at the hearing—
 - (i) present questions for the applicant to answer and examine or cross examine any witness;
 - (ii) make submissions on the appropriateness of granting the application; and
- (c) to gather statistical information about the use and effectiveness of approvals for the use of listening devices; and
- (d) whenever the monitor considers it appropriate—to give to the parliamentary committee a report on noncompliance by the commission with this Act.

‘(3) Subject to the direction of the public interest monitor, a deputy public interest monitor has the functions mentioned in subsection (2)(a), (b) and (c).

‘Monitor’s annual report

‘**84C.(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 approvals for the use of listening devices.

‘**(2)** The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

‘**(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, or is to be, investigated; or
- (b) indicates a particular investigation has been, is, or is to be conducted.

‘**(4)** The monitor’s report may form part of another annual report the monitor is required to prepare under another Act.

‘Secrecy

‘**84D.(1)** A person who is or was a monitor must not record, use or disclose information obtained under this Act and that came to the person’s knowledge because of the person’s involvement in the administration of this Act.

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

‘**(2)** Subsection (1) does not apply to a person’s recording, use or disclosure of information in the performance of his or her functions under this Act.

‘**(3)** A person who is or was a monitor is not in any proceeding compellable to disclose information obtained under this Act and that came to the person’s knowledge because of the person’s involvement in the administration of this Act.’

Amendment of s 88 (Publication of evidence)

142.(1) Section 88(2)—

omit, insert—

‘(2) The order does not prohibit a person summoned to attend before the commission making a submission to the parliamentary committee about the conduct of the commission’s investigation.

‘(2A) Also, the order does not prohibit the publication of matters mentioned in subsection (1)(a) or (b) if—

- (a) the publication is made by the person mentioned in subsection (1)(a) or (b) or with the person’s implied or express consent; or
- (b) the matter mentioned in subsection (1)(a) or (b) has been made generally known by the person mentioned in subsection (1)(a) or (b) or by the commission.’.

Amendment of s 123 (Application pursuant to s 82)

143. Section 123—

insert—

‘(6) This section applies subject to part 3, division 1A.’.

PART 13—AMENDMENT OF JUDICIAL REVIEW ACT 1991

Act amended in pt 13

144. This part amends the *Judicial Review Act 1991*.

Amendment of sch 2 (Decisions for which reasons need not be given)

145.(1) Schedule 2, section 1(c), after ‘section 71’—

insert—

‘and the *Crime Commission Act 1997*, sections 74 and 88³²’.

³² Sections 74 (Search warrant) and 88 (Covert search warrants)

(2) Schedule 2, section 4—

omit, insert—

‘Intelligence functions of criminal justice commission and Queensland crime commission

‘4. Decisions made by—

- (a) the intelligence division of the criminal justice commission under the *Criminal Justice Act 1989*, section 58³³ in the performance of its functions; or
- (b) the Queensland crime commission under the *Crime Commission Act 1997*, section 28(1)(e)³⁴ in the performance of its function to maintain an effective intelligence service about relevant criminal activity.’.

(3) Schedule 2, after section 5—

insert—

‘Certain decisions under the Crime Commission Act 1997

‘5A. Decisions made under the *Crime Commission Act 1997*, part 6, division 3.³⁵

PART 14—AMENDMENT OF PUBLIC SERVICE ACT 1996

Act amended in pt 14

146. This part amends the *Public Service Act 1996*.

³³ *Criminal Justice Act 1989*, section 58 (Role and functions)

³⁴ Section 28 (QCC’s functions)

³⁵ Part 6 (Powers), division 3 (Surveillance powers)

Amendment of s 109 (Who is a “term appointee”)

147. Section 109(3)—

insert—

‘(ea) the crime commissioner or an assistant crime commissioner appointed under the *Crime Commission Act 1997*;’.

**PART 15—AMENDMENT OF CRIMINAL JUSTICE
LEGISLATION AMENDMENT ACT 1997****Act amended in pt 15**

148. This part amends the *Criminal Justice Legislation Amendment Act 1997*.

Amendment of s 41 (Insertion of new ss 118A to 118F and new pt 4A)

149. Section 41, new *Criminal Justice Act 1989* section 118Q(1), after ‘parliamentary commissioner’s functions’—

insert—

‘under this or another Act’.

SCHEDULE**DICTIONARY**

section 5

“appointed member” of the Queensland Crime Commission management committee, see section 39(1)(h).

“arrest warrant” see section 97(1).

