



Queensland

Crime and Misconduct and Other Legislation Amendment Act 2006

Act No. 41 of 2006



Queensland

Crime and Misconduct and Other Legislation Amendment Act 2006

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Queensland

Crime and Misconduct and Other Legislation Amendment Act 2006

Act No. 41 of 2006

**An Act to amend the *Crime and Misconduct Act 2001* and other
legislation affecting the operations of the Crime and
Misconduct Commission, and for other purposes**

[Assented to 11 August 2006]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Crime and Misconduct and Other Legislation Amendment Act 2006*.

2 Commencement

This Act commences on the date of assent.

Part 2 Amendment of Crime and Misconduct Act 2001

3 Act amended in pt 2 and schedule

This part and the schedule amend the *Crime and Misconduct Act 2001*.

4 Amendment of s 56 (Commission's other functions)

Section 56(a)—

omit, insert—

‘(a) the witness protection function;

Note—

See also the *Witness Protection Act 2000*’.

5 Amendment of s 74 (Notice to produce for crime investigation)

(1) Section 74, heading, after ‘investigation’—

insert—

‘or witness protection function’.

(2) Section 74(1)—

omit, insert—

‘(1) This section applies only for the following—

- (a) a crime investigation;
- (b) the witness protection function.’.

(3) Section 74(2), after ‘investigation’—

insert—

‘or the witness protection function’.

(4) Section 74—

insert—

‘(2A) The notice to produce must state that it relates to—

- (a) a crime investigation; or
- (b) without specifying which, a crime investigation or the witness protection function.’.

(5) Section 74(3), ‘A notice to produce’—

omit, insert—

‘If the notice to produce is given in the context of a crime investigation, the notice’.

(6) Section 74—

insert—

‘(3A) If the notice to produce is given in the context of the witness protection function, the notice may be given only if the chairperson considers it is necessary to protect—

- (a) the security of a protected person; or
- (b) the integrity of the witness protection program or other witness protection activities of the commission.’.

(7) Section 74(4), from ‘that’—

omit, insert—

‘that—

- (a) for a notice given in the context of a crime investigation, delay in the production of the document may result in—
 - (i) its destruction, removal or concealment; or
 - (ii) serious prejudice to the conduct of the investigation; or
- (b) for a notice given in the context of the witness protection function, delay in the production of the document may threaten—
 - (i) the security of a protected person; or
 - (ii) the integrity of the witness protection program or other witness protection activities of the commission.’.

6 Insertion of new ch 3, pt 1, div 2A

After section 75—

insert—

‘Division 2A Further power to require production of documents or things at hearing

‘75A Application of div 2A

‘This division applies only for a crime investigation or a misconduct investigation.

‘75B Power to require immediate production

- ‘(1) The presiding officer at a commission hearing may require a witness at the hearing to immediately produce a stated document or thing that the presiding officer believes, on reasonable grounds, is—
 - (a) in the witness’s possession; and
 - (b) relevant to the investigation.

Note—

For a reasonable excuse for not producing the document or thing, see section 185 for a crime investigation and section 188 for a misconduct investigation.

- ‘(2) The presiding officer may adjourn the hearing to allow the person to comply with the requirement.
- ‘(3) The person does not, by complying with the requirement—
 - (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the document or thing; or
 - (b) incur any civil liability in relation to the document or thing.’.

7 Amendment of s 82 (Notice to attend hearing—general)

- (1) Section 82(1)(a) to (c)—

omit, insert—

- ‘(a) for a hearing in relation to a crime investigation or misconduct investigation—
 - (i) to give evidence; or
 - (ii) to produce a stated document or thing; or
 - (iii) to establish a reasonable excuse or claim of privilege under section 72 or 74;
- (b) for a witness protection function hearing—to establish the reasonable excuse or claim of privilege the subject of the hearing.’.

- (2) Section 82(2)(a)—

omit, insert—

- ‘(a) whether it is issued in the context of—
 - (i) a crime investigation; or
 - (ii) without specifying which, a crime investigation or the witness protection function; or
 - (iii) a misconduct investigation; and’.

(3) Section 82(4), from ‘about’—

omit, insert—

‘about—

- (a) for an attendance notice issued in the context of a crime investigation or misconduct investigation—any matter that relates to an investigation; or
- (b) for an attendance notice issued in the context of a witness protection function hearing—any matter that relates to the matter for which the attendance notice was issued.’.

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

(1) Section 85—

insert—

‘(1A) If the attendance notice is to be issued in the context of a witness protection function hearing, the chairperson must give the judge a certificate stating that the notice relates to a witness protection function hearing.’.

(2) Section 85(2), from ‘that delay’—

omit, insert—

‘that—

- (a) for a notice issued in the context of a crime investigation or misconduct investigation, delay in attendance might result in—
 - (i) the commission of an offence; or
 - (ii) an offender or suspected offender absconding; or
 - (iii) the loss or destruction of evidence; or
 - (iv) serious prejudice to the conduct of an investigation being conducted by the commission; or
- (b) for a notice issued in the context of a witness protection function hearing, delay in attendance and resolution of

the reasonable excuse or claim of privilege the subject of the hearing might threaten—

- (i) the security of a protected person; or
- (ii) the integrity of the witness protection program or other witness protection activities of the commission.’.

(3) Section 85(3), ‘The attendance notice—
omit, insert—

‘An attendance notice issued in the context of a crime investigation or misconduct investigation’.

(4) Section 85—
insert—

‘(4) For an attendance notice to be issued in the context of a witness protection function hearing, nothing in this section requires the chairperson to give the judge—

- (a) information about the identity or former identity of a protected person; or
- (b) details about the protection given to a protected person or the reasons for the protection; or
- (c) information about the identity of any person if the information would threaten—
 - (i) the security of a protected person; or
 - (ii) the integrity of the witness protection program or other witness protection activities of the commission.

