

CRIME AND MISCONDUCT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

To repeal the *Criminal Justice Act 1989* and the *Crime Commission Act 1997* and replace them with new updated legislation merging the previous Criminal Justice Commission (CJC) and Queensland Crime Commission (QCC) established under those Acts into a new, refocussed commission aimed at corruption prevention and enhancing the integrity of the public sector as well as the previous major and organised crime and paedophilia functions of the QCC.

The bill establishes a new “Crime and Misconduct Commission” (the commission), integrating the functions of the QCC and CJC, with an enhanced focus on core functions. It also recognises long standing arrangements for the resolution of police misconduct, giving the Queensland Police Service (QPS) more responsibility, but maintaining a strong monitoring role for the commission.

Reasons for the Objectives and how they will be achieved

The reason for the amalgamation is to seek greater efficiency in the fight against serious crime and misconduct and to recognise long standing arrangements for resolution of misconduct complaints to make the process more transparent whilst ensuring the commission has an oversight role including powers to take over and complete investigations, if required. The objectives are met through:

- Replacing the *Criminal Justice Act 1989* (CJ Act) and the *Crime Commission Act 1997* (CC Act) and establishing a Crime and Misconduct Commission (the commission) to continue under a new name.
- The commission has five members: a chairperson, four part-time community representatives. The Assistant Commissioner, Crime and the Assistant Commissioner, Misconduct will be entitled to

attend meetings of the commission but will not be members or be entitled to vote in proceedings.

- Incorporating a more flexible qualification requirement for community representatives and less extensive disqualification requirements allowing a wider discretion to appoint persons who may hold incidental appointments in units of public administration that would not effect their ability to effectively and impartially carry out their duties.
- Establishing crime and misconduct functions for the commission with an assistant commissioner for each. Other management structures will be left for the commission and are not legislated.
- Establishing a Crime Reference Committee, varied from the existing QCC Management Committee to reflect its role as a committee focusing on providing references for crime fighting, with management and oversight issues left to the full commission.
- Re-stating functions, including greater emphasis on corruption prevention and public sector integrity, and incorporating existing QCC crime fighting functions and powers.
- Legislatively recognising long-term changes in complaints practices, giving the QPS and other units of public administration more responsibility for investigating and dealing with misconduct.
- Maintaining commission accountability to the parliamentary committee (renamed the Parliamentary Crime & Misconduct Committee or PCMC) on the basis of existing CJC accountability, but emphasising commission efficiency and effectiveness.
- Refocussing the parliamentary commissioner as a part-time agent of the PCMC with codified powers, clarification that documents and reports are protected by parliamentary privilege, and enhancing accountability to the PCMC.
- Restoring some of the chairperson's powers to undertake normal managerial functions without reference to the full commission.
- Enhancing accountability of the commission, including oversight of crime functions by the parliamentary committee, and requiring the commission to report to the minister on the efficiency, effectiveness and timeliness of its systems and processes.

Improper conduct by commission officers is also required to be reported to the PCMC, giving an existing protocol legislative force.

The bill also includes several miscellaneous amendments to provisions carried over from the CJ Act and the CC Act that arise from previous recommendations by the CJC, QCC and Parliamentary Criminal Justice Committee (PCJC).

To assist the reader with comparisons between this bill and the CJ Act and CC Act, references to those Acts are included in the explanatory notes, where applicable. This does not necessarily indicate an intention to replicate those provisions but flags that similar issues are dealt with.

Administrative cost to Government of implementation

The cost to Government is expected to be neutral with some savings expected from confirmation of the part time role for the Parliamentary Commissioner and from savings associated with the greater efficiency that is expected in the longer term from integration, for example in the area of intelligence and administration. A review of the operation of the Act and commission by the minister will occur after two years (including a report to the minister on financial matters) to ensure that it is operating efficiently, effectively, economically and in a timely way.

Fundamental legislative principles

The bill seeks to balance and promote fundamental legislative principles. Care has been taken to ensure that existing coercive powers of the commission remain subject to checks and balances such as those provided by the Public Interest Monitor, the parliamentary committee and by the parliamentary commissioner. Overall, there is largely no increase in power in respect of either the crime or misconduct functions of the commission (with the exception of the crime function gaining electronic data surveillance powers). In some instances this has meant limiting a power to a crime or a misconduct investigation respectively to ensure no cumulative expansion of powers has occurred. Some specific issues that arise follow.

Powers of the commission

The commission has extensive powers that raise issues about the rights of individuals. These powers are equivalent to those presently given to the

CJC and QCC. Apart from the specific matters above, great care in drafting has ensured that where powers have been updated, they have not resulted in an increase in power in respect of crime or misconduct investigations. The powers continue to be necessary and justified on the basis of the important functions that the commission will carry out.

The breach of fundamental legislative principles is justified on the basis that the power is necessary to allow the commission to perform its operational responsibilities. Surveillance devices are an effective way of obtaining evidence, particularly in relation to possible police involvement in organised crime. Furthermore it is considered that appropriate safeguards such as court scrutiny and the Public Interest Monitor are included in the legislation which will minimise the adverse impact. The commission's use of such powers for crime functions will now be subject to the additional oversight by the parliamentary committee and parliamentary commissioner.

The powers in the bill are also consistent with similar powers in the *Police Powers and Responsibilities Act 2000* and the *Drugs Misuse Act 1986*.

Powers of the parliamentary commissioner

The parliamentary commissioner's previous royal commission powers have been codified, limiting them to those powers that are necessary for the functions. For example, the right to compel witnesses despite tendency to self-incrimination will only apply to commission staff and persons employed in units of public administration. The use of self-incriminating answers has been curtailed, however, derivative use has not been curtailed as it is considered that this might unduly restrict pursuit of commission staff who the public would expect should behave in accordance with the highest standards.

Clarifying that parliamentary privilege applies is consistent with the role as agent of the PCJC and the decision of the Court of Appeal in *Criminal Justice Commission v Parliamentary Criminal Justice Commissioner [2001] QCA 218*.

Exclusion of applicants on judicial review application

The Court has been provided with the power to exclude an applicant (and their lawyer) from hearing evidence in relation to a judicial review

application that alleges that an investigation by the misconduct unit is being conducted unfairly.

Without this provision, a person could use such an application to establish what evidence the commission has against them. This would allow suspects to obtain full information about an investigation through the court process. The CJ Act, s 120(3) previously allowed the court to exclude the applicant where the ground is that the complaint does not warrant investigation.

Requirement of consent to security clearance check

A security check has always been a requirement for such sensitive appointments and is specified in the legislation. The legislation details that pending charges may be considered. This is considered justified given the important functions that the commission performs. The provisions are based on those that apply to the Commission for Children and Young People.

Consultation

Successive parliamentary committees have engaged in extensive consultation with the community in the review of the operations of the commission and the legislation, and several committee reports have been taken into account in the development of the bill. The chairperson of the CJC and the Crime Commissioner have been consulted in the development of the model for the new commission and the bill. The parliamentary commissioner and public interest monitor were also consulted on the bill.

NOTES ON PROVISIONS

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

Short title

Clause 1 .— states the short title, the Crime and Misconduct Act 2001.

Commencement

Clause 2 .provides for the commencement of the Act by proclamation.

Act binds all persons [CJA, s 139; CCA, s 3]

Clause 3 .— provides that the Act binds all persons.

PART 2—PURPOSE

Act's purposes [CJA, s 2; CCA, s 4]

Clause 4 .— provides that the Act's primary purposes are to :

- combat and reduce the incidence of major crime, and
- continuously improve the integrity of and reduce the incidence of, misconduct in the public sector.

How Act's purposes are to be achieved

Clause 5 .— provides that the Act's purposes are to be achieved primarily by established a permanent commission witch investigative powers beyond those of other agencies such as the police service. The commission is to help units of public administration to deal effectively, and appropriately, with misconduct by increasing their capacity to do so while retaining power to investigate cases of misconduct, particularly more serious cases of misconduct itself and by investigating more serious cases of misconduct itself. It is intended that this emphasis on capacity building and on concentrating on more serious misconduct is to apply to how the

commission conducts its misconduct functions. It is incorporated in principles provided in a subsequent clause for the commission to have regard to in conducting its misconduct functions.

PART 3—OVERVIEW

Purpose of pt 3

Clause 6 .— provides the purpose of part 3 is to identify relevant entities and briefly outline their responsibilities.

Crime and Misconduct Commission Queensland

Clause 7 .— provides that the Crime and Misconduct Commission has primary responsibility for the achievement of the Acts purposes.

Crime Reference Committee

Clause 8 .— provides the Crime Reference Committee has responsibility for referring major crime to the commission for investigation and has a coordinating role for joint investigations.

Parliamentary Crime and Misconduct Committee

Clause 9 .— provides that the Parliamentary Crime and Misconduct Committee is a standing committee of the Parliament with particular responsibility for monitoring and review the commission's performance.

Parliamentary Crime and Misconduct Commissioner

Clause 10 .— provides that the Parliamentary Crime And Misconduct Commissioner is an officer of the Parliament who helps the Parliamentary Committee in the performance of its functions.

Public Interest Monitor

Clause 11 .— provides that the Public Interest Monitor has a right of appearance before a court hearing an application by the commission for a surveillance warrant or covert search warrant and is entitled to test the appropriateness and the validity of the application before the court.

PART 4—INTERPRETATION*Division 1—Definitions***Definitions**

Clause 12 .— states that the dictionary in schedule 2 defines particular words used in the Act.

Notes in text

Clause 13 .— clarifies that notes in the text of the Act form part of the Act.

*Division 2—Official Misconduct***Definitions for div 2 [CJA, s4, 31 and 32]**

Clause 14 .— states that in the division, conduct for a person regardless of whether the person holds an appointment in a unit of public administration, means conduct, or a conspiracy or attempt to engage in conduct, by the person that adversely affects, or could adversely affect the honest and impartial discharge of functions or exercise of powers of a unit of public administration (as defined) or of any person holding an appointment in one. Conduct also means for a person who holds or held an appointment – conduct or a conspiracy or attempt to engage in conduct of or by the person that involves their functions or the exercise of their powers as a holder of an appointment in a way that is not honest or impartial. It also extends to conduct that involves a breach of trust or misuse of information or material acquired in or in connection with the discharge of

their functions. The latter applies whether the misuse is for their benefit or the benefit of someone else.

Meaning of “official misconduct” [CJA, ss31 and 32]

Clause 15 .— provides that official misconduct is conduct that could, if proved, be either a criminal offence or a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment. The definition is intended to make it clear that the conduct can still be official misconduct notwithstanding that the person has resigned from their position in a unit of public administration.

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

Clause 16 .— provides that conduct may be official misconduct even though it, or some of the effects or elements, happened before the commencement of the Act, or even though the person involved in the conduct is no longer the holder of an appointment. It also provides that conduct engaged in by or in relation to a person at the time when they were not the holder of an appointment may be official misconduct if they become the holder of an appointment in a unit of public administration.

Conduct outside Queensland may be official misconduct [CJA, s 31]

Clause 17 .— provides that conduct may be official misconduct regardless of where it happened or whether the law relevant to the conduct is a law of Queensland or of another jurisdiction.

Conspiracy or attempt to engage in conduct may be official misconduct [CJA, ss 31 and 32]

Clause 18 .— provides that a conspiracy or an attempt to engage in conduct is not excluded from being official misconduct if, had it been brought to fruition by taking a further step, the further step could constitute or involve an offence or grounds for termination of their services in a unit of public administration.

Official misconduct not affected by time limitations [CJA, ss 31 and 32]

Clause 19 .— provides conduct does not stop being official misconduct only because a proceeding or an action for an offence to which the conduct is relevant can no longer be brought or continued or that action for termination of services can no longer be taken.

Division 3—Units of public administration**Meaning of “unit of public administration” [CJA, s 3A]**

Clause 20 .— restates the definition of unit of public administration from the CJA with only minor changes. These minor changes only extend to providing an ability to prescribe an entity by regulation and a clarification that the term excludes those entities declared by an Act not to be a unit of public administration. The clause states that the term means the Legislative Assembly, Executive Council, a department, the police service. It will also include entities named under other legislation such as an engaged service provider prescribed by regulation under the *Corrective Services Act 2000*. It also means a corporate entity established by an Act or provided for by an Act which collects revenue or raises funds under an Act; a non-corporate entity established or maintained under an Act, that is funded to any extent with State moneys, or is financially assisted by the State; or a state court of whatever jurisdiction and its registry and other administrative offices or another entity prescribed under a regulation.

It also clarifies that the parliamentary commissioner, and the entity consisting of the parliamentary commissioner and officers and employees of the parliamentary service assigned to assist the parliamentary commissioner, or engaged to provide services to the parliamentary commissioner, are not units of public administration.

Holding appointment in unit of public administration [CJA, s 4]

Clause 21 .— provides that a person holds an appointment in a unit of public administration if the person holds any office, place or position in the unit, whether the appointment is by way of election or selection.

Division 4—References to major crime and misconduct**References to major crime or misconduct include suspected major crime or suspected misconduct [CCA, s 10 + new]**

Clause 22 .— provides that a reference to major crime, or a reference to misconduct, includes, in the context of an investigation, suspected major crime or suspected misconduct.

**CHAPTER 2—COMMISSION FUNCTIONS,
INVESTIGATIONS AND REPORTING****PART 1— PREVENTION****Commission’s prevention function**

Clause 23 .— provides that the commission has a function of helping to prevent misconduct and major crime.

How commission performs its prevention function

Clause 24 .— provides without limiting the ways that the commission can undertake this function, that it may carry it out by analysing its intelligence and the results of its investigations and information it gathers from any source. It may analyse prevention systems within units of public administration, provide information to, consult with and make recommendations to units of public administration. It may provide information relevant to its prevention function to the general community. When performing any of its other functions, the commission should consider prevention. It may provide advice and training to units of public administration, and, if asked, to other entities. It may also report on way to prevent misconduct and major crime.

PART 2—MAJOR CRIME

Division 1—Major crime function

Commission’s major crime function [CJA, ss 21 and 23; CCA, s 28]

Clause 25 .— provides that the commission has a crime function to investigate major crime (as defined) referred to it by the reference committee.

How commission performs its crime function [CCA, s 28]

Clause 26 .— provides that, without limiting the ways in which the commission can carry out its crime function, it may do so by investigating, gathering evidence for prosecution of offences and the recovery of the proceeds of major crime, and liaising with and providing to and receiving information from other law enforcement agencies.

Division 2—Referrals by reference committee

Referrals to commission [CCA, s 46]

Clause 27 .— provides the reference committee may, in writing, refer relevant criminal activity for investigation on its own initiative or if asked by the commissioner of police or the assistant commissioner, crime.

Matters about which the reference committee must be satisfied before making a referral [CCA, s 46]

Clause 28 .— provides for the matters about which the reference committee must be satisfied before making a referral.

Subsection (1) provides that the reference committee may only refer major crime to the commission for investigation on its own initiative if it is satisfied that an investigation using ordinary police powers would not be effective, and also that it is in the public interest for the commission to investigate.

