



Queensland

Cross-Border Law Enforcement Legislation Amendment Act 2005

Act No. 45 of 2005



Queensland

Cross-Border Law Enforcement Legislation Amendment Act 2005

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Queensland

Cross-Border Law Enforcement Legislation Amendment Act 2005

Act No. 45 of 2005

**An Act to amend legislation relating to the enforcement of the
criminal law**

[Assented to 14 October 2005]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.

2 Commencement

- (1) This Act commences on a day to be fixed by proclamation.
- (2) The *Acts Interpretation Act 1954*, section 15DA does not apply to—
 - (a) part 2, division 3;¹ or
 - (b) part 3, division 3.²

Part 2 Amendment of Police Powers and Responsibilities Act 2000

Division 1 Preliminary

3 Act amended in pt 2 and sch 1

This part and schedule 1 amend the *Police Powers and Responsibilities Act 2000*.

1 Part 2 (Amendment of Police Powers and Responsibilities Act 2000), division 3 (Amendments relating to Australian Crime Commission activities)

2 Part 3 (Amendment of Evidence Act 1977), division 3 (Amendments relating to Australian Crime Commission activities)

Division 2 Amendments

4 Insertion of new s 4A

After section 4—

insert—

‘4A Act binds all persons

- ‘(1) This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- ‘(2) Nothing in this Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence.’.

5 Amendment of s 8 (Act does not affect court’s common law discretion to exclude evidence)

- (1) Section 8, heading, at the end—

insert—

‘or stay criminal proceedings’.

- (2) Section 8, after ‘discretion’—

insert—

‘or stay the proceeding in the interests of justice’.

6 Omission of ch 4, pt 2, hdg and divs 1–5

Chapter 4, part 2, heading and divisions 1 to 5—

omit.

7 Replacement of ch 4, pt 2, div 7, hdg

Chapter 4, part 2, division 7, heading—

omit, insert—

‘Part 5 Public interest monitor’.

8 Amendment of s 157 (Public interest monitor)

Section 157(1), from ‘to monitor’—

omit, insert—

‘to monitor—

- (a) applications for, and the use of, surveillance device warrants, retrieval warrants and covert search warrants; and
- (b) applications for approvals of the use of surveillance devices under emergency authorisations.’.

9 Amendment of s 159 (Monitor’s functions)

(1) Section 159(1), ‘surveillance warrants’—

omit, insert—

‘surveillance device warrants, retrieval warrants, approvals of the use of surveillance devices under emergency authorisations.’.

(2) Section 159(2)—

omit, insert—

‘(2) The functions are—

- (a) to monitor compliance by police officers with chapter 4A in relation to matters concerning applications for covert search warrants; and
- (b) to monitor compliance by law enforcement officers with chapter 5C in relation to matters concerning applications for surveillance device warrants, retrieval warrants and approvals of the use of surveillance devices under emergency authorisations; and
- (c) to appear at any hearing of an application to a Supreme Court judge for a warrant or approval mentioned in paragraph (a) or (b), or to a magistrate for a warrant mentioned in paragraph (b), to test the validity of the application, and for that purpose at the hearing, to—
 - (i) present questions for the applicant to answer and examine or cross-examine any witness; and

- (ii) make submissions on the appropriateness of granting the application; and
- (d) to appear at a consideration of a report made to a Supreme Court judge or a magistrate or given to the monitor and referred to a judge or magistrate under section 197ZZQ;³ and
- (e) to gather statistical information about the use and effectiveness of covert search warrants and surveillance device warrants; and
- (f) to report as required by this Act on any matter about which this Act expressly requires the public interest monitor to report; and
- (g) whenever the public interest monitor considers it appropriate—
 - (i) to give to the commissioner a report on noncompliance by police officers with chapter 4A; or
 - (ii) to give to the chief executive officer of a law enforcement agency a report on noncompliance by law enforcement officers of the law enforcement agency with chapter 5C.⁴
- (3) Section 159(3), ‘and (c)’—
omit, insert—
‘, (c), (d) and (e)’.

10 Amendment of s 160 (Monitor’s annual report)

- (1) Section 160(1), ‘surveillance warrants and’—
omit.
- (2) Section 160(1)—
insert—

³ Section 197ZZQ (Report to judge or magistrate)

⁴ Chapter 4A (Covert search warrants), chapter 5C (Surveillance device warrants)

Note—

Under section 197ZZW,⁵ the monitor, as inspection entity for the police service under chapter 5C, is also required to prepare reports on matters relating to surveillance device warrants and give the Minister a copy of the report.⁷

11 Renumbering and relocation of ch 4, pt 2, div 7

Chapter 4, part 2, division 7, as amended by sections 7 to 10—
relocate to chapter 11 as part 5 and *renumber* sections 157 to 162 as sections 443P to 443U.

12 Replacement of ch 5

Chapter 5—
omit, insert—

‘Chapter 5 Controlled activities

‘132 Object of ch 5

‘The object of this chapter is to ensure the effective investigation of offences by—

- (a) ensuring anything that may be approved or authorised under this chapter is approved or authorised only in appropriate circumstances; and
- (b) providing appropriate protection from civil and criminal liability for persons acting under this chapter; and
- (c) clarifying the status of evidence obtained by persons who engage in controlled activities under this chapter.

‘133 Relationship to other laws and matters

- ‘(1) This chapter is not intended to affect any other law of this State that authorises, controls or monitors the conduct of activities—

⁵ Section 197ZZW (Report on inspection)

- (a) that are for the purpose of obtaining evidence that may lead to the prosecution of a person for an offence; and
 - (b) that involve, or may involve, conduct for which participants in the operation would otherwise be criminally responsible.
- ‘(2) Also, this chapter is not intended to affect the investigation of minor matters or investigative activities that, by their nature, can not be planned but involve the participation of police officers in activities that may be unlawful.
- ‘(3) Subject to subsections (1) and (2), a controlled activity may be approved only under this chapter.

‘134 Lawfulness of particular actions

‘To remove doubt, it is declared—

- (a) that it is lawful for a police officer of at least the rank of inspector, acting in accordance with policies or procedures established by the commissioner, to authorise another police officer to engage in a stated controlled activity for the police service; and
- (b) that it is lawful for a person acting under an authority given under section 135 to engage in a controlled activity in accordance with the authority and policies or procedures established by the commissioner.

‘135 Authorised controlled activities

- ‘(1) This section applies if a police officer considers it is reasonably necessary for a police officer to engage in conduct that—
- (a) is directed to obtaining evidence of the commission of an offence against a particular person; and
 - (b) involves the following (a *controlled activity*)—
 - (i) a single meeting between the police officer and the person, whether or not the meeting was the result of a written or oral communication with the person;

- (ii) deliberately concealing the true purpose of the communication between the police officer and the person;
 - (iii) the police officer engaging in conduct for which, apart from section 136, the police officer would be criminally responsible.
- ‘(2) A police officer of at least the rank of inspector may, in accordance with any policy of the police service, authorise another police officer to engage in a stated controlled activity.⁶
- ‘(3) The authority must be written and state the controlled activity the police officer is authorised to engage in.
- ‘(4) A police officer authorised to engage in the controlled activity must comply with any relevant policy or procedure of the police service.
- ‘(5) In this section—
conduct includes any act or omission.

‘136 Protection from liability

- ‘(1) This section applies to each of the following persons (a *relevant person*)—
- (a) a person who authorised a controlled activity under section 135;
 - (b) a person who is or was authorised under this chapter to engage in a controlled activity.
- ‘(2) A relevant person does not incur civil liability for an act done, or omission made, in the honest belief that it was done or omitted to be done under this chapter.
- ‘(3) If subsection (2) prevents a civil liability attaching to the person, the liability attaches instead to the State.
- ‘(4) Also, a relevant person does not incur criminal liability for an act done, or omission made—

⁶ Under the *Freedom of Information Act 1992*, section 19 (Availability of certain documents) the policy documents must be made available for inspection and purchase by members of the community.

- (a) under an authority given for a controlled activity; and
 - (b) in accordance with the policy or procedure about controlled activities applying to the particular controlled activity.
- ‘(5) In addition, a relevant person does not incur criminal liability for an act done, or omission made, that, because of a controlled activity, was reasonably necessary for protecting the safety of any person.
- ‘(6) However, subsection (5) does not relieve a police officer from criminal liability for an act done or omission made if the act or omission results in—
- (a) injury to, or the death of, a person; or
 - (b) serious damage to property; or
 - (c) a serious loss of property.
- ‘(7) This section does not limit the *Police Service Administration Act 1990*, section 10.5.⁷

‘137 Admissibility of evidence obtained through controlled activities

‘It is declared that evidence gathered because of a controlled activity is not inadmissible only because it was obtained by a person while engaging in an unlawful act if the unlawful act was authorised under this chapter.

‘138 Evidentiary provision

‘In a proceeding, a certificate of the commissioner that on a stated day a stated person approved the conduct of a stated controlled activity is evidence of the things it states.

⁷ *Police Service Administration Act 1990*, section 10.5 (Liability for tort generally)

‘Chapter 5A Controlled operations

‘Part 1 Preliminary

‘139 Purposes of ch 5A

‘The main purposes of this chapter are—

- (a) to provide for the authorisation, conduct and monitoring of controlled operations, including operations conducted in this and 1 or more other jurisdictions, for the purpose of obtaining evidence that may lead to the prosecution of persons for particular offences and that involve or may involve conduct for which participants in the operation would, apart from this chapter, be criminally responsible; and
- (b) to facilitate the recognition of things done in relation to controlled operations authorised under laws of other jurisdictions corresponding to this chapter; and
- (c) to ensure, as far as practicable, only appropriately trained persons may act as participants in authorised operations; and
- (d) to ensure a person who may act as a participant in an authorised operation engages in otherwise unlawful activities only as part of the authorised operation; and
- (e) to provide appropriate protection from civil and criminal liability for persons acting under this chapter; and
- (f) to clarify the status of evidence obtained by participants in authorised operations.

‘140 Definitions for ch 5A

‘In this chapter—

authorised operation means a controlled operation for which an authority is in force.

authority means an authority in force under part 3,⁸ and includes any variation of an authority.

civilian participant in an authorised operation means a participant in the operation who is not a law enforcement officer.

committee means the controlled operations committee established under section 143.⁹

conduct includes any act or omission.

controlled conduct means conduct for which a person would, apart from section 169 or 176,¹⁰ be criminally responsible.

controlled operation means an operation that—

- (a) is conducted, or intended to be conducted, for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence; and
- (b) involves, or may involve, controlled conduct.

corresponding authorised operation means an operation in the nature of a controlled operation that is authorised by or under the provisions of a corresponding law.

corresponding authority means an authority authorising a controlled operation, within the meaning of a corresponding law, that is in force under the corresponding law.

corresponding participant means a person who is authorised by a corresponding authority to participate in a corresponding authorised operation.

criminal activity means conduct that involves the commission of an offence by 1 or more persons.

formal application see section 150(2)(a).¹¹

formal authority see section 156(1)(a).¹²

8 Part 3 (Authorisation of controlled operations)

9 Section 143 (Establishment of controlled operations committee)

10 Section 169 (Protection from criminal responsibility for controlled conduct during authorised operations) or 176 (Recognition of corresponding authorities)

11 Section 150 (Application for authority to conduct controlled operation)

12 Section 156 (Form of authority)

formal variation application see section 159(3)(a).¹³

formal variation of authority see section 164(1)(a).¹⁴

illicit goods means goods the possession of which is a contravention of the law of this jurisdiction.

inspection entity, for a law enforcement agency, means—

- (a) for the police service—the independent member of the committee; or
- (b) for the CMC—the parliamentary commissioner.

law enforcement participant in an authorised operation—

- (a) generally—means a participant in the operation who is a law enforcement officer; and
- (b) for an authorised operation being conducted for the CMC—includes a participant in the operation who is a law enforcement officer of a declared agency engaged by the CMC for the operation.

participant in an authorised operation means a person who is authorised under this chapter to engage in controlled conduct for the purposes of the operation.

principal law enforcement officer for an authorised operation means the law enforcement officer who is responsible for the conduct of the operation.

relevant offence means—

- (a) a seven year imprisonment offence; or
- (b) an indictable offence included in schedule 2.

report entity, for a law enforcement agency, means—

- (a) for the police service—the independent member of the committee; or
- (b) for the CMC—the parliamentary commissioner.

suspect means a person reasonably suspected of having committed or being likely to have committed, or of

13 Section 159 (Application for variation of authority)

14 Section 164 (Way to vary authority)

committing or being likely to be committing, a relevant offence.

urgent application see section 150(2)(b).¹⁵

urgent authority see section 156(1)(b).¹⁶

urgent variation application see section 159(3)(b).¹⁷

urgent variation of authority see section 164(1)(b).¹⁸

‘141 Relationship to other laws and matters

- ‘(1) This chapter is not intended to affect any other law of this jurisdiction that authorises, controls or monitors the conduct of operations entirely within this jurisdiction—
 - (a) that are for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence; and
 - (b) that involve, or may involve, conduct for which participants in the operation would otherwise be criminally responsible.
- ‘(2) Also, this chapter does not affect the *Crime and Misconduct Act 2001*, chapter 3, part 6A.¹⁹
- ‘(3) Also, this chapter is not intended to affect the investigation of minor matters or investigative activities in Queensland that, by their nature, can not be planned but involve the participation of law enforcement officers in activities that may be unlawful.
- ‘(4) Subject to subsections (1) to (3), a controlled operation may be approved only under this chapter.
- ‘(5) A function conferred in relation to the activities of the CMC under this chapter is only conferred for the purpose of a function conferred on the CMC under the *Crime and*

15 Section 150 (Application for authority to conduct controlled operation)

16 Section 156 (Form of authority)

17 Section 159 (Application for variation of authority)

18 Section 164 (Way to vary authority)

19 *Crime and Misconduct Act 2001*, chapter 3 (Powers), part 6A (Controlled operations and controlled activities for misconduct offences)

Misconduct Act 2001 relating to major crime as defined under that Act.

- ‘(6) In deciding whether evidence should be admitted or excluded in any proceeding, the fact that the evidence was obtained as a result of a person engaging in criminal activity is to be disregarded if—
- (a) the person was a participant or corresponding participant acting in the course of an authorised operation or corresponding authorised operation; and
 - (b) the criminal activity was—
 - (i) controlled conduct as defined under this chapter or controlled conduct as defined under a corresponding law; or
 - (ii) conduct for which the person is not criminally responsible because of section 169(2) or a corresponding provision of a corresponding law.²⁰

‘142 When a controlled operation is conducted in this jurisdiction

‘For this chapter, a controlled operation in relation to a relevant offence is taken to be conducted in this jurisdiction, whether or not it is also conducted in another jurisdiction, if a participant in the operation is a law enforcement officer of this jurisdiction.

Note—

This provision is intended to cover the situation where an officer of this jurisdiction is conducting an operation in another jurisdiction for the purposes of investigating an offence of this jurisdiction, for example, a Queensland officer is investigating a conspiracy to import drugs into Queensland from New South Wales, and the operation is to be conducted entirely in New South Wales.

²⁰ Section 169 (Protection from criminal responsibility for controlled conduct during authorised operations)

‘Part 2 Controlled operations committee

‘Division 1 Establishment

‘143 Establishment of controlled operations committee

- ‘(1) The controlled operations committee is established.
- ‘(2) The committee must include—
 - (a) an independent member; and
 - (b) the commissioner or the commissioner’s nominee; and
 - (c) the CMC chairperson or the chairperson’s nominee.
- ‘(3) The committee may also include anyone else the commissioner considers has appropriate knowledge or experience relevant to the performance of the committee’s functions.

‘144 Independent member

- ‘(1) The Minister may appoint a retired Supreme Court or District Court judge to be the independent member of the committee.
- ‘(2) Before appointing the independent member, the Minister must consult with the Premier and the Attorney-General about the proposed appointment.

‘145 Acting independent member

- ‘(1) The Minister may appoint a retired Supreme Court or District Court judge to act as the independent member—
 - (a) during any vacancy in the office; or
 - (b) during any period, or all periods, when the independent member is absent from duty or from the State or, for another reason, can not perform the duties of the office.

- ‘(2) Before appointing the acting independent member, the Minister must consult with the Premier and the Attorney-General about the proposed appointment.

‘Division 2 Functions, business and recommendations

‘146 Committee functions

‘The committee has the following functions—

- (a) to consider, and make recommendations about, applications referred to the committee by a chief executive officer for—
 - (i) an authority to conduct a controlled operation; or
 - (ii) variation of an authority for a controlled operation;
- (b) any other function conferred on it under this or another Act.

‘147 Committee business

- ‘(1) The committee may conduct its business only if the independent member is present.
- ‘(2) The committee may otherwise conduct its business, including its meetings, in the way it considers appropriate.
- ‘(3) The independent member is the chairperson of the committee.
- ‘(4) The chairperson must record the committee recommendations in the way the chairperson considers appropriate.

‘148 Committee recommendations

- ‘(1) After considering an application and any other relevant material referred to it by a chief executive officer, the committee may recommend that the officer grant or refuse to grant authority for a particular controlled operation.
- ‘(2) However, the committee may recommend the grant of authority for a controlled operation only if satisfied, having

regard to the nature and seriousness of the offence being or to be investigated, it is appropriate for persons to engage in controlled conduct for the purposes of gathering evidence that may lead to the conviction of a person for the offence.

‘Division 3 Protection

‘149 Protection for committee members

- ‘(1) A member of the committee does not incur civil liability for an act done, or omission made, under this chapter.
- ‘(2) If subsection (1) prevents a civil liability attaching to a member of the committee, the liability attaches instead to the State.
- ‘(3) Also, a member of the committee does not incur criminal liability for an act done, or omission made in accordance with an authority given for a controlled operation under this chapter because of a recommendation made by the committee.

‘Part 3 Authorisation of controlled operations

‘Division 1 Procedure for authorising controlled operations

‘150 Application for authority to conduct controlled operation

- ‘(1) A law enforcement officer of a law enforcement agency may apply to the chief executive officer of the agency for authority to conduct a controlled operation on behalf of the agency.
- ‘(2) An application for an authority may be made—
 - (a) by way of a written document signed by the applicant (a *formal application*); or

-
- (b) if the applicant reasonably believes that the delay caused by making a formal application may affect the success of the operation—orally in person or under section 451²¹ (an *urgent application*).
- ‘(3) Nothing in this part prevents an application for an authority being made for a controlled operation that has been the subject of a previous application, but in that case the subsequent application must be a formal application.
- ‘(4) In an application, whether formal or urgent, the applicant must—
- (a) provide sufficient information to enable the chief executive officer to decide whether or not to grant the application; and
- (b) state—
- (i) whether or not the proposed operation, or any other controlled operation in relation to the same criminal activity, has been the subject of an earlier application for an authority or variation of an authority; and
- (ii) if the proposed operation, or any other controlled operation in relation to the same criminal activity, has been the subject of an earlier application for an authority or variation of an authority, whether or not the authority was given or variation granted; and
- (iii) if the authority was given, the type of controlled operation authorised.
- ‘(5) In particular, the information mentioned in subsection (4)(a) must include the following for the proposed operation—
- (a) an identifying name or number;
- (b) a description of the criminal activity in relation to which it is proposed to conduct the operation;

21 Section 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

- (c) the name of each person who it is intended will act as a participant in the operation;
 - (d) a precise description of the controlled conduct a civilian participant will be required to engage in for the operation;
 - (e) a general description of the controlled conduct a law enforcement participant will be required to engage in for the operation.
- ‘(6) The chief executive officer may require the applicant to give additional information about the proposed controlled operation the chief executive officer considers appropriate for consideration of the application.
- ‘(7) As soon as practicable after making an urgent application, the applicant must make a record in writing of the application and give a copy of it to the chief executive officer.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.²²

‘151 Application must be referred to committee

- ‘(1) The chief executive officer must refer the application to the committee without deciding the application.
- ‘(2) However, if the chief executive officer considers the application does not have enough merit to justify referring it to the committee, the chief executive officer may refuse to refer the application to the committee.
- ‘(3) This section is subject to sections 152 and 153.

‘152 Particular CMC controlled operations

- ‘(1) This section applies to an application made to the CMC chairperson for authority to conduct a controlled operation if a person to be investigated by the CMC under the proposed controlled operation is or may be a police officer.

²² Part 6 (General), division 1 (Delegation)

- ‘(2) The chairperson may grant the authority without referring the application to the committee but, before granting the authority, the chairperson must consult with the independent member and obtain the independent member’s agreement to the proposed operation.
- ‘(3) However, the chairperson may grant an authority on an urgent application made to the chairperson without complying with subsection (2), but must consult with the independent member about the controlled operation as soon as possible after granting the authority.
- ‘(4) Sections 154 and 155(2) do not apply to an application under this section.

‘153 Procedure in urgent circumstances other than if s 152 applies

- ‘(1) This section applies to an urgent application for authority to conduct a controlled operation made to a chief executive officer.
- ‘(2) However, this section does not apply if section 152 applies.
- ‘(3) The chief executive officer may grant the authority without referring the application to the committee, but must refer the application to the committee as soon as practicable after granting the authority.
- ‘(4) Sections 154 and 155(2) do not apply to an application under this section.
- ‘(5) The committee may consider the application as if the application had not been granted.
- ‘(6) The chief executive officer must consider the committee’s recommendations on the application but is not bound by the recommendations.

‘154 Deciding application

‘After considering an application for authority to conduct a controlled operation, any additional information given under section 150(6), and any recommendations of the committee, the chief executive officer—

- (a) may authorise the operation by granting the authority, with or without conditions; or
- (b) may refuse the application.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

‘155 Matters to be taken into account

- ‘(1) An authority to conduct a controlled operation may not be granted unless the chief executive officer is satisfied on reasonable grounds—
 - (a) that a relevant offence has been, is being, or is likely to be committed; and
 - (b) that the nature and extent of the suspected criminal activity justifies the conduct of a controlled operation—
 - (i) in this jurisdiction; or
 - (ii) in this jurisdiction and a participating jurisdiction, if the controlled operation will be or is likely to be conducted in those jurisdictions; and
 - (c) that any unlawful conduct involved in conducting the operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and
 - (d) that the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of persons, other than law enforcement officers, at the end of the operation than are reasonably necessary to enable the officers to achieve the purpose of the controlled operation; and
 - (e) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the reporting requirements of part 5²³ to be complied with; and

- (f) that the operation will not be conducted in a way that makes it likely for a person to be induced to commit an offence against a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and
- (g) that any conduct involved in the operation will not—
 - (i) seriously endanger the health or safety of any person; or
 - (ii) cause the death of, or serious injury to, any person; or
 - (iii) involve the commission of a sexual offence against any person; or
 - (iv) result in serious loss of or serious damage to property, other than illicit goods; and
- (h) that any role given to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer; and
- (i) that any proposed participant in the operation has received appropriate training for the purpose.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

- ‘(2) Also, the chief executive officer must not grant authority for a controlled operation unless the committee has recommended that the authority be granted.

‘156 Form of authority

- ‘(1) An authority to conduct a controlled operation may be granted—
 - (a) by way of a written document, signed by the chief executive officer (a *formal authority*); or
 - (b) if the chief executive officer is satisfied that the delay caused by granting a formal authority may affect the

success of the operation—orally in person or under section 452²⁴ (an *urgent authority*).

- ‘(2) This part does not stop an authority being granted for a controlled operation that has been the subject of a previous authority, but in that case the subsequent authority must be a formal authority.
- ‘(3) An authority, whether formal or urgent, must—
- (a) state an identifying name or number for the operation; and
 - (b) state the name and rank or position of the person granting the authority; and
 - (c) state the name of the principal law enforcement officer for the operation and, if the principal law enforcement officer is not the applicant for the authority, the name of the applicant; and
 - (d) state whether the application was a formal application or an urgent application; and
 - (e) identify each person who may engage in controlled conduct for the purposes of the operation; and
 - (f) state the participating jurisdiction in which the controlled conduct is, or is likely to be, engaged in; and
 - (g) identify the nature of the criminal activity, including the suspected relevant offences, in relation to which the controlled conduct is to be engaged in; and
 - (h) identify—
 - (i) in relation to the law enforcement participants, the nature of the controlled conduct that those participants may engage in; and
 - (ii) in relation to the civilian participants, the particular controlled conduct, if any, that each of the participants may engage in; and
 - (i) identify, to the extent known, any suspect; and

24 Section 452 (Steps after issue of prescribed authority)

- (j) state the period of validity of the authority, of not more than 6 months for a formal authority or 7 days for an urgent authority; and
 - (k) state any conditions to which the conduct of the operation is subject; and
 - (l) state the date and time when the authority is granted; and
 - (m) identify, to the extent known—
 - (i) the nature and quantity of any illicit goods that will be involved in the operation; and
 - (ii) the route through which those goods will pass in the course of the operation.
- ‘(4) A person is sufficiently identified for subsection (3)(e) if the person is identified—
- (a) by an assumed name under which the person is operating; or
 - (b) by a code name or code number;
- if the assumed name, code name or code number can be matched to the person’s identity.
- ‘(5) The chief executive officer must ensure that written notes are kept of the particulars mentioned in subsection (3) for each urgent authority and issue a written authority to the applicant as soon as practicable.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

‘157 **Duration of authority**

‘Unless it is sooner cancelled, an authority has effect for the period of validity stated in it under section 156(3)(j).

‘Division 2 Variation and cancellation of authorities

‘158 Variation of authority

- ‘(1) The chief executive officer may vary an authority granted by the chief executive officer—
- (a) at any time on the chief executive officer’s own initiative; or
 - (b) on application under section 159.
- ‘(2) However, a variation can not be made that has the effect of extending the period of validity of an urgent authority.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.²⁵

‘159 Application for variation of authority

- ‘(1) The principal law enforcement officer for an authorised operation, or any other law enforcement officer on behalf of the principal law enforcement officer, may apply to the chief executive officer for a variation of authority for any 1 or more of the following purposes—
- (a) to extend the period of validity of the authority, other than as provided by section 158(2);
 - (b) to authorise additional or alternative persons to engage in controlled conduct for the purposes of the operation;
 - (c) to authorise participants in the operation to engage in additional or alternative controlled conduct;
 - (d) to identify additional suspects, to the extent known.
- ‘(2) More than 1 application for a variation may be made in relation to the same authority, but no single variation may extend the period of validity of an authority for more than 6 months at a time.

25 Part 6 (General), division 1 (Delegation)

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- ‘(3) An application for a variation of an authority may be made—
- (a) by way of a written document signed by the applicant (a *formal variation application*); or
 - (b) if the applicant reasonably believes that the delay caused by making a formal application for variation may affect the success of the operation—orally in person or under section 451²⁶ (an *urgent variation application*).
- ‘(4) In an application, whether formal or urgent, the applicant must state—
- (a) sufficient information to enable the chief executive officer to decide whether or not to grant the application; and
 - (b) whether or not the proposed variation, or any other variation in relation to the same authorised operation, has been the subject of an earlier application for a variation; and
 - (c) if the proposed variation, or any other variation in relation to the same authorised operation, has been the subject of an earlier application for a variation—
 - (i) whether or not the variation was granted; and
 - (ii) if the variation was granted, the type of variation granted.
- ‘(5) The chief executive officer may require the applicant to give additional information about the proposed variation the chief executive officer considers appropriate for consideration of the application.

‘160 Variation must be referred to committee

- ‘(1) The chief executive officer must refer the proposed variation to the committee without deciding it, whether the chief executive officer is acting under section 158(1)(a) or (b).²⁷

26 Section 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

27 Section 158 (Variation of authority)

- ‘(2) However, if—
- (a) the chief executive officer is acting under section 158(1)(b); and
 - (b) the chief executive officer considers the application does not have enough merit to justify referring it to the committee;
- the chief executive officer may refuse to refer the application to the committee.
- ‘(3) This section is subject to sections 161 and 162.

‘161 Particular CMC controlled operations

- ‘(1) This section applies if—
- (a) an application for the variation of an authority for a controlled operation is made to the CMC chairperson under section 159;²⁸ and
 - (b) the chairperson had granted the authority because the operation related to a person who was or who might be a police officer.
- ‘(2) The chairperson may vary the authority without referring the application to the committee but, before varying the authority, the chairperson must consult with the independent member and obtain the independent member’s agreement to the proposed variation.
- ‘(3) However, the chairperson may vary an authority on an application made to the chairperson in urgent circumstances without complying with subsection (2), but must consult with the independent member about the variation as soon as possible after granting it.

28 Section 159 (Application for variation of authority)

‘162 Procedure in urgent circumstances other than if s 161 applies

- ‘(1) This section applies to an application for the variation of an authority for a controlled operation made to a chief executive officer in urgent circumstances.
- ‘(2) However, this section does not apply if section 161 applies.
- ‘(3) The chief executive officer may grant the application without referring it to the committee, but must refer the application to the committee as soon as practicable after granting it.
- ‘(4) The committee may consider the application as if the application had not been granted.
- ‘(5) Section 163(1) and (3) do not apply to the grant of a variation of an authority under this section.
- ‘(6) The chief executive officer must consider the committee’s recommendations on the application but is not bound by the recommendations.
- ‘(7) A variation under subsection (3) may only take effect for a maximum period of 7 days decided by the chief executive officer.

‘163 Deciding the application to vary the authority

- ‘(1) After considering an application for a variation of authority, any additional information given under section 159(5),²⁹ and any recommendations of the committee, the chief executive officer—
 - (a) may vary the authority in accordance with the application, with or without conditions; or
 - (b) may refuse the application.
- ‘(2) Section 155(1)³⁰ applies to an application for a variation of authority under this division in the same way as it applies to an application for authority under section 150.³¹

29 Section 159 (Application for variation of authority)

30 Section 155 (Matters to be taken into account)

31 Section 154 (Application for authority to conduct controlled operation)

- ‘(3) Without limiting subsection (2), a variation of an authority may not be granted—
- (a) unless the chief executive officer is satisfied on reasonable grounds that the variation will not authorise a significant change to the nature of the authorised operation concerned; and
 - (b) unless the committee has recommended the application be granted.