“assistant crime commissioner” see sections 13 and 14.

“attendance notice” see section 95.

“authorised QCC officer” see section 36.

“boat” includes a ship or other vessel of any size or type and however propelled or moved, including, for example, a rowing boat, hovercraft and a submersible vessel.

“CJC” means the criminal justice commission.

“class A device” means a surveillance device installed—

(a) in a private place, or on a suspect’s clothing, without the suspect’s consent; or

(b) in a public place;

but does not include a visual surveillance device installed in a public place or, with the occupier’s consent, a private place.

“class B device” means a tracking device installed in a vehicle or other moveable object without covert entry to a building by the person installing it.

“commission member” means the crime commissioner or an assistant crime commissioner.

“committee” means the management committee.

“covert search warrant” see section 88.

“crime commissioner” see sections 13 and 14.

SCHEDULE (continued)

“criminal paedophilia” see section 6.

“declared law enforcement agency” means an entity declared to be a law enforcement agency under a regulation.

“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.
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 a relevant criminal activity or a major crime”, includes—

- (a) a thing or activity that is or may provide evidence of the relevant criminal activity or the major crime; and
- (b) a thing that will, itself or by or on scientific examination, provide evidence of the commission of the relevant criminal activity or the major crime; and
- (c) a thing that is intended to be used for the purpose of committing the relevant criminal activity or the major crime; and
- (d) a thing that may be liable to forfeiture or may be used in evidence for a forfeiture proceeding.

“forfeiture proceeding” means a proceeding for the forfeiture or restraint of property under the *Crimes (Confiscation) Act 1989* or another Act.

SCHEDULE (continued)

“listening device” means any instrument, apparatus, equipment or device capable of being used to overhear, record, monitor or listen to a private conversation simultaneously with its taking place.

“major crime” see section 7.

“management committee” means the Queensland Crime Commission Management Committee established under section 38.

“monitor” means—

- (a) the public interest monitor appointed under section 69(1); or
- (b) a deputy public interest monitor appointed under section 69(2).

“national crime authority” means the national crime authority established under the *National Crime Authority Act 1984* (Cwlth).

“notice to produce” see section 93.

“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*.

“official misconduct” see the *Criminal Justice Act 1989*, sections 31 and 32.³⁶

“parliamentary commissioner” means the Parliamentary Criminal Justice Commissioner appointed under the *Criminal Justice Act 1989*.

“parliamentary committee” means the criminal justice committee of the Legislative Assembly.

“photograph” includes photocopy and videotape.

“place” includes—

- (a) premises; and

³⁶ *Criminal Justice Act 1989*, sections 31 (Official misconduct) and 32 (General nature of official misconduct)

SCHEDULE (continued)

- (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 commissioner” means the commissioner of the police service.

“police service” means the Queensland Police Service.

“police task force” means a task force under the authority of the police commissioner.

“possession” includes the following—

- (a) custody;
- (b) control.

“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 member”, for a QCC hearing, see section 100(3) and(4).

“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 indicate that either of those persons desires the words to be heard or listened to only by themselves and by some other person;

SCHEDULE (continued)

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 privilege recognised at law on the ground of—

- (a) self-incrimination; or
- (b) legal professional privilege;

and includes a claim, recognised at law, that giving the answer, or disclosing the communication or document, would be a breach of a statutory or commercial obligation or restriction to maintain secrecy.

“public prosecutor” means the director, deputy director, or another lawyer appointed under the *Director of Public Prosecutions Act 1984*.

“Queensland crime commission” means the Queensland Crime Commission established under section 11.

“QCC” means the Queensland crime commission.

“QCC agent” see section 26.

“QCC hearing” means a hearing under this Act conducted by a commission member.

“QCC officer” means—

- (a) a commission member; or
- (b) a person employed or made available under section 25; or
- (c) a person engaged under section 26; or
- (d) a police officer who is a member of a police task force established under section 30.

“relevant criminal activity” see section 9.

“search warrant” see section 74.

“surveillance device” includes—

SCHEDULE (continued)

- (a) a listening device; and
- (b) a visual surveillance device; and
- (c) a tracking device; and
- (d) a device containing any combination of the devices mentioned in paragraphs (a), (b) and (c).

“surveillance warrant” see section 82(2).

“unit of public administration” means—

- (a) the Criminal Justice Commission; or
- (b) a unit of public administration under the *Criminal Justice Act 1989*, section 3.

“vehicle” includes aircraft and boat.

“warrant register” see section 92.