Subsection (2) imposes a similar test applicable to major crime which the police commissioner asks the reference committee to refer to the

commission, but adds the requirement that the committee be satisfied that there has been a police investigation into the major crime in question that has not been effective.

Subsection (3) sets out the matters to which the reference committee may take into account when determining whether the public interest is served by referring a matter to the commission for investigation. These matters generally refer to the seriousness, extent and consequences of the activity, but also include whether the use of the commission is a justifiable use of resources.

Reference committee may give commission directions about investigations

Clause 29 .— allows the reference committee to impose limitations on a crime investigation by the commission. The reference committee will have the ability to give the commission directions about the way an investigation is to be conducted, including placing limits on what powers may be exercised by the commission in the course of an investigation.

The reference committee will also have the power to direct the commission to end a crime investigation under certain circumstances. The commission is obliged to comply with any direction given under this provision.

Amendment of referral to investigate

Clause 30 .— provides that the reference committee may either on its own initiative or if asked by the assistant commissioner, crime, amend the terms of its reference to the commission to investigate.

Referrals to police service [CCA, s 48]

Clause 31 .— provides that the reference committee may refer criminal activity to the commissioner of police for investigation rather than to the commission. In such cases the commissioner of police may be obliged to report to the reference committee of the result of any investigation, and is also obliged to take into account any comments by the reference committee about the investigation.

Division 3—Dealing with major crime**Police task forces and other operational agreements [CCA, ss 30, 31(2)]**

Clause 32 .— recasts CCA ss 30, 31(2), and provides that the commission may make arrangements with the commissioner of police for the establishment of police task forces to help the commission carry out crime investigations. A task force is to be under the control and direction of the commissioner of police. The reference committee can also authorise the commission entering into operational agreements with other entities such as a police task force or another law enforcement agency.

PART 3—MISCONDUCT***Division 1—Misconduct functions*****Commission’s misconduct functions**

Clause 33 .— details the commission’s misconduct functions which are not limited to investigation of misconduct but emphasises the commission’s prevention role in raising standards of integrity and conduct in public administration. The commission is to ensure complaints about misconduct are dealt with in an appropriate way, having regard to the principles set out in next clause.

Principles for carrying out misconduct functions

Clause 34 .— states that it is the Parliament’s intention that the commission apply the stated principles when carrying out its misconduct functions. The principles recognise that there is a public benefit in the commission and units of public administration working cooperatively to prevent, investigate and deal with misconduct. They also acknowledge that the commission has a lead role in building capacity to investigate and deal with misconduct in a way that promotes public confidence in the process. Thirdly, they recognise that, subject to the other principles, misconduct should generally be investigated and dealt with within the unit where it happens. The fourth principle recognises that the commission should

exercise its power to investigate and deal with particular cases of misconduct itself when it is appropriate.

In considering when it is appropriate, the commission should have primary regard to such matters as: the capacity and the resources available to the unit to effectively investigate the misconduct; the nature and seriousness of the misconduct, particularly if the misconduct is prevalent or systemic; and the public interest in having the misconduct investigated and dealt with by the commission directly.

How commission carries out its misconduct functions [CJA, ss23 and 29]

Clause 35 .— provides without limiting the means, that the commission may carry out its misconduct functions through doing one or more of the matters listed. These include expeditiously assessing complaints made or notified to it and investigating complaints about official misconduct by itself or in cooperation with a unit of public administration.

The commission may also refer complaints about misconduct to a relevant public official (as defined) such as the commissioner of police or a chief executive officer of a department. It may carry out its misconduct functions through monitoring police misconduct or official misconduct.

It may take an investigation over and complete it if, for any reason consistent with the principles set out in the principles clause, it considers it appropriate to do so. This might apply in circumstances such as where it forms a view that a matter should be investigated notwithstanding the commissioner of police determined no further action was necessary. It might also apply if, for instance, the commission was investigating a series of complaints involving similar or systemic conduct.

The commission might also, on its own initiative, investigate the incidence, or particular cases of misconduct without the need for complaint or notification. The commission should when conducting or monitoring investigations gather or ensure evidence is gathered for prosecutions of offences or disciplinary proceedings. In carrying out its misconduct functions, the commission should, whenever possible, liaise with a relevant public official in keeping with the principle of cooperation.

Division 2—How to make a complaint**Complaining about misconduct**

Clause 36 .— provides a person may complain to the commission about misconduct but may also complain directly to the commissioner of police as this section does not limit to whom a person can complain.

Division 3—Duty to notify**Duty to notify commission of police misconduct [CJA 37(2) and (3)]**

Clause 37 .— recasts CJA s 37(2) and (3), and imposes a duty upon the commissioner of police to notify the commission of all complaints, information or matter which the commissioner of police reasonably suspects involve police misconduct.

Duty to notify commission of official misconduct [CJA, s 37(2) and (3)]

Clause 38 .— recasts CJA s 37(2) and (3), and provides that a public official, defined to include the commissioner of police, must notify the commission of all complaints or matters that the person suspects may involve official misconduct.

A “public official” is defined in *Schedule 2 – Dictionary*.

Duty to notify is paramount [CJA, s 37(4)]

Clause 39 .— recasts section CJA s 37(4), and provides that the duty of a public official to notify the commission of a complaint overrides any other act (subject to defined exceptions) or any obligation to maintain confidentiality in relation to a matter to which the complaint may relate.

Commission may issue directions about how notifications are to be made [CJA, s 37(6)]

Clause 40 .— recasts CJA s 37(6), and provides that the commission may issue directions about how public officials are to notify the commission of complaints, but before so doing, must consider the views of the relevant public official. Any direction must be complied with.

If requiring the disclosure of information by the commissioner of police otherwise protected by specified legislation, the commission must:

- first have regard to the desirability of protecting its confidentiality, and
- protect the confidentiality to the greatest extent practical if using or disclosing the information in the administration of the Act.

Division 4—Dealing with complaints

Subdivision 1—Commissioner of police

Responsibility of commissioner of police

Clause 41 .— provides that the commissioner of police has primary responsibility for dealing with complaints, information or matter that the police commissioner reasonably suspects to involve police misconduct (as defined). It is the responsibility of the commissioner of police to deal with these matters.

Dealing with complaints—commissioner of police

Clause 42 .— the commissioner of police must expeditiously assess complaints about misconduct made or notified, or otherwise coming to his/her attention. The clause provides that the commissioner of police deals with a complaint (as defined) by taking appropriate action such as investigating it, or with a view to taking managerial or disciplinary action. This action, and action taken by police in dealing with a complaint of official misconduct referred by the commission, is subject to the commission’s monitoring role. The commissioner of police is not required to take action if satisfied that the complaint is frivolous or vexatious, lacks substance or credibility or that investigating it would be an unjustifiable use of resources. The commissioner of police may ask the commission to deal with a complaint of police misconduct or official misconduct in cooperation with police. In appropriate circumstances, the police commissioner may ask the commission to deal with a complaint of police misconduct.

Subclauses (7) and (8) are intended to impose a degree of “client” focus on police. This is to ensure that complainants and persons providing

information about misconduct are informed of the outcome of their matters, any action taken or not taken, and the reasons behind the decisions made. However, this is only to apply where people have provided contact details and want to be kept informed. Information is also not required to be disclosed if it would be contrary to the public interest.

Subdivision 2 —Other units of public administration

Responsibility of public officials, other than the commissioner of police

Clause 43 .—does not apply to the police service. It provides that the relevant public official has a responsibility to investigate and deal with complaints about official misconduct referred by the commission.

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

Clause 44 .— provides that, in dealing with complaints, the public official must investigate or take other appropriate action (such as taking managerial or disciplinary action) or the public official can ask the commission to assist in cooperatively investigating the complaint.

The public official can take no action if it is satisfied that the complaint is frivolous or vexatious or lacks substance or credibility or that investigating it would be an unjustified use of resources.

Subclauses (4) and (5) are intended to impose a degree of “client” focus on public officials. This is to ensure that complainants and persons providing information about misconduct are informed of the outcome of their matters, any action taken or not taken, and the reasons behind the decisions made. However, this is only to apply where people have provided contact details and want to be kept informed. Information is also not required to be disclosed if it would be contrary to the public interest.

Subdivision 3 —Commission

Responsibility of commission

Clause 45 .— provides that the commission has primary responsibility for investigating and dealing with complaints about official misconduct. It also has responsibility for monitoring how the commissioner of police

investigates and deals with police misconduct and for monitoring investigations of official misconduct that have been referred to other public officials to investigate in the ways outlined in clauses 44 and 45. The level of monitoring is more rigorous for official misconduct

Dealing with complaints—commission

Clause 46 .— provides that the commission is required to quickly assess complaints about misconduct that it receives or is notified of and investigate those amounting to official misconduct which it considers, applying the principles in cl34, should not be referred to a public official.

A major shift in this bill is to ensure that duplication on complaints handling is minimised. Complaints about police misconduct made to the commission must therefore be rapidly assessed and referred to police to consider fully and deal with, subject to monitoring by the commission. If the complaint is made directly to the police commissioner the commission should allow police to continue to deal with the complaint subject to the commission's monitoring role.

The commission can refer an official misconduct complaint to a public official to deal with entirely or in cooperation with the commission, subject to the commission's monitoring role. If a public official asks the commission to deal with a complaint or to deal with it cooperatively, the commission can agree or, if it considers it appropriate, advise the public official that they should continue to deal with the complaint subject to monitoring by the commission.

The commission can refer an official misconduct complaint that may involve criminal activity to the police commissioner to deal with, except if it involves the police service.

The commission can take no action if it is satisfied that the complaint is frivolous or vexatious or lacks substance or credibility or that investigating it would be an unjustified use of resources.

Subclauses (5) and (6) are intended to maintain a "client" focus for the commission. This is to ensure that complainants and persons providing information about misconduct are informed of the outcome of their matters, any action taken or not taken, and the reasons behind the decisions made. However, this is only to apply where people have provided contact details and want to be kept informed. Information is also not required to be disclosed if it would be contrary to the public interest.

It is intended that the commission can provide information about a person's conduct to a public official, for official purposes.

Commissions monitoring role for police misconduct

Clause 47 .— provides the actions that the commission may take, having regard to the principles set out in the bill, in its monitoring role for police misconduct (as defined). The commission may issue advisory guidelines for the conduct of investigations by the commissioner of police for investigations into police misconduct, review or audit those investigations or, assume responsibility for and complete an investigation at any time.

The commissioner must give reasonable help to the commission, and if the commission directs, stop investigating or taking other action that might interfere with the commission's investigation.

Commission's monitoring role for official misconduct

Clause 48 .— provides the actions that the commission may take, having regard to the principles set out in the bill, in its monitoring role for official misconduct. These are the same as the commission's monitoring actions for police misconduct in the previous clause but apply to all units of public administration. They also provide for more rigorous monitoring because the commission may require a public official to report to the commission about an investigation in the way and at the times it directs and giving an ability for the commission to direct a public official to undertake further investigation.

Division 5—Action following investigation

Reports about complaints dealt with by the commission [CJA, s33]

Clause 49 .— provides the commission with an ability to report if it investigates or takes over the investigation of a complaint. It may report to one or more of the director of public prosecutions or other prosecuting authority, the listed judicial officials or if these do not apply, the chief executive officer of a relevant unit of public administration for the purpose of taking disciplinary action.

Reports under the clause must contain or be accompanied by all relevant information known to the commission that supports a charge and a defence

to a charge. The director of public prosecution may require the commission to make further investigation or supply further information relevant to a prosecution.

Commission may prosecute for official misconduct [CJA, s39]

Clause 50 .— restates s39 CJA and provides that the commission may charge a prescribed person with official misconduct by way of a disciplinary charge in the misconduct tribunal under the *Misconduct Tribunals Act 1997*, if the commission report to the chief executive that there is a complaint, and evidence to support a charge of, official misconduct.

In the clause, prescribed person means a member of the police service or a person in a unit of public administration (other than a court or the police service) whose appointment is declared by regulation to be a prescribed person, or whose unit of public administration is declared by regulation to be subject to the jurisdiction of a misconduct tribunal.

Other action for misconduct

Clause 51 .—provides that this part is not intended to restrict the action that can be lawfully taken to discipline or deal with a person for misconduct, but that the action is subject to monitoring by the commission.

PART 4—RESEARCH, INTELLIGENCE AND OTHER FUNCTIONS

Division 1—Research

Research functions [CJA, s 23]

Clause 52 .— provides the research functions of the commission. These research functions have been reformulated from the CJC's research functions to focus them more clearly on providing support for the commission's core functions, which include major crime. The commission retains responsibility for research into the incidence and prevention of criminal activity. The ability to conduct research on broader criminal

justice system issues will be relocated to a unit within government to better inform whole of government decision making on criminal justice issues and to facilitate the achievement of criminal justice coordination.

There is an ability to undertake research into any matter relevant to its functions and a requirement to undertake research into any other matter relating to the administration of criminal justice or misconduct that is referred to the commission by the minister. Without limiting these functions, the commission may continue to conduct research related to the continuous improvement of the police service, including analysing its methods of operations, exercise of powers and methods of law enforcement.

Division 2—Intelligence

Intelligence functions [CJA, s 58]

Clause 53 .— recasts CJA s 58, and provides that the intelligence functions of the commission are focused on undertaking intelligence activities to support its functions.

This clause emphasises that the commission has a function to minimise unnecessary duplication of intelligence data. It also requires the commission to ensure that intelligence gathering is appropriate to the proper performance of the commission's functions and is legitimately applied, especially where issues of natural justice and the rights of individuals are concerned.

Database of intelligence information [CJA, s 58(2)]

Clause 54 .— recasts CJA s 58(2), and imposes an obligation on the commission to build up a database on intelligence information about all its functions, including major crime and misconduct, from a variety of sources.

Sharing of intelligence information [CJA, s 60]

Clause 55 .— recasts CJA s 60, and imposes obligations on the commission and the Commissioner of police in respect of the sharing of intelligence information between the Commission and the police service and other entities.

Division 3—Other functions**Commission’s other functions**

Clause 56 .— provides that the commission has the additional functions of undertaking witness protection under the *Witness Protection Act 2000* (Qld) and a function conferred under another Act.

PART 5—PERFORMANCE OF FUNCTIONS**Commission to act independently etc. [CJA, s 22]**

Clause 57 .— recasts CJA s 22, and imposes a duty upon the commission to at all times act independently, impartially and fairly, but having regard to the need to achieve the purposes of the Act and the importance of protecting the public interest.

Independence of holders of judicial office [CJA, s 5, s29(4)]

Clause 58 .— recasts CJA s 5 and s29(4), and provides that in performing its functions or exercising its powers, the commission must proceed having proper regard for the independence of judges and judicial officers including tribunal members of tribunals that are a court of record. The section limits commission investigations to misconduct that would warrant the judicial officer’s removal from office and requires the chairperson to exercise the powers and functions of the commission in relation to the investigation in consultation with the Chief Justice.

Commission to cooperate with other entities [CJA, s 57; CCA, s28]

Clause 59 .— recasts CJA s 57 and CCA s28, and provides that the commission is to cooperate with units of public administration and to relate and adapt to Queensland, the work of similar entities outside Queensland.