‘164 Way to vary authority

- ‘(1) An authority may be varied, on application or otherwise, only—
- (a) by way of a written document signed by the chief executive officer (*a formal variation of authority*); or
 - (b) if the person granting the variation is satisfied that the delay caused by granting a formal variation of authority may affect the success of the operation—orally in person or under section 452³² (*an urgent variation of authority*).
- ‘(2) The chief executive officer—
- (a) must ensure that written notes are kept of—
 - (i) the date and time when the authority was varied; and
 - (ii) the identity of the law enforcement officer to whom the variation of authority was granted; and
 - (b) must, as soon as practicable, prepare and give to the applicant a written document that complies with section 165.

Note—

The chief executive may delegate powers under this section—see part 6, division 1.³³

32 Section 452 (Steps after issue of prescribed authority)

33 Part 6 (General), division 1 (Delegation)

‘165 Form of variation of authority

‘A variation of authority, whether formal or urgent, must state—

- (a) an identifying name or number for the operation; and
- (b) the name and rank or position of the person granting the variation of authority; and
- (c) the date and time when the authority was varied; and
- (d) the provision of this chapter under which the variation was made; and
- (e) the period for which the variation has effect; and
- (f) if the variation is made under section 159³⁴—
 - (i) the name of the applicant; and
 - (ii) whether the application was a formal variation application or an urgent variation application; and
- (g) a description of the variation having regard to the purposes mentioned in section 159(1) for which the application was made.

‘166 Cancellation of authority

- ‘(1) The chief executive officer may, by notice in writing given to the principal law enforcement officer for an authorised operation, cancel the authority at any time and for any reason.
- ‘(2) Without limiting subsection (1), the chief executive officer may cancel an authority for an authorised operation at any time at the request of the principal law enforcement officer for the operation.
- ‘(3) Cancellation of an authority for a controlled operation takes effect at the time the notice is given or at the later time stated in the notice.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

‘Division 3 Effect of authority

‘167 Effect of authority

- ‘(1) While it has effect, an authority for a controlled operation—
- (a) authorises each law enforcement participant to engage in the controlled conduct stated in the authority in relation to the law enforcement participants; and
 - (b) authorises each civilian participant, if any, to engage in the particular controlled conduct, if any, stated in the authority in relation to that participant; and
 - (c) authorises each participant to engage in that conduct in this jurisdiction or any participating jurisdiction, subject to the corresponding law of the participating jurisdiction.
- ‘(2) The authority to engage in controlled conduct given to a participant cannot be delegated to any other person.

‘168 Defect in authority

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

‘Part 4 Conduct of controlled operations

‘Division 1 Controlled conduct engaged in for controlled operations

‘169 Protection from criminal responsibility for controlled conduct during authorised operations

- ‘(1) Despite any other Act or law of this jurisdiction, a participant who engages in conduct, whether in this jurisdiction or elsewhere, in an authorised operation in the course of, and for the purposes of, the operation, is not, if engaging in that conduct is an offence, criminally responsible for the offence, if—
- (a) the conduct is authorised by, and is engaged in, in accordance with, the authority for the operation; and
 - (b) the conduct does not involve the participant intentionally inducing a person to commit an offence under a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and
 - (c) the conduct does not involve the participant engaging in any conduct that is likely to—
 - (i) cause the death of, or serious injury to, any person; or
 - (ii) involve the commission of a sexual offence against any person; and
 - (d) if the participant is a civilian participant—the participant acts in accordance with the instructions of a law enforcement officer.
- ‘(2) Also, a law enforcement officer is not criminally responsible for conduct that, because of an authorised operation, was reasonably necessary to—
- (a) protect the safety of any person; or

- (b) protect the identity of a participant; or
 - (c) take advantage of an opportunity to gather evidence about a relevant offence not mentioned in the authority.
- ‘(3) However, subsection (2) does not relieve a law enforcement officer from criminal responsibility for conduct if the conduct results in—
- (a) injury to, or the death of, a person; or
 - (b) serious damage to property; or
 - (c) a serious loss of property; or
 - (d) a person being encouraged or induced by the officer to engage in criminal activity of a kind the person could not reasonably be expected to have engaged in if not encouraged or induced by the officer to engage in it.

‘170 Indemnification of participants against civil liability

- ‘(1) This section applies to a law enforcement agency if a controlled operation has been authorised by the chief executive officer of the agency under section 152, 153 or 154.³⁵
- ‘(2) The law enforcement agency must indemnify a participant in the authorised operation against any civil liability, including reasonable costs, the participant incurs because of conduct the participant engages in if—
- (a) the participant engages in the conduct in the course of, and for the purposes of, the operation in accordance with the authority for the operation; and
 - (b) the conduct does not involve the participant intentionally inducing a person to commit an offence under a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and

³⁵ Section 152 (Particular CMC controlled operations), 153 (Procedure in urgent circumstances other than if s 152 applies) or 154 (Deciding application)

- (c) the conduct does not involve the participant engaging in any conduct that is likely to—
 - (i) cause the death of, or serious injury to, any person; or
 - (ii) involve the commission of a sexual offence against any person; and
- (d) if the participant is a civilian participant—the participant acts in accordance with the instructions of a law enforcement officer; and
- (e) the requirements, if any, stated under a regulation have been met.

‘171 Effect of ss 169–170 on other laws relating to criminal investigation

‘Sections 169 and 170³⁶ do not apply to a person’s conduct that is, or could have been, authorised under this Act, apart from this chapter or another law of this jurisdiction, about the following—

- (a) arrest or detention of individuals;
- (b) searches of individuals;
- (c) entry onto, or searches or inspection of, premises;
- (d) searches, inspections or seizures of other property;
- (e) forensic procedures;
- (f) electronic surveillance devices;
- (g) identification procedures;
- (h) the acquisition or use of assumed identities;
- (i) any other matter about powers of criminal investigation.

36 Sections 169 (Protection from criminal responsibility for controlled conduct during authorised operations) and 170 (Indemnification of participants against civil liability)

‘172 Effect of being unaware of variation or cancellation of authority

- ‘(1) If an authority for a controlled operation is varied in a way that limits its scope, this part continues to apply to a participant in the operation as if the authority had not been varied in that way, for as long as the participant—
- (a) is unaware of the variation; and
 - (b) is not reckless about the existence of the variation.
- ‘(2) If an authority for a controlled operation is cancelled, this part continues to apply to a participant in the operation as if the authority had not been cancelled, for as long as the participant—
- (a) is unaware of the cancellation; and
 - (b) is not reckless about the existence of the cancellation.
- ‘(3) For this section, a person is reckless about the existence of the variation or cancellation of an authority if—
- (a) the person is aware of a substantial risk that the variation or cancellation has happened; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to continue to engage in conduct that was, but may no longer be, authorised by the authority because of the variation or cancellation.

‘173 Protection from criminal responsibility for particular ancillary conduct

- ‘(1) This section applies to conduct, for example aiding or enabling the commission of an offence or conspiring to commit an offence (*ancillary conduct*), for which a person may be criminally responsible because it involves conduct engaged in by another person that is controlled conduct for which the other person would, apart from section 169,³⁷ be criminally responsible (the *related controlled conduct*).

37 Section 169 (Protection from criminal responsibility for controlled conduct during authorised operations)

Note—

The Criminal Code, section 7(1)(b) and (c) makes provision for a person who aids or enables the commission of an offence, and the Criminal Code, chapter 56, makes provision for conspiracy.

- ‘(2) Despite any other Act or law of this jurisdiction, a person who engages in ancillary conduct that is an offence, whether or not the person is a participant in a controlled operation, is not criminally responsible for the offence if at the time the person engaged in the ancillary conduct the person believed the related controlled conduct was being engaged in, or would be engaged in, by a participant in an authorised operation.

‘Division 2 **Compensation and notification of third parties**

‘174 **Compensation for property loss or serious damage**

- ‘(1) If a person suffers loss of or serious damage to property as a direct result of an authorised operation conducted by the police service or the CMC, the State is liable to pay to the person compensation as agreed between the State and the person or, in default of agreement, as decided by civil proceedings for a debt of the amount claimed.
- ‘(2) However, if, apart from subsection (1), section 455³⁸ would apply in relation to the loss or damage, the person must apply for compensation, and the compensation is to be decided, under section 455 and not under this section.
- ‘(3) Subsection (1) does not apply if—
- (a) the person suffered the loss or damage in the course of, or as a direct result of, engaging in any criminal activity, other than criminal activity that is controlled conduct; or
 - (b) the person was a law enforcement officer at the time of suffering the loss or damage.

‘175 Notification requirements

- ‘(1) If any loss of or serious damage to property happens in the course of or as a direct result of an authorised operation, the principal law enforcement officer for the operation must report the loss or damage to the chief executive officer of the law enforcement agency as soon as practicable.
- ‘(2) The chief executive officer must take all reasonable steps to notify the owner of the property of the loss or damage.
- ‘(3) The chief executive officer is not required to notify the owner of property under this section until the chief executive officer is satisfied that notification would not—
 - (a) compromise or hinder the authorised operation; or
 - (b) compromise the identity of a participant in the authorised operation; or
 - (c) endanger the life or safety of any person; or
 - (d) prejudice any legal proceeding; or
 - (e) otherwise be contrary to the public interest.
- ‘(4) Subsection (1) does not apply to property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation.
- ‘(5) If any personal injury happens in the course of or as a direct result of an authorised operation, the principal law enforcement officer for the operation must report the injury to the chief executive of the law enforcement agency as soon as possible.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.³⁹

‘Division 3 Recognition of corresponding authorities

‘176 Recognition of corresponding authorities

‘The following provisions apply, with any necessary changes, to a corresponding authority under a corresponding law, and to a corresponding authorised operation under that law, as if the corresponding authority were an authority given under section 154⁴⁰ for a controlled operation—

- (a) section 167 (Effect of authority);
- (b) section 168 (Defect in authority);
- (c) section 169(1) (Protection from criminal responsibility for controlled conduct during authorised operations);
- (d) section 170 (Indemnification of participants against civil liability);
- (e) section 171 (Effect of ss 169–170 on other laws relating to criminal investigation);
- (f) section 172 (Effect of being unaware of variation or cancellation of authority);
- (g) section 173 (Protection from criminal responsibility for particular ancillary conduct).

‘Part 5 Compliance and monitoring

‘Division 1 Information restrictions

‘177 Unauthorised disclosure of information

- ‘(1) A person commits an offence if—

⁴⁰ Section 154 (Deciding application)

- (a) the person intentionally, knowingly or recklessly discloses any information; and
- (b) the person knows that, or is reckless as to whether, the information relates to an authorised operation or a corresponding authorised operation; and
- (c) the person knows that, or is reckless as to whether, the disclosure is not made—
 - (i) with the approval of the chief executive officer of the relevant law enforcement agency; or
 - (ii) in connection with the administration or execution of this chapter or a corresponding law; or
 - (iii) for the purposes of any legal proceeding arising out of or otherwise related to this chapter or a corresponding law or of any report of the proceeding; or
 - (iv) under any requirement imposed by law; or
 - (v) under another law.

Maximum penalty—2 years imprisonment.

- ‘(2) A person commits a crime if the person commits an offence against subsection (1) in circumstances in which the person—
- (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an authorised operation or a corresponding authorised operation; or
 - (b) knows that, or is reckless as to whether, the disclosure of the information—
 - (i) endangers or will endanger the health or safety of any person; or
 - (ii) prejudices or will prejudice the effective conduct of an authorised operation or a corresponding authorised operation.

Maximum penalty—10 years imprisonment.

- ‘(3) This section does not affect section 454⁴¹ or the *Crime and Misconduct Act 2001*, section 213(4).⁴²
- ‘(4) In this section—
relevant law enforcement agency, for a controlled operation, means the law enforcement agency whose officer was granted an authority to conduct the operation.

‘Division 2 Reporting and record keeping

‘178 Principal law enforcement officer’s reports

- ‘(1) Within 2 months after the end of an authorised operation, the principal law enforcement officer for the operation must give a report under this section to the chief executive officer of the law enforcement agency.
- ‘(2) The report must include the following details—
- (a) the date and time when the operation began and its duration;
 - (b) whether the operation was conducted in this jurisdiction or in this jurisdiction and a participating jurisdiction;
 - (c) the nature of the controlled conduct engaged in for the purposes of the operation;
 - (d) details of the outcome of the operation;
 - (e) if the operation involved illicit goods, a statement, to the extent known, of—
 - (i) the nature and quantity of the illicit goods; and
 - (ii) the route through which the illicit goods passed in the course of the operation;
 - (f) details of any loss of or serious damage to property, or any personal injuries, happening in the course of or as a direct result of the operation;

41 Section 454 (Protection of methodologies)

42 *Crime and Misconduct Act 2001*, section 213 (Secrecy)

- (g) details of any opportunity taken to gather evidence to which section 169(2)(c)⁴³ applies.

‘179 Chief executive officers’ reports

- ‘(1) As soon as practicable after 31 March and 30 September in each year, the chief executive officer of each law enforcement agency must give a report to the report entity for the agency stating the details required by subsection (2) for authorised operations conducted on behalf of the agency during the preceding 6 months.
- ‘(2) The report must include the following details—
 - (a) the number of formal authorities that have been granted or varied by the chief executive officer, and the number of formal applications for the granting or variation of authorities that have been refused by the chief executive officer, during the period of the report;
 - (b) the number of urgent authorities or urgent variations of authorities that have been granted by the chief executive officer, and the number of urgent applications for authorities or urgent variations of authorities that have been refused by the chief executive officer, during the period of the report;
 - (c) the nature of the criminal activities against which the authorised operations were directed;
 - (d) the nature of the controlled conduct engaged in for the purposes of the authorised operations;
 - (e) if any of the authorised operations involved illicit goods, a statement, to the extent known, of—
 - (i) the nature and quantity of the illicit goods; and
 - (ii) the route through which the illicit goods passed in the course of the operations;

43 Section 169 (Protection from criminal responsibility for controlled conduct during authorised operations)

- (f) details of any loss of or serious damage to property, or any personal injuries, happening in the course of or as a direct result of the authorised operations;
 - (g) details of any opportunity taken to gather evidence to which section 169(2)(c)⁴⁴ applies;
 - (h) the number of authorities cancelled by the chief executive officer or that have expired during the period to which the report relates.
- ‘(3) The details mentioned in subsection (2) must be classified into controlled operations conducted in this jurisdiction or conducted in this jurisdiction and a participating jurisdiction.
- ‘(4) The report entity may require the chief executive officer to give additional information about any authorised operation to which a report relates.
- ‘(5) Subsection (2)(d) or (e) does not require particulars of an authorised operation to be included in a report for a period of 6 months if the operation had not ended during that period.
- ‘(6) However, the particulars must instead be included in the report for the period of 6 months in which the operation ends.

‘180 Annual report by report entity

- ‘(1) The report entity for a law enforcement agency must, as soon as practicable after 30 June in each year, prepare a report of the work and activities of the law enforcement agency under this chapter for the preceding 12 months.
- ‘(2) The report entity must give a copy of the report to the chief executive officer of the agency and—
- (a) if the agency is the police service—the Minister; or
 - (b) if the agency is the CMC—the parliamentary committee chairperson.
- ‘(3) The report—

⁴⁴ Section 169 (Protection from criminal responsibility for controlled conduct during authorised operations)

- (a) must include comments on the comprehensiveness and adequacy of the reports that were given to the report entity by the chief executive officer of the law enforcement agency under section 179; and
 - (b) must not disclose any information that identifies any suspect or a participant in an operation or that is likely to lead to the person or participant being identified.
- ‘(4) The chief executive officer must advise the Minister or parliamentary committee chairperson of any information in the report that, in the chief executive officer’s opinion, should be excluded from the report before the report is tabled in the Legislative Assembly because the information, if made public, could reasonably be expected to—
- (a) endanger a person’s safety; or
 - (b) prejudice an investigation or prosecution; or
 - (c) compromise any law enforcement agency’s operational activities or methodologies.
- ‘(5) The Minister or parliamentary committee chairperson must exclude information from the report if satisfied on the advice of the chief executive officer of any of the grounds mentioned in subsection (4).
- ‘(6) The Minister or chairperson must table the report in the Legislative Assembly within 14 sitting days after receiving the report.
- ‘(7) This section does not require particulars of an authorised operation to be included in a report for a year if the operation had not ended as at 30 June in that year.
- ‘(8) However, the particulars must instead be included in the report for the year in which the operation ends.

‘181 Keeping documents connected with authorised operations

‘The chief executive officer of a law enforcement agency must cause to be kept—

- (a) each formal application made by a law enforcement officer of the agency; and
- (b) each formal authority granted to a law enforcement officer of the agency; and
- (c) all written notes made under section 156(5);⁴⁵ and
- (d) each formal variation application made by a law enforcement officer of the agency; and
- (e) each formal variation of authority granted to a law enforcement officer of the agency; and
- (f) each notice cancelling an authority granted to a law enforcement officer of the agency; and
- (g) all written notes made under section 164(2)(a);⁴⁶ and
- (h) each report of a principal law enforcement officer of the agency under section 175 or 178;⁴⁷ and
- (i) each recommendation made by the committee in relation to an application for an authority or a variation of an authority.

‘182 General register

- ‘(1) The chief executive officer of a law enforcement agency must cause a general register to be kept.
- ‘(2) The register must be or form part of the register of covert acts kept under chapter 11, part 2.⁴⁸

45 Section 156 (Form of authority)

46 Section 164 (Way to vary authority)

47 Section 175 (Notification requirements) or 178 (Principal law enforcement officer’s reports)

48 Chapter 11 (Administration), part 2 (Registers)

‘Division 3 Inspections

‘183 Inspection of records

- ‘(1) The inspection entity for a law enforcement agency must, from time to time and at least once every 12 months, inspect the records of the agency to find out the extent of compliance by the agency and law enforcement officers of the agency with this chapter and chapter 11, part 2,⁴⁹ to the extent it applies to activities under this chapter.
- ‘(2) For an inspection under this section, the inspection entity—
- (a) after notifying the chief executive officer of the agency, may enter at any reasonable time premises occupied by the agency; and
 - (b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and
 - (c) may require a member of staff of the agency to give the inspection entity any information that the inspection entity considers necessary, being information that is in the member’s possession, or to which the member has access, and that is relevant to the inspection.
- ‘(3) The chief executive officer must ensure that members of staff of the agency give the inspection entity any help the inspection entity reasonably requires to enable the inspection entity to perform functions under this section.
- ‘(4) This section does not limit the parliamentary commissioner’s powers under *Crime and Misconduct Act 2001*, chapter 6, part 4, division 4⁵⁰ in relation to the functions of the CMC.

49 Chapter 11 (Administration), part 2 (Registers)

50 *Crime and Misconduct Act 2001*, chapter 6 (Administration), part 4 (Parliamentary crime and misconduct commissioner), division 4 (Powers)

‘Part 6 General

‘Division 1 Delegation

‘184 Delegation generally

‘Other than as provided by this division, and despite any other Act or law to the contrary, the powers of a chief executive officer under this chapter may not be delegated to any other person.

‘185 Delegation—commissioner

‘The commissioner may delegate any of the commissioner’s powers under this chapter as chief executive officer relating to the authorisation of controlled operations, including the variation and cancellation of authorities for controlled operations and notifications under section 175(2),⁵¹ to—

- (a) a person for the time being performing functions in the police service as a deputy commissioner of the police service; or
- (b) the person for the time being performing functions in the police service as the assistant commissioner of the police service responsible for crime operations.

‘186 Delegation—CMC chairperson

‘(1) The CMC chairperson may delegate any of the chairperson’s powers under this chapter as chief executive officer relating to the authorisation of controlled operations, including the variation and cancellation of authorities for controlled operations and notifications under section 175(2), to a CMC assistant commissioner.

‘(2) However, subsection (1) does not authorise the CMC chairperson to exercise a power of delegation in relation to a

51 Section 175 (Notification requirements)

controlled operation under which a person under investigation is or may be a police officer or was or may have been, at any time relevant to the investigation, a police officer.

‘Division 2 Evidentiary provisions

‘187 Evidence of authorities

- ‘(1) A document purporting to be an authority granted under section 154⁵²—
- (a) is admissible in any legal proceedings; and
 - (b) is evidence in any proceedings, other than criminal or disciplinary proceedings against a law enforcement officer, that the person granting the authority was satisfied of the facts the person was required to be satisfied of to grant the authority.
- ‘(2) A document purporting to be an authority within the meaning of a corresponding law granted under a provision of the corresponding law that corresponds to section 154—
- (a) is admissible in any legal proceedings in this jurisdiction; and
 - (b) is evidence in any proceedings, other than criminal or disciplinary proceedings against a law enforcement officer, that the person who granted the authority was satisfied of the facts the person was required to be satisfied of under the corresponding law to grant the authority.

52 Section 154 (Deciding application)

‘Chapter 5B Assumed identities

‘Part 1 Preliminary

‘188 Purpose of ch 5B

‘The main purpose of this chapter is to facilitate, for law enforcement purposes, investigations and intelligence gathering in relation to criminal activity, including investigations extending beyond Queensland.

‘189 How purpose is achieved

‘The purpose is to be achieved primarily by—

- (a) providing for the lawful acquisition and use of an assumed identity; and
- (b) facilitating the recognition of things done in relation to an assumed identity under a corresponding law.

‘190 Definitions for ch 5B

‘In this chapter—

acquire, an assumed identity, means acquire evidence, or take steps to acquire evidence, of the identity.

agency means—

- (a) an issuing agency; or
- (b) a law enforcement agency.

authorised civilian means a person, other than a law enforcement officer, who is authorised under an authority to acquire or use an assumed identity.

authorised officer means a law enforcement officer who is authorised under an authority to acquire or use an assumed identity.

authorised person means—

- (a) an authorised civilian; or
- (b) an authorised officer.

authority means an authority granted under section 193⁵³ to acquire or use an assumed identity, including the authority as varied under section 196.⁵⁴

birth certificate approval see—

- (a) section 197A;⁵⁵ or
- (b) section 197B.⁵⁶

conduct includes any act or omission.

corresponding authority means—

- (a) an authority under a corresponding law to acquire or use an assumed identity in this jurisdiction; or
- (b) an authority under a corresponding law to request the production of evidence of an assumed identity in this jurisdiction.

criminal activity means conduct that involves the commission of an offence by 1 or more persons.

doing a thing, includes failing to do the thing.

evidence, of identity, means a document or other thing, including, for example, a driver licence, birth certificate, credit card or identity card, that evidences or indicates, or can be used to evidence or indicate, a person's identity or any aspect of a person's identity.

government issuing agency, in relation to an authority, means an entity that—

- (a) is named in the authority; and
- (b) issues evidence of identity as part of performing any function of the government of this jurisdiction.

53 Section 193 (Deciding application)

54 Section 196 (Variation or cancellation of authority)

55 Section 197A (Approval for creation of birth certificate for assumed identity)

56 Section 197B (Order authorising creation of birth certificate for assumed identity under corresponding authority)

issuing agency means—

- (a) a government issuing agency; or
- (b) a non-government issuing agency.

non-government issuing agency, in relation to an authority, means an entity, other than a government issuing agency, that—

- (a) is named in the authority; and
- (b) issues evidence of identity.

officer, of an agency, includes a person employed or engaged in the agency.

supervisor, of an authorised civilian, means the law enforcement officer, appointed under section 193(3),⁵⁷ who supervises or is to supervise the acquisition or use of an assumed identity by the authorised civilian.

use an assumed identity, includes representing, whether expressly or impliedly, or by saying or doing something, the identity to be real when it is not.

‘191 Relationship to other laws and matters

- ‘(1) A function conferred in relation to the activities of the CMC under this chapter is only conferred for the purpose of a function conferred on the CMC under the *Crime and Misconduct Act 2001* relating to major crime as defined under that Act.
- ‘(2) The Public Records Act and the *Freedom of Information Act 1992* do not apply to activities or records under parts 2 to 7.

57 Section 193 (Deciding application)

(vii) details of any issuing agencies and the types of evidence to be issued by them.

- ‘(4) The chief executive officer may require the applicant to give additional information about the application the chief executive officer considers appropriate for consideration of the application.

‘193 Deciding application

- ‘(1) After considering an application for an authority to acquire or use an assumed identity, and any additional information given under section 192(4), the chief executive officer—
- (a) may grant an authority to acquire or use the assumed identity, with or without conditions; or
 - (b) may refuse the application.
- ‘(2) The chief executive officer must not grant an authority to acquire or use an assumed identity unless the chief executive officer is satisfied on reasonable grounds of all of the following—
- (a) the assumed identity is necessary for the purposes of an investigation or intelligence gathering in relation to criminal activity;
 - (b) the risk of abuse of the assumed identity by the authorised person under the authority is minimal;
 - (c) if the application is for authorisation of an assumed identity for a person who is not a law enforcement officer—it would be impossible or impracticable in the circumstances for a law enforcement officer to acquire or use the assumed identity for the purpose sought.
- ‘(3) If an authority is granted for an authorised civilian, the chief executive officer must appoint a law enforcement officer of the law enforcement agency to supervise the acquisition or use of the assumed identity by the authorised civilian.
- ‘(4) The law enforcement officer appointed as supervisor under subsection (3) must be—

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- (a) for the police service—of or above the rank of sergeant;
or
 - (b) for the CMC—an authorised commission officer.
- ‘(5) An authority may also authorise 1 or more of the following—
- (a) an application to the independent member for a birth certificate approval;
 - (b) an application under a corresponding law for an order for an entry in a register similar to the register of births, deaths or marriages kept under the *Births, Deaths and Marriages Registration Act 2003*;
 - (c) a request under section 197G or 197T.⁵⁸
- ‘(6) A separate authority is required for each assumed identity.

‘194 Form of authority

- ‘(1) An authority must be—
- (a) in writing in the form decided by the chief executive officer; and
 - (b) signed by the person granting it.
- ‘(2) An authority must state all of the following—
- (a) the name of the person granting the authority;
 - (b) the date of the authority;
 - (c) details of the assumed identity under the authority;
 - (d) details of the evidence of the assumed identity that may be acquired under the authority;
 - (e) the conditions, if any, to which the authority is subject;
 - (f) why the authority is granted;
 - (g) if the authority relates to an authorised officer—the name of the officer;
 - (h) if the authority relates to an authorised civilian—

⁵⁸ Section 197G (Request for evidence of assumed identity) or 197T (Request to participating jurisdiction for evidence of assumed identity)

- (i) the name of the authorised civilian; and
 - (ii) the name of the civilian's supervisor under the authority; and
 - (iii) the period, of not more than 3 months, for which the authority remains in force.
- '(3) The authority also must state the following—
- (a) whether it authorises—
 - (i) an application to the independent member for a birth certificate approval; or
 - (ii) an application under a corresponding law for an order for an entry in a register similar to the register of births, deaths or marriages kept under the *Births, Deaths and Marriages Registration Act 2003*;
 - (b) each issuing agency to which a request may be made under section 197G or 197T;⁵⁹
 - (c) the assumed identity may be used in this jurisdiction and a participating jurisdiction.

'195 Period of authority

- '(1) An authority for an authorised officer remains in force until cancelled under section 196.
- '(2) An authority for an authorised civilian remains in force until the end of the period stated in the authority under section 194(2)(h)(iii), unless the authority is sooner cancelled under section 196.

'196 Variation or cancellation of authority

- '(1) The chief executive officer—
 - (a) may vary or cancel the authority at any time; and

⁵⁹ Section 197G (Request for evidence of assumed identity) or 197T (Request to participating jurisdiction for evidence of assumed identity)

- (b) must cancel the authority if satisfied, on a review under section 197 or otherwise, that use of the assumed identity under the authority is no longer necessary.
- ‘(2) The chief executive officer must give written notice of the variation or cancellation to—
 - (a) the authorised person to whom the authority relates; and
 - (b) if the authorised person is an authorised civilian—the authorised person’s supervisor.
- ‘(3) The notice must state the reasons for the variation or cancellation.
- ‘(4) The variation or cancellation has effect on—
 - (a) the day the notice is given to the authorised person; or
 - (b) if a later day is stated in the notice—the later day.

‘197 Review of authority

- ‘(1) The chief executive officer must, at least once a year, review each authority granted by the chief executive officer and in force under this chapter.
- ‘(2) The purpose of a review is to decide whether use of the assumed identity under the authority is still necessary.
- ‘(3) If the chief executive officer is satisfied on a review that use of the assumed identity is no longer necessary, the chief executive officer must cancel the authority under section 196.
- ‘(4) If the chief executive officer is satisfied on a review that use of the assumed identity is still necessary, the chief executive officer must record the chief executive officer’s opinion, and the reasons for it, in writing.

‘Part 3 Evidence of assumed identities

‘Division 1 Creation of birth certificates for assumed identities

‘197A Approval for creation of birth certificate for assumed identity

- ‘(1) The chief executive officer of a law enforcement agency may apply to the independent member for authority to create a birth certificate (a *birth certificate approval*) for an assumed identity for an authorised person.
- ‘(2) The application must be written and include enough information to enable the independent member to properly consider whether the birth certificate approval should be granted.
- ‘(3) The independent member may grant the birth certificate approval only if satisfied granting the approval is justified having regard to the nature of the activities undertaken or to be undertaken by the authorised person under the authority for the assumed identity.
- ‘(4) A birth certificate approval granted under this section must be written, signed by the independent member, and state that a named law enforcement officer is authorised under this section to create a birth certificate for the purpose of concealing the identity of an authorised person.