‘(5) A certificate mentioned in subsection (1A) is evidence of the matters stated in it.’.

9 Amendment of s 177 (Whether hearings are to be open or closed)

Section 177(2)(b)—
omit, insert—

- ‘(b) for a witness protection function hearing, the commission may open the hearing to the public if it—
 - (i) considers opening the hearing will make the hearing more effective and—
 - (A) would not be unfair to a person or contrary to the public interest; and
 - (B) would not threaten the security of a protected person or the integrity of the witness protection program or other witness protection activities of the commission; and
 - (ii) approves that the hearing be a public hearing; or
- (c) for a hearing other than a hearing mentioned in paragraph (a) or (b), the commission may open the hearing to the public if it—
 - (i) considers closing the hearing to the public would be unfair to a person or contrary to the public interest; and
 - (ii) approves that the hearing be a public hearing.’.

10 Amendment of s 178 (Who must conduct hearings)

- (1) Section 178(2)—
omit, insert—
- ‘(2) However, if the chairperson considers it necessary for the efficient operation of the commission, a public hearing may be conducted by an assistant commissioner as decided by the chairperson.
- ‘(2A) More than 1 public hearing may be conducted at the same time.’.
- (2) Section 178(4) to (7)—
omit.

11 Replacement of s 184 (Application of subdiv 1)

Section 184—

omit, insert—

‘184 Application of sdiv 1

‘This subdivision applies only in the context of—

- (a) a crime investigation; or
- (b) a witness protection function hearing.’.

12 Amendment of s 185 (Refusal to produce—claim of reasonable excuse)

Section 185(1), after ‘notice’—

insert—

‘or a requirement made under section 75B’.

13 Amendment of s 188 (Refusal to produce—self-incrimination)

- (1) Section 188, heading, ‘self-incrimination’—

omit, insert—

‘claim of reasonable excuse’.

- (2) Section 188(1)—

omit, insert—

- ‘(1) This section applies if a person is required to produce a stated document or thing—

- (a) to an identified commission officer under a notice to discover under section 75; or
- (b) at a commission hearing under an attendance notice; or
- (c) under a requirement under section 75B.’.

- (3) Section 188(2), from ‘A’ to ‘attendance notice’—

omit, insert—

‘The person’.

14 Replacement of s 189 (Application of subdiv 1)

Section 189—

omit, insert—

‘189 Application of sdiv 1

‘This subdivision applies only in the context of the following—

- (a) a crime investigation;
- (b) a witness protection function hearing.’.

15 Replacement of s 193 (Application of subdiv 1)

Section 193—

omit, insert—

‘193 Application of sdiv 1

‘This subdivision applies only in the context of the following—

- (a) a crime investigation;
- (b) a witness protection function hearing.’.

16 Amendment of s 194 (Presiding officer to decide whether refusal to answer questions or produce documents or things is justified)

Section 194(2), ‘a claim of privilege against self-incrimination’—

omit, insert—

‘self-incrimination privilege’.

17 Amendment of s 195B (Supreme Court to decide claim of privilege)

Section 195B(7), ‘is established on a ground of self-incrimination’—

omit, insert—

‘of self-incrimination privilege is established’.

18 Amendment of s 197 (Restriction on use of privileged answers, documents, things or statements disclosed or produced under compulsion)

(1) Section 197(1)—

omit, insert—

‘(1) This section applies if—

(a) before an individual answers a question put to the individual by the commission or a commission officer or produces a document or thing or a written statement of information to the commission or a commission officer, the individual claims self-incrimination privilege in relation to the answer or production; and

(b) apart from this Act, the individual would not be required to answer the question or produce the document, thing or statement in a proceeding if the individual claimed self-incrimination privilege in relation to the answer or production; and

(c) the individual is required to answer the question or produce the document, thing or statement.’.

(2) Section 197(2) and (6), ‘person’—

omit, insert—

‘individual’.

(3) Section 197(3)(a), ‘person’s’—

omit, insert—

‘individual’s’.

(4) Section 197(3)(b)(i)—

omit, insert—

‘(i) the falsity or misleading nature of an answer, document, thing or statement mentioned in subsection (1) and given or produced by the individual; or’.

(5) Section 197(5), ‘a person’—

omit, insert—

‘an individual’.

- (6) Section 197(5), ‘the person’—

omit, insert—

‘the individual’.

19 **Amendment of s 213 (Secrecy)**

Section 213(4)(b)(ii), after ‘investigation’—

insert—

‘conducted by the commission’.

20 **Amendment of s 247 (Duration of appointment)**

- (1) Section 247(3)—

omit, insert—

- ‘(3) However, subject to subsection (3A), an assistant commissioner or senior officer must not hold office in the commission as an assistant commissioner or senior officer for more than 10 years in total.

Example—

A person held office as a senior officer for 7 years, comprising an appointment for an initial term of 5 years and a reappointment for a further term of 2 years. The person is appointed as an assistant commissioner for 3 years. The person must not continue in, or be reappointed to, the office at the end of the 3 year period, unless the reappointment is made under subsection (3A).

- ‘(3A) An assistant commissioner or senior officer who has held office in the commission as an assistant commissioner or senior officer for 10 years in total may be reappointed for a further term if the reappointment—

- (a) is necessary for the efficient operation of the commission; and
- (b) does not result in the person holding office in the commission as an assistant commissioner or senior officer for more than 15 years in total.

Example—

A person has held office in the commission for 10 years, comprising an appointment as a senior officer for a term of 5 years and an appointment as an assistant commissioner for a term of 5 years. At the end of the 5 year period, the person may be reappointed as an assistant commissioner for a further term of not more than 5 years.