Commission may give evidence or information to other entities [CJA, ss23(1), 99; CCA, s 32]

Clause 60 .— recasts CJA, ss23(1) and CCA s 32, and provides that the commission may , where appropriate, give information and evidence to other law enforcement agencies if it has evidence of an offence against a law of the State, the Commonwealth or another state. The commission may also give information to a unit of public administration with a proper interest in receiving the information. The clause does not limit anyone’s right to start a prosecution for an offence.

Commission’s functions not to limit proper performance of similar functions by other entities [CCA, s 28]

Clause 61 .— recasts CCA s 28, and clarifies that the conferral of a function on the commission does not mean that another law enforcement agency can not also undertake that same task. This means, for example, that the Police Service may investigate major crime and that this legislation is not intended to inhibit that ability.

Restriction on access [CJA, s 99]

Clause 62 .— stipulates that the commission can use any information, document or thing in its possession to carry out its functions. However, the information, document or thing must not be used for any other purpose without written authorisation from the commission.

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

Clause 63 .— provides that the obligation on the commission to report does not apply to the commission’s crime functions.

Division 2—Commission reports**Commission’s reports—general [CJA, ss 23(h); 93]**

Clause 64 .— recasts CJA s 93, and provides that the commission must include in each of its reports, its recommendations and an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations.

The clause changes CJA s 23(h), and provides that if appropriate, and after consulting with the commissioner of police, the commission may make a recommendation that the minister for police give a direction to the commissioner of police under the *Police Service Administration Act*, s.4.6.

If the minister for police decides not to give a direction, following a recommendation by the commission, the minister for police must provide the commission with his/her reasons and table those reasons in the Legislative Assembly.

The commission will not have the power to issue a direction directly to the commissioner of police as the CJC had the power to do under CJA s 23(h). To do so, would create a potential conflict in that the minister of police might give a countervailing direction pursuant to s.4.6(2) of the *Police Service Administration Act 1990*.

Commission reports—court procedures [CJA, s 27]

Clause 65 .— recasts CJA s 27, and provides, that the CJC may not present reports relating to ‘procedures and operations of a State court’ or ‘the procedures and practices of the registry or administrative officers of a State court’ in the usual way. Instead such reports must only be given to the principal judicial officer of the relevant court. It is intended that the clause covers research reports of the commission that include recommendations about court practices or court procedures. In those instances, it would be expected that the recommendations about the court would be given to the head of court and the court would responsibly attend to any recommendation.

Division 3—Confidential information**Maintaining confidentiality of information [CJA, ss 27, 138]**

Clause 66 .— recasts CJA s 27, and provides that if the commission is in possession of confidential information, the commission may determine not to report or if it does report, may determine not to disclose the confidential information in the report.

However, sub-section (4) acknowledges the need for the commission to be accountable to its parliamentary committee notwithstanding that the commission considers the information to be confidential information. More specifically, this clause and the following clause repeat the regime set out in CJA s 27(3) – (10) for the disclosure of such confidential information.

Notwithstanding that the commission considers that the information is confidential information, the commission must either:

- disclose the confidential information to the parliamentary committee; or
- if a majority of the commissioners consider that the information is confidential information, give the parliamentary committee the reasons for its decision;

Register of confidential information

Clause 67 .— provides the commission must maintain a register of information withheld under the previous clause and advise the parliamentary committee immediately after the need for confidentiality ends. The committee, or a person appointed to assist it, is authorised at any time to inspect on the register information that the committee has been advised is no longer required to be kept strictly confidential. The parliamentary commissioner may inspect the confidential information at any time but the committee may not required them to disclose the information to the committee unless the commission advised that the information need not still be kept confidential.

Giving reasons

Clause 68 .— provides that reasons for the previous clauses may be given in writing or orally and are not a report or part of a report for specified clauses.

Division 4—Tabling requirements**Commission reports to be tabled [CJA, ss26, 138]**

Clause 69 .— recasts CJA s 26, and provides that reports on public hearings or other reports that the parliamentary committee directs, must be given in accordance with the section. The requirement does not apply to the commission’s annual report or to the other stated reports. The reports to which the clause applies are to be signed by the chairperson and given to the chairperson of the parliamentary committee, the Speaker and the minister.

Subsection (3) provides a mechanism to enable reports of the commission to be tabled when the Legislative Assembly is “not sitting”. The section provides that the Speaker shall deliver such a report to the Clerk of the Parliament. The report is deemed to have been tabled in and printed by order of the Legislative Assembly and such a report is granted all the immunities and privileges of a report so tabled and printed (including parliamentary privilege).

Division 5—General**Commission’s report is not enough to remove a judge [CJA, s 28]**

Clause 70 .— recasts CJA s 28, and provides that a commission report is not sufficient for the removal from office of a Supreme Court or District Court judge.

The clause provides that if the Legislative Assembly considers that further action is necessary, a tribunal of judges be appointed to inquire into the matter and to report to the Legislative Assembly with any recommendations. The commission must provide it with relevant material in its possession and sufficient copies of its report.

Giving other information to parliamentary committee [CJA, s 28A]

Clause 71 .— recasts CJA s 28 and provides that the commission may, with the parliamentary committee’s consent, give the parliamentary committee information, orally or in writing, whether or not the committee has requested the information, that is not included in a report under the clause dealing with commission reports to be tabled.

CHAPTER 3—POWERS**PART 1—POWERS TO REQUIRE INFORMATION OR ATTENDANCE WITHOUT WARRANT*****Division 1—Particular powers in relation to units of public administration******Subdivision 1 — Crime investigations*****Power to require information or documents [CCA, s 73]**

Clause 72 .— recasts CCA s 73, and provides the commission, in conducting a crime investigation, with the power, if authorised by the chairperson, to obtain information or documents from units of public administration. A person in a unit of public administration must comply with the notice to produce information or documents. A person does not commit an offence in failing to comply with a notice by the chairperson if the information is subject to “privilege” as defined for a crime investigation, or a provision of another Act prescribed under a regulation excuses compliance. A person does not, by complying with the notice contravene any statutory or commercial obligation to maintain secrecy nor do they incur any civil liability. Claims of privilege are dealt with under a further clause.

Power to enter etc. [CJA, s 70]

Clause 73 .—recasts CJA s 70, and provides the commission, in conducting a misconduct investigation, with the power to enter and search public premises (excluding any premises used by or for the purposes of any State court), inspect, and seize and remove any thing found there. A person may resist the power if they claim that the document or thing is subject to “privilege” as defined for a misconduct investigation. A person does not, by complying with the notice contravene any statutory or commercial obligation to maintain secrecy nor do they incur any civil liability. Claims of privilege are dealt with under further clauses.

Division 2—Notice to produce or discover***Subdivision 1 — Crime investigations*****Notice to produce [CCA, s 93]**

Clause 74 .— recasts CCA s 93, and creates a scheme by which the commission, in a crime investigation, may serve a notice on a person to produce a record or thing. This power is limited to requiring the production of a thing that is relevant to an investigation. The notice to produce may require the immediate production of the thing under certain urgent circumstances. A person must comply with the notice to produce unless the person has a reasonable excuse. However, a person who fails to comply with a notice does not commit an offence if the information is subject to “privilege” as defined. Claims of privilege are dealt with under a further clause.

Subdivision 2 — Misconduct investigations**Notice to discover information [CJA, s 69]**

Clause 75 .— recasts CJA s 69, and provides the commission, in conducting a misconduct investigation, with the power, if authorised by the chairperson, to serve a notice on a person to provide a statement, produce a document or other thing relevant to the investigation. A person must comply with the notice to discover information. However, a person who fails to comply with a notice does not commit an offence if the information,

document or thing is subject to “privilege” as defined for a misconduct investigation. A person does not, by complying with the notice contravene any statutory or commercial obligation to maintain secrecy nor do they incur any civil liability. Claims of privilege are dealt with under a further clause. A notice to discover information can not be given to a person who is subject to a disciplinary charge before the misconduct tribunal or any of the person’s witnesses or prospective witnesses.

Division 3—procedure on claim of privilege

Sub-division 1—Crime investigations

Application of subdiv 1

Clause 76 .— provides the subdivision applies if a person claims privilege under clauses 72 and 74 in relation to information or a document or thing.

Commission officer to consider claim [CCA, s94]

Clause 77 .— provides a commission officer must consider the claim and may withdraw the requirement in relation to which the claim is made or advise the person that they may be required to attend before a commission hearing to establish the claim.

Procedure for documents subject to claim of privilege [CCA, s94]

Clause 78 .— provides a mechanism for the sealing up of documents or things the subject of a claim of privilege for safe keeping until the claim is dealt with and provides penalties for contravention.

Subdivision 2—Misconduct investigations

Application of subdiv 2

Clause 79 .— provides that the subdivision applies if a person claims privilege under the specified clauses in relation to information or a document or thing.

Commission officer to consider claim of privilege

Clause 80 .— applies to a misconduct investigation and provides a commission officer must consider the claim and may withdraw the requirement in relation to which the claim is made or advise the person that they may be required to attend or may apply to the Supreme Court to establish the privilege.

Procedure for documents subject to claim of privilege [CJA,s78]

Clause 81 .— provides a mechanism for the sealing up of documents or things the subject of a claim of privilege and provision to the registrar of the Supreme Court for safe keeping. The clause provides that the documents and things are to be returned if no claim is made and otherwise dealt with in accordance with the order or by agreement.

Division 4—Notice to attend**Notice to attend hearing—general [CCA, s 95; CJA, s 74]**

Clause 82 .— recasts CCA s 95, and incorporates CJA s 74, and provides that the chairperson may issue an attendance notice requiring a person to attend a commission hearing to give evidence, to produce a document or thing, or to establish a claim of privilege under the stated clauses.

An attendance notice must state whether it is for a crime or a misconduct investigation and, so far as is practicable, the general nature of the matters about which the person may be questioned at the hearing. A failure by the commission to provide the person with a general nature of the matters about which the person may be questioned does not prevent the commission from questioning the person about any matter that relates to an investigation.

A person who fails to attend as required by the notice commits an offence unless they have a reasonable excuse.

Notice to attend hearing—prisoner or patient [CJA, s 81]

Clause 83 .— recasts CJA s 81, and establishes a scheme by which the commission may direct that a prisoner or patient under the *Mental Health Act 1974* be brought before the commission.

Division 5—Confidential documents**Notice may be a confidential document [CCA, s 119]**

Clause 84 .— recasts without change, CCA s 119, and creates the offence of disclosing the existence of a confidential document if the notice contains a direction that it is a confidential document. This provision relates to notices to attend and notices to produce a document or thing, but the provision does not operate unless the notice specifically contains a direction that information about it must not be disclosed.

The provision provides that no offence occurs if the disclosure to another is made for the certain defined purposes and the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the document.

The defined purposes for which a disclosure may be made are seeking legal advice in relation to the document, seeking further information in order to comply with the document or of making a complaint to the parliamentary committee about the document.

Division 6—Restriction on power**Notices requiring immediate attendance may be issued only by or with the approval of a Supreme Court judge [CCA, s 95(2)]**

Clause 85 .— provides that an immediate attendance notice may only be issued by or with the approval of a Supreme Court judge. If the chairperson reasonably suspects that the defined notice would require a person to produce a document or thing that is the subject of a duty or an obligation of confidence, or if the chairperson requires immediate attendance, the chairperson must first obtain the approval of a Supreme Court judge.

PART 2—SEARCH WARRANTS GENERALLY

Search warrant applications [PPRA, s 68; CCA, s 74; CJA, ss 71 and 119(2)]

Clause 86 — provides a scheme by which the commission may obtain a search warrant. The application may be made to a magistrate or must be made to a Supreme Court judge if entering or searching will involve causing structural damage to a building. The warrant may be issued to obtain evidence of the commission of major crime or misconduct being investigated by the commission.

Issue of search warrant [PPRA, s 69]

Clause 87 .— is based on s69 PPRA and provides limitations on the issue of a search warrant. It provides the issuer with an ability to provide in the warrant that the warrant is a confidential document.

Order in search warrants about documents [PPRA, s 71]

Clause 88 .— provides the issuer of a warrant may in the warrant order the person in possession of documents at the place to give them to a commission or police officer.

Search warrant may be a confidential document

Clause 89 .— provides an offence for persons disclosing the existence of a confidential warrant to anyone unless they have a reasonable excuse.

When search warrant ends [PPRA, s 72]

Clause 90 .— provides that warrants expire after the stated time limits.

What search warrant must state [PPRA, s 73]

Clause 91 .— provides the requirements for information within warrants.

Powers under search warrants [PPRA, s 74; CJA, ss 71, 72; CCA, s 77B]

Clause 92 .— provides that authorised commission or police officers have a wide range of powers available under a search warrant.

Copy of search warrant to be given to occupier [PPRA, s 75]

Clause 93 .— provides that an officer executing a search warrant that is occupied, must give the occupier a copy of the warrant and a statement summarising the person's rights and obligations under the warrant. If the occupier is not present, the officer must leave a copy. This requirement does not apply to a confidential search warrant.

Limitation on search warrant powers for misconduct investigations [CJA, s 77]

Clause 94 .— provides for a limited right to claim privilege for misconduct investigations based on CJA s77. It provides a commission officer must consider the claim and may withdraw the requirement in relation to which the claim is made, or advise the person may apply to or be required to attend before, the Supreme Court to establish the privilege. The mechanism under the previous clause for sealing and safe custody then applies.

PART 3—SEARCH OF PLACE TO PREVENT LOSS OF EVIDENCE**Application of part**

Clause 95 .— provides that the part applies only to a crime investigation.

Search to prevent loss of evidence [CCA, s 77D; PPRA, s 77]

Clause 96 .— provides a scheme by which an authorised commission officer, under urgent circumstances, may enter and search a place without first obtaining a warrant. This power only applies where there is a reasonable suspicion that unless the place is immediately entered and

searched, evidence may be concealed or destroyed or the forensic value of the evidence may be diminished. Post search approval is necessary in accordance with the following clause.

Post-search approval [CCA, s 77E; PPRA, s 78]

Clause 97.— provides a requirement of post search approval by a magistrate for a search conducted under the preceding clause. The applicant is not required to appear unless the magistrate otherwise requires but the authorised commission officer must give the magistrate all the information they require about the application and in the way the magistrate requires.

Making of post-search approval order [CCA, s 77F; PPRA, s 79]

Clause 98.— provides for a post approval order by the magistrate if satisfied of the grounds for the search and that it is in the public interest to make the order. Irrespective of whether a post—search approval order is given, the magistrate may make orders about items the subject of the search.

Appeal [CCA, s 77G; PPRA, s 80]

Clause 99.— provides for an appeal against a magistrates refusal to make a post search approval order or if the magistrate makes an order in the case of an ownership dispute.

PART 4—SEARCHING PERSONS

Division 1—General provisions

General provisions about searches of persons [PPRA, s 382; CJA, s 71; CCA, s 77H]

Clause 100.— provides general requirements for officers lawfully searching a person under the Act. These are intended to strike a balance between achieving the aims of a search and preserving the dignity of the

person being searched. It acknowledges, however, that the safeguards prescribed may not be achievable where immediate action is required.