‘197B Order authorising creation of birth certificate for assumed identity under corresponding authority

- ‘(1) The chief executive officer of a law enforcement agency under a corresponding law may apply to the Supreme Court for an order (a *birth certificate approval*) authorising a named law enforcement officer of the agency to create a birth certificate for an assumed identity under a corresponding authority.
- ‘(2) The Supreme Court may make the order only if satisfied the order is justified having regard to the nature of the activities

undertaken or to be undertaken by the law enforcement officer or other person under the corresponding authority.

- ‘(3) The Supreme Court must hear the application in the absence of anyone other than the following—
- (a) the applicant;
 - (b) someone the court permits to be present;
 - (c) a lawyer representing anyone mentioned in paragraph (a) or (b).
- ‘(4) The order has effect for the time stated in the order of not more than 28 days.

‘197C Giving effect to birth certificate approval

- ‘(1) On the production to the registrar-general, for inspection, of a birth certificate approval—
- (a) the law enforcement officer named in the approval may create a birth certificate as authorised under the approval; and
 - (b) the registrar-general must give the officer any help the officer reasonably requires for the purpose.
- ‘(2) The law enforcement officer must, if practicable, give the registrar-general at least 3 days notice of the day the officer intends to create the birth certificate under the birth certificate approval.

‘197D Destruction of birth certificate created under s 197C

- ‘(1) This section applies in relation to a birth certificate created under a birth certificate approval (a *created birth certificate*).
- ‘(2) As soon as practicable after the authority or corresponding authority for an assumed identity to which the created birth certificate relates is cancelled, the chief executive officer of the law enforcement agency for whom the certificate was created—
- (a) must cause the created birth certificate to be destroyed; and

- (b) must notify the registrar-general that the created birth certificate is no longer being used and has been destroyed.

‘197E Cancelling authority affecting entry in participating jurisdiction’s register of births, deaths or marriages

- ‘(1) This section applies if—
 - (a) a chief executive officer cancels an authority for an assumed identity; and
 - (b) there is an entry in relation to that identity in a register of births, deaths or marriages in a participating jurisdiction because of an order under a corresponding law of the jurisdiction.
- ‘(2) The chief executive officer must apply for an order under the corresponding law to cancel the entry within 28 days after the day the authority is cancelled.

‘197F Restriction about records and access to application for authority to create birth certificate

- ‘(1) This section applies to—
 - (a) a proceeding on an application under section 197B for a birth certificate approval in relation to the acquisition or use of an assumed identity under a corresponding authority; and
 - (b) an order given in the proceeding.
- ‘(2) Despite the *Recording of Evidence Act 1962*, a transcript of the proceeding must not be made.
- ‘(3) A person must not publish a report of the proceeding.
Maximum penalty—85 penalty units or 1 year’s imprisonment.
- ‘(4) A person is not entitled to search information in the custody of a court in relation to the proceeding, unless a Supreme Court judge otherwise orders in the interests of justice.

‘Division 2 Other provisions about evidence of assumed identities

‘197G Request for evidence of assumed identity

- ‘(1) This section applies if an authority authorises a request under this section.
- ‘(2) The chief executive officer who grants the authority may ask the chief executive officer of an issuing agency stated in the authority to—
 - (a) produce evidence of an assumed identity in accordance with the authority; and
 - (b) give evidence of the assumed identity to the authorised person named in the authority.
- ‘(3) The request must state a reasonable period for compliance with the request.
- ‘(4) A request can not be made under this section for the creation of a birth certificate or a certified copy of a marriage certificate.
- ‘(5) In this section—

evidence means evidence similar to that ordinarily produced or given by the issuing agency.

‘197H Government issuing agency to comply with request

‘The chief executive officer of a government issuing agency who receives a request under section 197G must comply with the request within the reasonable period stated in the request.

‘197I Non-government issuing agency may comply with request

‘The chief executive officer of a non-government issuing agency who receives a request under section 197G may comply with the request.

‘197J Cancelling evidence of assumed identity

- ‘(1) The chief executive officer of an issuing agency who produces evidence of an assumed identity under this part must cancel the evidence if directed in writing to do so by the chief executive officer who requested the evidence.
- ‘(2) In this section—
cancel includes delete or alter an entry in a record of information.

‘Division 3 Protections and indemnities

‘197K Protection from criminal responsibility—officer of issuing agency

- ‘(1) A person who does something under division 1 or 2 that, apart from this section, would be an offence, is not criminally responsible for the offence, if the thing is done to give effect to a birth certificate approval.
- ‘(2) Also, the chief executive officer, or an officer, of an issuing agency who does something that, apart from this section, would be an offence, is not criminally responsible for the offence if the thing is done to comply with a request under section 197G or a direction under section 197J.

‘197L Indemnity for issuing agency and officers in relation to creation of birth certificates

- ‘(1) This section applies if a birth certificate approval is produced to the registrar-general under section 197C.⁶⁰
- ‘(2) The law enforcement agency to whom the birth certificate approval relates must indemnify the registrar-general, or an officer of the registrar-general, for any civil liability incurred by the registrar-general or officer, including reasonable costs, if—

⁶⁰ Section 197C (Giving effect to birth certificate approval)

- (a) the liability is incurred because of something done by the registrar-general or officer to comply with section 197C; and
- (b) the requirements, if any, prescribed under a regulation have been met.

‘197M Indemnity for issuing agency and officers in relation to other evidence of assumed identities

- ‘(1) This section applies if the chief executive officer of a law enforcement agency makes a request under section 197G or gives a direction under section 197J to the chief executive officer of an issuing agency.
- ‘(2) The law enforcement agency must indemnify the issuing agency, or an officer of the agency, for any civil liability incurred by the agency or officer, including reasonable costs, if—
 - (a) the liability is incurred because of something done by the agency or officer to comply with the request or direction in the course of duty; and
 - (b) the requirements, if any, prescribed under a regulation have been met.

‘197N Protection from criminal responsibility for particular ancillary conduct

- ‘(1) This section applies to conduct, for example aiding or enabling the commission of an offence or conspiring to commit an offence (*ancillary conduct*), for which a person may be criminally responsible because it involves conduct engaged in by another person for which the other person would, apart from section 197K, be criminally responsible (the *related conduct*).

Note—

The Criminal Code, section 7(1)(b) and (c) makes provision for a person who aids or enables the commission of an offence, and the Criminal Code, chapter 56, makes provision for conspiracy.

- ‘(2) Despite any other Act or law of this jurisdiction, a person who engages in ancillary conduct that is an offence, whether or not the person is an authorised person or an officer of an issuing agency, is not criminally responsible for the offence if at the time the person engaged in the ancillary conduct the person believed the related conduct was being engaged in, or would be engaged in, by an authorised person or an issuing officer of an agency.

‘Part 4 Effect of authorities

‘1970 Assumed identity may be acquired and used

- ‘(1) An authorised officer may acquire or use an assumed identity if the acquisition or use is—
- (a) in accordance with an authority; and
 - (b) in the course of duty.
- ‘(2) An authorised civilian may acquire or use an assumed identity if the acquisition or use is in accordance with—
- (a) an authority; and
 - (b) the directions of the authorised civilian’s supervisor.

‘197P Protection from criminal responsibility—authorised person

‘If an authorised person does something, whether in this jurisdiction or elsewhere, that, apart from this section, would be an offence, the authorised person is not criminally responsible for the offence if—

- (a) the thing is done in the course of acquiring or using an assumed identity under an authority; and
- (b) the thing is done—
 - (i) for an authorised officer—in the course of duty; or

- (ii) for an authorised civilian—in accordance with the directions of the authorised civilian’s supervisor; and
- (c) doing the thing would not be an offence if the assumed identity were the authorised person’s real identity.

‘197Q Indemnity for authorised person

- ‘(1) This section applies if the chief executive officer of a law enforcement agency grants an authority.
- ‘(2) The law enforcement agency must indemnify the authorised person under the authority against any civil liability, including reasonable costs, incurred by the person, because of something done by the person, whether in this jurisdiction or elsewhere, if—
 - (a) the thing is done in the course of acquiring or using an assumed identity under the authority; and
 - (b) the thing is done—
 - (i) for an authorised officer—in the course of duty; or
 - (ii) for an authorised civilian—in accordance with the directions of the authorised civilian’s supervisor; and
 - (c) the requirements, if any, prescribed under a regulation have been met.
- ‘(3) This section does not limit the *Police Service Administration Act 1990*, section 10.5.⁶¹

‘197R Particular qualifications

- ‘(1) Sections 197P and 197Q do not apply to anything done by an authorised person if—
 - (a) a particular qualification is needed to do the thing; and
 - (b) the person does not have the qualification.

61 *Police Service Administration Act 1990*, section 10.5 (Liability for tort generally)

- ‘(2) Subsection (1) applies whether or not the authorised person has acquired, as evidence of an assumed identity, a document that indicates that the person has the qualification.

‘197S Effect of being unaware of variation or cancellation of authority

- ‘(1) If an authority to acquire or use an assumed identity has been varied in a way that limits its scope, this part continues to apply to the authorised person to whom the authority relates as if it had not been varied in that way, for as long as the person—
- (a) is unaware of the variation; and
 - (b) is not reckless about the existence of the variation.
- ‘(2) If an authority to acquire or use an assumed identity has been cancelled, this part continues to apply to the authorised person to whom the authority related as if it had not been cancelled, for as long as the person—
- (a) is unaware of the cancellation; and
 - (b) is not reckless about the existence of the cancellation.
- ‘(3) For this section, a person is reckless about the existence of the variation or cancellation of an authority if—
- (a) the person is aware of a substantial risk that the variation or cancellation has happened; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to continue to use the assumed name in a way that was, but may no longer be, authorised by the authority because of the variation or cancellation.

‘197V Direction from participating jurisdiction to cancel evidence of assumed identity

- ‘(1) The chief executive officer of an issuing agency who produces evidence of an assumed identity because of a request mentioned in section 197U must cancel the evidence if directed in writing to do so by the chief executive officer who made the request.
- ‘(2) In this section—
cancel includes delete or alter an entry in a record of information.

‘197W Indemnity for issuing agency and officer

- ‘(1) This section applies if the chief executive officer of a law enforcement agency makes a request to the chief executive officer of an issuing agency of a participating jurisdiction under section 197T.
- ‘(2) The law enforcement agency must indemnify the issuing agency and any officer of the issuing agency for any civil liability incurred by the agency or officer, including reasonable costs, if—
- (a) the liability is incurred because of something done, whether in this jurisdiction or elsewhere, by the agency or officer to comply with the request in the course of duty; and
 - (b) the requirements, if any, prescribed under a regulation have been met.

‘197X Application of ch 5B to corresponding authority

‘The following provisions apply, with necessary changes, to anything done in this jurisdiction in relation to a corresponding authority as if it were an authority granted under section 193⁶²—

- (a) section 197K (Protection from criminal liability—officer of issuing agency);
- (b) section 197O (Assumed identity may be acquired and used);
- (c) section 197P (Protection from criminal liability—authorised person);
- (d) section 197R (Particular qualifications);
- (e) section 197S (Effect of being unaware of variation or cancellation of authority);
- (f) section 197Y (Misuse of assumed identity);
- (g) section 197Z (Disclosing information about assumed identity).

‘Part 6 Compliance and monitoring

‘Division 1 Misuse of assumed identity and information

‘197Y Misuse of assumed identity

- ‘(1) An authorised officer commits an offence if—
 - (a) the officer intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by the officer’s authority; and
 - (b) the officer knows that, or is reckless as to whether, the acquisition or use is not—
 - (i) in accordance with the officer’s authority; or
 - (ii) in the course of duty.

Maximum penalty—2 years imprisonment.

- ‘(2) An authorised civilian commits an offence if—

- (a) the person intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by the person's authority; and
- (b) the person knows that, or is reckless as to whether, the acquisition or use is not in accordance with—
 - (i) the person's authority; or
 - (ii) the directions of the person's supervisor under the authority.

Maximum penalty—2 years imprisonment.

'197Z Disclosing information about assumed identity

- '(1) A person commits an offence if—
 - (a) the person intentionally, knowingly or recklessly discloses any information; and
 - (b) the person knows that, or is reckless as to whether, the information reveals, or is likely to reveal, that an assumed identity acquired or used by another person is not the other person's real identity; and
 - (c) the person knows that, or is reckless as to whether, the disclosure is not made—
 - (i) in connection with the administration or execution of this chapter or a corresponding law; or
 - (ii) for the purposes of any legal proceeding arising out of or otherwise related to this chapter or a corresponding law or of any report of the proceedings; or
 - (iii) in accordance with any requirement imposed by law.

Maximum penalty—2 years imprisonment.

- '(2) A person commits a crime if the person commits an offence against subsection (1) in circumstances in which the person—
 - (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation or intelligence gathering in relation to criminal activity; or

- (b) knows that, or is reckless as to whether, the disclosure of the information—
 - (i) endangers or will endanger the health or safety of any person; or
 - (ii) prejudices or will prejudice the effective conduct of an investigation or intelligence gathering in relation to criminal activity.

Maximum penalty—10 years imprisonment.

- ‘(3) This section does not affect section 454⁶³ or the *Crime and Misconduct Act 2001*, section 213(4).⁶⁴

‘Division 2 Reporting and record keeping

‘197ZA Report about authorities for assumed identities etc.

- ‘(1) As soon as practicable after the end of each financial year, the chief executive officer of a law enforcement agency must give to the agency’s report entity a written report containing the following information in relation to the agency for the financial year—
 - (a) the number of authorities granted;
 - (b) a general description of the activities undertaken by authorised persons when using assumed identities under this chapter;
 - (c) the number of applications for an authority that were refused;
 - (d) a statement about whether or not any fraud or other unlawful activity was identified by an audit under section 197ZC;
 - (e) any other information relating to authorities, assumed identities or the administration of this chapter that the report entity considers appropriate.

63 Section 454 (Protection of methodologies)

64 *Crime and Misconduct Act 2001*, section 213 (Secrecy)

- ‘(2) The report must not contain information that, if made public, could reasonably be expected to—
- (a) endanger a person’s safety; or
 - (b) prejudice an investigation or prosecution; or
 - (c) compromise any law enforcement agency’s operational activities or methodologies.
- ‘(3) The report entity must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.
- ‘(4) In this section—
- report entity***, for a law enforcement agency, means—
- (a) for the police service—the Minister; or
 - (b) for the CMC—the parliamentary committee chairperson.

‘197ZB Record keeping

- ‘(1) The chief executive officer of a law enforcement agency must keep appropriate records about the agency’s operations under this chapter.
- ‘(2) The records must contain all of the following information about each authority granted under this chapter in relation to the agency—
- (a) the date on which the authority was granted and the name of the person who granted it;
 - (b) if the authority was varied or cancelled under this chapter—the date it was varied or cancelled, and the name of the person who varied or cancelled it;
 - (c) the name of the authorised person under the authority;
 - (d) details of the assumed identity to which the authority relates;

- (e) details of any request made to an issuing agency under section 197G⁶⁵ in relation to the authority;
- (f) the general nature of the duties undertaken by the authorised person under the assumed identity;
- (g) general details of relevant financial transactions entered into using the assumed identity;
- (h) details of reviews of the authority under section 197.⁶⁶

‘197ZCAudit of records

- ‘(1) The chief executive officer of a law enforcement agency must have the records kept under section 197ZB for each authority granted in relation to the agency audited—
 - (a) at least once every 6 months while the authority is in force; and
 - (b) at least once in the 6 months after the cancellation or expiry of the authority.
- ‘(2) The parliamentary commissioner must audit the records kept by the CMC.
- ‘(3) The chief executive officer of a law enforcement agency, other than the CMC, must appoint a person to audit the records kept by the agency.
- ‘(4) The person appointed under subsection (3)—
 - (a) may, but need not, be an officer of the law enforcement agency; and
 - (b) must not be a person—
 - (i) who granted, varied or cancelled any of the authorities to which the records under section 197ZB relate; or
 - (ii) who is or was an authorised person under any of the authorities to which the records relate.

65 Section 197G (Request for evidence of assumed identity)

66 Section 197 (Review of authority)

- ‘(5) A person who conducts an audit under this section for a law enforcement agency must give the chief executive officer of the agency a written report of the results of the audit.

‘Part 7 Delegation

‘197ZD Delegation generally

‘Other than as provided by this part, and despite any other Act or law to the contrary, the powers of a chief executive officer under this chapter may not be delegated to any other person.

‘197ZE Delegation—commissioner

- ‘(1) The commissioner may delegate any of the commissioner’s powers under this chapter relating to the following to a person for the time being performing functions in the police service as a deputy commissioner or an assistant commissioner of the police service—
- (a) the granting, variation and cancellation of authorities;
 - (b) conducting reviews under section 197;⁶⁷
 - (c) authorising the making of an application to the independent member for a birth certificate approval for an assumed identity;
 - (d) making applications under section 197E;⁶⁸
 - (e) making requests under section 197G or 197T.⁶⁹
- ‘(2) Also, the commissioner may delegate to a police officer of or above the rank of inspector the commissioner’s power under

67 Section 197 (Review of authority)

68 Section 197E (Cancelling authority affecting entry in participating jurisdiction’s register of births, deaths or marriages)

69 Section 197G (Request for evidence of assumed identity) or 197T (Request to participating jurisdiction for evidence of assumed identity)

section 197A⁷⁰ to apply to the independent member for authority to create a birth certificate for an assumed identity.

- ‘(3) No more than 4 delegations may be in force under this section at any time.

‘197ZF Delegation—CMC chairperson

- ‘(1) The CMC chairperson may delegate any of the chairperson’s powers under this chapter relating to the following to a CMC assistant commissioner—
- (a) the granting, variation and cancellation of authorities;
 - (b) conducting reviews under section 197;
 - (c) authorising the making of an application to the independent member for a birth certificate approval for an assumed identity;
 - (d) making applications under section 197E;
 - (e) making requests under section 197G or 197T.
- ‘(2) Also, the CMC chairperson may delegate to an authorised commission officer the chairperson’s power under section 197A to apply to the independent member for authority to create a birth certificate for an assumed identity.
- ‘(3) No more than 4 delegations may be in force under this section at any time.

70 Section 197A (Approval for creation of birth certificate for assumed identity)

‘Chapter 5C Surveillance device warrants

‘Part 1 Preliminary

‘197ZGPurposes of ch 5C

‘The main purposes of this chapter are—

- (a) to establish procedures for law enforcement officers to obtain warrants or emergency authorisations for the installation, use, maintenance and retrieval of surveillance devices in criminal investigations, including criminal investigations extending beyond this jurisdiction; and
- (b) to recognise warrants and emergency authorisations issued in other jurisdictions; and
- (c) to restrict the use, communication and publication of information obtained through the use of surveillance devices or otherwise connected with surveillance device operations; and
- (d) to impose requirements for the secure storage and destruction of records, and the making of reports to judges, magistrates and Parliament, in connection with surveillance device operations.

‘197ZHDefinitions for ch 5C

‘In this chapter—

computer means any electronic device for storing or processing information.

corresponding emergency authorisation means an authorisation in the nature of an emergency authorisation given under the provisions of a corresponding law whether or not the emergency authorisation is of a kind that may be issued under this chapter.

corresponding warrant means a warrant in the nature of a surveillance or retrieval warrant issued under the provisions of a corresponding law in relation to a relevant offence under a corresponding law.

data surveillance device means any device or program capable of being used to record or monitor the input of information into or the output of information from a computer, but does not include an optical surveillance device.

device includes instrument, apparatus and equipment.

disciplinary proceeding means a proceeding of a disciplinary nature under a law of any jurisdiction or of the Commonwealth.

emergency authorisation means an emergency authorisation given under part 3.⁷¹

enhancement equipment, in relation to a surveillance device, means equipment capable of enhancing a signal, image or other information obtained by the use of the surveillance device.

inspection entity, for a law enforcement agency, means—

- (a) for the police service—the public interest monitor; or
- (b) for the CMC—the parliamentary commissioner.

install includes attach.

maintain, in relation to a surveillance device, includes—

- (a) adjust, relocate, repair or service the device; and
- (b) replace a faulty device.

optical surveillance device means any device capable of being used to record visually or observe an activity, but does not include spectacles, contact lenses or a similar device used by a person with impaired sight to overcome that impairment.

premises means premises or place as defined under this Act whether in or outside this jurisdiction.

71 Part 3 (Emergency authorisations)

protected information, for part 5, division 1, see section 197ZZK.⁷²

public officer means a person employed by, or holding an office established by or under a law of, this jurisdiction or a person employed by a public authority of this jurisdiction, and includes a law enforcement officer.

record includes—

- (a) an audio, visual or audiovisual record; and
- (b) a record in digital form; and
- (c) a documentary record prepared from a record mentioned in paragraph (a) or (b).

relevant offence means—

- (a) generally, see section 197ZI;⁷³ or
- (b) for part 5, division 1, see section 197ZZK.

relevant proceeding, for part 5, division 1, see section 197ZZK.

remote application for a warrant, means an application under section 451⁷⁴ in relation to a warrant.

report of a conversation or activity, includes a report of the substance, meaning or purport of the conversation or activity.

retrieval warrant means a warrant issued under part 2, division 3.⁷⁵

senior officer means—

- (a) for the police service—a police officer of at least the rank of inspector; or
- (b) for the CMC—an authorised commission officer.

surveillance device means—

72 Section 197ZZK (Definitions for div 1)

73 Section 197ZI (Meaning of *relevant offence*)

74 Section 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

75 Part 2 (Warrants), division 3 (Retrieval warrants)

- (a) a data surveillance device, a listening device, an optical surveillance device or a tracking device; or
- (b) a device that is a combination of any 2 or more of the devices mentioned in paragraph (a).

surveillance device warrant means a warrant issued under part 2, division 2 or under section 197ZZG(2).⁷⁶

three year imprisonment offence means an indictable offence for which the maximum penalty is at least 3 years imprisonment.

tracking device means any electronic device capable of being used to find or monitor the geographical location of a person or an object.

use of a surveillance device includes use of the device to record a conversation or other activity.

warrant means surveillance device warrant or retrieval warrant.

‘197ZI Meaning of *relevant offence*

- ‘(1) A ***relevant offence*** is an offence against a law of this jurisdiction that is—
 - (a) a seven year imprisonment offence; or
 - (b) an indictable offence included in schedule 2.
- ‘(2) However, to the extent any provision of this Act applies to matters mentioned in subsection (3), a ***relevant offence*** is an offence against a law of this jurisdiction that is—
 - (a) a three year imprisonment offence; or
 - (b) an indictable offence included in schedule 2.
- ‘(3) For subsection (2), the matters are—
 - (a) an application for a surveillance device warrant—

⁷⁶ Part 2 (Warrants), division 2 (Surveillance device warrants) or section 197ZZG (Judge may approve emergency use of powers)

- (i) that authorises the use of a tracking device only; and
 - (ii) does not authorise covert entry to a building by a person installing it; and
- (b) a surveillance device warrant mentioned in paragraph (a).

‘197ZJ When an investigation is conducted in this jurisdiction

‘For this chapter, an investigation into a relevant offence is taken to be conducted in this jurisdiction, whether or not it is also conducted in another jurisdiction, if a law enforcement officer participates in the investigation.

Note—

This provision is intended to cover the situation where an officer of this jurisdiction is conducting or participating in an investigation entirely in another jurisdiction for an offence of this jurisdiction, for example, a Queensland officer is investigating a conspiracy to import drugs into Queensland from New South Wales, and all the evidence of the offence is in New South Wales.

‘197ZK Relationship to other laws and matters

- ‘(1) This chapter is not intended to affect any other law of this jurisdiction that prohibits or regulates the use of surveillance devices entirely within this jurisdiction.
- ‘(2) To remove doubt, it is declared that it is intended that a warrant may be issued, or an emergency authorisation given, in this jurisdiction under this chapter for the installation, use, maintenance or retrieval of a surveillance device and any related enhancement equipment in this jurisdiction or a participating jurisdiction or both.
- ‘(3) A function conferred under this chapter in relation to the activities of the CMC is only conferred for the purpose of a function conferred on the CMC under the *Crime and Misconduct Act 2001* relating to major crime as defined under that Act.

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- ‘(4) Also, nothing in this chapter authorises the doing of anything for which a warrant would be required under the *Telecommunications (Interception) Act 1979* (Cwlth).
- ‘(5) This chapter does not stop a law enforcement officer from using an optical surveillance device in a place where the presence of the police officer is not an offence.
- Examples—*
- 1 The police officer may use an optical surveillance device to record activities in a public place or, with the occupier’s consent, install the device in a private place.
 - 2 A police officer who is lawfully at a place may use binoculars or a telescope to monitor activities at a place the police officer is not lawfully entitled to enter.
- ‘(6) The Public Records Act does not apply to activities and records under this chapter.
- ‘(7) Also, the *Freedom of Information Act 1992* does not apply to activities and records under this chapter.

‘Part 2 Warrants

‘Division 1 Introduction

‘197ZL Types of warrant

- ‘(1) The following types of warrant may be issued under this part—
- (a) surveillance device warrants;
 - (b) retrieval warrants.
- ‘(2) A warrant issued by a Supreme Court judge may be issued in relation to 1 or more kinds of surveillance device.

‘197ZM Who may issue warrants

- ‘(1) A Supreme Court judge may issue any warrant under this part.

- ‘(2) A magistrate may issue—
- (a) a surveillance device warrant—
 - (i) that authorises the use of a tracking device only; and
 - (ii) that does not authorise covert entry to a building by a person installing it; and
 - (b) a retrieval warrant in relation to a tracking device authorised under a warrant mentioned in paragraph (a), if a magistrate issued the original warrant.

‘Division 2 Surveillance device warrants

‘197ZNAApplication for surveillance device warrant

- ‘(1) A senior officer of a law enforcement agency may apply for the issue of a surveillance device warrant if the officer reasonably believes that—
- (a) a relevant offence has been, is being, is about to be or is likely to be committed; and
 - (b) the use of a surveillance device in the course of an investigation is or will be necessary for the purpose of enabling evidence or information to be obtained of the commission of the relevant offence or the identity or location of the offender.
- ‘(2) The application may be made to—
- (a) a Supreme Court judge in any case; or
 - (b) a magistrate for a surveillance device warrant that authorises the use of a tracking device only.
- ‘(3) The application must be sworn and state—
- (a) the name of the applicant; and
 - (b) the nature and duration of the warrant sought, including the kind of surveillance device sought to be authorised; and
 - (c) the grounds on which the warrant is sought; and

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- (d) information required under a regulation, whether under this Act or the *Crime and Misconduct Act 2001*, about any warrants issued within the previous year under either Act, or both Acts, in relation to the person stated in the application or wherever it is sought to use the surveillance device.
- ‘(4) The application must also fully disclose all matters of which the applicant is aware, both favourable and adverse to the issuing of the warrant
- ‘(5) Without limiting this section, the application may seek the use of a surveillance device in a public place or in a place described by reference to a class of place.
- ‘(6) Subsection (3)(d) only applies to—
- (a) information kept in a register that the applicant may inspect; and
- (b) information the applicant otherwise actually knows.
- ‘(7) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.
- ‘(8) The judge or magistrate may refuse to consider the application until the applicant gives the judge or magistrate all the information the judge or magistrate requires about the application in the way the judge or magistrate requires.

Note—

An application made under this section by a lawyer appearing for the applicant is not a remote application.

‘197ZOWho may be present at consideration of application

- ‘(1) The judge or magistrate must hear an application for a surveillance device warrant in the absence of anyone other than the following—
- (a) the applicant;
- (b) a monitor;
- (c) someone the judge or magistrate permits to be present;

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

‘197ZP Deciding application

- ‘(1) A Supreme Court judge or a magistrate may issue a surveillance device warrant if satisfied—
 - (a) there are reasonable grounds for the belief founding the application for the warrant; and
 - (b) for a remote application—that it would have been impracticable for the application to have been made in person.
- ‘(2) In deciding whether a surveillance device warrant should be issued, the judge or magistrate, being mindful of the highly intrusive nature of a surveillance device warrant, must have regard to—
 - (a) the nature and gravity of the relevant offence for which the warrant is sought; and
 - (b) the extent to which the privacy of any person is likely to be affected; and
 - (c) the existence of alternative ways of obtaining the evidence or information sought to be obtained and the extent to which those ways may help or prejudice the investigation; and
 - (d) the evidentiary or intelligence value of any information sought to be obtained; and
 - (e) any previous warrant of a similar kind sought or issued under this Act, the *Crime and Misconduct Act 2001* or a corresponding law, if known, in connection with the same offence; and

- (f) any submissions made by a monitor.
- ‘(3) The judge or magistrate may issue a warrant for the use of a surveillance device in the office of a practising lawyer only if the application for the warrant relates to the lawyer’s involvement in a relevant offence.
- ‘(4) A magistrate may issue a warrant for the use of a tracking device only if the warrant does not authorise covert entry to a building by a person installing the device.

‘197ZQWhat must a surveillance device warrant contain

- ‘(1) A surveillance device warrant must—
 - (a) state that the judge or magistrate is satisfied of the matters mentioned in section 197ZP(1) and has had regard to the matters mentioned in section 197ZP(2); and
 - (b) state—
 - (i) the applicant’s name; and
 - (ii) the relevant offence in relation to which the warrant is issued; and
 - (iii) the date and time the warrant is issued; and
 - (iv) the kind of surveillance device authorised to be used; and
 - (v) if the warrant authorises the use of a surveillance device on premises—the premises where the use of the surveillance device is authorised; and
 - (vi) if the warrant authorises the use of an optical surveillance device that is to be installed in a dwelling—the parts of the dwelling in which the device may be installed; and
 - (vii) if the warrant authorises the use of a surveillance device in or on an object or class of object—the object or class of object in or on which the use of the surveillance device is authorised; and

- (viii) if the warrant authorises the use of a surveillance device in relation to the conversations, activities or geographical location of a person—the name of the person, if known; and
 - (ix) the period, of not more than 90 days, during which the warrant is in force, and the day and time the warrant starts and when the warrant ends; and
 - (x) the name of the law enforcement officer primarily responsible for executing the warrant; and
 - (xi) any conditions subject to which premises may be entered, or a surveillance device may be used, under the warrant; and
 - (xii) the time within which a report in relation to the warrant must be made under section 197ZZQ and to whom the report must be made.
- ‘(2) For a warrant mentioned in subsection (1)(b)(viii), if the identity of the person is unknown, the warrant must state that fact.
- ‘(3) A warrant must be signed by the person issuing it and include their name.