‘(3B) Any time a person held office in the commission as either an assistant commissioner or senior officer before the commencement of this subsection must be included in working out the number of years under subsection (3) or (3A).’.

(2) Section 247(4), ‘Subsection (3) has’—

omit, insert—

‘Subsections (3) to (3B) have’.

(3) Section 247(5), examples—

omit, insert—

‘Examples of senior officers whose duties support the commission’s functions—

- an officer whose principal duties relate to information technology matters
- an officer whose principal duties relate to financial matters
- an officer whose principal duties relate to human resource management matters’.

21 Insertion of new s 247A

After section 247—

insert—

‘247A Notice to parliamentary committee

‘(1) If a person is reappointed for a further term under section 247(3A), the chairperson must give the parliamentary committee written notice of the appointment.

‘(2) The notice must state the following—

- (a) the name of the person appointed for the further term;
- (b) the position the person holds in the commission;

- (c) why the person's appointment for the further term is necessary for the efficient operation of the commission;
- (d) the period of the further term.'

22 Amendment of s 255 (Secondment of officers)

Section 255(2)—

omit, insert—

- '(2) The arrangement is not effective unless it has been approved by—
 - (a) for a secondment of an officer or employee of the parliamentary service—the Speaker; or
 - (b) for a secondment of a member of the police service—the Minister and the Minister administering the *Police Service Administration Act 1990*; or
 - (c) for a secondment of another officer or employee—
 - (i) if the secondment is to a position at a level equivalent to or above the level of a senior officer under the *Public Service Act 1996*—the Minister and the Minister responsible for the unit of public administration from which the person is to be seconded; or
 - (ii) if the secondment is to a position at another level—the chief executive of the unit of public administration from which the person is to be seconded.'

23 Amendment of s 260 (Performance)

Section 260(5), from 'that would'—

omit, insert—

'that, if given—

- (a) would prejudice a current sensitive operation of, or investigation by, the commission; or
- (b) may threaten—

- (i) the security of a protected person; or
- (ii) the integrity of the witness protection program or other witness protection activities of the commission.’.

24 Amendment of s 269 (Delegation—commission)

- (1) Section 269(2), table, entry for section 254—
omit.
- (2) Section 269—
insert—
- ‘(3) Also, the commission’s powers under section 254 in relation to the appointment of a person at a level equivalent to or above the level of a senior officer may only be delegated to the chairperson.’.

25 Amendment of s 295 (Referral of concerns by parliamentary committee)

- (1) Section 295(1)(a), from ‘activities’—
omit, insert—
‘activities of the commission or a commission officer; or’.
- (2) Section 295(1)(b), ‘or former commission officer’—
omit.

26 Amendment of s 305 (Disqualifications as parliamentary commissioner)

- Section 305(3), definition *ineligible person*, ‘or former commission officer’—
omit.

27 Amendment of s 312 (Termination of appointment)

Section 312(4), definition *ineligible person*, ‘or former commission officer’—

omit.

28 Amendment of s 318 (Parliamentary commissioner may conduct hearings in limited circumstances)

Section 318(11)—

omit.

29 Amendment of s 321 (Confidentiality obligations not to apply)

(1) Section 321(2), definition *commission officer*—

omit.

(2) Section 321(2), definition *relevant person*—

omit, insert—

‘*relevant person* means a person—

(a) who is a commission officer; or

(b) who is or was a person holding an appointment in a unit of public administration.’.

30 Amendment of s 326 (Monitor’s functions)

Section 326(1)(d), after ‘give to the commission’—

insert—

‘and the parliamentary committee’.

31 Amendment of s 329 (Duty of chairperson to notify improper conduct to the parliamentary committee)

Section 329(2), definition *commission officer*—

omit.

32 Amendment of s 341 (Personnel changes do not affect commission's power to make findings or report)

Section 341(2), after 'investigation'—

insert—

'or anything done under this Act for the witness protection function'.

33 Amendment of s 343 (Information disclosure and privilege)

Section 343—

insert—

'(3) To remove any doubt, it is declared that only a person who is an individual may claim self-incrimination privilege under this Act.'

34 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definition *commission officer*—

omit.

(2) Schedule 2—

insert—

'commission officer—

(a) means, generally—

(i) a commissioner; or

(ii) an assistant commissioner; or

(iii) a senior officer; or

(iv) a person employed under section 254 or seconded under section 255; or

(v) a person engaged under section 256; or

(vi) a police officer authorised by the chairperson under section 272(2); and

- (b) in sections 295, 305(3), 314(2)(b)(ii), 318(4), 321(2), 322(3), 329 and 331(4), includes—
- (i) a former commission officer; and
 - (ii) a person who was a commissioner or an officer of the commission under the *Criminal Justice Act 1989*; and
 - (iii) a person who was engaged by the commission under the *Criminal Justice Act 1989*, section 66; and
 - (iv) a person who was a commission member, or an officer or employee of the Queensland crime commission, under the *Crime Commission Act 1997*; and
- (c) in chapter 3, part 6A—includes an officer or employee of a declared agency.

Note—

The reference to a declared agency is a reference to a declared agency within the meaning of that term as inserted by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.

conduct, for chapter 1, part 4, division 2, see section 14.

holder of an appointment means the holder of an appointment in a unit of public administration as mentioned in section 21.

other witness protection activities, of the commission, means activities of the commission under the *Witness Protection Act 2000* relating to interim protection agreements or short-term protection arrangements within the meaning of that Act.

protected person means a person who is, or has been—

- (a) included in the witness protection program; or
- (b) given protection under the *Witness Protection Act 2000*, section 9 or part 2A.