Taking a person to another place for search [PPRA, s 383; CCA, s 77H]

Clause 101 .— provides a power to take a person to another place for search where a thing may be concealed on a person. The officer must take into account matters including the need to protect the dignity of the person.

Limitation on period of detention for search [PPRA, s 384]

Clause 102 .— provides a limit on detention of a person for a search to no longer than is reasonably necessary.

Dealing with persons who obstruct search of person [PPRA, s 386; CCA, s 121 (a general provision dealing with obstruction)]

Clause 103 .— provides a requirement for an officer conducting a lawful search to, if reasonably practicable, warn an obstructing person of the offence for obstructing an officer in the performance of the officers duties and give them an opportunity to stop obstructing. The provision expressly recognises that there may be instances when this is not reasonably practicable.

Division 2—Searches involving removal of clothing

Application of division

Clause 104 .—provides that the division only applies to a crime investigation.

Removal of clothing for search [PPRA, s 387; CCA, 77H]

Clause 105 .— provides power of a commission officer, limited to a crime investigation, to require removal of clothing for a search.

Protecting the dignity of persons during search [PPRA, s 388]

Clause 106 .— imposes requirements on officers to be undertaken, if reasonably practicable, to protect the dignity of persons during a search.

Special requirements for searching children and persons with impaired capacity [PPRA, s 389]

Clause 107 .— provides for special requirements when searching children and persons with impaired capacity.

If video cameras monitor place where person is searched [PPRA, s 390]

Clause 108 .— provides additional safeguards for searches where a video camera monitors the area where a person is searched. It is intended that video recordings of strip searches be strictly controlled and viewed only by specified persons.

PART 5—SEIZING PROPERTY**Definitions for pt 5**

Clause 109 .— provides definitions of court and prosecution for the part.

General power to seize evidence—crime investigation [CCA, s 99]

Clause 110 .— provides a scheme by which an officer may seize property which the officer reasonably suspects is evidence of the commission of a major crime that the commission is investigating. If the officer is lawfully in or at a place, whether by virtue of a warrant or not, and locates evidence, the clause allows the officer to seize it, even though the officer was not at the place for that purpose. The property must be treated as if it was seized by warrant.

General power to seize evidence—misconduct investigation [CJA, s 73]

Clause 111 .— provides a power for an officer conducting a misconduct investigation to seize a thing if the officer reasonably suspects that the thing is evidence of an indictable offence. A claim of privilege applies to evidence seized under this clause.

Receipt for seized property [PPRA, s 380; CCA, s 77J]

Clause 112 .— provides a requirement for the provision of a receipt for property seized under the chapter, unless providing a receipt may frustrate an investigation, in which case compliance can be delayed for a limited time prescribed. No receipt is required if the thing is not apparently in anyone's possession. Details of the search and anything seized must be recorded in the warrants register.

Application for order in relation to seized things [PPRA, s 426; CCA, s 78(1) and (2)]

Clause 113 .— imposes a requirement on officers seizing anything under the chapter (other than the section dealing with passports), to apply to a magistrate for an order about the thing seized unless consent is given to continue keeping the thing, a proceeding has been started, or the thing is destroyed or dealt with under the authority of another Act. A regime is also provided for in the event that a proceeding is discontinued or the owner's consent is withdrawn.

Orders magistrate may make in relation to seized thing [PPRA, s427; CCA, s 78(4)]

Clause 114 .— provides details of the types of orders a magistrate may make in relation to the thing seized.

Disposal of seized things at end of proceeding [PPRA, s 428; CCA, s 78(5)]

Clause 115 .— provides for the disposal of seized things at the end of a proceeding by order of a court.

Right to inspect seized documents [PPRA, s 381; CCA, s 79]

Clause 116 .— provides, subject to a contrary order, that the commission or other law enforcement agency, must allow a person who would be entitled to the document to inspect it and take extract or make copies. This is subject to a limitation where it is reasonably suspected that compliance would enable the person to repeat or continue an offence.

Return of seized things [PPRA, s 423; CCA, s 80]

Clause 117 .— imposes an obligation on the commission or other law enforcement agency to return the seized thing to its owner when it is no longer required.

Application by owner etc. for return of relevant things [PPRA, s 424]

Clause 118 .— provides a mechanism for an application to a magistrate for the return of a thing to a person that claims an interest in it. It specifies when the magistrate may order the delivery up of the thing to a person and when the magistrate should not so order.

Application by commission officer for order if ownership dispute [PPRA, s 425]

Clause 119 .— provides for an application to a magistrate if there is a question about the ownership about a thing and the magistrate can make an appropriate order about it.

PART 6—SURVEILLANCE DEVICES***Division 1—Non-application of particular Acts*****Acts that do not apply to divs 2-5 [CCA, s 81]**

Clause 120 .— provides that the *Libraries and Archives Act 1988* and the *Freedom of Information Act 1992* do not apply to activities or records under the specified divisions.

Division 2—Use of surveillance devices under warrant of Supreme Court judge**Surveillance warrant applications [PPRA, s 124; CCA, s 82]**

Clause 121 .— provides a scheme by which the commission may obtain a warrant for a surveillance device (as defined). An inspector of police (or more senior rank) who is an authorised commission officer must, among other things, fully disclose information both favourable and adverse to the application.

The definition of surveillance device and hence the type of device for which a warrant can be applied, depends on whether the investigation is for misconduct or major crime, with a wider scope of devices available for major crime investigations. The intention is to retain for the misconduct function powers previously held by the CJC, and for the crime function powers previously held by the Crime Commission, with the addition of electronic data surveillance for the crime function. Other than electronic data surveillance it is intended that neither function should have an increase in powers.

The applicant must advise the public interest monitor of the application. The judge may refuse to consider the application until the applicant gives the judge all the information about the application that is required.

Who may be present at consideration of application for surveillance warrant [PPRA, s 125; CCA, s 83; CJA, s 119(2)]

Clause 122 .— provides who may be present at the application for a surveillance warrant.

Consideration of application for surveillance warrant [PPRA, s126; CCA, s 84]

Clause 123 .— provides the matters that the judge must consider, being mindful of the highly intrusive nature of a surveillance warrant, before deciding an application for a surveillance warrant.

Issue of surveillance warrant [PPRA, s 127; CJA, s 82; CCA, s 85]

Clause 124 .— provides for the issue of a surveillance warrant for a period of not more than thirty days after the judge has considered the

application and is satisfied of the matters outlined. A class A surveillance device may only be used in a practising lawyer's office if the warrant relates to the lawyer's involvement in major crime or misconduct. The judge can impose conditions on the warrant that are necessary in the public interest to closely monitor the use of surveillance devices and to minimise unnecessary intrusion through their use.

What surveillance warrant must state [PPRA, s 128; CCA, s 86]

Clause 125 .— provides the matters that must be stated in the surveillance warrant including any conditions imposed by the judge in the order for its issue.

Report on use of surveillance devices [PPRA, s 129; CCA, s 87]

Clause 126 .— provides that after considering report on the use of a surveillance device, a judge may require the destruction of any recording material that is not related to any major crime or misconduct.

Duration and extension of surveillance warrants [PPRA, s 130; CCA, s 88]

Clause 127 .— stipulates when a warrant is in force and requires the same process for an application of a warrant to apply to an application for an extension of a warrant. Even if a surveillance warrant has ended, the commission officer can continue to exercise powers under it but only those necessary to remove the device.

Power under surveillance warrants [PPRA, s 131; CCA, s 89]

Clause 128 .— sets out the powers which a commission officer may exercise under a surveillance warrant. These vary depending on the type and class of device. Electronic data surveillance has been added to the definition of "surveillance device". It is intended that these powers should apply to the installation of such devices and that a commission officer should be able to use an assistant to interpret the data intercepted or recorded.

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

Application of div 3

Clause 129 . —provides that the division only applies for a crime investigation.

Emergency use of surveillance devices [PPRA, s 132; CCA, s 90]

Clause 130 . —provides an ability for the commission to use a surveillance device without a warrant if the chairperson reasonably believes there is risk of serious injury to a person and the device may help reduce the risk. Such emergency use of a surveillance device requires the chairperson's approval and authorisation of a commission officer who is a police officer of at least the rank of inspector. The use must be subsequently approved under the following clause.

Application for approval of emergency use of surveillance device [PPRA, s 133; CCA, s 91]

Clause 131 . —provides that where a surveillance device is used in an emergency, the officer who authorised the use of the device must apply to a Supreme Court judge for approval of the exercise of the powers within two business days and provide all the information about the application that the judge requires. The public interest monitor must be advised of the application.

Who may be present at consideration of application [PPRA, s 134; CCA, s 91A]

Clause 132 . —provides for who may be present at the hearing about subsequent approval of the emergency use of a surveillance device.

Consideration of application [PPRA, s 135; CCA, s 91B]

Clause 133 . —provides that a judge hearing the subsequent approval application must be mindful of the highly intrusive nature of using a surveillance device and consider a number of matters, including any

submission made by a public interest monitor before approving use of the device.

Judge may approve emergency use of powers [PPRA, s 136; CCA, s 91C]

Clause 134 . —provides the judge may approve the emergency use of the surveillance device if satisfied that there were reasonable grounds for the officer to believe that there was a risk of serious injury to a person from major crime being investigated and use of the surveillance device might help reduce the risk. The judge may require the destruction of any recordings not related to the purpose for which the device was used.

Use of evidence and information [PPRA, s 137; CCA, s 91D]

Clause 135 . —states that evidence obtained by the emergency use of a surveillance device, that is subsequently approved by a judge, may be used as evidence in proceedings for an offence and may be given to other enforcement bodies, except if a judge ordered the destruction of the recordings.

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

Application of div 4

Clause 136 . —provides that the division applies only for a crime investigation.

Surveillance warrant applications [PPRA, s 138; CCA, s 91E]

Clause 137 . —provides a scheme for application for a surveillance warrant authorising the use of a class B surveillance device (as defined). These devices are less intrusive than class A devices and hence the applications may be made to a magistrate. The applications are still subject to the chairperson's approval and an authorised commission officer (of at least the rank of inspector) must make the application in a stipulated way, including the disclosure of both favourable and adverse information to the magistrate. The Public Interest Monitor must be advised of the application.

Who may be present at consideration of application [PPRA, s 139; CCA, s 91F]

Clause 138 . —provides for who may be present at the consideration of an application under the preceding clause.

Consideration of application [PPRA, s 140; CCA, s 91G]

Clause 139 . —provides the matters that the magistrate must take into account in consideration of the application, having regard to the highly intrusive nature of using a surveillance device.

Issue of surveillance warrant [PPRA, s 141; CCA, s 91H]

Clause 140 . —provides for the issue of the a surveillance warrant by the magistrate if the magistrate is satisfied there are reasonable grounds as required. The warrant is issued for a period of not more than 30 days. The magistrate may impose conditions on the warrant in the public interest.

What warrant must state [PPRA, s 142; CCA, s 91I]

Clause 141 . —provides the matters that the surveillance warrant must state.

Duration and extension of surveillance warrants [PPRA, s 143; CCA, s 91J]

Clause 142 . —stipulates when a warrant is in force and requires the same process for an application of a warrant to apply to an application for an extension of a warrant. Even if a surveillance warrant has ended, the commission officer can continue to exercise powers under it but only those necessary to remove the device

Powers under surveillance warrants [PPRA, s 144; CCA, s 91K]

Clause 143 . —provides the powers that a commission officer to whom a surveillance warrant is directed may, subject to the warrant, lawfully exercise.

Division 5—Other provisions about surveillance devices**Restriction about records and access to surveillance warrant applications etc. [PPRA, s 145; CCA, s 91L]**

Clause 144 . —states that applications to a Supreme Court judge or to a magistrate, or relevant orders (for a surveillance warrant, or its extension; or for an approval after an emergency use of a surveillance device) must not be recorded in a way that is accessible other than by order of a Supreme Court judge. These proceedings must not be recorded in a transcript and no reports may be published. An offence is created for breaches. A person can, however, be required to give evidence to a court orally about what happened at the proceeding.

Disclosure of information obtained using surveillance warrant [PPRA, s 146; CCA, s 91M; CJA, s 83]

Clause 145 . — provides that information obtained by virtue of a surveillance warrant, unless it has already been released in open court, may only be passed on to certain persons stipulated in specified circumstances.. The persons to whom information may be given are essentially law enforcement and judicial officers. A penalty applies.

Destruction of records [PPRA, s 147; CJA, s 83(3); CCA, s 91N]

Clause 146 . —provides for the secure keeping of information obtained under a surveillance warrant and requires destruction as soon as possible after it is no longer required. However, information may be preserved for any period or indefinitely if the chairperson considers it relevant to an issue that may arise about a conviction or if it relates to an ongoing investigation.

PART 7—COVERT SEARCHES FOR CRIME INVESTIGATIONS**Application of pt 7**

Clause 147 . —provides that the part applies only for a crime investigation.

Covert search warrant applications [PPRA, s 148; CCA, s 91O]

Clause 148 .—provides a scheme by which an authorised commission officer, with the chairperson’s approval, may apply to a Supreme Court judge for a covert search warrant to enter and search a place for evidence of major crime. An inspector of police (or more senior rank) who is an authorised commission officer must make the application in a specified way and, among other things, fully disclose information both favourable and adverse to the application.

The applicant must advise the public interest monitor of the application. The judge may refuse to consider the application until the applicant gives the judge all the information about the application that is required

Who may be present at consideration of application [PPRA, s 149; CCA, s 91P]

Clause 149 .—stipulates those persons who may be present at the consideration of an application under the preceding clause.

Consideration of application [PPRA, s 150; CCA, s 91Q]

Clause 150 .—provides the matters that the judge must take into account in consideration of the application, taking into account the highly intrusive nature of covert search warrants, and including any submissions made by the monitor.

Issue of covert search warrant [PPRA, s 151; CCA, s 91R]

Clause 151 .— provides for the issue of the covert surveillance warrant by a Supreme Court judge, if satisfied that there are reasonable grounds for believing that evidence of a major crime is either at the place, or is likely to be taken there in the next 72 hours. The judge may impose conditions on the warrant in the public interest.

What covert search warrant must state [PPRA, s 152; CCA, s 91S]

Clause 152 .— provides the matters that the covert search warrant must state, including the evidence that may be seized. It also requires that, if practicable, the search must be videotaped and states that the warrant can not last more than 30 days.

Duration and extension of covert search warrant [PPRA, s 153; CCA, s 91T]

Clause 153 .— provides for time limits on the duration of the covert surveillance warrant and allows for the extension of the warrant.

Restriction about records and access to covert search warrant applications [PPRA, s 154; CCA, s 91U]

Clause 154 .— provides an offence for publication of a report of an application for surveillance warrants including applications for extension and applications for approval after emergency use. Persons are not entitled to search court records of applications except by order of a Supreme Court judge. These proceedings must not be recorded in a transcript.

Powers under covert search warrant [PPRA, s 155; CCA, s 91V]

Clause 155 .— provides the powers that a commission officer to whom a surveillance warrant is directed may, subject to the warrant, lawfully exercise.