Note—

See section 452(1) for records the issuer must keep for surveillance warrants issued on a remote application.

‘197ZR What a surveillance device warrant authorises

- ‘(1) A surveillance device warrant may authorise, as stated in the warrant, any 1 or more of the following—
- (a) the use of a surveillance device on stated premises;
 - (b) the use of a surveillance device in or on a stated object or class of object;
 - (c) the use of a surveillance device in relation to the private conversations, activities or geographical location of a stated person or a person whose identity is unknown.
- ‘(2) A surveillance device warrant authorises—

- (a) for a warrant of a kind mentioned in subsection (1)(a)—
 - (i) the installation, use and maintenance of a surveillance device of the kind stated in the warrant on the stated premises; and
 - (ii) the entry onto the premises, or other stated premises adjoining or providing access to the premises, for any of the purposes mentioned in subparagraph (i) or subsection (3); and
 - (b) for a warrant of a kind mentioned in subsection (1)(b)—
 - (i) the installation, use and maintenance of a surveillance device of the kind stated in the warrant in or on the stated object or an object of the stated class; and
 - (ii) the entry onto any premises where the object, or an object of the class, is reasonably believed to be or is likely to be, or other premises adjoining or providing access to those premises, for any of the purposes mentioned in subparagraph (i) or subsection (3); and
 - (c) for a warrant of a kind mentioned in subsection (1)(c)—
 - (i) the installation, use and maintenance of a surveillance device of the kind stated in the warrant, on premises where the person is reasonably believed to be or is likely to be; and
 - (ii) the entry onto the premises mentioned in subparagraph (i), or other premises adjoining or providing access to those premises, for any of the purposes mentioned in subparagraph (i) or subsection (3).
- ‘(3) Each surveillance device warrant also authorises—
- (a) the retrieval of the surveillance device; and
 - (b) the installation, use, maintenance and retrieval of any enhancement equipment in relation to the surveillance device; and
 - (c) the temporary removal of an object from premises for the purpose of the installation, maintenance or retrieval

- of the surveillance device or enhancement equipment and the return of the object to the premises; and
- (d) the breaking open of any thing for the purpose of the installation, maintenance or retrieval of the surveillance device or enhancement equipment; and
 - (e) the connection of the device or equipment to an electricity supply system and the use of electricity from that system to operate the surveillance device or enhancement equipment; and
 - (f) the connection of the device or equipment to a telephone system and the use of that system in connection with the operation of the surveillance device or enhancement equipment.
- ‘(4) A surveillance device warrant may authorise the doing of anything reasonably necessary to conceal the fact that anything has been done in relation to the installation, use, maintenance or retrieval of a surveillance device or enhancement equipment under the warrant.
- ‘(5) A law enforcement officer may use a surveillance device under a warrant only if the officer is acting in the performance of the officer’s duty.
- ‘(6) This section applies to a warrant subject to any conditions stated in the warrant.

‘197ZS Extension and variation of surveillance device warrant

- ‘(1) A senior officer of a law enforcement agency to whom a surveillance device warrant has been issued may apply, at any time before the expiry of the warrant—
- (a) for an extension of the warrant for a period of not more than 90 days from the day on which it would otherwise expire; or
 - (b) for a variation of any of the other terms of the warrant.
- ‘(2) The application must be made to—

- (a) a Supreme Court judge, if the warrant was issued by a Supreme Court judge; or
 - (b) a magistrate, if the warrant was issued by a magistrate.
- ‘(3) Section 197ZN⁷⁷ applies, with any necessary changes, to an application under this section as if it were an application for the warrant.
- ‘(4) The judge or magistrate may grant an application, subject to any conditions the judge or magistrate considers appropriate, if satisfied that the matters mentioned in section 197ZP(1) still exist, having regard to the matters mentioned in section 197ZP(2).⁷⁸
- ‘(5) If the judge or magistrate grants the application, the judge or magistrate must write the new expiry date or the other varied term on the original warrant.
- ‘(6) An application may be made under this section more than once.

‘197ZT Revocation of surveillance device warrant

- ‘(1) A surveillance device warrant may be revoked at any time before the expiry of the period of validity stated in it by—
- (a) a Supreme Court judge, if a Supreme Court judge issued the warrant; or
 - (b) a magistrate, if a magistrate issued the warrant.
- ‘(2) Also, a judge or magistrate may revoke a surveillance warrant after receiving a report under section 197ZZQ⁷⁹ about the warrant.
- ‘(3) A judge or magistrate who revokes a warrant must cause notice of the revocation to be given to the chief executive officer of the law enforcement agency of which the law enforcement officer to whom the warrant was issued is a member.

77 Section 197ZN (Application for surveillance device warrant)

78 Section 197ZP (Deciding application)

79 Section 197ZZQ (Report to judge or magistrate)

‘197ZU Discontinuance of use of surveillance device under warrant

- ‘(1) This section applies if a surveillance device warrant is issued to a senior officer of a law enforcement agency.
- ‘(2) If the senior officer to whom the warrant is issued, or the law enforcement officer who is primarily responsible for executing the warrant, believes that use of a surveillance device under the warrant is no longer necessary for the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender, the officer must inform the chief executive officer of the law enforcement agency immediately.
- ‘(3) If the chief executive officer of the law enforcement agency is satisfied, whether because of subsection (2) or otherwise, that the use of a surveillance device under the warrant is no longer necessary for the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender, the chief executive officer—
 - (a) must take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued as soon as practicable; and
 - (b) must give written notice of that fact to the public interest monitor.
- ‘(4) If notice is given under subsection (3)(b) for a surveillance device warrant, the warrant stops having effect other than to the extent it authorises the removal of a surveillance device and any enhancement equipment.
- ‘(5) Also, if the chief executive officer is notified that the warrant has been revoked by a judge or magistrate under section 197ZT(1), the chief executive officer must take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued immediately.

‘Division 3 Retrieval warrants

‘197ZV Application for retrieval warrant

- ‘(1) A law enforcement officer may apply for the issue of a retrieval warrant in relation to a surveillance device or enhancement equipment—
 - (a) that was lawfully installed on premises, or in or on an object, under a surveillance device warrant; and
 - (b) that the law enforcement officer reasonably believes is still on those premises or in or on that object, or on other premises or in or on another object.
- ‘(2) The application may be made to—
 - (a) a Supreme Court judge in any case; or
 - (b) a magistrate for an application for a retrieval warrant—
 - (i) that authorises the retrieval of a tracking device only; and
 - (ii) that does not authorise covert entry to a building by a person retrieving it.
- ‘(3) The application must be sworn and state the grounds on which the warrant is sought.
- ‘(4) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.
- ‘(5) The judge or magistrate may refuse to consider the application until the applicant gives the judge all the information the judge or magistrate requires about the application in the way the judge or magistrate requires.

‘197ZW Who may be present at consideration of application

- ‘(1) The judge or magistrate must hear an application for a retrieval warrant in the absence of anyone other than the following—
 - (a) the applicant;
 - (b) a monitor;

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

‘197ZX Deciding application

- ‘(1) A Supreme Court judge or a magistrate may issue a retrieval warrant if the judge or magistrate is satisfied—
- (a) that there are reasonable grounds for the belief founding the application for the warrant; and
 - (b) for a remote application—that it would have been impracticable for the application to have been made in person.
- ‘(2) In deciding whether a retrieval warrant should be issued, the judge or magistrate must have regard to—
- (a) the extent to which the privacy of any person is likely to be affected; and
 - (b) the public interest in retrieving the device sought to be retrieved; and
 - (c) any submissions made by a monitor.

‘197ZY What must a retrieval warrant contain

- ‘(1) A retrieval warrant must—
- (a) state that the judge or magistrate is satisfied of the matters mentioned in section 197ZX(1) and has had regard to the matters mentioned in section 197ZX(2); and
 - (b) state—

- (i) the name of the applicant; and
- (ii) the date and time the warrant is issued; and
- (iii) the kind of surveillance device authorised to be retrieved; and
- (iv) the premises or object from which the surveillance device is to be retrieved; and
- (v) the period, of not more than 90 days, during which the warrant is in force, including the date and time the warrant starts and when the warrant ends; and
- (vi) the name of the law enforcement officer primarily responsible for executing the warrant; and
- (vii) any conditions on which premises may be entered under the warrant; and
- (viii) the time within which a report in relation to the warrant must be made under section 197ZZQ⁸⁰ and to whom the report must be made.

‘(2) A warrant must be signed by the person issuing it and include their name.

Note—

See section 452(1) for records the issuer must keep for retrieval warrants issued on a remote application.

‘197ZZ What a retrieval warrant authorises

- ‘(1) A retrieval warrant, subject to any conditions stated in it, authorises—
- (a) the retrieval of the surveillance device stated in the warrant and any enhancement equipment in relation to the device or, if the warrant relates to the retrieval of enhancement equipment only, the enhancement equipment; and
 - (b) the entry onto premises where the surveillance device is reasonably believed to be, or other premises adjoining or

- providing access to those premises, for the purpose of retrieving the device and equipment; and
- (c) the breaking open of any thing for the purpose of the retrieval of the device and equipment; and
 - (d) if the device or equipment is installed on or in an object, the temporary removal of the object from any place where it is situated for the purpose of the retrieval of the device and equipment and the return of the object to that place.
- ‘(2) Also, the warrant authorises the use of the surveillance device and any related enhancement equipment solely for the purpose of the retrieval of the device and any enhancement equipment.
- ‘(3) However, if the warrant authorises the use of the surveillance device in another jurisdiction, subsection (2) applies subject to the corresponding law of the jurisdiction.
- ‘(4) A retrieval warrant may authorise the doing of anything reasonably necessary to conceal the fact that anything has been done in relation to the retrieval of a surveillance device or enhancement equipment under the warrant.

‘197ZZA Revocation of retrieval warrant

- ‘(1) A retrieval warrant may be revoked at any time before the expiry of the period of validity stated in it by—
- (a) a Supreme Court judge, if a Supreme Court judge issued the warrant; or
 - (b) a magistrate, if a magistrate issued the warrant.
- ‘(2) A judge or magistrate may revoke a retrieval warrant after receiving a report under section 197ZZQ⁸¹ about the warrant.
- ‘(3) A judge or magistrate who revokes a warrant must cause notice of the revocation to be given to the chief executive officer of the law enforcement agency of which the law

81 Section 197ZZQ (Report to judge or magistrate)

enforcement officer to whom the warrant was issued is a member.

‘197ZZB Discontinuance of retrieval warrant

- ‘(1) If the law enforcement officer to whom a retrieval warrant has been issued, or who is primarily responsible for executing a retrieval warrant, believes that the grounds for issue of the warrant no longer exist, the law enforcement officer must inform the chief executive officer of the law enforcement agency immediately.
- ‘(2) If the chief executive officer of a law enforcement agency is satisfied, whether because of subsection (1) or otherwise, that the grounds for issue of a retrieval warrant to a law enforcement officer of the agency no longer exist, the chief executive officer must give written notice of that fact to the public interest monitor.
- ‘(3) If notice is given under subsection (2) for a retrieval warrant, the warrant stops having effect.

‘Part 3 Emergency authorisations

‘197ZZC Emergency authorisation—risk of serious personal violence or substantial property damage

- ‘(1) A law enforcement officer of a law enforcement agency may apply to a senior officer of the agency for an emergency authorisation for the use of a surveillance device if the law enforcement officer reasonably believes that—
 - (a) an imminent threat of serious violence to a person or substantial damage to property exists; and
 - (b) the use of a surveillance device is immediately necessary for the purpose of dealing with the threat; and
 - (c) the circumstances are of a degree of seriousness and the matter is of a degree of urgency that the use of a surveillance device is warranted; and

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- (d) it is not practicable in the circumstances to apply for a surveillance device warrant.
- ‘(2) An application may be made orally or in writing.
- Note—*
- Applications may also be made under section 451.⁸²
- ‘(3) A senior officer may give an emergency authorisation for the use of a surveillance device on an application under subsection (1) if satisfied that there are reasonable grounds for the belief founding the application.
- ‘(4) An emergency authorisation given under this section may authorise the law enforcement officer to whom it is given to do anything that a surveillance device warrant may authorise them to do.

‘197ZZD Application for approval after use of surveillance device under emergency authorisation

- ‘(1) Within 2 business days after giving an emergency authorisation, a senior officer must apply to a Supreme Court judge for approval of the exercise of powers under the emergency authorisation.
- ‘(2) An application must be sworn and state—
- (a) the name of the applicant; and
- (b) the kind of surveillance device sought to be approved and, if a warrant is sought, the nature and duration of the warrant; and
- (c) the grounds on which the approval, and warrant, if any, is sought.
- ‘(3) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.
- ‘(4) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

82 Section 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

‘197ZZE Who may be present at consideration of application

- ‘(1) The judge must hear the application for approval of the exercise of powers under the emergency authorisation in the absence of anyone other than the following—
- (a) the applicant;
 - (b) a monitor;
 - (c) someone the judge permits to be present;
 - (d) a lawyer representing anyone mentioned in paragraphs (a) to (c).
- ‘(2) Also, the judge must hear the application—
- (a) in the absence of the person placed under or proposed to be placed under surveillance (the *relevant person*) or anyone likely to inform the relevant person of the application; and
 - (b) without the relevant person having been informed of the application.

‘197ZZF Consideration of application

‘Before deciding an application for approval of the exercise of powers under an emergency authorisation given under section 197ZZC,⁸³ the judge must, in particular, and being mindful of the highly intrusive nature of using a surveillance device, consider the following—

- (a) the nature of the risk of serious violence to a person or substantial damage to property;
- (b) the extent to which issuing a surveillance device warrant would have helped reduce or avoid the risk;
- (c) the extent to which law enforcement officers could have used alternative methods of investigation to help reduce or avoid the risk;

83 Section 197ZZC (Emergency authorisation—risk of serious personal violence or substantial property damage)

- (d) how much the use of alternative methods of investigation could have helped reduce or avoid the risk;
- (e) how much the use of alternative methods of investigation would have prejudiced the safety of the person or property because of delay or for another reason;
- (f) whether or not it was practicable in the circumstances to apply for a surveillance device warrant;
- (g) any submissions made by a monitor.

‘197ZZG Judge may approve emergency use of powers

- ‘(1) After considering an application for approval of an emergency authorisation given under section 197ZZC, the judge may approve the application if satisfied that there were reasonable grounds to believe that—
 - (a) there was a risk of serious violence to a person or substantial damage to property; and
 - (b) using a surveillance device may have helped reduce the risk; and
 - (c) it was not practicable in the circumstances to apply for a surveillance device warrant.
- ‘(2) If the judge approves an application under this section, the judge may issue a surveillance device warrant for the continued use of the surveillance device as if the application were an application for a surveillance device warrant under part 2, division 2.⁸⁴
- ‘(3) If the judge does not approve an application under this section, the judge may—
 - (a) order that the use of the surveillance device cease; and
 - (b) authorise, on conditions the judge considers appropriate, the retrieval of the surveillance device.

84 Part 2 (Warrants), division 2 (Surveillance device warrants)

‘197ZZJ Corresponding emergency authorisations

- ‘(1) A corresponding emergency authorisation authorises the use of a surveillance device in accordance with its terms in this jurisdiction, as if it were an emergency authorisation given under part 3.⁸⁶
- ‘(2) Subsection (1) does not apply at any time after a judge orders, under a provision of a corresponding law that corresponds to section 197ZZG(3),⁸⁷ that the use of a surveillance device under the corresponding emergency authorisation cease.
- ‘(3) To remove doubt it is declared that subsection (1) applies even though the corresponding emergency authorisation could not have been issued in this jurisdiction.

‘Part 5 Compliance and monitoring**‘Division 1 Restrictions on use, communication and publication of information****‘197ZZK Definitions for div 1**

‘In this division—

protected information means—

- (a) any information obtained from the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or
- (b) any information relating to—
 - (i) an application for, issue of, variation of, existence of or expiry or revocation of a warrant, emergency

86 Part 3 (Emergency authorisations)

87 Section 197ZZG (Judge may approve emergency use of powers)

- authorisation, corresponding warrant or corresponding emergency authorisation; or
- (ii) an application for approval of powers exercised under an emergency authorisation; or
 - (iii) an application under a corresponding law for approval of powers exercised under a corresponding emergency authorisation.

relevant offence means an offence against a law of this jurisdiction that is—

- (a) a three year imprisonment offence; or
- (b) an offence included in schedule 3.

relevant proceeding means any of the following—

- (a) the prosecution of a relevant offence;
- (b) a bail application, or a review of a decision to grant or refuse bail, in relation to a relevant offence;
- (c) a proceeding with a view to the committal of a person for trial for a relevant offence;
- (d) an application for the exercise of a power in relation to a relevant offence—
 - (i) to a court or judicial officer; or
 - (ii) by a law enforcement officer to anyone under this chapter;
- (e) a proceeding for the confiscation, forfeiture or restraint of property or for the imposition of a pecuniary penalty in connection with a relevant offence;
- (f) a proceeding under the Confiscation Act or a corresponding law as defined under that Act for the confiscation, forfeiture or restraint of property or for a pecuniary penalty order or a proceeds assessment order in connection with a serious crime related activity as defined under that Act;
- (g) a proceeding for the protection of a child or intellectually impaired person;

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- (h) a proceeding about the validity of a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation;
 - (i) a disciplinary proceeding against a public officer;
 - (j) a coronial inquest or inquiry if, in the opinion of the coroner, the event that is the subject of the inquest or inquiry may have resulted from the commission of a relevant offence;
 - (k) a proceeding under the *Mutual Assistance in Criminal Matters Act 1987* (Cwlth), section 13,⁸⁸ in relation to a criminal matter that concerns an offence against the laws of the foreign country that made the request resulting in the proceeding for which the maximum penalty is at least 3 years imprisonment or imprisonment for life;
 - (l) a proceeding for the taking of evidence under the *Extradition Act 1988* (Cwlth), section 43,⁸⁹ in so far as the proceeding relates to a relevant offence;
 - (m) a proceeding for the extradition of a person from another jurisdiction to this jurisdiction, in so far as the proceeding relates to a relevant offence;
 - (n) a proceeding under the *International War Crimes Tribunals Act 1995* (Cwlth), part 4, division 1;⁹⁰
 - (o) a proceeding of the International Criminal Court.

‘197ZZL Prohibition on communication or publication of protected information

‘(1) A person commits an offence if—

88 *Mutual Assistance in Criminal Matters Act 1987* (Cwlth), section 13 (Requests by foreign countries for the taking of evidence or the production of documents)

89 *Extradition Act 1988* (Cwlth), section 43 (Evidence for purposes of surrender of persons to Australia)

90 *International War Crimes Tribunals Act 1995* (Cwlth), part 4 (Other forms of assistance to a Tribunal), division 1 (Taking evidence etc.)

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- (a) the person intentionally, knowingly or recklessly uses, communicates or publishes any protected information; and
 - (b) the person knows that, or is reckless as to whether, the information is protected information; and
 - (c) the person knows that, or is reckless as to whether, the use, communication or publication of the information is not permitted by this division.

Maximum penalty—2 years imprisonment.

‘(2) A person commits a crime if the person commits an offence against subsection (1) in circumstances in which the person—

- (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation into a relevant offence; or
- (b) knows that, or is reckless as to whether, the disclosure of the information—
 - (i) endangers or will endanger the health or safety of any person; or
 - (ii) prejudices or will prejudice the effective conduct of an investigation into a relevant offence.

Maximum penalty—10 years imprisonment.

‘(3) Subsections (1) and (2) do not apply to—

- (a) the use, communication or publication of any information that—
 - (i) has been disclosed in proceedings in open court; or
 - (ii) has entered the public domain; or
- (b) the use or communication of protected information by a person who reasonably believes that the use or communication is necessary to help prevent or reduce the risk of serious violence to a person or substantial damage to property; or
- (c) the communication to the Director-General, as defined under the *Australian Security Intelligence Organisation Act 1979* (Cwlth), of protected information that relates

- or appears to relate to activities prejudicial to security as defined under that Act; or
- (d) the use or communication of information mentioned in paragraph (c) by an officer of the Australian Security Intelligence Organisation under the *Australian Security Intelligence Organisation Act 1979* (Cwlth) in the performance of the officer's official functions; or
 - (e) the use or communication of information to a foreign country or an appropriate authority of a foreign country under the *Mutual Assistance in Criminal Matters Act 1987* (Cwlth); or
 - (f) the communication of information with the approval of the chief executive officer of the law enforcement agency communicating the information; or
 - (g) the use or communication of information otherwise authorised under this division.
- ‘(4) Subsection (3)(c) and (d) does not apply to the use, communication or publication of protected information in relation to an emergency authorisation or a corresponding emergency authorisation unless the use of powers under that emergency authorisation has been approved under section 197ZZG⁹¹ or the provisions of a corresponding law that correspond to section 197ZZG.

‘197ZZM Permitted use of protected information

- ‘(1) Protected information may be used, communicated or published if it is necessary to do so for any of the following purposes—
- (a) the investigation of a relevant offence or a relevant offence as defined under a corresponding law;
 - (b) the making of a decision whether or not to bring—
 - (i) a relevant proceeding in relation to a relevant offence; or

91 Section 197ZZG (Judge may approve emergency use of powers)

- (ii) a relevant proceeding as defined under a corresponding law in relation to a relevant offence as defined under that law;
 - (c) a relevant proceeding in relation to a relevant offence, or a relevant proceeding as defined under a corresponding law in relation to a relevant offence as defined under that law;
 - (d) an investigation of a complaint against, or the conduct of, a public officer as defined under this chapter or a public officer as defined under a corresponding law;
 - (e) the making of a decision in relation to the appointment, re-appointment, term of appointment, termination or retirement of a person mentioned in paragraph (d);
 - (f) the keeping of records and the making of reports by a law enforcement agency under division 2 or a law enforcement agency, as defined under a corresponding law, under provisions of the corresponding law that correspond to division 2;
 - (g) an inspection by an inspection entity under section 197ZZV or an inspection under a provision of a corresponding law that corresponds to section 197ZZV;⁹²
 - (h) an investigation under the law of this jurisdiction or a participating jurisdiction or of the Commonwealth about the privacy of personal information.
- ‘(2) Subsections (1)(a), (b) and (c) do not authorise the use, communication or publication of protected information in relation to an emergency authorisation or a corresponding emergency authorisation unless the use of powers under that emergency authorisation has been approved under section 197ZZG⁹³ or the provisions of a corresponding law that correspond to section 197ZZG.
- ‘(3) However, subsection (2) does not apply to the use or communication of protected information in an application

92 Section 197ZZV (Inspection of records)

93 Section 197ZZG (Judge may approve emergency use of powers)

under section 197ZZD or the provisions of a corresponding law that corresponds to section 197ZZD to obtain the approval under section 197ZZG or the provisions of the corresponding law that correspond to section 197ZZG.

- ‘(4) A reference in subsection (1) to a relevant offence, whether of this jurisdiction or another jurisdiction, is a reference to any relevant offence of the relevant jurisdiction, whether or not the offence in relation to which the relevant warrant or emergency authorisation was issued or given.

‘197ZZN Dealing with records obtained by use of surveillance devices

- ‘(1) The chief executive officer of a law enforcement agency—
- (a) must ensure that every record or report obtained by use of a surveillance device by a law enforcement officer of the agency under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation is kept in a secure place that is not accessible to people who are not entitled to deal with the record or report; and
 - (b) must destroy or cause to be destroyed any record or report mentioned in paragraph (a) if satisfied it is not likely to be required in connection with a purpose mentioned in section 197ZZL(3) or 197ZZM(1).⁹⁴
- ‘(2) Subsection (1) does not apply to a record or report that is received into evidence in legal proceedings or disciplinary proceedings.
- ‘(3) Subsection (1) does not prevent information or other matter relevant to an offence of which someone has been convicted being preserved for any period or indefinitely if there is any possibility that an issue about the conviction may arise.

⁹⁴ Section 197ZZL (Prohibition on communication or publication of protected information) or 197ZZM (Permitted use of protected information)

‘197ZZO Protection of surveillance device technologies and methods

- ‘(1) Despite the *Recording of Evidence Act 1962*, a transcript of a proceeding under this chapter for an application or order or approval must not be made.
- ‘(2) A person must not publish a report of a proceeding under this chapter for an application or order or approval.
Maximum penalty—85 penalty units or 1 year’s imprisonment.
- ‘(3) Subsection (4) applies to a proceeding before a court, a tribunal or a commission of inquiry under the *Commissions of Inquiry Act 1950*.
- ‘(4) Without limiting section 454,⁹⁵ if the person conducting or presiding over a proceeding is satisfied that publication of any information disclosed in the proceeding could reasonably be expected to reveal details of surveillance device technology or methods of installation, use or retrieval of surveillance devices, the person must make any orders prohibiting or restricting publication of the information that the person considers necessary to ensure that those details are not revealed.
- ‘(5) Subsection (4) does not apply to the extent that the person conducting or presiding over the proceeding considers that the interests of justice require otherwise.

‘197ZZP Protected information in the custody of a court

‘A person is not entitled to search any protected information in the custody of a court unless a Supreme Court judge otherwise orders in the interests of justice.

95 Section 454 (Protection of methodologies)

‘Division 2 Reporting and record keeping

‘197ZZQ Report to judge or magistrate

- ‘(1) A law enforcement officer to whom a warrant is issued, or who is primarily responsible for executing a warrant issued, under this chapter must make a report as required under this section.
- ‘(2) The report must be made to the judge or magistrate who issued the warrant or to the public interest monitor as stated in the warrant.
- ‘(3) The report must be made—
 - (a) within the time stated in the warrant; or
 - (b) if the warrant is revoked before the end of the time stated in the warrant—as soon as practicable after the warrant is revoked and within the time stated in the warrant.
- ‘(4) For a surveillance device warrant, the report must—
 - (a) state whether the warrant was executed; and
 - (b) if so—
 - (i) state the name of each person involved in the execution of the warrant; and
 - (ii) state the kind of surveillance device used; and
 - (iii) state the period when the device was used; and
 - (iv) state the name, if known, of any person whose conversations or activities were overheard, recorded, monitored, listened to or observed by the use of the device; and
 - (v) state the name, if known, of any person whose geographical location was found by the use of a tracking device; and
 - (vi) give details of any premises on which the device was installed or any place where the device was used; and

- (vii) give details of any object in or on which the device was installed or any premises where the object was located when the device was installed; and
 - (viii) give details of the benefit to the investigation of the use of the device and of the general use made or to be made of any evidence or information obtained by the use of the device; and
 - (ix) give details of the compliance with the conditions, if any, to which the warrant was subject; and
- (c) if the warrant was extended or varied, state—
- (i) the number of extensions or variations; and
 - (ii) the reasons for them; and
- (d) if written notice was given to the public interest monitor under section 197ZU,⁹⁶ state the reasons for the notice.
- ‘(5) For a retrieval warrant, the report must—
- (a) give details of any premises entered, anything opened and any object removed and replaced under the warrant; and
 - (b) state whether the surveillance device was retrieved under the warrant; and
 - (c) if the device was not retrieved, state the reason that the device was not retrieved; and
 - (d) give details of the compliance with the conditions, if any, to which the warrant was subject; and
 - (e) if written notice was given to the public interest monitor under section 197ZZB,⁹⁷ state the reasons for the notice.
- ‘(6) If a report is given to the public interest monitor, the monitor may refer the report to a judge or magistrate for the purpose of an order being made under subsection (7).
- ‘(7) On receiving a report, the judge or magistrate may order that any information obtained from or relating to the execution of

96 Section 197ZU (Discontinuance of use of surveillance device under warrant)

97 Section 197ZZB (Discontinuance of retrieval warrant)

the warrant or any record of that information be dealt with in the way stated in the order.

- ‘(8) The function imposed on a law enforcement officer by subsection (1) may be performed by the person for the time being occupying or acting in the office or position held by the law enforcement officer.

Note—

Provision for a statutory function to be performed by a person acting in an office is also made by the *Acts Interpretation Act 1954*, section 23(2).

‘19ZZR Annual reports

- ‘(1) The chief executive officer of a law enforcement agency must make a report under subsection (4) that includes the following information for each financial year—
- (a) the number of applications for warrants by and the number of warrants issued to law enforcement officers of the agency during that year;
 - (b) the number of applications for emergency authorisations by and the number of emergency authorisations given to law enforcement officers of the agency during that year;
 - (c) the number of remote applications for warrants by law enforcement officers of the agency during that year;
 - (d) the number of applications for warrants or emergency authorisations by law enforcement officers of the agency that were refused during that year, and the reasons for refusal, if known;
 - (e) the number of applications for variations or extensions of warrants by law enforcement officers of the agency during that year, the number of variations or extensions granted or refused and, if refused, the reasons for refusal, if known;
 - (f) the number of arrests made by law enforcement officers of the agency during that year on the basis, entirely or partly, of information obtained by the use of a surveillance device under a warrant or emergency authorisation;

- (g) the number of prosecutions that were started in this jurisdiction during that year in which information obtained by the use of a surveillance device under a warrant or emergency authorisation was given in evidence and the number of those prosecutions in which a person was found guilty;
 - (h) any other information about the use of surveillance devices and the administration of this chapter that the Minister considers appropriate.
- ‘(2) The information mentioned in subsection (1)(a) and (b) must be presented in a way that identifies the number of warrants issued and emergency authorisations given for each different kind of surveillance device.
- ‘(3) The report must not contain information that—
- (a) discloses or may lead to the disclosure of the identity of any person who has been, is being or is to be investigated; or
 - (b) indicates a particular investigation has been, is being or is to be conducted.
- ‘(4) The report must be given as soon as practicable after the end of each financial year, and within 3 months after the end of the financial year, to—
- (a) for the police service—the Minister; or
 - (b) for the CMC—the parliamentary committee chairperson.
- ‘(5) The Minister or parliamentary committee chairperson must cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days after the Minister or chairperson receives the report.