Note—

The *Witness Protection Act 2000*, section 9 deals with interim protection and part 2A deals with arrangements for short-term protection.

public hearing means a hearing that is open to the public.

self-incrimination privilege means the privilege an individual may claim at law on the ground of self-incrimination.

witness protection function means the function the commission has under the *Witness Protection Act 2000* in relation to witness protection.

witness protection function hearing means a hearing to establish a reasonable excuse or claim of privilege in relation to a notice to produce issued, under section 74, in the context of the witness protection function.

witness protection program has the same meaning as in the *Witness Protection Act 2000*.

- (3) Schedule 2, definition *ineligible person*, paragraph (a), after ‘convicted’—

insert—

‘, including by summary conviction,’.

- (4) Schedule 2, definition *ineligible person*, paragraph (f)—

omit, insert—

‘(f) a person appointed as the public interest monitor or a deputy public interest monitor under this Act or the *Police Powers and Responsibilities Act 2000*;

(fa) a person appointed to act as the public interest monitor or a deputy public interest monitor under this Act or the *Police Powers and Responsibilities Act 2000*;’.

- (5) Schedule 2, definition *member*, after ‘means’—

insert—

‘the’.

- (6) Schedule 2, definition *notice to produce*, paragraph (a)—

omit, insert—

‘(a) for a crime investigation or the witness protection function—see section 74; or’.

- (7) Schedule 2, definition *privilege*, paragraph (a)—

omit, insert—

‘(a) in the context of a crime investigation or the witness protection function—

(i) legal professional privilege; or

(ii) self-incrimination privilege; or’.

(8) Schedule 2, definition *privilege*, paragraph (c)(iv)—

omit, insert—

‘(iv) self-incrimination privilege;’.

35 Insertion of new ch 8, pt 4

Chapter 8—

insert—

‘Part 4 Transitional provision for Crime and Misconduct and Other Legislation Amendment Act 2006

‘383 Declaration about repeal of Cross-Border Law Enforcement Legislation Amendment Act 2005, s 73(3)

‘(1) This section applies if the Crime and Misconduct provision has effect before the Cross-Border provision has effect.

‘(2) The Cross-Border provision is repealed when the Crime and Misconduct provision has effect.

‘(3) In this section—

Crime and Misconduct provision means the *Crime and Misconduct and Other Legislation Amendment Act 2006*, section 34(2), to the extent it inserts the definition *commission officer*.

Cross-Border provision means the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, section 73(3).’.

Part 2A Amendment of Corrective Services Act 2006

35A Act amended in pt 2A

This part amends the *Corrective Services Act 2006*.

35B Amendment of s 497 (Insertion of new pt 9, div 3)

- (1) Section 497, new section 160—

insert—

‘**impose**, a term of imprisonment on an offender for an offence, includes make an order that the offender serve the whole or part of suspended imprisonment for the offence.’.

- (2) Section 497, new section 160, definition *period of imprisonment*, as a note—

insert—

‘*Note—*

Period of imprisonment therefore includes the term of imprisonment a court is imposing at the time of sentence.’.

- (3) Section 497, new section 160A(2), as a note—

insert—

‘*Note—*

Sections 160E to 160H further provide for the orders that may be made under sections 160B to 160D.’.

- (4) Section 497, new section 160B(1), ‘apply’—

omit, insert—

‘applies’.

- (5) Section 497, new section 160H(1)(b), ‘under this part would’—

omit, insert—

‘under this division would, because of section 160E.’.

- (6) Section 497, new section 160H(2), ‘under this part’—

omit, insert—

‘under this division’.

- (7) Section 497, new section 160H(2), example, after ‘period of imprisonment’—

insert—

‘which must not be a date earlier in time than a parole release date notionally fixed under any of the previous orders the court would, apart from this section, be required to make’.

Part 2B Amendment of Electoral Act 1992

35C Act amended in pt 2B

This part amends the *Electoral Act 1992*.

35D Amendment of s 3 (Definitions)

Section 3, definition *institution*, paragraph (f)—

omit.

35E Amendment of s 58 (Commission to keep electoral rolls)

- (1) Section 58—

insert—

- ‘(6A) Also, to enable the commission to decide the persons who are not entitled to vote because of section 101(3), the commission may ask the chief executive (corrective services) to give the commission information about persons who are serving sentences of imprisonment for offences against the law of the Commonwealth or of a State or Territory.’.

- (2) Section 58(7), after ‘entity’—

insert—

‘or chief executive (corrective services)’.

35F Amendment of s 64 (Entitlement to enrolment)

Section 64(5)—

omit.

35G Amendment of s 101 (Who may vote)

Section 101—

insert—

- ‘(3) Also, a person who is serving a sentence of imprisonment is not entitled to vote at an election for an electoral district.
- ‘(4) For subsection (3), a person is serving a sentence of imprisonment only if—
 - (a) the person is in detention on a full-time basis for an offence against a law of the Commonwealth or a State or Territory; and
 - (b) the detention is attributable to the sentence of imprisonment concerned.’.

35H Amendment of s 105 (Who may make a declaration vote)

(1) Section 105(2)(f)—

omit.

(2) Section 105(2)(g)—

renumber as section 105(2)(f).

Part 2C Amendment of Local Government Act 1993

35I Act amended in pt 2C

This part amends the *Local Government Act 1993*.

35J Amendment of s 336 (Procedure for voting at a polling booth)

Section 336(7)(a), ‘344(a), (b) or (c)’—

omit, insert—

‘344(1)(a), (b), (c) or (d)’.

35K Amendment of s 343 (Who may cast a declaration vote)

Section 343(f)—

omit.

35L Amendment of s 344 (Who must cast a declaration vote in ordinary elections)

(1) Section 344(d)—

renumber as section 344(1)(e).

(2) Section 344—

insert—

‘(d) an elector who is serving a sentence of imprisonment on the cut off day for the election, but who is not serving a sentence of imprisonment on the polling day for the election;’.