Report on covert search [PPRA, s 156; CCA, s 91W]

Clause 156 .— requires a commission officer to report to the Supreme Court judge who issued the covert search warrant, and a monitor, information required by regulation to be provided about the exercise of powers under the warrant. The report must be given in the required time. The officer must also produce to the judge anything seized or photographed during the search, and the judge may make orders in relation to those things.

PART 8—ADDITIONAL POWERS WITH COURT'S APPROVAL**Application of pt**

Clause 157 .— provides that the part only applies to a misconduct investigation.

Additional powers warrant applications [CJA, s 124]

Clause 158 .— provides a scheme by which an authorised commission officer, with the chairperson’s approval, may apply to a Supreme Court judge for an “additional powers warrant”. An inspector of police (or more senior rank) who is an authorised commission officer must make the application in a specified way and, among other things, fully disclose information both favourable and adverse to the application.

The applicant must advise any person the judge directs to be advised of the application. The judge may refuse to consider the application until the applicant gives the judge all the information about the application that is required

Who may be present at consideration of application

Clause 159 . —provides for who may be present at the consideration of an application under the preceding clause.

Consideration of application

Clause 160 .— provides the matters that the judge must take into account in consideration of the application, taking into account the highly intrusive nature of powers under an additional powers warrant, and including any submissions made by the monitor.

Issue of additional powers warrant

Clause 161 .— provides for the issue of an additional powers warrant by a Supreme Court judge, if satisfied that there are reasonable grounds for believing that the use of the additional powers is justified in each case. The judge may impose conditions on the warrant in the public interest.

What additional powers warrant must state

Clause 162 .— provides the matters that the additional powers warrant must state.

Duration and extension of additional powers warrant

Clause 163 .— provides for time limits on the duration of the additional powers warrant and allows for the extension of the warrant.

Restriction about records and access to additional powers search warrant applications

Clause 164 .— provides an offence for publication of a report of an application for an additional powers warrant, including applications for extension. Persons are not entitled to search court records of applications except by order of a Supreme Court judge. These proceedings must not be recorded in a transcript.

Powers under additional powers warrant [CJA, s 84]

Clause 165 .—provides the powers that a commission officer to whom an additional powers warrant is directed may, subject to the warrant, lawfully exercise.

PART 7—WARRANTS REGISTER**Register of warrants, warrant applications etc. [PPRA, ch 11, pt2, divs 2 and 3; CCA, s 92]**

Clause 166 .— provides an obligation on the commission to keep a register of applications for warrants, which are defined as “prescribed information”. The register is to be accessible only to the parliamentary commissioner and public interest monitor and to other persons who are given authorisation for limited purposes. The commission officers may only have access as required for the purposes of providing a judge or magistrate with information about the warrants issued.

PART 8—ARREST WARRANTS**Arrest warrant application [PPRA, 203; CJA, ss 79 and 119(2); CCA, s 97]**

Clause 167 .— provides for a scheme for the commission to apply to a Supreme Court judge for a warrant for the apprehension of a person who has been given an attendance notice. The grounds on which an arrest

warrant is sought must be provided and the judge can refuse to consider the application until requisite information is provided.

Issue of arrest warrant [PPRA, 204; CJA, s 79; CCA, s 97]

Clause 168 .— provides for the issue of an arrest warrant if the judge is satisfied on the evidence that the person has been given a notice to attend and has either failed to attend without reasonable excuse or intends not to attend. — and that it is in the public interest, that the person be compelled to attend at the hearing.

What arrest warrant authorises [CJA, s 80(3); CCA, s 97(4); PPRA, ss 19 and 392(2)]

Clause 169 .— provides for the powers that an authorised officer may exercise in order to apprehend a person under the warrant including power to use the force reasonably necessary to enter a place, but subject to limitations where it may cause damage to a place. The *Bail Act 1980* applies to a person taken into custody under the warrant in the same way it applies to a person in custody charged with an offence.

Provision for overnight detention [CCA, s 97(5)]

Clause 170 .— provides requirements for reasonable accommodation if a person apprehended under an arrest warrant is required to be detained overnight.

Person's liability for noncompliance with attendance notice unaffected by issue of arrest warrant [CCA, s 97(8)]

Clause 171 .— provides that the issue of an arrest warrant does not relieve the person from any liability incurred for failing to comply with the attendance notice.

PART 9—GENERAL

Commission officer may use assistance in exercising particular powers [PPRA, s 373]

Clause 172 .— provides that commission officers exercising a power under the Act may lawfully seek assistance of another person in performing a function of the commission or take onto a place any assistant, equipment, vehicle, animal or material reasonably required for exercising a power. An assistant cannot arrest a person. If practicable, the commission officer must tell the assistant what action they are authorised to take and what their powers are under this section.

Protection for assistants from liability [PPRA, s 374]

Clause 173 .— provides for the protection of assistants from civil liability for acts and omissions made honestly and without negligence. Liability attaches instead to the State if it cannot attach to the assistant.

Commission's powers generally [CCA, s 98]

Clause 174 .— provides, without limiting the commission's powers, that it has the power to do all things necessary or convenient to be done for or in connection with, or reasonably incidental to, the performance of its functions. It also provides that seconded officers retain their powers.

Supplying officer's details [PPRA, s 394; CCA, s 77I]

Clause 175 .— imposes a requirement on an officer searching or seizing things under a warrant, other than a covert warrant, to inform the person the subject of the power that they are a commission officer, and provide identifying information. They must also produce identification if they are not in uniform. Only the officer in charge of a search is required to comply unless a person asks for identifying information about another officer.

CHAPTER 4—HEARINGS AND DECIDING CLAIMS OF PRIVILEGE AND EXCUSE

PART 1—PROCEEDINGS

Commission may hold hearings [CJA, s 25(1); CCA, s 100(1)]

Clause 176 .— provides that the commission may authorise the holding of a hearing in relation to any matter relevant to the performance of its functions.

Whether hearings are to be open or closed [CJA, s 90; CCA, s 102]

Clause 177 .— restates s 90 of the CJA and s102 of the CCA and provides that generally, hearings of the commission are not open to the public. However, a hearing for a crime investigation may be opened if the commission consider it will make the hearing more effective and would not be unfair to a person or contrary to the public interest.

A hearing for a misconduct investigation may be opened to the public if the commission considers that closing the hearing to the public would be unfair to a person or contrary to the public interest. The commission must not delegate a decision about whether a hearing should be public. A presiding officer may also close an open hearing for a particular purpose. This allows the presiding officer to close a hearing in circumstance where it might be unfair for the evidence to be made public.

Who must conduct hearings [CJA, s 25(2); CCA, s 100]

Clause 178 .— provides that the chairperson must conduct a public hearing. If for any reason the chairperson is unable to conduct a public hearing, the Governor in Council must appoint a person qualified to be the chairperson to conduct the public hearing and act as chairperson for the period stated in the person's appointment. The chairperson must stand down for that period but is entitled to be paid full remuneration and allowances during that time. Advertising and consultation requirements do not apply to the appointment.

Who may be present at closed hearings [CJA, s 90(4), (5), and (6)]

Clause 179 .— provides that the presiding officer conducting a closed hearing may give a direction about who may be present at the hearing. There is a penalty for knowingly contravening a direction about whom may be present.

Conduct of hearings [CJA, s 25(4), 88(1); CCA, ss 100(6) and 101]

Clause 180 .— provides that when conducting a hearing the presiding officer must act quickly and with as little formality and technicality as is consistent with a fair and proper consideration of the issues. It also provides that the presiding officer is not bound by the rules of evidence, may inform themselves of anything in the way they consider appropriate and may decide the procedures to be followed for the proceeding. They, or a person nominated, may administer an oath or take a statutory declaration. They may make an order prohibiting the publication of an answer given or document or thing produced or anything about the answer document or thing. They may also prohibit publication of information that might identify a witness at a hearing to be ascertained. The presiding officer is considered for the purposes of the hearing to be the commission.

Legal representation and examination [CJ Act, s 95; CCA, s 103]

Clause 181 .— provides that a person giving sworn evidence at a commission hearing may be legally represented. If the presiding officer considers it relevant, the presiding officer may allow a witness to be examined, cross-examined or re-examined on any matter by the presiding officer, counsel assisting the commission, a person authorised or a lawyer representing the witness. The presiding officer has discretion to allow a person who is not giving sworn evidence at a hearing to be legally represented if there are special circumstances.

Right to interpreter [CCA, s 104]

Clause 182 .— provides a right to an interpreter and to delay questioning until the interpreter is present. This applies if the presiding officer at a commission hearing reasonably suspects a witness is unable, because of inadequate knowledge of the English language or a physical disability, to understand what is being said or to speak with reasonable fluency in English.

PART 2—REFUSALS AND CLAIMS OF PRIVILEGE AND REASONABLE EXCUSE

Division 1—Refusal to be sworn

Refusal to take oath or affirmation [CCA, s 107(1)]

Clause 183 .— provides an offence for a person failing to take an oath or affirmation when required to do so by the presiding officer.

Division 2—Refusal to produce

Application of subdiv1

Clause 184 .— provides the subdivision applies only in the context of a crime investigation.

Refusal to produce—claim of reasonable excuse [CCA, s 105]

Clause 185 .— sets out a scheme to deal with a situation where a witness before a hearing is compelled to produce a document or thing, and seeks to claim legal professional privilege in respect to the document. The document or thing can not be withheld on the basis of any claim of privilege other than legal professional privilege. Legal professional privilege is not a reasonable excuse when it is waived by the person, or by someone with authority to waive it. When it is claimed, the document or thing must be sealed and retained by the commission for determination pursuant to the following clauses.

Return of sealed documents or things for decision on claim of privilege at hearing [CCA, s 106]

Clause 186 .—provides a scheme for the production of documents at a hearing for which privilege has been previously claimed. This clause requires the commission to hand sealed evidence back to the witness at the hearing to allow the witness to either comply with the direction to produce, or seek to establish a claim of privilege or other reasonable excuse for not producing it.

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

Clause 187 .— provides that the subdivision applies only in the context of a misconduct investigation.

Refusal to produce—self incrimination [CJA,s76(3)]

Clause 188 .— provides a requirement for persons attending at a hearing for a misconduct investigations because the person claims that production of the document may incriminate them. They are required to produce the document or thing to the hearing if it is in their possession. It is not a reasonable excuse to fail to produce the document or thing because it might tend to incriminate the person.

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

Clause 189 .— provides the subdivision applies only in the context of a crime investigation.

Refusal to answer question [CCA, s 107]

Clause 190 .— provides a penalty for a person attending as a witness at a commission hearing who fails to answer a question put to him or her. The person may only refuse to answer on the ground of legal professional privilege.

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

Clause 191 .— provides the subdivision applies only in the context of a misconduct investigation.

Refusal to answer question [CJA, s 94]

Clause 192 .—provides a penalty for a person attending as a witness at a commission hearing for failing to answer a question put to him or her. The person may only refuse to answer on the ground of legal professional privilege, public interest immunity, or parliamentary privilege.

Division 4—Deciding claims***Subdivision 1—Crime investigations*****Application of subdiv 1**

Clause 193 .— provides the subdivision applies only in the context of a crime investigation.

Presiding member to decide whether refusal to answer questions or produce documents or things is justified [CCA, s 108]

Clause 194 .— provides for a scheme in which a presiding officer may determine whether a refusal to answer questions or produce documents is justified. The clause has a step at which the witness is given an opportunity to make submissions to the commission that they should not be compelled to answer or produce. The presiding officer then decides the issue and must give reasons for the decision and advise the witness of their appeal rights under the following clause.

Appeals to Supreme Court [CCA, s 109; CJA, s 119(2)]

Clause 195 .— provides a scheme by which a person may appeal the decision of the commission that they must answer a question or produce a document or thing. The person must first obtain leave of the Supreme Court to appeal, and leave may not be granted unless there is a significant prospect of success, or there is an important question of law to determine.

Subdivision 2—Misconduct investigations**Supreme Court to decide claim of privilege or reasonable excuse [CJA,ss77 and 122]**

Clause 196 .— provides a scheme where a person makes a claim of privilege under the stated sections in relation to information or a document or thing. Either the chairperson or the person making the claim may apply to a Supreme Court judge to decide whether the claim is established, and if established, whether it is to be upheld. The burden of proof is on the person seeking to withhold the information or to prevent the exercise of authority.

Restriction on use of privileged answers, documents and things disclosed or produced under compulsion [CJA, s 96; CCA, s 110]

Clause 197 .— provides that when a witness is compelled to answer a question or produce a document, and a ground of privilege against self incrimination would otherwise apply, the answer may not be used against the person at a later criminal or civil proceeding if before being compelled the person claims that answering the question or producing the document or thing might tend to incriminate them. There are a number of exceptions to this protection; such as if there is consent or if the proceeding is about the falsity of the answer.

PART 3—CONTEMPT**Contempt of person conducting commission hearing [CCA, s 114]**

Clause 198 .— provides the circumstances for when a person may be held in contempt of the presiding officer conducting a commission hearing.

Punishment of contempt [CJA, ss 107, 108, 119(2); CCA, s 115]

Clause 199 .— provides a scheme by which a person in contempt of the presiding officer of a commission hearing may be punished. If a presiding officer finds a person in contempt, they may certify the contempt to the

Supreme Court and issue a warrant for the person to be brought before the Supreme Court to be dealt with according to law.

Conduct that is contempt and offence [CJA, s 109; CCA, s 116]

Clause 200 .— provides protection to a person from being prosecuted twice in the event that the same set of circumstances represents both a contempt and an offence.

PART 5—GENERAL

Commission must give evidence to defence unless court certifies otherwise [CCA, s 112]

Clause 201 .— provides a scheme by which a person who stands charged before a court can obtain access to otherwise confidential material of the commission, if that material is relevant to the person's defence.

Publication of names, evidence etc. [CJA, s 88(2), (2A); CCA, s 111]

Clause 202 .— prohibits the publication of a range of material relating to any commission hearing including information that might enable the existence or identity of a witness to be ascertained. In the clause, publication includes giving it to a single person either orally or in writing.

Protection of members, legal representatives and witnesses [CJA, ss 100; CCA, s 113]

Clause 203 .— provides that parties, including the presiding officer of a commission hearing, have the same protections and privileges as the equivalent party for a Supreme Court proceeding.

Allowances for witness [CJA, s 105; CCA, s 117]

Clause 204 .— provides that witnesses before a commission hearing have the same entitlements to an allowance as a witness before a Magistrate's Court.

Legal assistance for crime investigations [CCA, s 118]

Clause 205 .—sets out a scheme by which the Attorney-General may approve financial assistance to a person to enable them to obtain legal representation in the case of a crime investigation. Crime investigation is defined to mean an investigation conducted by the commission in the performance of its crime function which is reference based. The Attorney-General is empowered to provide assistance if hardship would otherwise result to the person, or if in all the circumstances of the case, assistance should be provided.

CHAPTER 5—OFFENCES**Application of Criminal Code [CJA, s 125]**

Clause 206 .— provides for a number of sections of the Criminal Code to apply, with necessary changes, to commission hearings under the Act. It also provides guidance for applying the provisions to a commission hearing.