Note—

The *Parliament of Queensland Act 2001*, section 59 makes provision for the tabling of reports when the Assembly is not sitting.

‘197ZZS Keeping documents connected with warrants and emergency authorisations

‘The chief executive officer of a law enforcement agency must cause the following or a copy of the following to be kept—

- (a) each warrant issued to a law enforcement officer of the agency;
- (b) each notice given to the chief executive officer under section 197ZT(3)⁹⁸ of revocation of a warrant;
- (c) each application made by a law enforcement officer of the agency for an emergency authorisation;
- (d) each emergency authorisation given to a law enforcement officer of the agency;
- (e) each application made by a law enforcement officer of the agency for—
 - (i) a warrant; or
 - (ii) variation, extension or revocation of a warrant; or
 - (iii) approval of the exercise of powers under an emergency authorisation;
- (f) each report made under section 197ZZQ;⁹⁹
- (g) each certificate issued by a senior officer of the agency under section 197ZZX.¹⁰⁰

‘197ZZT Other records to be kept

‘The chief executive officer of a law enforcement agency must cause the following to be kept—

- (a) a statement as to whether each application made by a law enforcement officer of the agency for a warrant, or variation, extension or revocation of a warrant, was granted, refused or withdrawn;

98 Section 197ZT (Revocation of surveillance device warrant)

99 Section 197ZZQ (Report to judge or magistrate)

100 Section 197ZZX (Evidentiary certificates)

- (b) a statement as to whether each application made by a law enforcement officer of the agency for an emergency authorisation, or for approval of powers exercised under an emergency authorisation, was granted, refused or withdrawn;
- (c) details of each use by the agency, or by a law enforcement officer of the agency, of information obtained by the use of a surveillance device by a law enforcement officer of the agency;
- (d) details of each communication by a law enforcement officer of the agency to a person other than a law enforcement officer of the agency of information obtained by the use of a surveillance device by a law enforcement officer of the agency;
- (e) details of each occasion when, to the knowledge of a law enforcement officer of the agency, information obtained by the use of a surveillance device by a law enforcement officer of the agency was given in evidence in a relevant proceeding as defined in section 197ZZK;¹⁰¹
- (f) details of the destruction of records or reports under section 197ZZN(1)(b).¹⁰²

‘197ZZU Register of warrants and emergency authorisations

- ‘(1) This section applies only to the police service and the CMC.
- ‘(2) The chief executive officer must cause a register of warrants and emergency authorisations to be kept.
- ‘(3) The register must be or form part of the register of covert acts kept under chapter 11, part 2.¹⁰³

101 Section 197ZZK (Definitions for div 1)

102 Section 197ZZN (Dealing with records obtained by use of surveillance devices)

103 Chapter 11 (Administration), part 2 (Registers)

‘Division 3 Inspections

‘197ZZV Inspection of records

- ‘(1) The inspection entity for a law enforcement agency must, from time to time, inspect the records of the law enforcement agency to decide the extent of compliance with this chapter by the agency and law enforcement officers of the agency.
- ‘(2) For the purpose of an inspection, the inspection entity—
 - (a) after notifying the chief executive officer of the agency, may enter at any reasonable time premises occupied by the agency; and
 - (b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and
 - (c) may require a member of staff of the agency to give the inspection entity any information that the inspection entity considers necessary, being information that is in the member’s possession, or to which the member has access, and that is relevant to the inspection.
- ‘(3) The chief executive officer must ensure that members of staff of the agency give the inspection entity any help the inspection entity reasonably requires to enable the inspection entity to perform functions under this section.
- ‘(4) For applying this section to the parliamentary commissioner as inspection entity for the CMC, this section does not limit the parliamentary commissioner’s powers under the *Crime and Misconduct Act 2001*, chapter 6, part 4, division 4.¹⁰⁴

104 *Crime and Misconduct Act 2001*, chapter 6 (Administration), part 4 (Parliamentary crime and misconduct commissioner), division 4 (Powers)

‘197ZZW Report on inspection

- ‘(1) The inspection entity of a law enforcement agency must make a written report at 6 monthly intervals on the results of each inspection under section 197ZZV.¹⁰⁵
- ‘(2) The report may include comments or observations about the use and effectiveness of surveillance device warrants.
- ‘(3) The inspection entity must give the report to—
 - (a) if the inspection entity is the public interest monitor—the Minister; or
 - (b) if the inspection entity is the parliamentary commissioner—the parliamentary committee chairperson.
- ‘(4) The report must not contain information that—
 - (a) discloses or may lead to the disclosure of the identity of any person who has been, is being or is to be investigated; or
 - (b) indicates a particular investigation has been, is being or is to be conducted.
- ‘(5) The Minister or the parliamentary committee chairperson must cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days after receiving the report.

Note—

The *Parliament of Queensland Act 2001*, section 59 makes provision for the tabling of reports when the Assembly is not sitting.

‘Division 4 General**‘197ZZX Evidentiary certificates**

- ‘(1) A senior officer of a law enforcement agency may issue a written certificate signed by the officer stating any facts the officer or person considers relevant about—

105 Section 197ZZV (Inspection of records)

- (a) anything done by a law enforcement officer of the agency, or by a person helping or providing technical expertise to him or her, in connection with the execution of a warrant or in accordance with an emergency authorisation; or
 - (b) anything done by a law enforcement officer of the agency in connection with—
 - (i) the communication by a person to another person; or
 - (ii) the making use of; or
 - (iii) the making of a record of; or
 - (iv) the custody of a record of;

information obtained by the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation.
- ‘(2) A document purporting to be a certificate issued under subsection (1) or under a provision of a corresponding law that corresponds to subsection (1) is admissible in any proceeding as evidence of the matters stated in it.
- ‘(3) Subsection (2) does not apply to a certificate to the extent that the certificate states facts about anything done in accordance with an emergency authorisation or corresponding emergency authorisation unless the use of powers under that authorisation has been approved under section 197ZZG¹⁰⁶ or under a provision of a corresponding law that corresponds to section 197ZZG.’.

13 Amendment of s 373 (Assistance in exercising powers)

- (1) Section 373(1), example 1, ‘surveillance warrant’—
omit, insert—
 ‘surveillance device warrant’.

¹⁰⁶ Section 197ZZG (Judge may approve emergency use of powers)

(2) Section 373—

insert—

‘(6) A reference in this section to a police officer and the police service includes a reference to a law enforcement agency and a law enforcement officer when a person is performing the functions of a law enforcement officer under chapter 5A or 5C.¹⁰⁷’.

14 Amendment of s 375 (Power to use force—exercise of certain powers)

(1) Section 375(1), after ‘police officer’—

insert—

‘or law enforcement officer’.

(2) Section 375(1)(a), ‘surveillance warrant’—

omit, insert—

‘surveillance device warrant’.

15 Replacement of ch 11, pt 2, div 2, hdg

Chapter 11, part 2, division 2, heading—

omit, insert—

‘Division 2 Register of covert acts

‘Subdivision 1 Preliminary’.

16 Amendment of s 400 (Application of div 2)

Section 400(2)—

omit.

107 Chapter 5A (Controlled operations) or 5C (Surveillance device warrants)

17 Insertion of new ch 11, pt 2, div 2, sdiv 2, hdg and s 402A

Before section 403—

insert—

‘Subdivision 2 Covert acts under chapters 4 and 4A**‘402A Application of sdiv 2**

‘This subdivision applies only in relation to the following covert acts—

- (a) applications for a monitoring order or a suspension order;
- (b) applications for a covert search warrant or an extension of a covert search warrant;
- (c) the exercise of powers under a monitoring order, a suspension order or a covert search warrant.’.

18 Amendment of s 403 (Information to be recorded in register)

- (1) Section 403, heading, at the end—

insert—

‘for sdiv 2’.

- (2) Section 403(3), after ‘other covert acts’—

insert—

‘to which this subdivision applies’.

19 Insertion of new ch 11, pt 2, div 2, sdiv 3 and sdiv 4, hdg

Chapter 11, part 2, before section 404—

insert—

‘Subdivision 3 Covert acts under chapters 5A and 5C

‘403A Application of sdiv 3

‘This subdivision applies only in relation to the following covert acts—

- (a) applications for surveillance device warrants or extensions or variations of surveillance device warrants;
- (b) applications for retrieval warrants;
- (c) revocations of surveillance device warrants or retrieval warrants;
- (d) applications for emergency authorisations or for approval of the use of a surveillance device under an emergency authorisation;
- (e) applications for authority for a controlled operation or for variation of an authority for a controlled operation;
- (f) the exercise of powers under this Act under a warrant, emergency authorisation or authority mentioned in paragraph (a), (b), (d) or (e); or
- (g) the disclosure of information under section 197ZZL or 197ZZM.

‘403B Information to be included in register for surveillance device warrants and retrieval warrants

‘The following information about surveillance device warrants and retrieval warrants must be recorded in the register—

- (a) the date and time of issue of the warrant;
- (b) the name of the judge or magistrate who issued the warrant;
- (c) the name of the law enforcement officer stated in the warrant as the person primarily responsible for executing it;

-
- (d) the relevant offence for which the warrant was issued;
 - (e) the period when the warrant is in force;
 - (f) details of any variation or extension of the warrant;
 - (g) whether the surveillance device was used in a participating jurisdiction;
 - (h) information prescribed under the responsibilities code about the exercise of powers under the warrant.

‘403C Information to be included in register for emergency authorisations

‘The following information about emergency authorisations must be recorded in the register—

- (a) the date and time the emergency authorisation was given;
- (b) the name of the senior officer who gave the emergency authorisation;
- (c) the name of the law enforcement officer to whom the emergency authorisation was given;
- (d) the relevant offence for which the emergency authorisation was given;
- (e) the date on which the application for approval of powers exercised under the emergency authorisation was made;
- (f) information prescribed under the responsibilities code about the exercise of powers under the emergency authorisation.

‘403D Information to be included in register for controlled operations

‘(1) The following information about each application made under chapter 5A by a law enforcement officer of a law enforcement agency, including for variation of authority, must be recorded in the register—

- (a) the date of the application;

- (b) whether the application was formal or urgent;
 - (c) whether the application was granted, refused or withdrawn;
 - (d) if the application was refused or withdrawn—the date and time of the refusal or withdrawal.
- ‘(2) The following information about each authority granted under chapter 5A to a law enforcement officer of a law enforcement agency must be recorded in the register—
- (a) the date and time the authority was granted;
 - (b) whether the authority was formal or urgent;
 - (c) the name and rank or position of the person who granted the authority;
 - (d) each relevant offence for which controlled conduct under the authority was to be engaged in;
 - (e) the period of validity of the authority;
 - (f) if the authority was cancelled, the date and time of cancellation;
 - (g) the date and time the authorised operation began and the date of completion of the operation;
 - (h) the date on which the principal law enforcement officer for the operation made a report on the operation under section 178;¹⁰⁸
 - (i) if the authorised operation involved illicit goods, to the extent known—
 - (i) the nature and quantity of the illicit goods; and
 - (ii) the route through which the illicit goods passed in the course of the operation;
 - (j) details of any loss of or serious damage to property, or any personal injuries, happening in the course of or as a direct result of the operation;

- (k) whether the operation was undertaken in a participating jurisdiction;
 - (l) information prescribed under the responsibilities code about the exercise of powers under the authority.
- ‘(3) The following information about each variation of authority under chapter 5A must be recorded in the register—
- (a) the date and time the variation was made;
 - (b) whether the variation was formal or urgent;
 - (c) the name and rank or position of the person who made the variation.

‘Subdivision 4 General’.

20 Amendment of s 404 (Who must record information in register)

Section 404, heading, after ‘information’—
insert—
‘relating to covert search warrants’.

21 Amendment of s 409 (Other authorised inspections)

- (1) Section 409(1), ‘an entity’—
omit, insert—
‘a law enforcement agency’.
- (2) Section 409(1), ‘entity’s’—
omit, insert—
‘law enforcement agency’s’.
- (3) Section 409(2)(c)—
omit, insert—
‘(c) for preparing an application for an approval, authorisation, order or warrant of a kind to which this division applies; or’.

22 Amendment of s 411 (Application of div 3)

Section 411(2), definition *enforcement act*, from ‘surveillance warrant’—

omit, insert—

‘covert search warrant, surveillance device warrant, retrieval warrant or emergency authorisation.’.

23 Amendment of s 419 (Correcting registers)

Section 419(1), after ‘section 403’—

omit, insert—

‘, 403B, 403C, 403D’.

24 Amendment of s 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

(1) Section 451, after ‘police officer’—

insert—

‘or law enforcement officer’.

(2) Section 451(2), after ‘radio’—

insert—

‘, email’.

(3) Section 451(2)(b), after ‘police officer’s’—

insert—

‘or law enforcement officer’s’.

(4) Section 451(5)—

renumber as section 451(6).

(5) Section 451(4)—

omit, insert—

‘(4) If, apart from this section, the application is required to be sworn, the police officer or law enforcement officer may apply for the prescribed authority before the application is sworn.’

- ‘(5) If transmission by fax is available, the person applying must transmit a copy of the application to the person who is to decide the application.’.

25 Amendment of s 452 (Steps after issue of prescribed authority)

- (1) Section 452(1)—
omit, insert—
- ‘(1) After issuing the prescribed authority, the issuer must—
- (a) immediately fax a copy to the police officer or law enforcement officer if it is reasonably practicable to fax the copy; and
 - (b) for a prescribed authority issued on a remote application made under chapter 5C—immediately record the details mentioned in subsection (2)(a)(i) and (ii) in a register kept by the issuer for the purpose.’.
- (2) Section 452(2), (3) and (4), after ‘police officer’—
insert—
‘or law enforcement officer’.
- (3) Section 452(4), ‘, at the first reasonable opportunity,’—
omit.
- (4) Section 452(5)—
renumber as section 452(7).
- (5) Section 452—
insert—
- ‘(5) The police officer or law enforcement officer must send the documents mentioned in subsection (4) to the issuer—
- (a) generally—at the first reasonable opportunity; or
 - (b) for a remote application made under chapter 5C—within 72 hours.
- ‘(6) To remove doubt, it is declared that the prescribed authority form, properly completed by the police officer or law

enforcement officer, is, and is taken always to have been, of the same effect as the prescribed authority signed by the issuer.’.

26 Amendment of s 453 (Presumption about exercise of powers under prescribed authority)

Section 453, after ‘police officer’—

insert—

‘or law enforcement officer’.

27 Amendment of s 454 (Protection of methodologies)

Section 454(4)—

insert—

‘*Note—*

For provisions about the protection of surveillance device technologies and methods under chapter 5C, see section 197ZZO.’.

28 Insertion of new ch 13, pt 5

Chapter 13—

insert—

**‘Part 5 Transitional provisions for
Cross-Border Law Enforcement
Legislation Amendment Act
2005**

‘Division 1 Preliminary

‘484 Definitions for pt 5

‘In this part—

amendment Act means the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.

commencement day means the day on which section 12¹⁰⁹ of the amendment Act commences.

former, of a provision mentioned in this part, means the provision mentioned is a provision of the pre-amended Act.

new, of a provision mentioned in this part, means the provision mentioned is a provision of the post-amended Act.

pre-amended Act means this Act as in force immediately before the commencement day.

post-amended Act means this Act as in force from the commencement day.

‘Division 2 Controlled activities

‘485 Transitional provision for controlled activities

- ‘(1) A controlled activity authorised under former section 190¹¹⁰ but not completed before the commencement day continues in force as a controlled activity authorised under new section 135.¹¹¹
- ‘(2) New sections 136, 137 and 138¹¹² apply in relation to a controlled activity continued in force under subsection (1).

‘Division 3 Controlled operations

‘Subdivision 1 Definitions

‘486 Definitions for div 3

‘In this division—

109 Section 12 (Replacement of ch 5) of the amendment Act

110 Former section 190 (Authorised controlled activities)

111 New section 135 (Authorised controlled activities)

112 New sections 136 (Protection from liability), 137 (Admissibility of evidence obtained through controlled activities) and 138 (Evidentiary provision)

CMC officer means—

- (a) a commission officer; or
- (b) an officer or employee of a declared agency engaged by the CMC for a particular controlled operation.

existing CMC approving officer means an approving officer for the CMC mentioned in former section 173(2)(b).¹¹³

existing CMC civilian covert operative means a person other than a CMC officer or a police officer who is named in an existing CMC controlled operation approval or an existing CMC controlled operation urgent approval as a covert operative for the existing CMC controlled operation.

existing CMC controlled operation approval means an approval given by an existing CMC approving officer under former section 177¹¹⁴ for a controlled operation in relation to a serious indictable offence or organised crime.

existing CMC controlled operation urgent approval means an approval given by an existing CMC approving officer under former section 175 or 176¹¹⁵ for a controlled operation in relation to a serious indictable offence or organised crime.

existing CMC covert operative means a CMC officer or police officer named in an existing CMC controlled operation approval or an existing CMC controlled operation urgent approval as a covert operative for the existing CMC controlled operation.

existing police service approving officer means an approving officer for the police service mentioned in former section 173(2)(a).

existing police service civilian covert operative means a person who is not a police officer and is named in an existing police service controlled operation approval or an existing police service controlled operation urgent approval as a covert

113 Former section 173 (Application for approval)

114 Former section 177 (Consideration and approval of application)

115 Former section 175 (Certain CMC controlled operations) or 176 (Procedure in urgent circumstances other than if s 175 applies)

operative for the controlled operation to which the approval relates.

existing police service controlled operation approval means an approval for a controlled operation given under former section 177 by an existing police service approving officer.

existing police service controlled operation urgent approval means an approval for a controlled operation given under former section 176 by an existing police service approving officer.

existing police service covert operative means a police officer who is named in an existing police service controlled operation approval or an existing police service controlled operation urgent approval as a covert operative for the controlled operation to which the approval relates.

‘Subdivision 2 Controlled operations committee

‘487 Transitional provisions about committee membership

- ‘(1) A person who held office as a member of the committee under former section 167(2)(b),¹¹⁶ whether as the chief executive officer of an entity or as the chief executive officer’s nominee, continues to hold office as a member of the committee under new section 143(2)(b).
- ‘(2) The independent member of the committee under former section 168¹¹⁷ continues to be the independent member under new section 144 without further appointment.
- ‘(3) An acting independent member of the committee under former section 169¹¹⁸ continues to be an acting independent member under new section 145 without further appointment.

116 Former section 167 (Establishment of controlled operations committee)

117 Former section 168 (Independent member)

118 Former section 169 (Acting independent member)

‘488 Transitional provisions about committee business

- ‘(1) A matter referred to the committee by an approving officer under former chapter 5, part 2, division 3,¹¹⁹ but not decided before the commencement day, may continue to be considered by the committee under new chapter 5A, part 2, division 2.¹²⁰
- ‘(2) If, after the commencement day, the period of the first annual report required to be prepared under new section 180¹²¹ includes any period before the commencement day, the annual report prepared under new section 180 must include the matter required to be included under that section in relation to the committee’s activities before the commencement day.

‘Subdivision 3 Controlled operation approvals**‘489 Transitional provisions for police service controlled operation approvals**

- ‘(1) An existing police service controlled operation approval that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were a formal authority given under new section 156.¹²²
- ‘(2) An existing police service controlled operation urgent approval that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were an urgent authority given under new section 156.

119 Former chapter 5 (Controlled operations and controlled activities), part 2 (Controlled operations), division 2 (Committee’s functions and business)

120 New chapter 5A (Controlled operations), part 2 (Controlled operations committee), division 2 (Functions, business and recommendations)

121 New section 180 (Annual report by report entity)

122 New section 156 (Form of authority)

‘490 Transitional provisions for CMC controlled operation approvals

- ‘(1) An existing CMC controlled operation approval that was in force immediately before the commencement day and relates to a serious indictable offence or suspected organised crime continues in force from that day in accordance with its terms as if it were a formal authority given under new section 156 in relation to a relevant offence that is major crime as defined under the *Crime and Misconduct Act 2001*.
- ‘(2) An existing CMC controlled operation urgent approval that was in force immediately before the commencement day and relates to a serious indictable offence or suspected organised crime continues in force from that day in accordance with its terms as if it were an urgent authority given under new section 156 in relation to a relevant offence that is major crime as defined under the *Crime and Misconduct Act 2001*.

‘491 Transitional provision for pre-commencement day recommendations

‘A recommendation made by the committee under former section 172¹²³ continues in force from the commencement day as if it were a recommendation made by the committee under new section 148.

‘Subdivision 4 Covert operatives**‘492 Transitional provisions for police service covert operatives**

- ‘(1) An existing police service civilian covert operative named in an existing police service controlled operation approval or an existing police service controlled operation urgent approval continued in force under section 489 as a formal authority or an urgent authority is taken, from the commencement day, to be a civilian participant.

123 Former section 172 (Committee’s recommendations)

- ‘(2) An existing police service covert operative named in an existing police service controlled operation approval or an existing police service controlled operation urgent approval continued in force under section 489 as a formal authority or an urgent authority is taken, from the commencement day, to be an authorised participant.

‘493 Transitional provisions for CMC covert operatives

- ‘(1) An existing CMC civilian covert operative named in an existing CMC controlled operation approval or an existing CMC controlled operation urgent approval continued in force under section 490 as a formal authority or an urgent authority is taken, from the commencement day, to be a civilian participant.
- ‘(2) An existing CMC covert operative named in an existing CMC controlled operation approval or an existing CMC controlled operation urgent approval continued in force under section 490 as a formal authority or an urgent authority is taken, from the commencement day, to be an authorised participant.

‘Division 4 Assumed identities

‘494 Authorities for identity documents that are birth certificates

- ‘(1) An authority given under former section 186 or 187 to create a birth certificate to help conceal the identity of a covert operative for an existing CMC controlled operation or an existing police service controlled operation continues in force as a birth certificate approval given under new section 197A.
- ‘(2) A birth certificate created in accordance with an authority continued in force under subsection (1) continues in force as if it were a birth certificate created under new section 197C and may continue to be used for the purpose for which it was created.

- ‘(3) If, under new section 196, the chief executive officer cancels an authority mentioned in subsection (1), new section 197D applies to a birth certificate created under former section 186 or 187 in the same way as it applies to a birth certificate created under new section 197C.

‘495 Identity documents other than birth certificates

- ‘(1) An identity document created in accordance with former section 189—
- (a) continues in force as evidence of identity produced under a request under new section 197G; and
 - (b) is taken to have been issued under an authority given under new section 193; and
 - (c) may, if the purpose for which the identity document was created has not ended, continue to be used for the purpose.
- ‘(2) If, under new section 196, the chief executive officer of the law enforcement agency for whom the identity document is produced cancels an authority mentioned in subsection (1)(b), the chief executive officer must direct the issuing agency to cancel the evidence of identity under new section 197J.
- ‘(3) This section applies to an identity document created for the CMC under former section 189 to the extent to which continued use of the document relates to a controlled operation under a controlled operation approval continued in force under section 490.
- ‘(4) In this section—
- identity document* means a document, other than a birth certificate, created under former section 189.

‘Division 5 Surveillance devices

‘Subdivision 1 Definitions

‘496 Definitions for div 5

‘In this division—

existing CMC surveillance warrant means a warrant issued under the *Crime and Misconduct Act 2001*, section 124 as in force immediately before the commencement day, in relation to major crime as defined under that Act.

existing CMC emergency authorisation means an authorisation given under the *Crime and Misconduct Act 2001*, section 130 as in force immediately before the commencement day, in relation to major crime as defined under that Act.

existing police service surveillance warrant means a warrant issued under former section 127.

existing police service emergency authorisation means an authorisation given under former section 132.

‘Subdivision 2 Transitional provisions for police service surveillance devices

‘497 Transitional provisions for existing police service surveillance devices

- ‘(1) An existing police service surveillance warrant that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were a surveillance device warrant issued under new section 197ZP¹²⁴ to a police officer under new chapter 5C.¹²⁵

124 New section 197ZP (Deciding application)

125 New chapter 5C (Surveillance device warrants)

- ‘(2) An existing police service emergency authorisation that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were an emergency authorisation given under new section 197ZZC¹²⁶ to a police officer or member of the police service performing duties under new chapter 5C.
- ‘(3) New sections 197ZZD¹²⁷ to 197ZZH¹²⁸ apply to an authorisation mentioned in subsection (2).
- ‘(4) A warrant or emergency authorisation may be issued or given under this Act as in force from the commencement day in relation to an offence that was committed before the commencement day.

‘498 Transitional provisions for protection of records

- ‘(1) New section 197ZZO(1) and (2)¹²⁹ apply to a relevant proceeding within the meaning of former section 145¹³⁰ in relation to an existing police service surveillance warrant or an existing police service emergency authorisation as if the proceeding were a proceeding under new chapter 5C.
- ‘(2) New section 197ZZP¹³¹ applies to information in the custody of a court in relation to a relevant proceeding within the meaning of former section 145 as if the information were protected information.

126 New section 197ZZC (Emergency authorisation—risk of serious personal violence or substantial property damage)

127 New section 197ZZD (Application for approval after use of surveillance device under emergency authorisation)

128 New section 197ZZH (Admissibility of evidence)

129 New section 197ZZO (Protection of surveillance device technologies and methods)

130 Former section 145 (Restriction about records and access to surveillance warrant applications etc.)

131 New section 197ZZP (Protected information in the custody of a court)

‘499 Transitional provision for use and disclosure of information obtained from using surveillance devices

‘New section 197ZZM¹³² applies to information obtained before the commencement day from using a surveillance device under an existing police service surveillance warrant or an existing police service emergency authorisation that could have been disclosed under former section 146¹³³ as if the information were protected information under new chapter 5C.

‘Subdivision 3 Transitional provisions for CMC surveillance devices

‘500 Transitional provisions for existing CMC surveillance devices

- ‘(1) An existing CMC surveillance warrant that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were a surveillance device warrant issued under new section 197ZP to an authorised commission officer.
- ‘(2) An existing CMC emergency authorisation that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were an emergency authorisation given under new section 197ZZC to an authorised commission officer.
- ‘(3) New sections 197ZZD¹³⁴ to 1197ZZH¹³⁵ apply to an authorisation mentioned in subsection (2).
- ‘(4) A warrant or emergency authorisation may be issued or given under this Act as in force from the commencement day in relation to a misconduct offence that was committed before the commencement day.

132 New section 197ZZM (Permitted use of protected information)

133 Former section 146 (Disclosure of information obtained using surveillance warrant)

134 New section 197ZZD (Application for approval after use of surveillance device under emergency authorisation)

135 New section 197ZZH (Admissibility of evidence)

‘501 Transitional provisions for protection of records

- ‘(1) New section 197ZZO(1) and (2)¹³⁶ apply to a relevant proceeding within the meaning of former section 145¹³⁷ in relation to an existing CMC surveillance device or an existing CMC emergency authorisation as if the proceeding were a proceeding under new chapter 5C.
- ‘(2) New section 197ZZP¹³⁸ applies to information in the custody of a court in relation to a relevant proceeding within the meaning of former section 145 as if the information were protected information.

‘502 Transitional provisions for use and disclosure of information obtained from using surveillance devices

‘New section 197ZZM¹³⁹ applies to information obtained from using a surveillance device under an existing CMC surveillance warrant or an existing CMC emergency authorisation that could have been disclosed under former section 146¹⁴⁰ as if the information were protected information under new chapter 5C.

‘Division 6 General

‘503 Transitional regulation-making power

- ‘(1) A regulation (a *transitional regulation*) may make provision about a matter for which—
 - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the pre-amended Act to the operation of the post-amended Act; and

136 New section 197ZZO (Protection of surveillance device technologies and methods)

137 Former section 145 (Restriction about records and access to surveillance warrant applications etc.)

138 New section 197ZZP (Protected information in the custody of a court)

139 New section 197ZZM (Permitted use of protected information)

140 Former section 146 (Disclosure of information obtained using surveillance warrant)

- (b) this Act does not make provision or sufficient provision.
- ‘(2) In particular, a transitional regulation may prescribe as relevant offences for the definition *relevant offence* in chapter 5A or 5C offences that are not already relevant offences for those chapters.
- ‘(3) A transitional regulation, other than a transitional regulation made under subsection (2), may have retrospective operation to a day not earlier than the commencement day.
- ‘(4) A transitional regulation must declare it is a transitional regulation.
- ‘(5) This section and any transitional regulation expire 12 months after the commencement day.’.

29 Insertion of new schs 2–3

After schedule 1—

insert—

‘Schedule 2 Relevant offences for controlled operations and surveillance device warrants

sections 140 and 197ZI

1 Classification of Computer Games and Images Act 1995

An offence against the following provisions of the *Classification of Computer Games and Images Act 1995* involving a child abuse computer game as defined under that Act—

- section 26(3) (Possession of objectionable computer game)
- section 27(3) (Making objectionable computer game)
- section 27(4) (Making objectionable computer game)

- section 28 (Obtaining minor for objectionable computer game).