(3) Section 344—

insert—

‘(2) For subsection (1)(d), a person is serving a sentence of imprisonment only if—

(a) the person is in detention on a full-time basis for an offence against a law of the Commonwealth or a State or Territory; and

(b) the detention is attributable to the sentence of imprisonment concerned.’.

-
- 35M Amendment of s 347 (Distribution of ballot papers to other electors who may or must cast declaration vote)**
Section 347(1), ‘section 343(a) to (f)’—
omit, insert—
‘section 343(a) to (e)’.
- 35N Amendment of s 349 (Distribution of ballot papers to electors for postal ballot election)**
Section 349(2)(a), ‘344(a), (b) or (c)’—
omit, insert—
‘344(1)(a), (b), (c) or (d)’.
- 35O Amendment of s 352 (Declaration voting before polling day)**
Section 352(1), ‘section 343(a) to (f)’—
omit, insert—
‘section 343(a) to (e)’.
- 35P Amendment of s 357 (Effect of ballot papers—optional-preferential voting)**
Section 357(2)(d)(ii), ‘section 343(a) to (f)’—
omit, insert—
‘section 343(a) to (e)’.
- 35Q Amendment of s 358 (Effect of ballot papers—first-past-the-post voting)**
Section 358(2)(d)(ii), ‘section 343(a) to (f)’—
omit, insert—
‘section 343(a) to (e)’.

35R Amendment of s 381 (Notice to electors whose ballot papers are not accepted)

Section 381(1)(a), ‘344(a)’—

omit, insert—

‘344(1)(a)’.

35S Amendment of sch 2 (Dictionary)

(1) Schedule 2, definition *institution*, paragraph (f)—
omit.

(2) Schedule 2, definition *institution*, paragraph (g)—
renumber as paragraph (f).

Part 3 Amendment of Misconduct Tribunals Act 1997

36 Act amended in pt 3

This part amends the *Misconduct Tribunals Act 1997*.

37 Amendment of s 4 (Dictionary)

Section 4, ‘schedule 2’—

omit, insert—

‘the schedule’.

38 Replacement of s 5 (Appointment of misconduct tribunal panel members)

Section 5—

omit, insert—

‘5 Appointment of misconduct tribunal panel members

- ‘(1) The Governor in Council may, by gazette notice, appoint as many qualified persons as the Minister considers appropriate as members of a panel of misconduct tribunal members (the *tribunal panel*).
- ‘(2) The Governor in Council is to appoint 1 tribunal member as the senior member of the tribunal panel (the *senior member*).
- ‘(3) In this section—
qualified person means a person who is qualified, under section 6, for appointment as a tribunal member.’

39 Amendment of s 6 (Qualifications of tribunal members)

Section 6(2) and (3)—

omit, insert—

- ‘(2) An ineligible person is not qualified for appointment as a tribunal member.
- ‘(3) If a tribunal member becomes an ineligible person, the member can not continue as a tribunal member.’

40 Amendment of s 7 (Nomination for appointment as tribunal member)

- (1) Section 7(1)(c), from ‘support’ to ‘members’—

omit, insert—

‘bipartisan support’.

- (2) Section 7(2)—

omit, insert—

- ‘(2) Subsection (1)(a) does not apply to the nomination of a person for reappointment as a tribunal member.

- ‘(3) In this section—

bipartisan support, of the parliamentary committee, means—

- (a) support of the members of the parliamentary committee unanimously; or

- (b) support of a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Legislative Assembly.’.

41 Insertion of new s 7A

After section 7—

insert—

‘7A Report about person’s criminal history

- ‘(1) To help decide whether a person is suitable for nomination for appointment as a tribunal member, the Minister may ask the commissioner of the police service for a written report about the person’s criminal history.
- ‘(2) However, the Minister may make a request about a person under subsection (1) only if the person has given the Minister written consent for the request.
- ‘(3) If asked by the Minister, the commissioner of the police service must give the Minister a written report about the criminal history of the person.
- ‘(4) The duty imposed on the commissioner of the police service applies only to information in the commissioner’s possession or to which the commissioner has access.
- ‘(5) In having regard to the report, the Minister must consider the nature of any offence mentioned in the report and the relevance of the offence to the person’s suitability for nomination for appointment as a tribunal member.
- ‘(6) The Minister must destroy the report as soon as practicable after it is no longer needed for the purpose for which it was requested.
- ‘(7) In this section—
- criminal history*, of a person, means every conviction of the person for an offence, in Queensland or elsewhere, whether before or after the commencement of this section.’.

42 Insertion of new s 9A

After section 9—

insert—

‘9A Appointment of acting senior member

‘The Governor in Council is to appoint a tribunal member to act as the senior member—

- (a) for any period, or all periods, when the senior member is absent from duty or the State, or can not for another reason perform the duties of the office; or
- (b) for any period, or all periods, that the office is vacant because of the operation of section 19A(2)(b); or
- (c) for any period that the office is otherwise vacant.’

43 Insertion of new s 19A

After section 19—

insert—

‘19A Disclosure of interests

‘(1) If a tribunal member becomes aware that the member has a conflict of interest in a proceeding before a tribunal constituted by the member, the member must disclose the issue giving rise to the conflict—

- (a) if the member is the senior member—
 - (i) to the person appointed under section 9A(b) to act as the senior member during a vacancy in the office of senior member; and
 - (ii) to the parties to the proceeding; or
- (b) otherwise—to the senior member and the parties to the proceeding.

‘(2) After making the disclosure—

- (a) the member must disqualify himself or herself from the proceeding; and

- (b) if the member is the senior member, the member is taken to have vacated the member's office as senior member for the remainder of the proceeding.
- '(3) If the disqualified member is not the senior member, the senior member must, under section 11, choose a member other than the disqualified member to reconstitute the tribunal.
- '(4) If the disqualified member is the senior member, the acting senior member must, under section 11, choose a member other than the disqualified member to reconstitute the tribunal.
- '(5) The tribunal as reconstituted must continue and finish the proceeding and, for that purpose, may have regard to any record relating to the proceeding made by the tribunal as previously constituted.'