Pretending to be commissioner or commission officer [CJA, s 126; CCA, 123]

Clause 207 .— creates an offence of pretending to be a commissioner or commission officer.

Abuse of office in commission [CJA, s 127]

Clause 208 .— creates an offence for a commission officer to abuse their office in the commission.

Bribery of commission officer [CJA, s 128]

Clause 209 .— creates an offence for a person to bribe a commission officer with a view to the officer neglecting their duty, influencing the officer in their duties or to the officer taking advantage of their office to facilitate an offence.

Obstruction or delay of commission procedures [CJA, s 129]

Clause 210 .— creates an offence to , with intent to obstruct or delay the functions or exercise of powers of the commission , fabricate, destroy or send out of the state, any relevant record or thing.

Injury or detriment to witness [CJA, s 130; CCA, s 122]

Clause 211 .— creates the offence of injuring or threatening or otherwise causing detriment to a witness or potential commission witness.

Offence of victimisation [CJA, s 131]

Clause 212 .—creates an offence for a person to make threats, prejudice, intimidate or harass a person because they gave or someone else gave evidence to or helped the commission.

Confidentiality to be maintained [CJA, s84D,s 132;CCA, s126]

Clause 213 .—combines secrecy and confidentiality requirements of the repealed legislation and imposes secrecy and confidentiality requirements on the named relevant officials to maintain confidence of material that came to their knowledge because of their involvement in the administration of the Act. The requirements extend to past and present officers and those that were past officers under the repealed Acts. There are exceptions such as where the information is publicly available.

Unauthorised publication of commission reports [CJA, s26(6)]

Clause 214 .—continues the prohibition on publication of commission reports that are required to be tabled unless they are authorised to be published under the Act.

Resisting exercise of powers [CJA, s 133]

Clause 215 .—creates an offence for a person wilfully obstructing a commission officer in the exercise of a power conferred by the Act.

Frivolous or vexatious complaint [CJA, s 136]

Clause 216 .—creates an offence for someone to give or cause to be given the same or substantially the same complaint or information to the commission where they have been given a notice by the commission that a complaint or information previously given will not be investigated because it appears to concern frivolous matter or to have been given or made vexatiously.

False or misleading statements [CJA, s 137; CCA, s 120]

Clause 217 .—creates an offence of providing false or misleading statements to the commission.

False or misleading documents [CJA, s137;CCA, s 120]

Clause 218 .—creates an offence of providing a document to the commission containing information the person knows is false or misleading in a material particular. The offence extends to causing the document to be given to the commission such as if the document or information is given to the police or a unit of public administration where the police or relevant public official must provide it to the commission under the notification requirements. This would apply whether or not the person intended it to be forwarded to the commission.

Proceedings for an offence

Clause 219 .sets out the scheme by which proceedings for an offence against the Act must be taken. It provides a limitation period for summary offences of one year from the offence or six months after the offence comes to the knowledge of the complainant but subject to a two year maximum time after the offence was committed.

CHAPTER 6—ADMINISTRATION

PART 1—CRIME AND MISCONDUCT COMMISSION

Division 1—Establishment of Crime and Misconduct Commission

Establishment

Clause 220 .— provides that the bodies corporate known as the CJC and the QCC are merged into a single body corporate and continued in existence under the Act under the name Crime and Misconduct Commission. This clause is drafted to provide clarification to ensure that references to the CJC and QCC will be taken to be references to the commission.

Commission has common seal etc. [CJA, ss 6, 7 and 147A;CCA, s 12(1), (3), (4)]

Clause 221 .—provides that the commission as established under the Act has a common seal and may sue and be sued in its corporate name and that judicial notice must be taken of the seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is proved.

Excluded matter for Corporations legislation

Clause 222 .—provides that the commission is declared to be an excluded matter for the Corporations Act, section 5F, in relation to the specified provisions of the Corporations Act.

Division 2—Commissioners***Subdivision 1—Membership and appointment*****Membership of the commission [CJA, s 8(1);CCA, s 13(1)]**

Clause 223 .—provides that the commission is to consist of five commissioners, one of which is the full-time commissioner who is the chairperson and four which are part-time community representatives.

Qualifications for appointment of chairperson [CJA, s 9;CCA, s 14(2)]

Clause 224 .—provides that a person is qualified for appointment as the chairperson if they have served as, or are qualified for appointment as a judge of either the Supreme Court of Queensland, Supreme Court of another State, the High Court, or the Federal Court of Australia.

Qualifications for appointment of part-time commissioners [CJA, s 9;CCA, s 14(2)]

Clause 225 .—provides that a person is qualified for appointment as a part-time commissioner if the person has a demonstrated interest in civil liberties or has qualifications or expertise in one or more of the following areas. These areas are public sector management and review, criminology, sociology, research related to crime or crime prevention and community service or experience of community standards and expectations relating to public sector officials and public sector administration.

Disqualification as commissioner [CJA, s 10(1);CCA, s 14(4), (5)]

Clause 226 .—provides that an ineligible person as defined can not be appointed as or continue as a commissioner.

Advertising and nominations for appointment [CJA, s 11(1) and (2), 12(2) and (5)]

Clause 227 .—restates the advertising and nomination requirements from the CJA and provides that the minister must advertise nationally for applications for suitably qualified persons to be considered for selection as the chairperson. The minister must advertise throughout the State for part time commissioners other than the civil liberties commissioner. The minister must ask the Bar Association of Queensland and the Queensland

Law Society to each nominate two persons having appropriate qualifications for appointment as the civil liberties commissioner. The requirements do not apply to the reappointment of a person as a commissioner.

Consultation before nominating persons for appointment [CJA, s 11(3) and (4), 12(2)(b), (3) and (4)]

Clause 228 .—restates the consultation requirements from the CJA and provides that before nominating a person for appointment as a commissioner, the minister must first consult with the parliamentary committee or if there is no committee at the time, the Leader of the Opposition and the Leader in the Legislative Assembly of any other political party represented in the Assembly by at least five members. If the appointment is of a part-time commissioner, the minister must also consult with the chairperson. If the minister consults with the parliamentary committee about the appointment, the appointment must receive bipartisan support as defined.

Appointment of chairperson[CJA, s 8(2), (3), (4);CCA, s 14(1), (6), (7), (8)]

Clause 229 .—provides that the chairperson is to be appointed on a full-time basis by the Governor in Council and that the chairperson is to be appointed under the Act and not under the *Public Service Act 1996*.

Appointment of part-time commissioners [CJA, s 8(2)-(4); CCA, 14(1),(6)-(8)]

Clause 230 .—provides part-time commissioners are to be appointed by the Governor in Council. At least one of them must have a demonstrated interest in civil liberties. The remaining must have one or more of the qualifications outlined for part time commissioners. At least one of the part-time commissioners must be a woman. The part-time commissioners are appointed under the Act and not under the *Public Service Act 1996*.

Subdivision 2—Other provisions about appointment**Duration of appointment [CJA, s 14; CCA, 17]**

Clause 231 .—provides a commissioner may only hold office for a term not longer than five years stated in the instrument of the commissioner's appointment. A commissioner must not hold office for more than five years in total. This has effect despite the *Acts Interpretation Act 1954*.

Terms of appointment [CJA, s 18; CCA, s 18]

Clause 232 .—provides a commissioner is to be paid the remuneration and allowances decided by the Governor in Council and to the extent that the terms and conditions are not provided for in the Act, a commissioner holds office on the terms and conditions decided by the Governor in Council.

Preservation of rights [CCA, s 19]

Clause 233 .—provides that if a public service officer is appointed as the chairperson, they retain and are entitled to current and future accrued rights because of their employment as a public service officer as if service as a commissioner were a continuation of service as a public service officer. At the end of their term or on resignation they are entitled to be appointed to an office at equivalent salary to that for the office they held before being appointed as a commissioner. The person's service as a commissioner is to be regarded as service of a like nature in the public service for deciding their rights as a public service officer.

Leave of absence [CCA, s 20]

Clause 234 .—provides that the minister may grant leave of absence to a commissioner on the terms the minister considers appropriate.

Resignation [CJA, s 14(7)(b); CCA, s 21]

Clause 235 .—provides a commissioner may resign by signed notice given to the minister.

Termination of appointment [CJA, s 14; CCA, s 22]

Clause 236 .—provides the Governor in Council may terminate the appointment of a commissioner if the commissioner becomes incapable of satisfactorily performing the duties of office or is absent from three consecutive meetings without leave and without reasonable excuse. The Governor in Council must terminate the appointment of the chairperson if the chairperson engages in paid employment outside the chairperson's duties without the minister's approval. The Governor in Council may terminate the appointment of a commissioner if a recommendation to the Legislative Assembly to terminate is made with bipartisan support of the parliamentary committee and the Legislative Assembly approves the termination. The office of a commissioner is vacated if the commissioner becomes an ineligible person as defined.

Acting chairperson [CJA, s 13; CCA, s 23]

Clause 237 .—provides that the Governor in Council may appoint a person qualified for appointment as the chairperson to act as the chairperson during any vacancy in the office or for any period or all periods when the chairperson is absent from duty or, for another reason, cannot perform the duties of the office. Advertising and consultation do not apply to the acting appointment.

Disclosure of interests by commissioners [CJA, s 142; CCA, s 24]

Clause 238 .—provides that the commission must keep a register of each commissioner's pecuniary interests and personal or political associations. Each commissioner must give to the commission and the minister, as soon as practicable after their appointment, a written summary of those interests at the time of their appointment. They must provide notice of a change and an updated written summary within thirty days of any substantial change. The register must be updated at least once during each twelve month period of a commissioner's term of office. A personal or political association is defined to mean one that might influence the commissioner in the discharge of the commissioner's duties.

Division 3—Appointment of assistant commissioners and senior officers***Subdivision 1—Appointment*****Assistant Commissioner, Crime and Assistant Commissioner, Misconduct**

Clause 239 —provides that there is to be an Assistant Commissioner, Crime and an Assistant Commissioner, Misconduct.

Qualifications for appointment as assistant commissioner

Clause 240 .—provides that a person is qualified for appointment as an assistant commissioner if they are qualified to be appointed as the chairperson.

Disqualification as an assistant commissioner

Clause 241 .—provides that an ineligible person can not be appointed as, or continue as, an assistant commissioner.

Advertising and nominations for appointment [CJA, s11(1) and (2), 12(2) and (5)]

Clause 242 .—provides that the minister must advertise nationally for applications from suitably qualified persons to be considered for selection as an assistant commissioner. The requirement to advertise does not apply to reappointment.

Consultation before nominating persons for appointment [CJA, s11(3) and (4), 12(2),(3) and (4)]

Clause 243 .— provides that before nominating a person for appointment as an assistant commissioner, the minister will consult with the Leader of the Opposition and the chairperson about the proposed appointment.

Appointment of assistant commissioners

Clause 244 .— provides that assistant commissioners are to be appointed on a full-time basis by the Governor in Council and are appointed under the Act and not under the *Public Service Act 1996*.

Senior officers

Clause 245 .— provides the commission may employ senior officers as necessary to enable the commission to perform its functions and that these officers are to be employed under the Act and not under the *Public Service Act 1996*.

Disqualification as a senior officer

Clause 246 .— provides that an ineligible person (as defined) can not be appointed as, or continue as, a senior officer.

Subdivision 2—Other provisions about appointment**Duration of appointment**

Clause 247 .— provides that the term of appointment of an assistant commissioner or senior officer is to be not longer than five years, stated in the person's contract of employment. If the commission considers that the performance of the assistant commissioner has been and will continue to be of a high standard, they may be appointed for a further term with the total term not to exceed eight years.

Basis of employment of directors or senior officers [CJA, s64(2)]

Clause 248 .— provides that assistant commissioners and senior officers must enter into a written contract of employment with the commission. The conditions of the contract must be approved by the minister and are governed by the Act and the contract. The contract must state the term, the person's duties, that the person must meet any performance standards set by the chairperson, the remuneration and the resignation and termination notice requirements. has effect despite the *Acts Interpretation Act 1954*. A senior officer means a person who, in the chairperson's opinion, is performing duties that would, if the person were a public service officer, be duties of a senior executive. The limitation on tenure for senior officers in

this clause does not extend to someone who is not performing duties relating directly to the performance of the commission's functions such as information technology, financial or human resource officers.

Subdivision 2 – other provisions about appointment?

Division 4—Roles of chairperson and assistant commissioners

Preservation of rights[CCA,s19]

Clause 249 .—provides that if a public service officer is appointed as an assistant commissioner or senior officer, they retain and are entitled to current and future accrued rights because of their employment as a public service officer as if service as a assistant commissioner or senior officer were a continuation of service as a public service officer. At the end of their term or on resignation they are entitled to be appointed to an office at equivalent salary to that for the office they held before being appointed to the commission. The person's service as a commissioner is to be regarded as service of a like nature in the public service for deciding their rights as a public service officer.

Acting assistant commissioner

Clause 250 .—provides that the minister may appoint a person qualified for appointment as the chairperson to act as an assistant commissioner. The requirements for advertisement and consultation do not apply to the acting appointment.

Division 4—Roles of chairperson and assistant commissioners

Role of chairperson

Clause 251 .—provides the chairperson is the commission's chief executive officer and its accountable officer for the *Financial Administration and Audit Act 1977*. Without limiting the chairperson's responsibilities, functions or powers, the chairperson, subject to the Act and the commission, is responsible for the administration of the commission and the proper performance of the commission's functions.

Role of assistant commissioner, crime

Clause 252 .—provides the assistant commissioner, crime is responsible to the chairperson for the proper performance of the commission's crime functions.

Role of assistant commissioner, misconduct

Clause 253 .—provides that the assistant commissioner, misconduct is responsible to the chairperson for the proper performance of the commission's misconduct functions.

Division 5—Commission staff and agents**Commission staff [CJA, ss 64; CCA, s 25]**

Clause 254 .—provides that the commission may employ the staff necessary to enable the commission to perform its functions. These staff are to be employed under the Act and not the *Public Service Act 1995*. They are to be paid the remuneration and allowances decided by the minister and are subject to the direction and control of the chairperson.

Secondment of officers [CJA, s 65]

Clause 255 .—provides that the chairperson may arrange with the chief executive of a department or another unit of public administration for the services of officers or employees to be seconded to the commission. These arrangements must be approved of by the ministers responsible. Seconded officers are subject to the direction and control of the chairperson. However, if police officers are seconded to the commission, their efficient deployment is to be the joint responsibility of the chairperson and any senior commanding police officer seconded to the commission. The clause does not apply to the establishment of a police task force or to police officers who are part of a police task force.

Engagement of agents [CJA, s 66; CCA, s 26]

Clause 256 .—provides that to meet temporary circumstances, the commission may engage suitably qualified persons to provide it with services, information or advice. These persons are engaged on the terms

and conditions decided by the commission and not under the *Public Service Act 1996*.

Commission officers [CJA, s 67]

Clause 257 .—provides that a person employed by the commission or a person engaged as an agent under the preceding clauses is a commission officer. The commission may issue directions for the performance of duties by commission officers. Seconded officers remain a member of the office from which they were seconded apart from the ability of the chairperson and commission to issue directions. They are entitled to their existing and accruing rights as if the employment as an officer of the commission were a continuation of their employment in the relevant office and they continue to be required to contribute to any superannuation scheme they were required to contribute to as a member of the office.