2 Classification of Films Act 1991

An offence against the following provisions of the *Classification of Films Act 1991*—

- section 41(3) (Possession of objectionable film)
- section 42(3) and (4) (Making objectionable film)
- section 43 (Procurement of minor for objectionable film).

3 Classification of Publications Act 1991

An offence against the following provisions of the *Classification of Publications Act 1991*—

- section 12 (Sale etc of prohibited publication or child abuse photograph) to the extent it applies to a child abuse publication or child abuse photograph
- section 13 (Possession of prohibited publication) to the extent it applies to a child abuse publication
- section 14 (Possession of child abuse publication or child abuse photograph)
- section 15 (Exhibition or display of prohibited publication or child abuse photograph) to the extent it applies to a child abuse publication or child abuse photograph
- section 16 (Leaving prohibited publication or child abuse photograph in or on public place) to the extent it applies to a child abuse publication or child abuse photograph
- section 17(1) and (2) (Producing prohibited publication) to the extent the subsections apply to a child abuse publication
- section 17(3) and (4) (Producing prohibited publication)

- section 18 (Procurement of minor for RC publication or child abuse photograph)
- section 20 (Leaving prohibited publication or child abuse photograph in or on private premises) to the extent it applies to a child abuse publication or child abuse photograph.

4 Criminal Code

An offence against the following provisions of the Criminal Code—

- section 218A (Using internet etc. to procure children under 16)
- section 228(1), if the penalty in section 228(2)(a) applies (Obscene publications and exhibitions)
- section 228D (Possessing child exploitation material)
- section 229H (Knowingly participating in provision of prostitution) if, in the circumstances, the maximum penalty for the offence is less than 7 years imprisonment
- section 229I (Persons found in places reasonably suspected of being used for prostitution etc.) if, in the circumstances, the maximum penalty for the offence is less than 7 years imprisonment
- section 229K (Having an interest in premises used for the purposes of prostitution etc.) if, in the circumstances, the maximum penalty for the offence is less than 7 years imprisonment
- section 324 (Failure to supply necessities)
- section 328 (Negligent acts causing harm).

5 Prostitution Act 1999

An offence against the following provisions of the *Prostitution Act 1999*—

- section 78(1) (Brothel offences)

- section 79(1) (Operating licensed brothel other than in a building)
- section 81(1) (Licensee not to operate brothel in partnership or in association with unlicensed person)
- section 82 (Person not to have interest in more than 1 licensed brothel).

6 Weapons Act 1990

An offence against the following provisions of the *Weapons Act 1990*—

- section 50B(1) (Unlawful supply of weapons), if paragraph (c)(iii) of the penalty applies
- section 69(1A) (Armourers to be licensed), to the extent it relates to a category A, B or M weapon.

‘Schedule 3 Relevant offences for chapter 5C disclosure of information provisions

section 197ZZK, definition *relevant offence*

1 Classification of Computer Games and Images Act 1995

An offence against the *Classification of Computer Games and Images Act 1995*, section 26(3) (Possession of objectionable computer game).

2 Classification of Films Act 1991

An offence against the *Classification of Films Act 1991*, section 41(3) (Possession of objectionable film).

3 Classification of Publications Act 1991

An offence against the following provisions of the *Classification of Publications Act 1991*—

- section 12 (Sale etc of prohibited publication or child abuse photograph) to the extent it applies to a child abuse publication or child abuse photograph
- section 13 (Possession of prohibited publication) to the extent it applies to a child abuse publication
- section 14 (Possession of child abuse publication or child abuse photograph)
- section 15 (Exhibition or display of prohibited publication or child abuse photograph) to the extent it applies to a child abuse publication or child abuse photograph
- section 16 (Leaving prohibited publication or child abuse photograph in or on public place) to the extent it applies to a child abuse publication or child abuse photograph
- section 20 (Leaving prohibited publication or child abuse photograph in or on private premises) to the extent it applies to a child abuse publication or child abuse photograph.

4 Criminal Code

An offence against the following provisions of the Criminal Code—

- section 328 (Negligent acts causing harm)
- section 544 (Accessories after the fact to crimes)
- section 545 (Accessories after the fact to misdemeanours and some other offences) if the maximum penalty for the offence is less than 3 years imprisonment.’.

30 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definitions *authorised person*, *chapter 4 application*, *class A surveillance device*, *class B surveillance device*, *CMC officer*, *committee*, *controlled activity*, *controlled operation*, *corresponding law*, *covert act*, *covert operative*, *declared law enforcement agency*, *entity*, *misconduct offence*, *monitor*, *otherwise unlawful activity*, *relevant offences*, *relevant place* and *responsible chief executive officer*—
omit.

(2) Schedule 4—

insert—

‘acquire, for chapter 5B, see section 190.¹⁴¹

agency, for chapter 5B, see section 190.

authorised civilian, for chapter 5B, see section 190.

authorised commission officer means an authorised commission officer as defined under the *Crime and Misconduct Act 2001*, section 272.

authorised officer, for chapter 5B, see section 190.

authorised operation, for chapter 5A, see section 140.¹⁴²

authorised person—

(a) for chapter 5B, see section 190; or

(b) for chapter 9, part 2, means a person appointed as an authorised person under section 345.¹⁴³

authority—

(a) for chapter 5A, see section 140; or

(b) for chapter 5B, see section 190.

birth certificate approval, for chapter 5B, see section 190.

141 Section 190 (Definitions for ch 5B)

142 Section 140 (Definitions for ch 5A)

143 Section 345 (Appointment of authorised persons)

chapter 4 application means an application under chapter 4 for a monitoring order or a suspension order.

chapter 4A application means an application under chapter 4A for a covert search warrant or an extension of a covert search warrant.

chapter 5A application means an application under chapter 5A for an authority for a controlled operation or a variation of an authority for a controlled operation.

chapter 5C application means an application under chapter 5C for a surveillance warrant, a variation or extension of a surveillance warrant, or a retrieval warrant.

chapter 8B offences see section 320.¹⁴⁴

civilian participant, for chapter 5A, see section 140.

commission officer means a commission officer as defined under the *Crime and Misconduct Act 2001*.

committee, for chapter 5A, see section 140.

computer, for chapter 5C, see section 197ZH.

conduct—

- (a) for chapter 5A, see section 140; or
- (b) for chapter 5B, see section 190.

controlled activity see section 135.

controlled conduct, for chapter 5A, see section 140.

controlled operation, for chapter 5A, see section 140.

corresponding authorised operation, for chapter 5A, see section 140.

corresponding authority—

- (a) for chapter 5A, see section 140; or
- (b) for chapter 5B, see section 190.

corresponding emergency authorisation, for chapter 5C, see section 197ZH.

corresponding law means a law of another State or the Commonwealth, declared under a regulation to be a law corresponding with this Act or a stated provision of it, whether that provision relates to—

- (a) forensic procedures; or
- (b) the acquisition or use of assumed identities; or
- (c) the conduct of controlled operations; or
- (d) the use of surveillance devices; or
- (e) another matter for which this Act expressly authorises the doing of something in relation to a jurisdiction for which there is a corresponding law for the purpose.

corresponding participant, for chapter 5A, see section 140.

corresponding warrant, for chapter 5C, see section 197ZH.

covert act means—

- (a) the making of a chapter 4, chapter 4A, chapter 5A or chapter 5C application; or
- (b) the exercise of powers under this Act under—
 - (i) a monitoring order; or
 - (ii) a suspension order; or
 - (iii) a surveillance device warrant; or
 - (iv) a retrieval warrant; or
 - (v) a covert search warrant; or
 - (vi) an authorisation for a controlled operation; or
- (c) the disclosure of information to a declared agency.

criminal activity—

- (a) for chapter 5A, see section 140; or
- (b) for chapter 5B, see section 190.

data surveillance device, for chapter 5C, see section 197ZH.

declared agency means an entity prescribed under a regulation as a declared agency for this Act.

device, for chapter 5C, see section 197ZH.

disciplinary proceeding, for chapter 5C, see section 197ZH.

doing, for chapter 5B, see section 190.

emergency authorisation, for chapter 5C, see section 197ZH.

enhancement equipment, for chapter 5C, see section 197ZH.

evidence, for chapter 5B, see section 190.

formal application, for chapter 5A, see section 140.

formal authority, for chapter 5A, see section 140.

formal variation application, for chapter 5A, see section 140.

formal variation of authority, for chapter 5A, see section 140.

government issuing agency, for chapter 5B, see section 190.

illicit goods, for chapter 5A, see section 140.

inspection entity means—

- (a) for chapter 5A, see section 140; or
- (b) for chapter 5C, see section 197ZH.

install, for chapter 5C, see section 197ZH.

issuing agency, for chapter 5B, see section 190.

jurisdiction means—

- (a) for chapters 5A, 5B and 5C, a State of the Commonwealth; or
- (b) if the ACC may do a thing under chapter 5A, 5B or 5C, the Commonwealth or a State of the Commonwealth.

Note—

Under the *Acts Interpretation Act 1954*, section 33A, a reference to a State includes a reference to the Australian Capital Territory and the Northern Territory.

law enforcement agency—

- (a) for chapters 5A, means—
 - (i) the police service; or
 - (ii) the CMC; or
- (b) for chapter 5B, means—

- (i) the police service; or
- (ii) the CMC; or
- (c) for chapter 5C, means—
 - (i) the police service; or
 - (ii) the CMC.

law enforcement officer—

- (a) for chapter 5A, means—
 - (i) for the police service—a police officer; or
 - (ii) a staff member of the service authorised by the commissioner for the purpose of the provision in which the expression is used; or
 - (iii) for the CMC—a commission officer; or
- (b) for chapter 5B, means—
 - (i) for the police service—a police officer; or
 - (ii) for the CMC—a commission officer; or
- (c) for chapter 5C, means—
 - (i) for the police service—a police officer; or
 - (ii) for the CMC—a commission officer; or
- (d) for sections 375 and 451 to 454, means—
 - (i) a police officer; or
 - (ii) a person performing functions as a law enforcement officer under chapter 5A or 5C.

law enforcement participant, for chapter 5A, see section 140.

listening device means any device capable of being used to overhear, record, monitor or listen to a private conversation or words spoken to or by any person in private conversation, but does not include a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and permit that person to hear only sounds ordinarily audible to the human ear.

maintain, for chapter 5C, see section 197ZH.

monitor, when used as a noun, means—

- (a) the public interest monitor appointed under section 157; or
- (b) a deputy public interest monitor.¹⁴⁵

non-government issuing agency, for chapter 5B, see section 190.

officer, for chapter 5B, see section 190.

optical surveillance device, for chapter 5C, see section 197ZH.

parliamentary committee, for chapters 5A, 5B and 5C, means the Parliamentary Crime and Misconduct Committee of the Legislative Assembly.

parliamentary committee chairperson means the chairperson of the parliamentary committee.

participant, for chapter 5A, see section 140.

participating jurisdiction, for chapter 5A, 5B or 5C, means a jurisdiction in which a corresponding law for the purposes of the chapter is in force.

premises, for chapter 5C, see section 197ZH.

principal law enforcement officer, for chapter 5A, see section 140.

protected information, for chapter 5C, see section 197ZH.

public officer, for chapter 5C, see section 197ZH.

record, for chapter 5C, see section 197ZH.

relevant offence—

- (a) for chapter 5A, see section 140; or
- (b) for chapter 5C, see section 197ZH.

relevant proceeding, for chapter 5C, see section 197ZZK.

remote application, for chapter 5C, see section 197ZH.

145 Section 157 (Public interest monitor)

report of a conversation or activity, for chapter 5C, see section 197ZH.

report entity, for chapter 5A, see section 140.

retrieval warrant, for chapter 5C, see section 197ZH.

senior officer, for chapter 5C, see section 197ZH.

supervisor, for chapter 5B, see section 190.

surveillance device, for chapter 5C, see section 197ZH.

surveillance device warrant, for chapter 5C, see section 197ZH.

suspect, for chapter 5A, see section 140.

this jurisdiction, for chapters 5A, 5B and 5C, means Queensland.

three year imprisonment offence, for chapter 5C, see section 197ZH.

tracking device, for chapter 5C, see section 197ZH.

urgent application, for chapter 5A, see section 140.

urgent authority, for chapter 5A, see section 140.

urgent variation application, for chapter 5A, see section 140.

urgent variation of authority, for chapter 5A, see section 140.

use—

(a) for chapter 5B, see section 190; or

(b) of a surveillance device, for chapter 5C, see section 197ZH.

warrant, for chapter 5C, see section 197ZH.’.

(3) Schedule 4, definition *chief executive officer*—

insert—

‘(c) for an issuing agency under chapter 5B—the chief executive officer, however described, of the issuing agency.’.

(4) Schedule 4, definition *police officer*, paragraphs (b) and (c)—
omit, insert—

- ‘(b) for chapters 5A and 5C—a police officer of a police force or service of another State or the Commonwealth; and
- ‘(c) other than for chapters 5A and 5C—a police officer of a police force or service of another State or the Commonwealth who is, for the time being, performing duties for the police service.’.

Division 3 Amendments relating to Australian Crime Commission activities

Subdivision 1 Controlled operations related amendments

31 Amendment of s 141 (Relationship to other laws and matters)

- (1) Section 141(6)—
renumber as section 141(7).
- (2) Section 141—
insert—
- ‘(6) A function or power conferred in relation to the activities of the ACC under this chapter is only conferred for the purpose of the function or power conferred on the ACC under the *Australian Crime Commission (Queensland) Act 2003* relating to suspected serious and organised crime as defined under that Act.’.

32 Amendment of s 143 (Establishment of controlled operations committee)

- Section 143(2)—
insert—
- ‘(d) for any application made by the ACC—the chief executive officer of the ACC.’.

33 Amendment of s 180 (Annual report by report entity)

Section 180(2), at the end—

insert—

‘Note—

Commonwealth law makes provision for reports by the ACC about activities under State law.’.

34 Replacement of s 182 (General register)

Section 182—

omit, insert—

‘182 General register

- ‘(1) This section applies only to the police service and the CMC.
- ‘(2) The chief executive officer must cause a general register to be kept.
- ‘(3) The register must be or form part of the register of covert acts kept under chapter 11, part 2.¹⁴⁶’.

35 Amendment of s 184 (Delegation generally)

Section 184—

insert—

- ‘(2) For applying this part to the ACC, a reference in this division to a power includes a reference to a function.’.

36 Insertion of new s 186A

Chapter 5A, part 6, division 1, after section 186—

insert—

‘186A Delegations—ACC

- ‘(1) The chief executive officer of the ACC may delegate any of the chief executive officer’s powers under this chapter relating

to the authorisation of controlled operations, including the variation and cancellation of authorities for controlled operations and notifications under section 175(2),¹⁴⁷ to a senior officer of the ACC.

‘(2) In this section—

senior officer, of the ACC, means any of the following—

- (a) the Director National Operations;
- (b) the General Manager National Operations;
- (c) a member of staff of the ACC—
 - (i) who is an SES employee or acting SES employee within the meaning of the *Public Service Act 1999* (Cwlth); and
 - (ii) who holds a position that is prescribed by regulation for this definition.’

37 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definition *chief executive officer*, paragraph (c), ‘chapter’—

omit, insert—

‘chapter 5A or’.

- (2) Schedule 4, definition *law enforcement agency*, paragraph (a)—

insert—

‘(iii) the ACC; or’.

- (3) Schedule 4, definition *law enforcement officer*, paragraph (a)—

insert—

‘(iv) for the ACC—a member of staff of the ACC who is a police officer of a police force or service of a State or the Commonwealth; or’.

Subdivision 2 Assumed identities related amendments

38 Amendment of s 191 (Relationship to other laws and matters)

(1) Section 191(2)—

renumber as section 191(3).

(2) Section 191—

insert—

‘(2) A function or power conferred under this chapter in relation to the activities of the ACC is only conferred for the purpose of the function or power conferred on the ACC under the *Australian Crime Commission (Queensland) Act 2003* relating to suspected serious and organised crime as defined under that Act.’.

39 Amendment of s 193 (Deciding application)

Section 193(4)—

insert—

‘(c) for the ACC—of or above the rank of senior investigator.’.

40 Amendment of s 197ZA (Report about authorities for assumed identities etc.)

Section 197ZA, at the end—

insert—

‘*Note*—

Commonwealth law makes provision for reports by the ACC about activities under State law.’.

41 Amendment of s 197ZD (Delegation generally)

Section 197ZD—

insert—

- ‘(2) For applying this division to the ACC, a reference in this part to a power includes a reference to a function.’.

42 Insertion of new s 197ZFA

Chapter 5B, part 7, after section 197ZF—

insert—

‘197ZFADelegation—ACC

- ‘(1) The chief executive officer of the ACC may delegate any of the chief executive’s powers under this chapter relating to the following to a senior officer of the ACC—

- (a) the granting, variation and cancellation of authorities, including conducting reviews under section 197;
- (b) making applications under section 197A;
- (c) making requests under section 197G or 197T.

- ‘(2) No more than 4 delegations may be in force under this section at any time.

- ‘(3) In this section—

senior officer, of the ACC, means any of the following—

- (a) the Director National Operations;
- (b) a director;
- (c) the General Manager National Operations;
- (d) a member of staff of the ACC—
 - (i) who is an SES employee or acting SES employee within the meaning of the *Public Service Act 1999* (Cwlth); and
 - (ii) who holds a position prescribed under a regulation for this definition.’.

43 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definition *law enforcement agency*, paragraph (b)—

insert—

‘(iii) the ACC; or’.

- (2) Schedule 4, definition *law enforcement officer*, paragraph (b)—

insert—

‘(iii) for the ACC—a member of staff of the ACC who is a police officer of a police force or service of a State or the Commonwealth; or’.

Subdivision 3 Surveillance device warrant related amendments

44 Amendment of s 197ZH (Definitions for ch 5C)

- (1) Section 197ZH, definition *inspection entity*, after ‘law enforcement agency’—

insert—

‘other than the ACC’.

- (2) Section 197ZH, definition *inspection entity*, at the end—

insert—

‘*Note—*

For inspection requirements for the ACC, see the *Surveillance Devices Act 2004* (Cwlth), section 55.’.

- (3) Section 197ZH, definition *senior officer*—

insert—

‘(c) for the ACC—a member of staff of the ACC who is an SES employee within the meaning of the *Public Service Act 1999* (Cwlth).’.

45 Amendment of s 197ZK (Relationship to other laws and matters)

- (1) Section 197ZK(4) to (7)—

renumber as section 197ZK(5) to (8).

(2) Section 197ZK—

insert—

‘(4) A function or power conferred under this chapter in relation to the activities of the ACC is only conferred for the purpose of the function or power conferred on the ACC under the *Australian Crime Commission (Queensland) Act 2003* relating to suspected serious and organised crime as defined under that Act.’

46 Amendment of s 197ZN (Application for surveillance device warrant)

(1) Section 197ZN(7) and (8)—

renumber as section 197ZN(8) and (9).

(2) Section 197ZN—

insert—

‘(7) Subsections (5) and (6) do not apply to an application made under this Act for the ACC, but in that case the application must be supported by an affidavit as if it had been made under the *Surveillance Devices Act 2004* (Cwlth), section 14.¹⁴⁸’

47 Amendment of s 197ZZL (Prohibition on communication or publication of protected information)

(1) Section 197ZZL(3)(g)—

renumber as section 197ZZL(3)(h).

(2) Section 197ZZL(3)—

insert—

‘(g) the communication by the monitor to the Commonwealth Ombudsman of information the monitor is satisfied is necessary to enable the Commonwealth Ombudsman to perform functions

¹⁴⁸ *Surveillance Devices Act 2004* (Cwlth), section 14 (Application for surveillance device warrant)

under the *Surveillance Devices Act 2004* (Cwlth) in relation to the ACC; or’.

48 Amendment of s 197ZZR (Annual reports)

Section 197ZZR(4), at the end—

insert—

‘*Note—*

The *Surveillance Devices Act 2004* (Cwlth) makes provision for reports by the ACC about activities under State law.’.

49 Amendment of sch 4 (Dictionary)

- (1) Schedule 4, definition *law enforcement agency*, paragraph (c)—

insert—

‘(iii) the ACC.’.

- (2) Schedule 4, definition *chief executive officer*, paragraph (c)—
renumber as paragraph (d).

- (3) Schedule 4, definition *chief executive officer*—

insert—

‘(c) for the ACC, but only for chapter 5C—the chief executive officer of the ACC; or’.

- (4) Schedule 4, definition *law enforcement officer*, paragraph (c)—

insert—

‘(iii) for the ACC—a member of staff of the ACC who is a police officer of a police force or service of a State or the Commonwealth; or’.

Part 3 Amendment of Evidence Act 1977

Division 1 Preliminary

50 Act amended in pt 3

This part amends the *Evidence Act 1977*.

Division 2 Amendments relating to police and Crime and Misconduct Commission activities

51 Replacement of pt 2, div 5 (Witness anonymity)

Part 2, division 5—

omit, insert—

‘Division 5 Witness identity protection

‘Subdivision 1 Preliminary

‘21B Purposes of div 5

‘The purposes of this division are—

(a) to facilitate, for law enforcement purposes, investigations in relation to criminal activity, including investigations extending beyond Queensland, by—

(i) providing for the protection of the identity of operatives; and

(ii) facilitating the recognition of witness identity protection certificates under corresponding laws; and

- (b) to facilitate investigations by the CMC in relation to misconduct by providing for the protection of the identity of operatives.

‘21C Definitions for div 5

‘In this division—

assumed name, of an operative, see section 21G(1)(a)(i).¹⁴⁹

chief executive officer, of a law enforcement agency, means—

- (a) for the CMC—the chairperson of the CMC; or
 (b) for the police service—the commissioner of the police service.

CMC means the Crime and Misconduct Commission established under the *Crime and Misconduct Act 2001*.

conduct includes any act or omission.

convicted means found guilty, or having a plea of guilty accepted by a court, whether or not a conviction is recorded.

corresponding law means a law of another jurisdiction that is declared under a regulation to correspond to this division.

corresponding witness identity protection certificate means a certificate given under a corresponding law that corresponds to section 21F.¹⁵⁰

court name, for an operative in relation to a proceeding, means a name, other than the operative’s real name, or code used to identify the operative in the proceeding.

criminal activity means conduct that involves the commission of an offence by 1 or more persons.

investigation means an investigation in relation to—

- (a) criminal activity, including an investigation extending beyond Queensland; or

149 Section 21G (Form of witness identity protection certificate)

150 Section 21F (Giving witness identity protection certificate)

(b) misconduct.

jurisdiction means the Commonwealth or a State of the Commonwealth.

law enforcement agency means—

- (a) the CMC; or
- (b) the police service.

misconduct see the *Crime and Misconduct Act 2001*, schedule 2.¹⁵¹

operative means a person who is or was—

- (a) a covert operative under the *Crime and Misconduct Act 2001*, chapter 3, part 6A;¹⁵² or
- (b) a participant in an authorised operation under the *Police Powers and Responsibilities Act 2000*, chapter 5A;¹⁵³ or
- (c) an authorised person under the *Police Powers and Responsibilities Act 2000*, chapter 5B.¹⁵⁴

party, to a proceeding, means—

- (a) for a criminal proceeding—the prosecutor and each accused person; or
- (b) for a civil proceeding—each person who is a party to the proceeding; or
- (c) for another proceeding—each person who has been given leave to appear in the proceeding.

relevant court, for a proceeding, means the entity before whom or which the proceeding is held or taken.

witness identity protection certificate means a certificate given under section 21F.

151 *Crime and Misconduct Act 2001*, schedule 2—

misconduct means official misconduct or police misconduct.

152 *Crime and Misconduct Act 2001*, chapter 3 (Powers), part 6A (Controlled operations and controlled activities for misconduct offences)

153 *Police Powers and Responsibilities Act 2000*, chapter 5A (Controlled operations)

154 *Police Powers and Responsibilities Act 2000*, chapter 5B (Assumed identities)

‘21D Application of div 5 to lawyer of party to a proceeding

‘For this division—

- (a) anything permitted to be done by a party to a proceeding may be done by the party’s lawyer; and
- (b) any requirement to give something to, or notify, a party to a proceeding is satisfied by giving the thing to, or notifying, the party’s lawyer.

‘Subdivision 2 Witness identity protection certificates for operatives

‘21E Application of sdiv 2

- ‘(1) This subdivision applies to a proceeding in which an operative is, or may be, required to give evidence obtained as an operative.
- ‘(2) To remove any doubt, it is declared that this subdivision does not affect the operation of the common law in relation to the protection of the identity of a person who is not an operative who gives or intends to give evidence in a proceeding.

‘21F Giving witness identity protection certificate

- ‘(1) The chief executive officer of a law enforcement agency may give a witness identity protection certificate for an operative of the agency in relation to a proceeding if—
 - (a) the operative is, or may be required, to give evidence in the proceeding; and
 - (b) the chief executive officer is satisfied on reasonable grounds that the disclosure in the proceeding of the operative’s identity or where the operative lives is likely to—
 - (i) endanger the safety of the operative or someone else; or
 - (ii) prejudice an investigation.

- ‘(2) The chief executive officer must make all reasonable enquiries to enable him or her to find out the information required to be included in the witness identity protection certificate under section 21G.
- ‘(3) A decision to give a witness identity protection certificate—
- (a) is final; and
 - (b) can not be impeached for informality or want of form; and
 - (c) can not be appealed against, reviewed, called into question, quashed or invalidated in any court.
- ‘(4) Subsection (3) does not prevent a decision to give a witness identity protection certificate being called into question during a proceeding of a disciplinary nature against the person who made the decision.

‘21G Form of witness identity protection certificate

- ‘(1) A witness identity protection certificate for an operative of a law enforcement agency in relation to a proceeding must state all of the following—
- (a) if the operative—
 - (i) is known to a party to the proceeding or a party’s lawyer by a name other than the operative’s real name—that name (the *assumed name*); or
 - (ii) is not known to any party to the proceeding or any party’s lawyer by a name—the operative’s court name for the proceeding;
 - (b) the period the operative was involved in the investigation to which the proceeding relates;
 - (c) the name of the agency;
 - (d) the date of the certificate;
 - (e) a general description of the reasons for giving the certificate;

- (f) whether the operative has been convicted of an offence, in Queensland or elsewhere, and, if so, particulars of each offence;
 - (g) whether a charge against the operative for an offence is outstanding, in Queensland or elsewhere, and, if so, particulars of each charge;
 - (h) if the operative is, or was, a law enforcement officer—
 - (i) whether the operative has been found guilty of professional misconduct and, if so, particulars of each finding; and
 - (ii) whether any allegation of professional misconduct against the operative is outstanding and, if so, particulars of each allegation;
 - (i) whether, to the knowledge of the person giving the certificate, a court has made any adverse comment about the operative's credibility and, if so, particulars of the comment;
 - (j) whether, to the knowledge of the person giving the certificate, the operative has made a false representation when the truth was required and, if so, particulars of the representation;
 - (k) if there is anything else known to the person giving the certificate that may be relevant to the operative's credibility—particulars of the thing.
- ‘(2) A witness identity protection certificate for an operative must not contain information that may allow the operative's identity, or where the operative lives, to be revealed.
- ‘(3) For this section—
- (a) a charge against a person for an offence is *outstanding* until the charge is finally dealt with in any of the following ways—
 - (i) the charge is withdrawn;
 - (ii) the charge is dismissed by a court;
 - (iii) the person is discharged by a court;

- (iv) the person is acquitted or convicted of the offence by a court; and
 - (b) an allegation of professional misconduct against a person is **outstanding** if the allegation has not been finally dealt with.
- ‘(4) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure of information under subsection (1)(f) or (g).
- ‘(5) In this section—
- charge**, for an offence, means a charge in any form, including, for example, the following—
- (a) a charge on an arrest;
 - (b) a notice to appear served under the *Police Powers and Responsibilities Act 2000*, section 214;¹⁵⁵
 - (c) a complaint under the *Justices Act 1886*;
 - (d) a charge by a court under the *Justices Act 1886*, section 42(1A),¹⁵⁶ or another provision of an Act;
 - (e) an indictment.
- false representation** does not include a representation made under—
- (a) an authority, or a corresponding authority, under the *Police Powers and Responsibilities Act 2000*, chapter 5A or 5B;¹⁵⁷ or
 - (b) an approval under the *Crime and Misconduct Act 2001*, chapter 3, part 6A.¹⁵⁸
- law enforcement officer** means—

155 *Police Powers and Responsibilities Act 2000*, section 214 (Notice to appear may be issued for offence)

156 *Justices Act 1886*, section 42 (Commencement of proceedings)

157 *Police Powers and Responsibilities Act 2000*, chapter 5A (Controlled operations) or 5B (Assumed identities)

158 *Crime and Misconduct Act 2001*, chapter 3 (Powers), part 6A (Controlled operations and controlled activities for misconduct offences)

(a) a commission officer under the *Crime and Misconduct Act 2001*; or

(b) a police officer.

professional misconduct means—

(a) misconduct under the *Crime and Misconduct Act 2001*;
or

(b) misconduct or a breach of discipline under—

(i) the *Police Service Administration Act 1990*; or

(ii) a law of another jurisdiction, or a foreign country,
that corresponds to the *Police Service
Administration Act 1990*.

‘21H Filing and notification

‘(1) If the chief executive officer of a law enforcement agency gives a witness identity protection certificate for an operative in relation to a proceeding, the agency must—

(a) file the certificate with the relevant court for the proceeding before the operative gives evidence in the proceeding; and

(b) if the agency is the police service—give to the chairperson of the CMC a copy of the certificate and notice of the date it was filed.

‘(2) Also, the law enforcement agency must give a copy of the witness identity protection certificate to each party to the proceeding at least 14 days, or the shorter period agreed to by a party, before the day the operative is to give evidence.

‘(3) The relevant court may order the law enforcement agency to give a copy of the witness identity protection certificate to someone else stated in the order.