44 Amendment of s 39 (Annual report)

- (1) Section 39, '2 months'—
omit, insert—
'4 months'.
- (2) Section 39—
insert—
- '(2) The Minister must table the report in the Legislative Assembly within 14 sitting days after receiving the report.'

45 Replacement of pt 7 hdg (Transitional provisions and amendments)

Part 7, heading—
omit, insert—

'Part 7 Transitional provisions

'Division 1 Provisions for Misconduct Tribunals Act 1997'.

46 Insertion of new pt 7, div 2

Part 7—

insert—

**‘Division 2 Provisions for Crime and
Misconduct and Other Legislation
Amendment Act 2006**

‘48 Existing members of tribunal

- ‘(1) This section applies to a person who was a member or the senior member of the tribunal panel immediately before the commencement of the *Crime and Misconduct and Other Legislation Amendment Act 2006*, section 38.
- ‘(2) On the commencement, the person continues to hold office as a member or the senior member of the tribunal panel according to the terms of the member’s appointment.’.

47 Amendment of sch 2 (Dictionary)

- (1) Schedule 2—

insert—

‘conviction—

- (a) means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded; and
- (b) includes a conviction—
- (i) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (ii) that is not revived as prescribed by section 11 of that Act.

ineligible person means any of the following—

- (a) a person with a conviction, including a summary conviction, for an indictable offence;

-
- (b) a person who is an insolvent under administration as defined under the Corporations Act, section 9;
 - (c) a person holding judicial appointment;
 - (d) a member of the Legislative Assembly or the Executive Council;
 - (e) the parliamentary commissioner under the *Crime and Misconduct Act 2001*;
 - (f) the public interest monitor or a deputy public interest monitor appointed under the *Crime and Misconduct Act 2001* or the *Police Powers and Responsibilities Act 2000*;
 - (g) a person who, under the *Crime and Misconduct Act 2001*, is—
 - (i) a commissioner; or
 - (ii) an assistant commissioner; or
 - (iii) a senior officer; or
 - (iv) employed under section 254; or
 - (v) seconded under section 255;
 - (h) the director of public prosecutions;
 - (i) a member of the police service under the *Police Service Administration Act 1990*;
 - (j) a person who, within the 5 years before the person's eligibility for appointment is being considered, has been a member of the police service under the *Police Service Administration Act 1990*;
 - (k) a public service employee;
 - (l) a person who holds an appointment on the staff of a Minister;
 - (m) a local government councillor;
 - (n) a local government employee.

tribunal member means an individual who is appointed as a member of a panel of misconduct tribunal members under section 5.’.

- (b) the Parliamentary Crime and Misconduct Committee of the Legislative Assembly.’.

49A Amendment of s 408 (Who may inspect CMC’s register)

Section 408(a), as numbered before the commencement of section 459A of the *Police Powers and Responsibilities Act 2000*—

omit, insert—

- ‘(a) the CMC chairperson; or’.

50 Expiry of pt 4

This part expires immediately after section 49 has effect.

Part 4A Amendment of Referendums Act 1997

50A Act amended in pt 4A

This part amends the *Referendums Act 1997*.

50B Amendment of s 21 (Who may vote)

Section 21—

insert—

- ‘(3) Also, a person who is serving a sentence of imprisonment is not entitled to vote at a referendum.
- ‘(4) For subsection (3), a person is serving a sentence of imprisonment only if—
- (a) the person is in detention on a full-time basis for an offence against a law of the Commonwealth or a State or Territory; and

- (b) the detention is attributable to the sentence of imprisonment concerned.
- ‘(5) To enable the commission to decide the persons who are not entitled to vote because of subsection (3), the commission may ask the chief executive (corrective services) to give the commission information about persons who are serving sentences of imprisonment for offences against the law of the Commonwealth or of a State or Territory.
- ‘(6) The chief executive (corrective services) must give the commission the information as soon as practicable after receiving the request.
- ‘(7) Subsection (6) has effect despite the provisions of any other Act that would otherwise permit or require the chief executive (corrective services) to refuse the commission’s request.’.

50C Amendment of s 25 (Who may make a declaration vote)

- (1) Section 25(2)(f)—
omit.
- (2) Section 25(2)(g)—
renumber as section 25(2)(f).’.

50D Amendment of sch 3 (Dictionary)

Schedule 3, definition *institution*, ‘section 3.’ and footnote—
omit, insert—
‘section 3.’.

**Part 5 Amendment of Whistleblowers
Protection Act 1994**

51 Act amended in pt 5

This part amends the *Whistleblowers Protection Act 1994*.

52 Amendment of s 47 (Right to apply for Industrial Commission injunction)

- (1) Section 47(1)(a), from ‘1999’—
omit, insert—
‘1999; and’.
- (2) Section 47(1)(b), from ‘1999’ to ‘flexibility agreement’—
omit, insert—
‘1999 or an industrial instrument’.
- (3) Section 47(3), ‘section 5’—
omit, insert—
‘section 277¹’.
- (4) Section 47(5), ‘, section 5’—
omit.

Part 6 Amendment of Witness Protection Act 2000

53 Act amended in pt 6

This part amends the *Witness Protection Act 2000*.

54 Amendment of s 8 (Content of protection agreement)

Section 8(2)(a)(iii) and (iv), ‘compromise’—
omit, insert—
‘threaten’.