Superannuation schemes [CJA, s 68]

Clause 258 .—provides that the commission may establish or amend superannuation schemes, join in establishing or amending superannuation schemes or otherwise take part in them. This does not apply to officers who are engaged as agents. The auditor general must audit these schemes. The requirement for the auditor general to audit is subject to the *Financial Administration and Audit Act 1977*, part 6.

Division 6—Performance and accountability

Budget and performance[CJA, s 147(1)-(4)]

Clause 259 .—provides that for each financial year, the commission must develop, adopt and submit a budget to the minister not later than the day the minister directs. The budget has no effect until approved by the minister. The commission may develop adopt and submit amendments to its budget to the minister for approval. The commission must comply with its budget.

Performance [CJA, s 147B; FAA&A Act, s 46J(3)]

Clause 260 .—is based on s46J(3) of the *Financial Administration and Audit Act* with alteration to refer to the timeliness of the commission and its

systems and processes. It provides that the minister has a responsibility to ensure that the commission operates to best practice standards.

To help the minister discharge that responsibility, the commission must report to the minister when and in the way required by the minister on the efficiency, effectiveness, economy and timeliness of the commission and its systems and processes, including operational processes. The report must be accompanied by any financial or other reports the minister requires to assess these matters and to assess the timeliness of how the commission deals with complaints. The commission must comply with a ministerial request but is not required to give the minister any details that would, if given, prejudice a current sensitive operation of, or investigation by the commission.

Division 7—Meetings and other business of commission

Conduct of business [CJA, s 16(8); CCA, s 53]

Clause 261 .—provides that, subject to division 7 of the Act, the commission may conduct its business, including its meetings, in the way it considers appropriate.

Assistant commissioners to attend meetings

Clause 262 .—provides that assistant commissioners may attend commission meetings, but are not entitled to vote at a meeting.

Times and places of meetings [CJA, s 16(2); CCA, s 54]

Clause 263 .—provides that commission meetings are to be held at the times and places the chairperson decides. However, the chairperson must call a meeting if asked in writing to do so by the minister or at least the number of commissioners forming a quorum for the commission.

Quorum [CJA, s 16(7); CCA, s 56]

Clause 264 .—provides that a quorum for a commission meeting is any three commissioners except where a report is to be presented for adoption where the quorum is any four commissioners.

Presiding at meetings [CJA, s 16(3); CCA, s 55]

Clause 265 .—provides that the chairperson is to preside at all commission meetings at which they are present. If the chairperson is absent, the commissioner chosen by the commissioners present is to preside.

Conduct of meetings [CJA, ss 16(5), (6), (7) and 16A; CCA, ss 56 and 57]

Clause 266 .—provides that a question at a commission meeting is decided by a majority of the votes of the commissioners present. Each commissioner present at the meeting has a vote on each question to be decided . The person presiding also has a casting vote. A commissioner who although present, abstains from voting is taken to have voted for the negative. The commission may hold meetings or allow participation by using any technology allowing reasonably contemporaneous and continuous communications between persons taking part in the meeting such as teleconferencing or through use of the internet. A person taking part through these means is taken to be present at the meeting. A resolution may be passed by flying minute if approved by the commission.

Disclosure of interests

Clause 267 .—provides a mechanism through which interests of persons must be disclosed and dealt with. If a commissioner has a material interest in an issue being considered or about to be considered and it could conflict with the proper performance of their duties, they must as soon as practicable after the relevant facts come to their knowledge, disclose the nature of the interest to a commission meeting. Unless the commission otherwise directs, they must not be present when the commission considers the issue or take part in the decision. They must not be present when the commission determines whether to make a contrary direction.

A similar requirement extends to any other commissioner who also must disclose an interest and the remaining members are a quorum of the commission for considering or deciding the issue or for considering or deciding whether to give a direction at the meeting. The disclosures under the clause must be recorded in the commission's minutes. A failure to disclose a material personal interest does not, of itself, invalidate a commission decision.

Minutes [CCA, s 59]

Clause 268 .—provides the commission must keep minutes of its meetings and a record of resolutions under the disclosure of interests requirements. If a resolution is passed at a commission meeting by a majority and a commissioner who votes against the passing of the resolution asks, the commission must record in the minutes that the commissioner voted against the resolution.

Division 8—Delegations and authorised commission officers**Delegation—commission [CJA, ss 68A, 139A and 140; CCA, s 35]**

Clause 269 .—provides the commission may by resolution delegate the commission’s powers under the Act or another Act to an appropriately qualified commission officer (as defined). It limits delegation of some specific powers of the commission to specific listed officers.

Delegation—chairperson [CJA, ss 68A, 139A and 140; CCA, s 35]

Clause 270 .—provides that the chairperson may delegate the chairperson’s powers under the Act or another Act (other than *s407 Police Powers and Responsibilities Act 2000*) to an appropriately qualified commission officer. The powers under chapter 3 (which include all the more invasive surveillance powers) must only be delegated with the approval of the commissioners by resolution. It is anticipated that such a resolution could extend to a standing delegation to specific officers if the commission considered this appropriate, or specific delegations.

Delegation—assistant commissioner

Clause 271 —provides that an assistant commissioner may delegate their powers under the Act to an appropriately qualified commission officer.

Authorised commission officer [CCA, s 36]

Clause 272 .—provides the chairperson may authorise an appropriately qualified officer or employee of the commission to perform functions, exercise powers or for any purpose to be an authorised commission officer under the Act or another Act. The authorisation may be given on conditions. An assistant commissioner and a police officer that is a

member of a police task force in a joint investigation with the commission are authorised commission officers.

Commission officer's identity card

Clause 273 .—provides that commission officers must be given identity cards and sets out the requirements for those cards.

PART 2—CRIME REFERENCE COMMITTEE

Division 1—Establishment of reference committee

Establishment [CCA, s 38]

Clause 274 .—provides for the establishment of the crime reference committee.

Division 2—Functions and support

Functions of reference committee [CCA, s 45(1)]

Clause 275 .—provides that the reference committee has functions to refer, as provided under the Act, major crime (as defined) to the commission for investigation and to coordinate to the extent it considers appropriate, joint investigations by the commission and a police task force or another entity.

Commission to give committee administrative support [CCA, s45(1)]

Clause 276 .—provides that the commission is to give the reference committee the necessary administrative support to enable it to perform its functions.

Division 3—Oversighting role**Reference committee may obtain information from commission [CCA, s 49]**

Clause 277 .—provides that the assistant commissioner, crime must keep the reference committee informed of the general conduct of their operations in the performance of the commission's functions in relation to major crime. The assistant commissioner, crime must give the reference committee information relating to the commission's operations in relation to major crime and give the help the reference committee needs to consider it. The reference committee is expected to be primarily involved with references and coordination. Managerial and resource issues are intended to be matters for the commission.

Division 4—Provisions about membership**Membership of reference committee [CCA, s 39]**

Clause 278 .—provides the membership of the reference committee. The chairperson of the parliamentary committee is no longer included given that the parliamentary committee is now the accountability mechanism for crime functions as well as misconduct functions.

Deputy committee member [CCA, s 40]

Clause 279 .—provides for appointment of deputies for the non-appointed members of the reference committee.

Duration of appointment of appointed member [CCA, s 41]

Clause 280 .—provides that an appointed member holds office for a term not longer than three years stated in the instrument of appointment.

Terms of appointment of appointed member [CCA, s 42]

Clause 281 .—provides that an appointed member is appointed on a part time basis and, to the extent not provided for in the Act, on terms and conditions decided by the Governor in Council.

Resignation of appointed member [CCA, s 43]

Clause 282 .—provides for the resignation of an appointed member.

Termination of appointment of appointed member [CCA, s 44]

Clause 283 .—provides for termination of an appointed member.

Division 5—Meetings and other business**Conduct of meetings and other business [CCA, s 53]**

Clause 284 .—provides that subject to the division, the reference committee may conduct its business, including its meetings, in the way it considers appropriate.

Times and places of meetings [CCA, s 54]

Clause 285 .—provides that reference committee meetings are to be held at the times and places the assistant commissioner, crime decides but must be called if the assistant commissioner is asked to do so in writing by the minister or a quorum of members.

Quorum [CCA, s 56(a)]

Clause 286 .— provides that a quorum for a reference committee meeting is any four members.

Presiding at meetings [CCA, s 55]

Clause 287 .— provides that the assistant commissioner, crime is to preside at all meetings at which they are present. It also provides for a mechanism to select who is to preside if they are absent.

Conduct of meetings [CCA, ss 56(b), (c), 57 and 58]

Clause 288 .— provides for how meetings of the reference are to be conducted.

Disclosure of interests

Clause 289 .— provides a mechanism, similar to that for the commission, for members of the reference committee to disclose any material personal interest in an issue being considered and resolve any conflict of interest through those members not being present or taking part in the making of a decision about the issue.

Minutes [CCA, s 59]

Clause 290 .— provides that the reference committee must keep minutes and a record of resolutions.

PART 3—PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE***Division 1—Establishment of parliamentary committee*****Establishment of parliamentary committee [CJA, s 115]**

Clause 291 .— provides for the establishment of a parliamentary committee to oversee the Crime and Misconduct Commission called the Parliamentary Crime and Misconduct Committee.

Division 2—Functions**Functions [CJA, s 118(1)]**

Clause 292 .— recasts CJA s 118(1), and provides for the functions of the parliamentary committee on the Crime and Misconduct Commission.

Division 3—Powers**Powers [CJA, ss 98(2) and (4) and 118(2)]**

Clause 293 .— recasts CJA ss 98(2) and (4) and 118(2), and provides for the general powers of the parliamentary committee.

Subsection 2 clarifies that the parliamentary committee has the power to appoint persons having special knowledge or skills to help the committee discharge its functions.

Directions by parliamentary committee to undertake investigation [CJA, s 118E]

Clause 294 .— recasts, CJA s 118E, and provides for the duration of appointment of the parliamentary commissioner.

Referral of concerns by parliamentary committee [CJA, s 118F]

Clause 295 .— recasts without change, CJA s 118F, and provides for a scheme for dealing with complaints or concerns by the parliamentary committee about the commission and its officers. This provision clarifies that the scheme may be triggered by notification to the parliamentary committee by the chairperson of the commission of suspected “improper conduct” by a commission officer.

Guidelines on operation of commission [CJA, s 118A]

Clause 296 .— recasts without change, CJA s 118A, and confers on the parliamentary committee, the capacity to issue guidelines on the operation of the commission and to give directions to the commission.

Guidelines to be tabled [CJA, s 118B]

Clause 297 .— recasts without change, CJA s 118B, and requires the chairperson of the parliamentary committee to table each guideline in the Legislative Assembly within 14 sitting days after it is issued to the commission.

Disallowance of guideline [CJA, s 118C]

Clause 298 .— recasts without change, CJA s 118C, and provides a mechanism for the disallowance of a guideline.

Limited saving of operation of guideline that ceases to have effect [CJA, s 118D]

Clause 299 .— recasts without change, CJA s 118D, and provides that the cessation of any guideline does not affect anything done or suffered under the guideline before cessation.

Division 4—Membership**Membership of parliamentary committee [CJA, s 116]**

Clause 300 .— recasts without change, CJA s 116, and provides for the membership of the parliamentary committee.

Membership of parliamentary committee continues despite dissolution [CJA, s 116A]

Clause 301 .—recasts CJA s 116A, and provides that membership of parliamentary committee continues despite any dissolution of the Legislative Assembly until one of several defined events occur.

Subsection 2(c) provides that if a member of the committee is not re-elected as a member of Parliament, the leader of the political party which nominated the member may nominate another member of parliament as a member of the committee until fresh members are nominated.

Division 5—Meetings**Quorum and voting at meetings of parliamentary committee [CJA, s 117]**

Clause 302 .—recasts without change, CJA s 117, and provides for the quorum and voting at meetings of the parliamentary committee.

PART 4—PARLIAMENTARY CRIME AND MISCONDUCT COMMISSIONER

Division 1—Establishment of office of parliamentary commissioner

Office of parliamentary crime and misconduct commissioner [CJA, s 118G]

Clause 303 .—recasts without change, CJA s 118G, and provides for the office of parliamentary crime and misconduct commissioner.

Division 2—Provisions about appointment of parliamentary commissioner

Qualification for appointment as parliamentary commissioner [CJA, s 118H]

Clause 304 .—recasts without change, CJA s 118H, and provides for the qualifications for appointment of the parliamentary commissioner.

Disqualifications as parliamentary commissioner [CJA, s 118I]

Clause 305 .—provides that an ineligible person can not be appointed as the parliamentary commissioner.

Selection for appointment of parliamentary commissioner [CJA, s 118J]

Clause 306 .—recasts, CJA s 118J, and provides for the selection for appointment of the parliamentary commissioner.

Appointment of parliamentary commissioner [CJA, s 118K]

Clause 307 .—recasts without change, CJA s 118I, and provides for the formal appointment process for the parliamentary commissioner.

Acting parliamentary commissioner [CJA, s 118L]

Clause 308 .—recasts, CJA s 118L, and provides for appointment of an acting parliamentary commissioner.

Duration of parliamentary commissioner’s appointment [CJA, s 118M]

Clause 309 .—recasts, CJA s 118M, and provides for the duration of appointment of the parliamentary commissioner.

Terms of parliamentary commissioner’s appointment [CJA, s 118O]

Clause 310 .—recasts, CJA ss 118O, and provides for the remuneration and terms of the parliamentary commissioner’s appointment.

Resignation [CJA, s 118N(b)]

Clause 311 .—recasts without change, CJA s 118N(b), and provides a mechanism for resignation of the parliamentary commissioner.

Termination of appointment [CJA, s 118(a) and (c)-(g)]

Clause 312 .—recasts, CJA ss 118N(a) and (c)-(g), and provides for the grounds upon which the appointment of the parliamentary commissioner may be terminated.

Oath of parliamentary commissioner [CJA, s 118P]

Clause 313 .— recasts without change, CJA ss 118O, and requires that the parliamentary commissioner must take an oath or affirmation prior to commencing duties as parliamentary commissioner.

Division 3—Functions and support**Functions of parliamentary commissioner [CJA, s 118R; CCA, s 60]**

Clause 314 .—recasts CJA s 118R, and sets out the functions of the parliamentary commissioner which the parliamentary committee may ask the parliamentary commissioner to perform. This now includes auditing

for the purpose of deciding whether matters under investigation are appropriate for investigation by the entity investigating them or are more appropriately the responsibility of another entity. This is intended to allow the committee and commissioner an ability to see if the commission is having proper regard to the principles for performing the commission's functions in its decisions about referring and monitoring misconduct. It will also allow assessment of whether the commission is concentrating on appropriate major crime investigations.

Administrative and support services for parliamentary commissioner [CJA, s 118Q]

Clause 315 .—recasts without change, CJA ss 118O, and provides for the provision of administrative and support services for the parliamentary commissioner.