‘21I Effect of witness identity protection certificate

‘(1) This section applies if—

- (a) a witness identity protection certificate for an operative in relation to a proceeding is filed under section 21H(1)(a); and
 - (b) either—
 - (i) a copy of the certificate is given to each party under section 21H(2) and to each person, if any, stated in an order under section 21H(3) for the certificate; or
 - (ii) the relevant court for the proceeding gives leave for this section to apply despite non-compliance with section 21H(2) or (3).
- ‘(2) If this section applies—
- (a) the operative may give evidence in the proceeding under the assumed name, or court name, stated in the certificate; and
 - (b) subject to section 21K—
 - (i) a question must not be asked of a witness, including the operative, that may lead to the disclosure of the operative’s identity or where the operative lives; and
 - (ii) a witness, including the operative, can not be required to, and must not, answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative’s identity or where the operative lives; and
 - (iii) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the operative’s identity or where the operative lives.
- ‘(3) For this section, a person involved in a proceeding includes the following—
- (a) the relevant court;
 - (b) a party to the proceeding;
 - (c) a person given leave to be heard or make submissions in the proceeding;

- (d) a lawyer representing a person mentioned in paragraph (b) or (c) or a lawyer assisting the court in the proceeding;
- (e) any other officer of the court or person assisting the court in the proceeding;
- (f) a person acting in the execution of any process or the enforcement of any order in the proceeding.

‘21J Orders to protect operative’s identity etc.

‘(1) The court with which a witness identity protection certificate is filed may make any order it considers necessary or desirable—

- (a) to protect the identity of the operative for whom the certificate is given; or
- (b) to prevent the disclosure of where the operative lives.

Examples of orders—

- an order prohibiting sketching of the operative
- an order that the operative give evidence in the absence of the public

‘(2) A person commits an offence if—

- (a) the person knows that, or is reckless as to whether, an order has been made under subsection (1); and
- (b) the person intentionally, knowingly or recklessly contravenes the order.

Maximum penalty—2 years imprisonment.

‘(3) Subsection (2) does not limit the court’s power to punish for contempt.

‘21K Disclosure of operative’s identity etc. despite certificate

‘(1) This section applies if a witness identity protection certificate for an operative in relation to a proceeding is filed with a court.

- ‘(2) A party to the proceeding, or a lawyer assisting the court in the proceeding, may apply to the court—
- (a) for leave—
 - (i) to ask a question of a witness, including the operative, that may lead to the disclosure of the operative’s identity or where the operative lives; or
 - (ii) for a person involved in the proceeding to make a statement that discloses, or may lead to the disclosure of, the operative’s identity or where the operative lives; or
 - (b) for an order requiring a witness, including the operative, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative’s identity or where the operative lives.
- ‘(3) The court may—
- (a) give leave for the party or lawyer to do anything mentioned in subsection (2)(a); or
 - (b) make an order requiring a witness to do anything mentioned in subsection (2)(b).
- ‘(4) However, the court must not give leave or make an order unless satisfied about each of the following—
- (a) there is evidence that, if accepted, would substantially call into question the operative’s credibility;
 - (b) it would be impractical to test properly the credibility of the operative without allowing the risk of disclosure of, or disclosing, the operative’s identity or where the operative lives;
 - (c) it is in the interests of justice for the operative’s credibility to be able to be tested.
- ‘(5) If there is a jury in the proceeding, the application must be heard in the absence of the jury.
- ‘(6) Unless the court considers that the interests of justice require otherwise, the court must be closed when—
- (a) the application is made; and

- (b) if leave is given or an order is made—the question is asked and answered, the evidence is given, the information is provided or the statement is made.
- ‘(7) The court must make an order suppressing the publication of anything said when—
 - (a) the application is made; and
 - (b) if leave is given or an order is made—the question is asked and answered, the evidence is given, the information is provided or the statement is made.
- ‘(8) Nothing in subsection (7) prevents the taking of a transcript of court proceedings, but the court may make an order for how the transcript is to be dealt with, including an order suppressing its publication.
- ‘(9) The court may make any other order it considers appropriate to protect the operative’s identity or to prevent the disclosure of where the operative lives.
- ‘(10) A person commits an offence if—
 - (a) the person knows that, or is reckless as to whether, an order has been made under subsection (7), (8) or (9); and
 - (b) the person intentionally, knowingly or recklessly contravenes the order.

Maximum penalty—2 years imprisonment.
- ‘(11) Subsection (10) does not limit the court’s power to punish for contempt.

‘21KA Directions to jury

- ‘(1) This section applies if—
 - (a) a witness identity protection certificate for an operative in relation to a proceeding is filed with a court; and
 - (b) there is a jury in the proceeding; and
 - (c) the operative gives evidence.
- ‘(2) The court must, unless it considers it inappropriate, direct the jury not to give the operative’s evidence any more or less

weight, or draw any adverse inferences against the defendant or another party to the proceeding, because—

- (a) there is a witness identity protection certificate for the operative; or
- (b) the court has made an order under section 21J or section 21K(7), (8) or (9).

‘21KB Witness identity protection certificate—cancellation

- ‘(1) This section applies if the chief executive officer of a law enforcement agency gives a witness identity protection certificate for an operative of the agency in relation to a proceeding.
- ‘(2) The chief executive officer must cancel the witness identity protection certificate if the chief executive officer considers that it is no longer necessary or appropriate to prevent the disclosure of the operative’s identity or where the operative lives.
- ‘(3) If the chief executive officer cancels the certificate after it has been filed with a court, the chief executive officer must immediately give written notice of the cancellation to the court and each party to the proceeding.

‘21KC Permission to give information disclosing operative’s identity etc.

- ‘(1) This section applies if the chief executive officer of a law enforcement agency gives a witness identity protection certificate for an operative of the agency in relation to a proceeding.
- ‘(2) The chief executive officer may, in writing, permit a person to give information, otherwise than in the proceeding, that discloses, or may lead to the disclosure of, the operative’s identity or where the operative lives if the chief executive officer considers it necessary or appropriate for the information to be given.
- ‘(3) The permission must state—

- (a) the name of the person who may give the information; and
 - (b) the name of the person to whom the information may be given; and
 - (c) the information that may be given.
- ‘(4) The permission also may state how the information may be given.

‘21KD Disclosure offences

- ‘(1) A person commits an offence if—
- (a) a witness identity protection certificate for an operative in relation to a proceeding has been given; and
 - (b) the person knows that, or is reckless as to whether, the certificate has been given; and
 - (c) the person intentionally, knowingly or recklessly does something (the *disclosure action*) that discloses, or is likely to lead to the disclosure of, the operative’s identity or where the operative lives; and
 - (d) the person knows that, or is reckless as to whether, the certificate had not been cancelled under section 21KB before the person does the disclosure action; and
 - (e) the person knows that, or is reckless as to whether, the disclosure action is not—
 - (i) authorised by leave or an order under section 21K; or
 - (ii) permitted under section 21KC.

Maximum penalty—2 years imprisonment.

- ‘(2) A person commits a crime if the person commits an offence against subsection (1) in circumstances in which the person—
- (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation; or
 - (b) knows that, or is reckless as to whether, the disclosure action—

- (i) endangers or will endanger the health or safety of any person; or
- (ii) prejudices or will prejudice the effective conduct of an investigation.

Maximum penalty—10 years imprisonment.

‘21KE Review of giving of witness identity protection certificate by police service

- ‘(1) This section applies to a witness identity protection certificate filed with a court by the police service.
- ‘(2) As soon as practicable after the end of the proceeding in which the witness identity protection certificate is filed by the police service, the commissioner of the police service must give the chairperson of the CMC notice of the date the proceeding to which the certificate relates ended.
- ‘(3) The chairperson of the CMC must—
 - (a) review the giving of the witness identity protection certificate as soon as practicable after the end of the proceeding to which the certificate relates and, in any event, within 3 months after the end of the year in which the certificate is filed; and
 - (b) consider whether, in the circumstances, it was appropriate to give the certificate; and
 - (c) if the chairperson considers it was inappropriate to give the certificate, notify whichever of the following is relevant of that fact as soon as practicable—
 - (i) each party to the proceeding;
 - (iv) a lawyer assisting the court.
- ‘(4) The commissioner of the police service, if asked by the chairperson of the CMC, must give the chairperson—
 - (a) all the information the police service used for deciding to give the witness identity protection certificate; and

- (b) particulars relating to each person to whom a copy of the certificate was given under section 21H(2) or (3).¹⁵⁹
- ‘(5) The chairperson of the CMC must give a copy of any report on the review to the commissioner of the police service as soon as practicable after the report is completed.

‘21KF Giving information about witness identity protection certificates

- ‘(1) As soon as practicable after the end of each financial year, the chief executive officer of a law enforcement agency, other than the CMC, must give to the chairperson of the CMC a written report containing all of the following information for the financial year—
 - (a) the number of witness identity protection certificates given by the chief executive officer;
 - (b) the basis on which the chief executive officer was satisfied about the matters mentioned in section 21F(1)(b)¹⁶⁰ for each certificate;
 - (c) if leave was given or an order made under section 21K in a proceeding in which a witness identity protection certificate for an operative of the agency was filed—details of the proceeding that relate to the leave or order;
 - (d) if a witness identity protection certificate was cancelled under section 21KB—the reasons for the cancellation;
 - (e) if a permission was given under section 21KC—the reasons for giving the permission;
 - (f) any other information relating to witness identity protection certificates and the administration of this division that the chairperson of the CMC considers appropriate.
- ‘(2) The report must not include information that discloses, or may lead to the disclosure of, an operative’s identity, or where the

159 Section 21H (Filing and notification)

160 Section 21F (Giving witness identity protection certificate)

operative lives, unless the witness identity protection certificate for the operative has been cancelled.

‘21KG Report about witness identity protection certificates

- ‘(1) The CMC must include in its annual report for a financial year the following information about witness identity protection certificates given under this division in the financial year—
- (a) the number of witness identity protection certificates given by each chief executive officer;
 - (b) the basis on which the chief executive officer was satisfied about the matters mentioned in section 21F(1)(b) for each certificate;
 - (c) if leave was given or an order made under section 21K in a proceeding in which a witness identity protection certificate was filed—details of the proceeding that relate to the leave or order;
 - (d) if a witness identity protection certificate was cancelled under section 21KB—the reasons for the cancellation;
 - (e) if a permission was given under section 21KC—the reasons for giving the permission;
 - (f) any other information relating to witness identity protection certificates and the administration of this division that the chairperson of the CMC considers appropriate.
- ‘(2) The annual report must not include information that discloses, or may lead to the disclosure of, an operative’s identity, or where the operative lives, unless the witness identity protection certificate for the operative has been cancelled.
- ‘(3) In this section—
- annual report***, of the CMC, means the report given by the CMC under the *Financial Administration and Audit Act 1977*, section 46J.¹⁶¹

161 *Financial Administration and Audit Act 1977*, section 46J (Annual report)

‘21KH Recognition of witness identity protection certificates under corresponding laws

‘Sections 21H to 21KA and section 21KD¹⁶² apply, with any necessary changes, to a corresponding witness identity protection certificate as if it were a witness identity protection certificate given under section 21F.

‘Subdivision 3 General

‘21KI Delegation

- ‘(1) Other than as provided by this section, and despite any other Act or law to the contrary, the powers of a chief executive officer under this division may not be delegated to any other person.
- ‘(2) A chief executive officer of a law enforcement agency may delegate any of the chief executive officer’s powers under this division, other than this power of delegation, to a senior officer of the agency.
- ‘(3) In this section—
 - senior officer*, of a law enforcement agency, means—
 - (a) for the police service—a deputy commissioner of the police service; or
 - (b) for the CMC—an assistant commissioner of the CMC.’.

52 Insertion of new pt 9, div 3

After section 142—

insert—

¹⁶² Section 21H (Filing and notification), 21I (Effect of witness identity protection certificate), 21J (Orders to protect operative’s identity etc.), 21K (Disclosure of operative’s identity etc. despite certificate), 21KA (Directions to jury) and 21KD (Disclosure offences)

‘Division 3 **Cross-Border Law Enforcement Legislation Amendment Act 2005**

‘143 **Witness anonymity certificates**

- ‘(1) This section applies to a witness anonymity certificate given under section 21D of the pre-amended Act.
- ‘(2) The prescribed sections continue to apply in relation to the witness anonymity certificate as if the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, part 3 had not commenced.¹⁶³
- ‘(3) In this section—
- pre-amended Act* means this Act as in force before the commencement of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, part 3.
- prescribed sections* means sections 21B to 21J of the pre-amended Act.’.

53 **Amendment of sch 3 (Dictionary)**

- (1) Schedule 3, definitions *controlled operation*, *covert operative*, *protected witness*, *relevant entity* and *relevant proceeding*—
omit.
- (2) Schedule 3—
insert—
- ‘*assumed name*, for part 2, division 5, see section 21C.
chief executive officer, for part 2, division 5, see section 21C.
CMC, for part 2, division 5, see section 21C.
conduct, for part 2, division 5, see section 21C.
convicted, for part 2, division 5, see section 21C.
corresponding law, for part 2, division 5, see section 21C.

¹⁶³ *Cross-Border Law Enforcement Legislation Amendment Act 2005*, part 3 (Amendment of Evidence Act 1977)

corresponding witness identity protection certificate, for part 2, division 5, see section 21C.

court name, for part 2, division 5, see section 21C.

criminal activity, for part 2, division 5, see section 21C.

investigation, for part 2, division 5, see section 21C.

misconduct, for part 2, division 5, see section 21C.

operative, for part 2, division 5, see section 21C.

party, for part 2, division 5, see section 21C.

police service means the Queensland Police Service.

protected witness, for part 2, division 6, see section 21M.

relevant court, for part 2, division 5, see section 21C.

relevant proceeding, for part 2, division 4A, see section 21AC.

witness identity protection certificate, for part 2, division 5, see section 21C.’.

- (3) Schedule 3, definition *law enforcement agency*, ‘21B’—
omit, insert—
‘21C’.

Division 3 Amendments relating to Australian Crime Commission activities

54 Amendment of s 21C (Definitions for div 5)

- (1) Section 21C—

insert—

‘**ACC** means the Australian Crime Commission established under the *Australian Crime Commission Act 2002* (Cwlth).’.

- (2) Section 21C, definition *chief executive officer*—

insert—

‘(c) for the ACC—the chief executive officer of the ACC.’.

- (3) Section 21C, definition *law enforcement agency*—
insert—
'(c) the ACC.'

55 Amendment of s 21G (Form of witness identity protection certificate)

- Section 21G(5), definition *law enforcement officer*—
insert—
'(c) a member of the staff of the ACC.'

56 Amendment of s 21H (Filing and notification)

- Section 21H(1)—
insert—
'(c) if the agency is the ACC—give to the Commonwealth Ombudsman a copy of the certificate and notice of the date it was filed.'

57 Amendment of s 21KI (Delegation)

- Section 21KI(3), definition *senior officer*—
insert—
'(c) for the ACC—
(i) the Director National Operations; or
(ii) another office of the ACC prescribed under a regulation.'

58 Amendment of sch 3 (Dictionary)

- Schedule 3—
insert—
'ACC, for part 2, division 5, see section 21C.'

Part 4 Amendment of Witness Protection Act 2000

59 Act amended in pt 4 and sch 2

This part and schedule 2 amend the *Witness Protection Act 2000*.

60 Replacement of pt 3, div 2 (Provisions about proceedings involving protected witnesses)

Part 3, division 2—

omit, insert—

‘Division 2 Proceedings involving protected witnesses

‘Subdivision 1 Preliminary

‘24 Definitions for div 2

‘In this division—

corresponding non-disclosure certificate means a certificate given under a provision of a complementary witness protection law that corresponds to section 25(2).

non-disclosure certificate means a certificate given under section 25(2)(a).

party, to a proceeding, means—

- (a) for a criminal proceeding—the prosecutor and each accused person; or
- (b) for a civil proceeding—each person who is a party to the proceeding; or
- (c) for another proceeding—each person who has been given leave to appear in the proceeding.

protected identity, of a protected witness, means—

- (a) for a proceeding in which the protected witness is or may be required to give evidence under the person's new identity—the person's former identity; or
- (b) for a proceeding in which the protected witness is or may be required to give evidence under the person's former identity—the person's new identity.

protected witness means a person who, having been given a new identity under the program, keeps that identity, even if the person is no longer included in the program.

'24A Application of div 2 to lawyer of party to a proceeding

'For this division—

- (a) anything permitted to be done by a party to a proceeding may be done by the party's lawyer; and
- (b) any requirement to give something to a party to a proceeding is satisfied by giving the thing to the party's lawyer.

'Subdivision 2 Proceedings involving protected witnesses

'25 Requirement if protected witness becomes a witness in a proceeding

- '(1) If a protected witness is or may be required to give evidence in a proceeding in a court, whether under the person's new identity or former identity, the person must notify the chairperson that the person is or may be required to give evidence in the proceeding.
- '(2) The chairperson must—
 - (a) give a certificate for the protected witness in relation to the proceeding; and
 - (b) file a copy of the certificate with the court.

- ‘(3) A protected witness commits an offence if the protected witness—
- (a) knows that, or is reckless as to whether, the protected witness is or may be required to give evidence in a proceeding in a court; and
 - (b) intentionally, knowingly or recklessly fails to notify the chairperson under subsection (1).
- Maximum penalty—50 penalty units.

- ‘(4) In this section—
- court* includes a court, within the meaning of this Act, of another State or the Commonwealth.

‘26 What non-disclosure certificate must state

- ‘(1) A non-disclosure certificate for a protected witness must state—
- (a) the person is, or has been, included in the program; and
 - (b) the person has been given a new identity under this Act; and
 - (c) the person has not been convicted of any offence, other than an offence mentioned in the certificate.
- ‘(2) The non-disclosure certificate must not include information that discloses, or may lead to the disclosure of, the protected witness’s protected identity or where the person lives.

‘27 Effect of non-disclosure certificate

- ‘(1) This section applies if a non-disclosure certificate for a protected witness in relation to a proceeding is filed with a court in Queensland.
- ‘(2) Subject to section 27A, in the proceeding—
- (a) a question must not be asked of a witness, including the protected witness, that may lead to the disclosure of the protected witness’s protected identity or where the protected witness lives; and

- (b) a witness, including the protected witness, can not be required to, and must not, answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the protected witness's protected identity or where the protected witness lives; and
 - (c) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the protected witness's protected identity or where the protected witness lives.
- ‘(3) For this section, a person involved in the proceeding includes the following—
- (a) the court;
 - (b) a party to the proceeding;
 - (c) a person given leave to be heard or make submissions in the proceeding;
 - (d) a lawyer representing a person mentioned in paragraph (b) or (c), or a lawyer assisting the court in the proceeding;
 - (e) any other officer of the court or person assisting the court in the proceeding;
 - (f) a person acting in the execution of any process or the enforcement of any order in the proceeding.
- ‘(4) The court may disclose to each party to the proceeding—
- (a) that the court has been given a non-disclosure certificate for a person who may be required to give evidence in the proceeding; and
 - (b) what the certificate states.
- ‘(5) The court may only disclose what the non-disclosure certificate states in the absence of any jury empanelled for the proceeding and the public.
- ‘(6) If the court makes a disclosure about the non-disclosure certificate under subsection (4), the court must also inform the parties of the effect of the certificate.
- ‘(7) This section applies despite any other Act.

‘27A Disclosure of protected witness’s identity despite certificate

- ‘(1) If a non-disclosure certificate for a protected witness in relation to a proceeding is filed in a court in Queensland, a party to the proceeding, or a lawyer assisting the court in the proceeding, may apply to the court—
- (a) for leave—
 - (i) to ask a question of a witness, including the protected witness, that may lead to the disclosure of the protected witness’s protected identity or where the protected witness lives; or
 - (ii) for a person involved in the proceeding to make a statement that discloses, or may lead to the disclosure of, the protected witness’s protected identity or where the protected witness lives; or
 - (b) for an order requiring a witness, including the protected witness, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the protected witness’s protected identity or where the protected witness lives.
- ‘(2) The court may—
- (a) give leave for the party or lawyer to do anything mentioned in subsection (1)(a); or
 - (b) make an order requiring a witness to do anything mentioned in subsection (1)(b).
- ‘(3) However, the court must not give leave or make an order unless satisfied about each of the following—
- (a) there is evidence that, if accepted, would substantially call into question the protected witness’s credibility;
 - (b) it would be impractical to test properly the credibility of the protected witness without allowing the risk of disclosure of, or disclosing, the protected witness’s protected identity or where the protected witness lives;
 - (c) it is in the interests of justice for the protected witness’s credibility to be able to be tested.

- ‘(4) If there is a jury in the proceeding, the application must be heard in the absence of the jury.
- ‘(5) Unless the court considers that the interests of justice require otherwise, the court must be closed when—
- (a) the application is made; and
 - (b) if leave is given or an order is made—the question is asked and answered, the evidence is given, the information is provided or the statement is made.
- ‘(6) The court must make an order suppressing the publication of anything said when—
- (a) the application is made; and
 - (b) if leave is given or an order is made—the question is asked and answered, the evidence is given, the information is provided or the statement is made.
- ‘(7) Nothing in subsection (6) prevents the taking of a transcript of court proceedings, but the court may make an order for how the transcript is to be dealt with, including an order suppressing its publication.
- ‘(8) The court may make any other order it considers appropriate to protect the protected witness’s protected identity or to prevent the disclosure of where the protected witness lives.
- ‘(9) A person is guilty of an offence if—
- (a) the person knows that, or is reckless as to whether, an order has been made under subsection (6), (7) or (8); and
 - (b) the person intentionally, knowingly or recklessly contravenes the order.

Maximum penalty—2 years imprisonment.

- ‘(10) Subsection (9) does not limit the court’s power to punish for contempt.

‘27B Recognition of corresponding non-disclosure certificate

‘Sections 27 and 27A apply, with any necessary changes, to a corresponding non-disclosure certificate that is filed with a court in Queensland, as if it were a non-disclosure certificate given under section 25(2)(a).’.

61 Amendment of s 30 (Dealing with rights, obligations and restrictions of protected witness)

Section 30(2)(b), ‘court, tribunal or commission of inquiry’—
omit, insert—
‘court’.

62 Amendment of s 36 (Offence of disclosures about protected witnesses or officers)

Section 36(3)(d)—
omit, insert—
‘(d) is permitted by leave, or required under an order, given under section 27A.¹⁶⁴’.

63 Amendment of s 37 (Offence of disclosure by prescribed persons)

Section 37(2)(c)—
omit, insert—
‘(c) permitted by leave, or required under an order, given under section 27A; or’.

¹⁶⁴ Section 27A (Disclosure of protected witness’s identity despite certificate)

64 Amendment of s 48 (Delegation)

Section 48(2)(c), ‘non-disclosure certificate.’—

omit, insert—

‘certificate under section 25(2)(a).¹⁶⁵’.

65 Insertion of new pt 5, div 2

After section 54—

insert—

**‘Division 2 Transitional provisions for
Cross-Border Law Enforcement
Legislation Amendment Act 2005**

‘55 Definitions for div 2

‘In this division—

amendment Act means the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.

commencement day means the day on which part 4¹⁶⁶ of the amendment Act commences.

former, of a provision mentioned in this division, means the provision to which the reference relates is a provision of the pre-amended Act.

new, of a provision mentioned in this division, means the provision to which the reference relates is a provision of the post-amended Act.

pre-amended Act means this Act as in force immediately before the commencement day.

post-amended Act means this Act as in force from the commencement day.

165 Section 25 (Requirement if protected witness becomes a witness in a proceeding)

166 Part 4 (Amendment of Witness Protection Act 2000) of the amendment Act

'56 Existing non-disclosure certificates

- '(1) This section applies to a non-disclosure certificate given to an entity under former section 24(2) (an *existing non-disclosure certificate*).
- '(2) The existing non-disclosure certificate is taken to be a non-disclosure certificate given, and filed with the entity, under new section 25(2).
- '(3) The person in relation to whom the existing non-disclosure certificate was given is taken to be a protected witness under new part 3, division 2.
- '(4) If, before the commencement, the entity has given leave, under former section 27(1), to a person to ask questions of a witness or make a statement, the leave is taken to be leave given to the person under new section 27A(2)(a).

'57 Provision about notice under pre-amended Act

- '(1) This section applies if, before the commencement day—
 - (a) a person has notified the chairperson, under former section 24(1), that the person is or may be required to give evidence; and
 - (b) the chairperson has not given an entity a non-disclosure certificate relating to the person under former section 24(2).
- '(2) The person is taken to be a protected witness who has notified the chairperson under new section 25(1).'

66 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *protected witness*, *relevant entity* and *relevant proceeding*—
omit.
- (2) Schedule 2—
insert—
'corresponding non-disclosure certificate, for part 3, division 2, see section 24.

68 Amendment of s 40 (Commission may issue directions about how notifications are to be made)

Section 40(3), ‘section 192’—

omit, insert—

‘section 177¹⁶⁷’.

69 Insertion of new ch 3, pt 6A

Chapter 3, after part 6—

insert—

**‘Part 6A Controlled operations and
 controlled activities for
 misconduct offences**

‘Division 1 Preliminary

‘132 Object of pt 6A

‘The object of this part is to ensure the effective investigation of misconduct offences by—

- (a) enabling particular commission officers to approve the conduct of controlled operations that may involve particular commission officers and others engaging in activities that may be unlawful as part of the investigation of a suspected misconduct offence; and
- (b) ensuring anything that may be approved or authorised under this part is approved or authorised only in appropriate circumstances; and
- (c) ensuring, as far as practicable, only appropriately trained persons act as covert operatives under an approval under this part; and

¹⁶⁷ *Police Powers and Responsibilities Act 2000*, section 177 (Unauthorised disclosure of information)

- (d) ensuring a person who may act as a covert operative under an approval under this part engages in otherwise unlawful activities only as part of the controlled operation for which the person is a covert operative; and
- (e) providing appropriate protection from civil and criminal liability for persons acting in accordance with this part; and
- (f) clarifying the status of evidence obtained by persons who engage in controlled operations or controlled activities under this part.

‘133 Investigation of minor matters not affected

‘The enactment of this part is not to affect the investigation of minor matters or investigative activities that, by their nature, can not be planned but involve the participation of commission officers who are police officers in activities that may be unlawful.

‘134 Lawfulness of particular actions

‘To remove doubt, it is declared—

- (a) that it is lawful for a person acting in accordance with this part—
 - (i) to recommend that other persons be authorised to engage in an activity that may be unlawful as part of an investigation of a suspected misconduct offence; or
 - (ii) to authorise other persons to engage in an activity that may be unlawful as part of an investigation of a suspected misconduct offence; and
- (b) that it is lawful for a person acting as a covert operative under an approval under section 141, 142 or 143 to engage in activities stated in the approval that may be unlawful as part of the investigation of a suspected misconduct offence; and
- (c) that it is lawful for the chairperson, or an assistant commissioner, acting in accordance with procedures

established by the chairperson, to authorise a police officer or a commission officer to engage in a stated controlled activity for the commission; and

- (d) that it is lawful for a person acting under an authority given under section 146I to engage in a controlled activity in accordance with the authority and procedures established by the commission.

‘135 Controlled operations and activities generally

- ‘(1) From the commencement of this part, a controlled operation or controlled activity in relation to a suspected misconduct offence may be approved only in accordance with this part.
- ‘(2) Also, a function conferred in relation to the activities of the commission under this part is only conferred for the purpose of a function conferred on the commission relating to suspected misconduct offences.

‘Division 2 Controlled operations committee

‘136 Declaration of controlled operations committee

‘The controlled operations committee established under the *Police Powers and Responsibilities Act 2000* is the controlled operations committee for this part.

‘137 Committee’s functions

‘For this part, the committee has the function to consider and make recommendations about applications referred to the committee by the chairperson for—

- (a) an approval for a controlled operation; or
- (b) variation of an approval for a controlled operation.

‘138 Provisions applying to committee and committee’s annual report

- ‘(1) The *Police Powers and Responsibilities Act 2000*, chapter 5A, part 2,¹⁶⁸ applies to the committee for this part as if—
- (a) a reference to a controlled operation were a reference to a controlled operation under this part; and
 - (b) a reference to an authority for a controlled operation, or a variation of a controlled operation, were a reference to an approval or variation under this part; and
 - (c) a reference to an offence were a reference to a misconduct offence.
- ‘(2) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the committee must prepare and give the chairperson of the parliamentary committee a written report on the committee’s activities under this Act.
- ‘(3) The chairperson of the parliamentary committee must table a copy of the annual report in the Legislative Assembly within 14 sitting days after receiving the report.
- ‘(4) The annual report must not contain information that—
- (a) discloses or may lead to the disclosure of the identity of—
 - (i) any covert operative; or
 - (ii) any person who has been, is being, or is to be, investigated; or
 - (b) indicates a particular investigation has been, is being, or is to be, conducted.

¹⁶⁸ *Police Powers and Responsibilities Act 2000*, chapter 5A (Controlled operations), part 2 (Controlled operations committee)

‘Division 3 Approval of controlled operations

‘139 Application for approval

- ‘(1) An authorised commission officer may apply to the approving officer for approval to conduct an operation under this part (*controlled operation*).
- ‘(2) The approving officer must be the chairperson or an assistant commissioner.
- ‘(3) However, if a person to be investigated under a proposed controlled operation is or may be a police officer—
 - (a) the application must be made to the chairperson; and
 - (b) the chairperson is the approving officer for the proposed operation.
- ‘(4) The application must be written and include enough information to enable the approving officer to properly consider whether the proposed operation should be approved.
- ‘(5) In particular, the application must state the following for the proposed controlled operation—
 - (a) an identifying name or number;
 - (b) a description of the suspected misconduct offence in relation to which it is proposed to conduct the operation;
 - (c) if a previous application relating to the same misconduct offence has been made under this division, whether the application was approved or refused;
 - (d) the name of each person who it is intended will act as a covert operative for the operation;
 - (e) a precise description of each otherwise unlawful activity a covert operative who is not a commission officer may be required to engage in as part of the operation;
 - (f) a description of the general classes of otherwise unlawful activities a covert operative who is a commission officer may be required to engage in as part of the operation.