¹ *Industrial Relations Act 1999*, section 277 (Power to grant injunctions)

55 Amendment of s 12 (Suspension of protection agreement)

Section 12(1)—

omit, insert—

‘(1) This section applies if the chairperson is satisfied that, because of something a protected witness has done or intends to do—

(a) the integrity of the program or other witness protection activities of the commission are threatened; or

Example—

The protected witness discloses information about the methodology of the program or the identity of witness protection officers.

(b) the protected witness can not be properly protected under the program.

Examples—

- 1 The protected witness may be temporarily in custody in a watch-house.
- 2 The protected witness may be imprisoned for an offence.
- 3 The protected witness may intend to travel to a place despite the chairperson having advised the person not to go there because of the risk of harm to the person.’

56 Amendment of s 14 (When chairperson may end protection under program)

(1) Section 14(1)(a)(iii), ‘under’—

omit, insert—

‘mentioned in’.

(2) Section 14(1)(b), from ‘because’—

omit, insert—

‘because—

(i) the integrity of the program or other witness protection activities of the commission are

threatened because of something the protected witness has done or intends to do; or

- (ii) the protected witness can not be properly protected under the program because of something the protected witness has done or intends to do.’

57 Insertion of new pt 2A

After section 14—

insert—

‘Part 2A Arrangements for short-term protection

‘14A Application of pt 2A

- ‘(1) This part applies to a person if—
 - (a) the person is not included, or being considered for inclusion, in the program; but
 - (b) the chairperson considers—
 - (i) the person needs the type of protection available under the program for a specific purpose and for a specific period because of a danger arising from a circumstance mentioned in subsection (2); and

Example—

The chairperson may consider that a person needs protection to safely attend court to give evidence.

- (ii) it is appropriate to provide the protection.
- ‘(2) For subsection (1)(b)(i), the circumstances are that the person—
 - (a) has helped, or is helping, a law enforcement agency in the performance of its functions; or
 - (b) has a relationship or association with a person who has helped, or is helping, a law enforcement agency in the performance of its functions.

Example for paragraph (b)—

a family member or an associate of a person who has helped a law enforcement agency in a criminal investigation

- ‘(3) In deciding under subsection (1)(b)(ii) whether it is appropriate to provide the protection, the chairperson—
- (a) may have regard to any of the matters mentioned in section 6(3); and
 - (b) must consider whether it would be more appropriate to include the person in the program and, if necessary, make an interim protection agreement with the person.

‘14B Arrangements for short term protection

- ‘(1) The chairperson may enter into an arrangement for a specific purpose and for a specific period (a *short-term protection arrangement*) with a person to whom this part applies.
- ‘(2) The arrangement must state the purpose and period for which it is made.
- ‘(3) The arrangement may include conditions of a kind mentioned in section 8 that the chairperson considers appropriate.
- ‘(4) Unless it is sooner ended under section 14E or 14F, the arrangement ends on the day the earlier of the following happens—
- (a) the purpose is completed;
 - (b) the period ends.

‘14C Variation of short-term protection arrangement

- ‘(1) A short-term protection arrangement may be varied—
- (a) by agreement between the chairperson and the person protected under the arrangement (the *short-term protected person*); or
 - (b) by the chairperson.
- ‘(2) If the arrangement is varied by agreement, the variation takes effect on the day stated in the agreement or, if no day is stated, the day after the agreement is made.

- ‘(3) However, if the chairperson proposes to vary the arrangement without agreement, the chairperson must, before varying the arrangement—
 - (a) notify the short-term protected person of the proposed variation and the reason for the variation; and
 - (b) give the person a reasonable opportunity to comment on the proposed variation.
- ‘(4) If, after considering any comments, the chairperson still proposes to vary the arrangement, the chairperson may vary the arrangement by notice given to the short-term protected person.
- ‘(5) The variation takes effect on the day after the notice is received by the short-term protected person.

‘14D Suspension of short-term protection arrangement

- ‘(1) This section applies if the chairperson is satisfied that, because of something a short-term protected person has done or intends to do—
 - (a) the integrity of the program or other witness protection activities of the commission are threatened; or
 - (b) the short-term protected person can not be properly protected under the short-term protection arrangement.
- ‘(2) The chairperson may suspend the short-term protection arrangement for a stated reasonable time by notice given to the short-term protected person.
- ‘(3) This section does not limit section 14F.

‘14E Voluntary ending of short-term protection arrangement

- ‘(1) A short-term protected person may end the person’s short-term protection arrangement by written or oral notice given to the chairperson.
- ‘(2) If the notice is given orally, the chairperson must take reasonable steps to have the notice confirmed in writing.

- ‘(3) If the short-term protected person is unwilling or unable to confirm the notice in writing, the chairperson must satisfy himself or herself that the oral notice was in fact given by the person.
- ‘(4) If the chairperson is satisfied the short-term protected person did give notice of the ending of the arrangement, the chairperson may end the arrangement—
 - (a) if the notice was written—on the day stated in the notice or, if no day is stated, the day after the chairperson receives the notice; or
 - (b) if the notice was given orally—on the day after the chairperson is satisfied the oral notice was in fact given.

‘14F When chairperson may end short-term protection arrangement

- ‘(1) The chairperson may end a short-term protection arrangement if—
 - (a) the chairperson is satisfied—
 - (i) the short-term protected person has committed an offence against a law of the Commonwealth or a State that is punishable by at least 1 year’s imprisonment; or
 - (ii) the short-term protected person has, without reasonable excuse, contravened a condition identified in the arrangement as a condition that, if contravened, may result in the ending of the arrangement; or
 - (b) the chairperson considers it is no longer appropriate for the short-term protected person to be protected, including, for example—
 - (i) because—
 - (A) the integrity of the program or other witness protection activities of the commission are threatened because of something the person has done or intends to do; or

- (B) the person can not be properly protected under the arrangement because of something the person has done or intends to do; or
 - (ii) because the circumstances, mentioned in section 14A(2), for which the arrangement was made have changed or no longer exist.
- ‘(2) Before ending the arrangement, the chairperson must take the steps the chairperson considers are reasonably necessary—
- (a) to inform the short-term protected person—
 - (i) why it is proposed to end the arrangement; and
 - (ii) when the arrangement will end; and
 - (b) to give the short-term protected person a reasonable opportunity to state why the arrangement should not end.
- ‘(3) After considering any response, the chairperson may end the arrangement on the date stated under subsection (2)(a)(ii) or decide not to end the arrangement.
- ‘(4) If—
- (a) the chairperson ends the arrangement; and
 - (b) the short-term protected person acknowledges that the arrangement has ended; and
 - (c) immediately before the arrangement ended, the short-term protected person was receiving financial help under the arrangement;

the chairperson may continue to provide financial help to the person for the period the chairperson considers appropriate.’

58 Replacement of s 36 (Offence of disclosures about protected witnesses or officers)

Section 36—

omit, insert—

‘36 Offence of disclosure about particular persons or the program

‘(1) A person must not knowingly, directly or indirectly, disclose or record information about a relevant person or the witness protection program that may threaten—

- (a) the security of a relevant person; or
- (b) the integrity of the program or other witness protection activities of the commission.

Maximum penalty—10 years imprisonment.

‘(2) Subsection (1) does not apply to a disclosure or record that—

- (a) is necessary to provide witness protection; or
- (b) is made with the chairperson’s consent; or
- (c) is otherwise required for the administration of this Act or the *Crime and Misconduct Act 2001*; or
- (d) is either—
 - (i) permitted by leave given under section 27 before the commencement of section 27A (as inserted by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*); or
 - (ii) permitted by leave, or required by an order, given under section 27A.

‘(3) In this section—

disclose information, includes allow access to the information.

relevant person means a person who is, or has been—

- (a) included in the witness protection program; or
- (b) protected under an interim protection agreement; or
- (c) protected under a short-term protection arrangement; or
- (d) a witness protection officer for whom an authorisation has been given under section 20A(1).’.

59 Replacement of s 37 (Offence of disclosure by prescribed persons)

Section 37—

omit, insert—

‘37 Offence of disclosure by prescribed persons

- ‘(1) A prescribed person must not, directly or indirectly, disclose or communicate to another person—
- (a) that the prescribed person or someone else known to the prescribed person has—
 - (i) undergone assessment for inclusion in the program; or
 - (ii) signed a protection agreement; or
 - (iii) undergone assessment for an interim protection agreement or short-term protection arrangement; or
 - (iv) signed an interim protection agreement or entered into a short-term protection arrangement; or
 - (b) details of a protection agreement signed by the prescribed person or someone else known to the prescribed person; or
 - (c) details of an interim protection agreement signed by the protected person or someone else known to the protected person; or
 - (d) details of a short-term protection arrangement entered into by the protected person or someone else known to the protected person; or
 - (e) information about anything done under this Act by—
 - (i) a person who was the chairperson of the Criminal Justice Commission under the *Criminal Justice Act 1989* or an officer of the witness protection division of that commission; or
 - (ii) the chairperson or a witness protection officer; or
 - (f) information gained by the person because of something done under this Act and about—

- (i) a person who was an officer of the witness protection division of the Criminal Justice Commission under the *Criminal Justice Act 1989*; or
- (ii) a witness protection officer.

Maximum penalty—1 year's imprisonment.

'(2) Subsection (1) does not apply to a disclosure or communication—

- (a) authorised by the chairperson; or
- (b) necessary to give effect to a new identity authority; or
- (c) that is either—
 - (i) permitted by leave given under section 27 before the commencement of section 27A (as inserted by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*); or
 - (ii) permitted by leave, or required by an order, given under section 27A; or
- (d) to the parliamentary committee.

'(3) In this section—

prescribed person means—

- (a) a protected witness; or
- (b) a former protected witness; or
- (c) a person who has undergone assessment for inclusion in the program; or
- (d) a person who is, or has been, given protection under section 9 or part 2A; or

Note—

Section 9 deals with interim protection and part 2A deals with arrangements for short-term protection.

- (e) a person who has undergone assessment for protection under section 9 or part 2A.'

60 Amendment of s 48 (Delegation)

Section 48(2)(a), after ‘interim protection’—

insert—

‘or protection under a short-term protection arrangement’.

61 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

‘other witness protection activities, of the commission, means activities of the commission under this Act relating to interim protection agreements or short-term protection arrangements.

short-term protected person see section 14C(1).

short-term protection arrangement see section 14B(1).’.

Schedule **Minor amendments of Crime
and Misconduct Act 2001**

section 3

1 **Chapter 3, part 1, division 2, subdivision 1, heading, after
'investigations'—***insert—***'and witness protection function'.****2** **Section 166(6), definition *prescribed information*,
paragraph (a)—***insert—*

'(ix) monitoring orders; or

(x) suspension orders; or'.

3 **Section 169(2)(b) and (c)—***renumber* as section 169(2)(a) and (b).**4** **Chapter 4, part 2, division 2, subdivision 1, heading, after
'investigations'—***insert—***'and witness protection function'.****5** **Chapter 4, part 2, division 3, subdivision 1, heading, after
'investigations'—***insert—***'and witness protection function'.**

Schedule (continued)

- 6 Chapter 4, part 2, division 4, subdivision 1, heading, after ‘investigations’—**
insert—
‘and witness protection function’.
- 7 Section 221A, ‘1997—**
omit, insert—
‘1977’.
- 8 Section 322(1)(b), after ‘evidence’—**
insert—
‘under this part’.
- 9 Section 323, ‘parliamentary committee under the *Parliamentary Papers Act 1992*—**
omit, insert—
‘statutory committee under the *Parliament of Queensland Act 2001*’.