- ‘(6) For subsection (5)(c), an application made under the *Police Powers and Responsibilities Act 2000*, chapter 5, part 2, division 3¹⁶⁹ as in force at any time before the commencement of this section is taken to have been made under this division.

‘140 Application must be referred to committee

- ‘(1) The approving officer must refer the application to the committee without deciding the application.
- ‘(2) However, if the approving officer considers the application does not have enough merit to justify referring it to the committee, the approving officer may refuse to refer the application to the committee.
- ‘(3) This section is subject to sections 141 and 142.

‘141 Particular controlled operations

- ‘(1) This section applies to an application made to the chairperson under section 139(3) for approval to conduct a controlled operation.
- ‘(2) The chairperson may approve the application without referring it to the committee but, before approving the application, the chairperson must consult with the independent member and obtain the independent member’s agreement to the proposed operation.
- ‘(3) However, the chairperson may approve an application made to the chairperson in urgent circumstances without complying with subsection (2), but must consult with the independent member about the controlled operation as soon as possible after approving the application.

169 *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled operations and controlled activities), part 2 (Controlled operations), division 3 (Approval of controlled operations)

‘142 Procedure in urgent circumstances other than if s 141 applies

- ‘(1) This section applies to an application for approval to conduct a controlled operation made to an approving officer in urgent circumstances.
- ‘(2) However, this section does not apply if section 141 applies.
- ‘(3) The approving officer may approve the application without referring it to the committee, but must refer the application to the committee as soon as practicable after approving it.
- ‘(4) The committee may consider the application as if the approval had not been given.
- ‘(5) The approving officer must consider the committee’s recommendations on the application but is not bound by the recommendations.

‘143 Consideration and approval of application

- ‘(1) After considering the committee’s recommendations on an application for approval to conduct a controlled operation, the approving officer may approve or refuse to approve the application.
- ‘(2) The approving officer must not approve an application under section 139, 141 or 142 if the approving officer considers, because of the way the proposed controlled operation is to be conducted, it is probable that any of the following will happen in the operation—
 - (a) injury to, or the death of, a person;
 - (b) serious damage to property;
 - (c) a serious loss of property;
 - (d) someone could be encouraged or induced by a covert operative to engage in criminal activity of a kind the person could not reasonably be expected to have engaged in if not encouraged or induced by the covert operative to engage in it.
- ‘(3) Also, the approving officer must not approve the application unless satisfied—

- (a) the purpose of the proposed controlled operation is to gather evidence of a misconduct offence; and
 - (b) a controlled operation represents an effective use of public resources for investigating the misconduct offence; and
 - (c) any proposed covert operative for the operation has received appropriate training for the purpose; and
 - (d) if a proposed covert operative for the operation is not a commission officer, it is wholly impractical in the circumstances for a commission officer to perform the role the proposed covert operative is to perform in the operation; and
 - (e) the committee has recommended the controlled operation be approved.
- ‘(4) Subsection (1) and (3)(e) do not apply to the approval of a controlled operation mentioned in section 141 or 142.

‘144 What approval must state

- ‘(1) An approval for a controlled operation must be written and state the following—
- (a) a description of the suspected misconduct offence to which the controlled operation relates;
 - (b) the period, of not more than 6 months, for which the approval has effect;
 - (c) the name of each covert operative who may engage in otherwise unlawful activities for the purposes of the operation;
 - (d) a precise description of each otherwise unlawful activity a person who is not a commission officer may engage in while acting as a covert operative for the operation;
 - (e) a description of the general classes of otherwise unlawful activities a commission officer may be required to engage in while acting as a covert operative for the operation;

- (f) any conditions the approving officer considers appropriate.
- ‘(2) For subsection (1)(c), it is enough to state an assumed name or code name in the approval if the actual identity of the covert operative is included in a register kept for the purpose by the chairperson.

‘145 Effect of approval

‘It is lawful for a person named in an approval of a controlled operation—

- (a) to act as a covert operative for the controlled operation to which the approval relates; and
- (b) to engage in the otherwise unlawful activity described in the approval for the purposes of the controlled operation.

‘Division 4 Variation of approval for controlled operation

‘146 Application to vary approval

- ‘(1) An authorised commission officer may apply to the approving officer for a variation of an approval for a controlled operation.
- ‘(2) However, if, the chairperson was the approving officer for the controlled operation because the operation relates to a person who is or may be a police officer, the application must be made to the chairperson.
- ‘(3) The application must be written and include enough information to enable the approving officer to properly consider whether the approval should be varied and if so how it should be varied.
- ‘(4) In particular, the application must state the following for the controlled operation—
 - (a) the identifying name or number for the operation;

-
- (b) a description of the suspected misconduct offence in relation to which the operation was approved;
 - (c) if a previous application for variation of the approval for the operation has been made under this division, whether the approval was varied because of the application;
 - (d) if it is intended to change particulars relating to persons who are or are intended to be covert operatives, the name of each person to whom the change relates and particulars of the change sought;
 - (e) if it is intended to change the description of the suspected misconduct offence in relation to which the operation was approved, a description of the suspected misconduct offence for which approval is sought.
- ‘(5) For subsection (4)(c), an application made under the *Police Powers and Responsibilities Act 2000*, chapter 5, part 2, division 4¹⁷⁰ as in force at any time before the commencement of this section is taken to have been made under this division.

‘146A Application must be referred to committee

- ‘(1) The approving officer must refer the application to the committee without deciding the application.
- ‘(2) However, if the approving officer considers the application does not have enough merit to justify referring it to the committee, the approving officer may refuse to refer the application to the committee.
- ‘(3) This section is subject to sections 146B and 146C.

‘146B Particular controlled operations

- ‘(1) This section applies if an application for the variation of an approval for a controlled operation is made to the chairperson under section 146(2).

¹⁷⁰ *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled operations and controlled activities), part 2 (Controlled operations), division 4 (Variation of approval for controlled operation)

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- ‘(2) The chairperson may approve the application without referring it to the committee but, before approving the application, the chairperson must consult with the independent member and obtain the independent member’s agreement to the proposed variation.
- ‘(3) However, the chairperson may approve an application made to the chairperson in urgent circumstances without complying with subsection (2), but must consult with the independent member about the variation as soon as possible after approving it.

‘146C Procedure in urgent circumstances other than if s 146B applies

- ‘(1) This section applies to an application for the variation of an approval for a controlled operation that is made to an approving officer in urgent circumstances.
- ‘(2) However, this section does not apply if section 146B applies.
- ‘(3) The approving officer may approve the application without referring it to the committee, but must refer the application to the committee as soon as practicable after approving it.
- ‘(4) The committee may consider the application as if the approval had not been given.
- ‘(5) The approving officer must consider the committee’s recommendations on the application but is not bound by the recommendations.

‘146D When approval may be given

‘The approving officer must not approve the application unless reasonably satisfied the variation is necessary for the continued effective investigation of the misconduct offence.

‘146E How approval may be varied

- ‘(1) The approving officer may vary the approval but only by—
- (a) extending the period of the approval from time to time by not more than 6 months at a time; or

- (b) changing particulars about who may act as a covert operative under the approval; or
 - (c) changing particulars of the misconduct offence to which the approval relates.
- ‘(2) The approval mentioned in section 145, as varied under subsection (1), has the effect mentioned in section 145.

‘Division 5 Special provisions about creating identity documents

‘146F Request for issue of document to conceal identity

- ‘(1) This section applies if, for a controlled operation, the independent member recommends the use of a birth certificate created to help conceal the identity of a covert operative.
- ‘(2) The approving officer may authorise a named commission officer to create a birth certificate for the purpose of concealing the identity of the covert operative.

‘146G Giving effect to authority under s 146F

‘On the production to the registrar-general, for inspection, of a written instrument signed by the chairperson and stating that a named officer is authorised under section 146F to create a birth certificate for the purpose of concealing the identity of a covert operative—

- (a) the officer may create a birth certificate for that purpose; and
- (b) the registrar-general must give the officer any help the officer reasonably requires for the purpose.

‘146H Special provisions about concealing identities of covert operatives

- ‘(1) This section applies despite any other Act or law.
- ‘(2) It is lawful for a person responsible for issuing a relevant document to issue, at the request of the approving officer, a

relevant document that helps a covert operative conceal his or her identity and personal particulars, including for example, the person's date and place of birth.

- '(3) The chairperson, the officer authorised to create a relevant document, the person responsible for issuing the relevant document, and anyone helping to issue the document—
 - (a) does not commit an offence by authorising, issuing or helping to issue the document; and
 - (b) no civil proceeding may be started or continued against the person only because of the issue of the document.
- '(4) Also, any contract or agreement made with a covert operative under an identity created under this division is not invalid only because of the use by the covert operative of that identity.
- '(5) As soon as practicable after the chairperson decides a relevant document issued under this division is no longer needed for a controlled operation, the chairperson must return the document to the issuing authority.
- '(6) A covert operative must not use a relevant document issued under this division other than for the purposes of a controlled operation.
Maximum penalty—75 penalty units.
- '(7) In this section—
relevant document means a document that—
 - (a) may be lawfully issued under an Act; and
 - (b) may be used to identify a person or authorise the person to do a lawful act.

'Division 6 Authorising controlled activities

'146I Authorised controlled activities

- '(1) This section applies if the chairperson or an assistant commissioner considers it is reasonably necessary for a police officer or a commission officer to engage in conduct that—

- (a) is directed to obtaining evidence of the commission of a suspected misconduct offence by a police officer (*relevant officer*); and
 - (b) involves the following (a *controlled activity*)—
 - (i) a single meeting between a police officer or commission officer and the relevant officer, whether or not the meeting was the result of a written or oral communication with the person;
 - (ii) deliberately concealing the true purpose of the communication between the police officer or commission officer and the relevant officer;
 - (iii) the commission by the police officer or commission officer of otherwise unlawful activity.
- ‘(2) The chairperson or assistant commissioner may, in accordance with any policy of the commission, authorise a police officer or commission officer to engage in a stated controlled activity.¹⁷¹
- ‘(3) The authority must be written and state the controlled activity the police officer or commission officer is authorised to engage in.
- ‘(4) The person authorised to engage in the controlled activity must comply with any relevant policy of the commission.

‘Division 7 Miscellaneous

‘146J Disclosure of information

- ‘(1) This section applies to a person to whom the existence of any of the following (*relevant information*) becomes known—
 - (a) an application for—
 - (i) approval of a controlled operation; or

¹⁷¹ Under the *Freedom of Information Act 1992*, section 19 (Availability of certain documents), the policy documents must be made available for inspection and purchase by members of the community.

- (ii) a variation of an approval given for a controlled operation;
 - (b) a decision of the committee to recommend the approval of, or the variation of an approval for, a controlled operation, and the committee's recommendation;
 - (c) an approval of—
 - (i) a controlled operation; or
 - (ii) a variation of an approval given for a controlled operation;
 - (d) information about a controlled operation;
 - (e) documents issued under division 5;
 - (f) the actual identity of a covert operative.
- ‘(2) The person must not disclose relevant information, other than—
- (a) for the purposes of this part; or
 - (b) with the approval of the commission; or
 - (c) to the extent—
 - (i) the information has generally been made known; or
 - (ii) it is in the public interest to disclose the information.

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

‘146K Protection from liability

- ‘(1) This section applies to each of the following persons (a *relevant person*)—
- (a) a member of the committee;
 - (b) an assistant commissioner;
 - (c) the chairperson;
 - (d) a person who is or was a covert operative;

- (e) a person who, as part of a controlled operation, provides a covert operative with help, including by giving the covert operative things necessary for the purposes of the controlled operation;
 - (f) a person who authorised a controlled activity;
 - (g) a person who is or was authorised under this part to engage in a controlled activity.
- ‘(2) A relevant person does not incur civil liability for an act done, or omission made, under this part.
- ‘(3) If subsection (2) prevents a civil liability attaching to the person, the liability attaches instead to the State.
- ‘(4) Also, a relevant person does not incur criminal liability for an act done, or omission made—
- (a) in accordance with an approval given for a controlled operation; or
 - (b) in accordance with—
 - (i) an authority given for a controlled activity; or
 - (ii) the commission’s policy about controlled activities.
- ‘(5) In addition, a relevant person who is a police officer or a commission officer does not incur criminal liability for an act done, or omission made, that, because of a controlled operation, was reasonably necessary for—
- (a) protecting the safety of any person; or
 - (b) protecting the identity of a covert operative; or
 - (c) taking advantage of an opportunity to gather evidence in relation to a misconduct offence not mentioned in the approval.
- ‘(6) However, subsection (5) does not relieve a police officer or a commission officer from criminal liability for an act done or omission made if the act or omission results in—
- (b) injury to, or the death of, a person; or
 - (b) serious damage to property; or

- (c) a serious loss of property; or
 - (d) someone being encouraged or induced by a covert operative to engage in criminal activity of a kind the person could not reasonably be expected to have engaged in if not encouraged or induced by the covert operative to engage in it.
- ‘(7) This section does not limit the *Police Service Administration Act 1990*, section 10.5.¹⁷²

‘146L Admissibility of evidence obtained through controlled operation

‘It is declared that evidence gathered because of a controlled operation or controlled activity is not inadmissible only because it was obtained by a person while engaging in an unlawful act if the unlawful act was authorised under this part.

‘146M Evidentiary provision

- ‘(1) In a proceeding, a certificate of the chairperson stating any of the following is evidence of the things it states—
- (a) at a stated time a stated person was an approving officer for this Act;
 - (b) at a stated time a stated person was a covert operative;
 - (c) on a stated day a stated person approved the conduct of a stated controlled operation or controlled activity;
 - (d) on a stated day a stated person varied an approval for a stated controlled operation in a stated way.
- ‘(2) For subsection (1)(b), it is enough to state an assumed name or code name in the certificate if the actual identity of the covert operative is included in a register kept for the purpose by the chairperson.

¹⁷² *Police Service Administration Act 1990*, section 10.5 (Liability for tort generally)

‘146N Powers not to be delegated

- ‘(1) Powers of an approving officer under this part may not be delegated.
- ‘(2) Also, powers of the chairperson or an assistant commissioner under section 146I may not be delegated.
- ‘(3) Subsections (1) and (2) apply despite any other Act.’.

70 Amendment of s 317 (Powers of the parliamentary commissioner)

Section 317—

insert—

- ‘(7) The parliamentary commissioner may delegate any of the parliamentary commissioner’s powers under the *Police Powers and Responsibilities Act 2000*, chapter 5A or 5C¹⁷³ as inspection entity under that Act to a legal practitioner engaged by the Speaker under section 315(2).’.

71 Insertion of new ch 8, pt 2, hdg

Chapter 8, part 2, heading—

omit, insert—

**‘Part 2 Transitional provisions for
Crime and Misconduct Act
2001’.**

¹⁷³ *Police Powers and Responsibilities Act 2000*, chapter 5A (Controlled operations) or 5C (Surveillance device warrants)

- (b) an existing approving officer under former section 176 of the *Police Powers and Responsibilities Act 2000*.

existing covert operative means a commission officer or another person who is named in an existing controlled operation approval as a covert operative for the controlled operation to which the approval relates.

former, of a provision of the *Police Powers and Responsibilities Act 2000* mentioned in this part, means the provision to which the reference relates is a provision of the pre-amended Act.

new, of a provision mentioned in this part, means the provision to which the reference relates is a provision of the post-amended Act.

post-amended Act means this Act as in force from the commencement day,

pre-amended Act means the *Police Powers and Responsibilities Act 2000* as in force immediately before the commencement of section 12 of the amendment Act.

‘377 Transitional provisions for pre-commencement day referrals to committee

- ‘(1) A referred application that was not considered by the committee under former chapter 5, part 2, division 2 of the *Police Powers and Responsibilities Act 2000* may continue to be considered by the committee under the applied provisions.

- ‘(2) In this section—

referred application means an application for either of the following that was referred to the committee by an approving officer under former chapter 5, part 2, division 2 of the *Police Powers and Responsibilities Act 2000*—

- (a) approval to conduct a controlled operation in relation to a suspected misconduct offence;
- (b) variation of an approval to conduct a controlled operation in relation to a suspected misconduct offence.

‘378 Transitional provisions for controlled operations

- ‘(1) An existing controlled operation approval that was in force immediately before the commencement day and relates to a suspected misconduct offence continues in force from that day in accordance with its terms as if it were an approval given under new section 143.
- ‘(2) An existing controlled operation urgent approval that was in force immediately before the commencement day and relates to a suspected misconduct offence continues in force from that day in accordance with its terms as if it were an urgent approval given under new section 143.

‘379 Transitional provision for pre-commencement day recommendations

‘A recommendation made by the committee under former chapter 5, part 2, division 2 of the *Police Powers and Responsibilities Act 2000* and not acted upon before the commencement day is taken, for this Act, to be a recommendation made by the committee under the applied provisions.

‘380 Transitional provision for covert operatives

‘A person named as a covert operative in an existing controlled operation approval continued in force under section 378 is taken, for this Act, to be a covert operative named in an approval given under this Act.

‘381 Transitional provisions for authorities for birth certificates

- ‘(1) This section applies to an authority given under former section 186 of the *Police Powers and Responsibilities Act 2000* to create a birth certificate to help conceal the identity of a covert operative for a controlled operation relating to a suspected misconduct offence.
- ‘(2) The authority continues in force as an authority given under new section 146F.

- ‘(3) A birth certificate created in accordance with an authority continued in force under subsection (2)—
- (a) is taken to have been created under new section 146G; and
 - (b) may continue to be used for the purpose for which it was created.

‘382 Identity documents other than birth certificates

- ‘(1) This section applies to a document created in accordance with former section 189 of the *Police Powers and Responsibilities Act 2000* in relation to a controlled operation relating to a suspected misconduct offence.
- ‘(2) New section 146H(3) to (7) apply to the document as if it had been produced under a request under new section 146H(2).¹⁷⁵.

73 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, *affected by bankruptcy action, class A surveillance device, class B surveillance device, declared law enforcement agency and surveillance warrant—*
omit.
- (2) Schedule 2—
insert—
‘approving officer see section 139(2).¹⁷⁶
controlled activity see section 146I(1)(b).¹⁷⁷
controlled operation see section 139(1).

175 Section 146H (Special provisions about concealing identities of covert operatives)

176 Section 139 (Application for approval)

177 Section 146I (Authorised controlled activities)

covert operative means a commission officer or another person named in an approval under section 144¹⁷⁸ as a covert operative.

declared agency means an entity prescribed under a regulation as a declared agency for this Act.

independent member, of the committee, means the independent member of the controlled operations committee under the *Police Powers and Responsibilities Act 2000*.

insolvent under administration see the Corporations Act, section 9.

misconduct offence means alleged or suspected criminal conduct that may be—

- (a) official misconduct; or
- (b) misconduct under the *Police Service Administration Act 1990*.

otherwise unlawful activity means an unlawful act or omission of a person for which—

- (a) because of chapter 3, part 6A¹⁷⁹ it would be unlawful for the person to do or omit; or
- (b) because of chapter 3, part 6A it would be lawful for the person to do or omit.

surveillance warrant see section 121.¹⁸⁰

- (3) Schedule 2, definition *commission officer*—

insert—

‘(g) for chapter 3, part 6A—a person mentioned in paragraph (a), (b), (c), (d), (e) or (f) or an officer or employee of a declared agency.’.

178 Section 144 (What approval must state)

179 Chapter 3 (Powers), part 6A (Controlled operations and controlled activities for misconduct offences)

180 Section 121 (Surveillance warrant applications)

-
- (4) Schedule 2, definition *ineligible person*, paragraph (b)—
omit, insert—
'(b) a person who is an insolvent under administration;'.
'

Part 6 **Minor and consequential amendments**

74 **Amendment of other Acts**

Schedule 4 amends the Acts it mentions.

Schedule 1 Minor and consequential amendments of Police Powers and Responsibilities Act 2000

section 3

1 Chapter 4, part 1, divisions 1 to 3, headings, ‘Division’—
omit, insert—
‘Part’.

2 Chapter 4, heading and chapter 4, part 1, heading
appearing immediately after the chapter heading—
omit, insert—

‘Chapter 4 Monitoring and suspension orders’.

3 Section 115, heading, ‘pt 1’—
omit, insert—
‘ch 4’.

4 Section 115, ‘In this part’—
omit, insert—
‘In this chapter’.

Schedule 1 (continued)

- 5 **Chapter 4 (Covert evidence gathering powers), part 2 (Surveillance powers), division 6 (Covert searches), heading—**
omit, insert—
‘Chapter 4A Covert searches’.
- 6 **Section 147A, heading, ‘div 6’—**
omit, insert—
‘ch 4A’.
- 7 **Section 147A, as amended by amendment 6, and sections 148 to 156—**
renumber as sections 122 to 131.
- 8 **Chapter 4, part 2, division 6, as renumbered by amendment 5 as chapter 4A—**
relocate immediately after section 121F.
- 9 **Sections 318G(1)(a), 318I(2)(c), 318J(1)(b), 318ZY(1) and (3), 398(2), 399(2), (3) and (4), 414(4), 481(1), schedule 4, definition *function of the police service*, ‘law enforcement’—**
omit.
- 10 **Section 320, ‘relevant offences’—**
omit, insert—
‘*chapter 8B offences*’.

Schedule 1 (continued)

- 11 Section 320(2), 321, 322(1), 324(3) and (5), 329(1)(a), (2)(a) and (3), ‘relevant offence’—**
omit, insert—
‘chapter 8B offence’.
- 12 Schedule 4, definition *covert search powers*, ‘section 155’—**
omit, insert—
‘section 130’.
- 13 Schedule 4, definition *covert search warrant*, ‘section 148’—**
omit, insert—
‘section 123’.
- 14 Schedule 4, definition *financial institution*—**
omit, insert—
‘financial institution—
(a) generally—includes cash dealer; and
(b) for chapter 4, see section 115.¹⁸¹.
- 15 Schedule 4, definition *relevant person*, paragraph (a), from ‘for a’—**
omit, insert—
‘or a magistrate for a surveillance device warrant—see section 197ZO; and’.

181 Section 115 (Meaning of *financial institution* for ch 4)

Schedule 1 (continued)

- 16** **Schedule 4, definition *relevant person*, paragraph (b), from ‘magistrate’—**
omit, insert—
‘judge or a magistrate for a retrieval warrant—see section 197ZW; or’.
- 17** **Schedule 4, definition *relevant person*, paragraph (c), ‘section 149’—**
omit, insert—
‘section 124’.
- 18** **Schedule 4, definition *terrorism*—**
omit, insert—
‘*terrorism*, for chapter 4A, see section 122(4).’.
- 19** **Schedule 4, definition *terrorist act*—**
omit, insert—
‘*terrorist act*, for chapter 4A, see section 122.’.

Schedule 2 Minor amendments of Witness Protection Act 2000

section 59

1 Sections 14(2)(a) and 38(1)(h), ‘protected person’—
omit, insert—
‘protected witness’.

2 Section 38(2) and (3), ‘relevant proceeding’—
omit, insert—
‘proceeding’.

3 Part 5, before section 53—
insert—

**‘Division 1 Transitional provisions for Act
No. 56 of 2000’.**

Schedule 3 Minor and consequential amendments of Crime and Misconduct Act 2001

section 67

- 1 Section 120, heading, ‘divs 2–5’—**
omit, insert—
‘divs 2–3’.

- 2 Section 120, ‘divisions 2 to 5’—**
omit, insert—
‘divisions 2 and 3’.

- 3 Section 121(1), ‘major crime or’—**
omit.

- 4 Section 121(4)(b) and (c)—**
omit.

- 5 Section 121(4), note appearing after paragraph (e)—**
omit.

- 6 Section 121(4)(d) and (e)—**
renumber as section 121(4)(b) and (c).

- 7 Section 121(6), ‘(4)(e)’—**
omit, insert—
‘(4)(c)’.

Schedule 3 (continued)

- 8 Section 123, ‘major crime or’—**
omit.
- 9 Section 123(b), from ‘if’ to ‘is sought,’—**
omit.
- 10 Section 124(1)(a), ‘major crime or’—**
omit.
- 11 Section 124(1)(b), ‘commission of the major crime or’—**
omit.
- 12 Section 124(2), ‘class A’—**
omit.
- 13 Section 125(d) and (e)—**
omit.
- 14 Section 125(f) and (g)—**
renumber as section 125(d) and (e).
- 15 Section 126(2), ‘major crime or’, first mention—**
omit.
- 16 Section 126(2), ‘another major crime or’—**
omit.
- 17 Section 127(2), ‘major crime or’—**
omit.

Schedule 3 (continued)

- 18 Section 128(a), ‘for a class A surveillance device—’—**
omit.
- 19 Section 128(b) to (e)—**
omit, insert—
- (b) power to install and use a surveillance device to intercept and record private conversations;
 - (c) power to remove a thing to another place to install a surveillance device in the thing;
 - (d) power to use an assistant to translate or interpret conversations intercepted under the warrant;’.
- 20 Section 128(h), ‘,whether of the same or a different kind,’—**
omit.
- 21 Section 128(f) to (i)—**
renumber as section 128(e) to (h).
- 22 Chapter 3, part 6, divisions 3 and 4—**
omit.
- 23 Chapter 3, part 6, division 5—**
renumber as chapter 3, part 6, division 3.
- 24 Section 144(1)(a), ‘or a magistrate’—**
omit.
- 25 Section 144(1)(b)—**
omit.

Schedule 3 (continued)

- 26 Section 144(1)(c)—**
omit, insert—
‘(b) an order made under an application mentioned in paragraph (a).’.
- 27 Section 145(2)(a), ‘or magistrate’—**
omit.
- 28 Section 145(2)(b)(ii)—**
omit.
- 29 Section 145(2)(b)(iii)—**
renumber as section 145(2)(b)(ii).
- 30 Section 145(2)(c)—**
omit.
- 31 Section 145(2)(d) to (e)—**
renumber as section 145(2)(c) to (e).
- 32 Section 145(2)(f)(i), ‘major crime or’—**
omit.
- 33 Section 145(2)(g), ‘law enforcement’—**
omit.
- 34 Section 145(2)(h)(iii)—**
omit.

Schedule 3 (continued)

- 35 Section 145(2)(h)(iv)—**
renumber as section 145(2)(h)(iii).
- 36 Sections 144 and 145, as amended, and 146—**
renumber as sections 129 to 131.
- 37 Section 166(6), definition *prescribed information*, paragraph (a)—**
insert—
- ‘(viii)approvals for controlled operations or variations of approvals for controlled operations under this Act; or’.

Schedule 4 Other Acts amended

section 74

Criminal Code

1 Section 228H(2)—

omit, insert—

‘(2) However, subsection (1) does not apply to the extent that the person’s conduct consists of engaging in conduct or an activity that—

(a) is authorised under—

(i) the *Police Powers and Responsibilities Act 2000*, chapter 5 or 5A;¹⁸² or

(ii) the *Crime and Misconduct Act 2001*, chapter 3, part 6A;¹⁸³ or

(b) is otherwise directed to gaining evidence of the commission of an offence against a particular person.’.

2 Section 228H(3), definition *chapter 5 criminal activity*—

omit.

182 *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled activities) or 5A (Controlled operations)

183 *Crime and Misconduct Act 2001*, chapter 3 (Powers), part 6A (Controlled operations and controlled activities for misconduct offences)

Schedule 4 (continued)

Freedom of Information Act 1992**1 Schedule 3, entry for *Police Powers and Responsibilities Act 2000*—***omit, insert—**'Police Powers and Responsibilities Act 2000, sections 191, 197ZK, 321 and 401¹⁸⁴'.***Police Service Administration Act 1990****1 Section 1.4, definition *covert operative*—***omit, insert—**'operative* see section 5A.2.'**2 Section 5.17(17), definition *terrorist act*, 'section 147A'—***omit, insert—**'section 122'.***3 Section 5A.2, definition *authorised person*, paragraph (c), 'covert'—***omit.*

184 *Police Powers and Responsibilities Act 2000*, section 191 (Relationship to other laws and matters), 197ZK (Relationship to other laws and matters), 321 (Certain Acts do not apply to this chapter) and 401 (Particular Acts do not apply to this division)

Schedule 4 (continued)

4 Section 5A.2, definition *covert operative*—

omit, insert—

'operative means a police officer who is—

- (a) a participant in an authorised operation under the *Police Powers and Responsibilities Act 2000*, chapter 5A;¹⁸⁵ or
- (b) a covert operative for a controlled operation under the *Crime and Misconduct Act 2001*, chapter 3, part 6A.¹⁸⁶

5 Section 5A.8(d), 'a covert'—

omit, insert—

'an'.

6 Section 5A.9(4), example 1, 'a covert'—

omit, insert—

'an'.

7 Section 5A.13(1)(a)(ii) and (iii), 'a covert'—

omit, insert—

'an'.

8 Section 10.1(1)(c), 'under this Act'—

omit, insert—

'under this or another Act'.

185 *Police Powers and Responsibilities Act 2000*, chapter 5A (Controlled operations)

186 *Crime and Misconduct Act 2001*, chapter 3 (Powers), part 6A (Controlled operations and controlled operations for misconduct offences)

Schedule 4 (continued)

Prostitution Act 1999

- 1 Section 75(1), from ‘chapter’—**
omit, insert—
‘chapter 5 or 5A.¹⁸⁷’.

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¹⁸⁷ *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled activities) or 5A (Controlled operations)