Subsection (2) requires the parliamentary committee's consent to the engagement of a legal practitioners or other suitably qualified person to provide the the parliamentary commissioner with services, information, or advice. Engaged service providers must consent to an oath of confidentiality.

Parliamentary commissioner can not be required to disclose particular information [CJA, s 118S]

Clause 316 .—recasts without change CJA 118S, and provides that the parliamentary commissioner can not be required by the parliamentary committee to disclose to the committee information lawfully withheld from the committee by the commission.

Division 4—Powers

Powers of the parliamentary commissioner [CJA, ss 98(3), 118T]

Clause 317 .—recasts CJA s 118T, and sets out the powers of the parliamentary commissioner. The parliamentary commissioner's power under CJA 118T(2) to require a person to appear before the parliamentary commissioner for examination is governed by the following clause [Parliamentary commissioner may conduct hearings in limited circumstances]. This clause subsumes CJA s 98(3), by providing the parliamentary commissioner with the broad general power to require a commission officer or a public official to produce or allow the

parliamentary commissioner access to all records, files and other documents or things in the possession of the commission or a unit of public administration.

Parliamentary commissioner may conduct hearings in limited circumstances [CJA, s 118T(2)(c)]

Clause 318.—recasts CJA s 118T(2)(c), and provides that the parliamentary commissioner may conduct hearings in limited circumstances. Those limited circumstances arise where the parliamentary commissioner has used all reasonable means to obtain relevant information without success and a bipartisan majority of the parliamentary committee authorises the parliamentary commissioner to conduct a hearing. The persons required to attend before the hearing are limited to commission officers and person holding appointments in a unit of public administration. This extends to current and past office holders. The person may not refuse to answer a question on the grounds of self-incrimination. However, evidence of a person's answer that might tend to incriminate the person is not admissible in evidence against the person in a civil or criminal proceeding other than defined circumstances.

Notice may be a confidential document

Clause 319.—provides that a notice given by the parliamentary commissioner may be a confidential document, the existence of which must not be disclosed except in the outlined limited circumstances.

Intelligence data review [CCA, s 61]

Clause 320.—recasts CCA s 61, and requires the parliamentary commissioner to conduct an annual review of intelligence data in the possession of the commission and the police service. Proposed subsection (2) sets out the purposes of the review. In essence, the review is intended to assess the effectiveness of the total criminal intelligence effort of the two agencies to ensure that the agencies are not duplicating intelligence, and assess whether the agencies are working as co-operatively as possible in the management of intelligence. The Parliamentary Commissioner is also to consider whether data is appropriately held by the agency having regard to the agency's functions. This is to ensure that data is compiled and held for legitimate purposes. There is also to be consideration of whether any

agency is restricting access by other agencies to its intelligence data unnecessarily.

Proposed subsection (3) requires the parliamentary commissioner to provide a written advice on the review to the chairperson of the commission, the commissioner of police and the parliamentary committee. They can be authorised to disclose the advice or parts thereof to officers for implementation.

Subclause (4) provides that the advice is not to disclose confidential intelligence matters.

Division 5—General

Confidentiality obligations not to apply [CJA, s 118X]

Clause 321 .—expands, CJA s 118X, and provides that the confidentiality requirements applying to information held by the commission or a unit of public administration or imposed on an officer do not apply under the part and hence do not restrict the information that the parliamentary commissioner may obtain.

Commission not entitled to privilege [CJA, s 118Y]

Clause 322 .—recasts CJA s 118Y, and provides that in relation to an investigation by the parliamentary commissioner, the commission is not entitled to claim privilege.

It is intended that the proposed section applies to all commission officers. Therefore, in relation to an investigation by the parliamentary commissioner, the parliamentary commissioner can not be refused information or access to relevant documents by an individual commission officer by purporting to claim privilege.

Parliamentary commissioner's report subject to Parliamentary privilege

Clause 323 .—provides that a report prepared by the parliamentary commissioner at the request of the parliamentary committee is an act done for transacting business of a parliamentary committee under the *Parliamentary Papers Act 1992* (Qld) and therefore that the report is subject to parliamentary privilege.

PART 5—PUBLIC INTEREST MONITOR

Division 1—Appointment of public interest monitor

Public Interest monitor [CJA, s84A;CCA,s69]

Clause 324 .—provides for the appointment of a public interest monitor and deputy public interest monitors on terms and conditions fixed by the Governor in Council.

Acting monitor [CCA,s70A]

Clause 325 .—provides for the appointment of persons qualified for appointment as the public interest monitor to act as the public interest monitor during vacancies or for absences.

Division 2—Functions

Monitor’s functions [CJA, s 84B; CCA, s 70]

Clause 326 .—provides for the functions of the public interest monitor (the monitor) in relation to applications by the commission for surveillance warrants and covert search warrants.

Minister’s guidelines

Clause 327 .— provides the minister may give the public interest monitor guidelines about the discharge of his or her functions.

Division 3—General

Monitor’s annual report [CJA, s 84C; CCA, s 71]

Clause 328 .—recasts without change, CJA s 84C and CCA, s 71, and provides that the monitor is required to provide to the minister each year a report on the use of surveillance warrants and covert search warrants for the previous year, which the minister is required to table in the Legislative Assembly.

CHAPTER 7—GENERAL

Duty of chairperson to notify improper conduct to the parliamentary committee

Clause 329 .—imposes a duty upon the commission chairperson to notify the parliamentary committee of any conduct of a commission officer that the chairperson suspects may involve improper conduct as required by the parliamentary committee. This reflects the obligation on other public officials to notify official misconduct to the commission. The clause envisages that the parliamentary committee may set protocols or table guidelines governing the investigation and notification of misconduct by commission officers.

Persons subject to criminal history check

Clause 330 .—provides a requirement for persons appointed under the Act to consent to a criminal history check. The detailed sections of the *Criminal Law (Rehabilitation of Offenders) Act 1986* do not apply.

Effect of pending proceedings [RC(PS) Act 1994 (NSW), s 38; ICAC Act 1988 (NSW), s 18]

Clause 331 .—authorises the commission to commence or complete an investigation including conducting investigative hearings despite any related court proceedings pending against the witness. This provision overrides the effect of the decision in Hammond v The Commonwealth (1982) 152 CLR 188 and is based on *Royal Commission (Police Service) Act 1994* (NSW) s 38 and *Independent Commission Against Corruption Act 19* s 18.

Judicial review of commission's activities in relation to official misconduct [CJA, ss 34 and 119(2)]

Clause 332 .—recasts CJA s 34, and provides for judicial review by the Supreme Court of the commission's activities in relation to investigations of official misconduct by the commission.

Subsection (2) adopts the substance of CJA 119(2) and provides that the judge may, on application by the commission, hear submissions from the

commission *ex parte* in the absence of the applicant or the applicant's legal representative.

Effect of further factors on order [CJA, s 35]

Clause 333 .—recasts CJA s 35, and provides that an order made on application under the preceding clause [Judicial review of commission's activities in relation to official misconduct] does not prevent or hinder an investigation by the commission if further factors or evidence emerge in light of which the court's order may be unjustified.

Application under s310 [CJA s 120]

Clause 334 .—recasts CJA s 120, and provides for the powers of the court in determining an application made under clause 310.

Protecting officials from liability [CJA, s 101; CCA, s 127]

Clause 335 .—recasts CJA s 101 and CCA s 127 and provides the commission and officials (as defined) with protection against civil liability for anything done honestly and without negligence under the Act. To protect the rights of a third party, the clause also provides that where a liability of a person is avoided because of this provision, that liability attaches instead to the State.

It provides a defence of absolute privilege for a publication by the commission or a commission officer made for the purpose of performing the commission's functions.

Protection of parliamentary commissioner and officers etc. [CJA, s 118ZA]

Clause 336 .—recasts CJA s 118ZA, and provides for the protection of the parliamentary commissioner and parliamentary commissioner officers. This protection only applies to things done honestly and without negligence. To protect the rights of a third party, the clause also provides that where a liability of a person is avoided because of this provision, that liability attaches instead to the State.

Protection from liability [CCA, s 72A]

Clause 337 .—recasts CCA s 72, and provides for the protection of the public interest monitor or deputy public interest monitor. This protection only applies to things done honestly and without negligence.

Protection of witnesses etc. [CJA, s 103(2); CCA, s 128]

Clause 338 .—recasts CJA s 103(2) and CCA s 128, and provides that if the commission is satisfied that the safety of a person may be at risk or the person may be subject to intimidation, the commission may provide witness protection under this legislation or under the *Witness Protection Act 2000* (Qld).

Record of execution of warrant [CCA, s 129]

Clause 339 .—recasts CCA s 129, and requires a commission officer who executes a warrant to endorse the back of the warrant with details about its execution as well as his or her personal details.

Evidentiary aids [CJA, ss 17, 143]

Clause 340 .—provides for a number of evidentiary aids that apply to a proceeding before a court or tribunal.

It recasts CJA s 143, and provides that a certificate purporting to be signed by the chairperson or a former chairperson of the commission is shall be evidence of the matters contained in the certificate for the purposes of any relevant court proceedings.

It provides that judicial notice must be taken of the chairperson's signature.

Personnel changes do not affect commission's power to make findings or report [CJA, s 86]

Clause 341 .—recasts CJA s 86, and provides that the commission's power to make findings or report is not affected by any change in the constitution of the commission.

Inspection and use of material in commission's custody [CJA, ss 98(1) and 99]

Clause 342 .—recasts CJA ss 98(1) and 99, and provides for the inspection and use of commission material by a person who is not a commission officer if that person is authorised in writing by the chairperson of the commission.

This clause must be read subject to clauses which authorise the parliamentary commissioner to require a commission officer to produce or allow the parliamentary commissioner access to all records, files and other documents in the commission's possession and which authorise the parliamentary committee access to non-operational records or things in the commission's possession.

Information disclosure and privilege [CJA, s 102]

Clause 343 .—recasts CJA s 102, and provides that no obligation imposed by any Act or rule of law prevents a person from disclosing information relevant to a commission investigation.

Injunctions [CJA, s 104]

Clause 344 .—recasts CJA s 104, and provides that the commission may apply to the Supreme Court for an injunction in defined circumstances.

Authority to administer oaths etc. [CJA, s 146]

Clause 345 .—recasts CJA s 146, and provides that any justice is authorised to administer an oath for the purposes of the Act. Oath includes affirmation or statutory declaration.

Commissions of Inquiry Act 1950 prevails over this Act [CJA, s 132A]

Clause 346 .—recasts CJA s 132, and provides that the *Commissions of Inquiry Act 1950* prevails over this Act.

Review of Act and commission's operational and financial performance

Clause 347 .—provides for a review of the Act and the commission's operational performance by the minister to start no sooner than two years after commencement.

Regulation-making power [CJA, s 148; CCA, s 130]

Clause 348 .—recasts CJA s 148 and CCA s 130, and provides that the Governor in Council may make regulations under the Act.

CHAPTER 8—REPEALS, TRANSITIONAL AND SAVINGS PROVISIONS*Division 1—Repeal provisions***Repeals**

Clause 349 .—provides for the repeal of the previous legislation.

*Division 2—Transitional provisions***Definitions for div 2]**

Clause 350 .—provides definitions of commencement, contract employee and repealed Act for the division.

References to repealed Acts and former titles

Clause 351 .—provides that references to the repealed Acts may, if the context permits, be taken to be a reference to the Act. It also provides a table for references in an Act or document to be taken to be references to the entities (titles) in the second column if the context permits.

Assets, rights and liabilities

Clause 352 .—declares, to remove doubt, that an asset, right or liability of the CJC or QCC is an asset right or liability of the commission.

Proceedings

Clause 353 .—declares, to remove doubt that a proceeding that could have been started or continued by or against the CJC or QCC may be started or continued by, or against the commission. It also removes doubt that disciplinary charges may be started or continued.

Continuation of complaints

Clause 354 .—provides for the continuation of complaints and for them to be dealt with as if they had been made under the Act.

Continuation of references

Clause 355 .—provides for the continuation of references by the management committee to the QCC as references by the reference committee to the commission.

Offences

Clause 356 .—provides for the continuation of proceedings by or against the commission.

Chairperson

Clause 357 .—provides that the chairperson of the CJC under the repealed Act goes out of office on the commencement of the Act. The CJC chairperson is not entitled to any severance payment that he may have been entitled to if he accepts the appointment as chair of the commission, or as an assistant commissioner. This provision is not intended to affect the CJC chairperson's superannuation entitlements.

Commissioners

Clause 358 .—provides that former part time commissioners of the CJC continue as part time commissioners of the commission under the Act.

Crime commissioner

Clause 359 .—provides that the Crime Commissioner of the QCC under the repealed Act goes out of office on the commencement of the Act. The Crime Commissioner is not entitled to any severance payment that he may have been entitled to if he accepts appointment as chair of the commission or as an assistant commissioner. This provision is not intended to affect the Crime Commissioner's superannuation entitlements.

Management committee

Clause 360 .—provides for the continuation of the appointed members of the management committee as members of the reference committee.

Parliamentary committee

Clause 361 .—provides for the continuation of the members of the Parliamentary Criminal Justice Committee as members of the Parliamentary Crime and Misconduct Committee under the Act.

Parliamentary commissioner

Clause 362 .—provides for the continuation of the parliamentary commissioner or an acting parliamentary commissioner.

Employees

Clause 363 .—to remove doubt, declares that employees employed by the QCC or CJC are to continue as employees of the commission on the same basis and their rights to salary and wages remain unaltered.

Right of return to public service

Clause 364 .—provides a right of return to the public service for any public service employee of the crime commission in a permanent or full time capacity.

Contract employees

Clause 365 .to remove doubt, declares that contract employees of the QCC or CJC become contract employees of the commission.

Accrued entitlements

Clause 366 .—provides that employees keep all accrued leave entitlements and benefits.

Public interest monitor

Clause 367 .—provides for continuation of the public interest monitor under the Act.

Special provisions for transitional office holders

Clause 368 .—provides that time for the limitation of tenure on appointments for senior staff will start running on commencement. This Act is not intended to have retrospective effect with regard to tenure of senior officers.

Provision for selection processes started before the commencement

Clause 369 .—provides for the continuation of advertising and selection processes started under the repealed Acts to be used for appointments under the Act. This applies if the role is similar to the role advertised.

Provision for selection processes for roles of chairperson and assistant commissioners

Clause 370 .—provides for the selection processes for chairperson and assistant commissioners to occur and be valid notwithstanding that they commenced or finished prior to commencement of the Act.

Warrants

Clause 371 .—provides for the continuation of warrants in force at the commencement of the Act.

Notices

Clause 372 .—provides for notices issued under the repealed Acts to continue and be valid under the Act.

Action taken by parliamentary commissioner

Clause 373 .—provides that action started by the parliamentary commissioner before commencement may be continued as if the action had started under the Act. The provisions of the Act are to apply to the action.

Parliamentary commissioner to have custody of and deal with records of the CJC inquiry (CJA, s 118U]

Clause 374 .—provides that the records of the CJC inquiry vested in the parliamentary commissioner as agent of the parliamentary committee continue to be held on the terms that applied under the repealed Act.

Data and records of commission of inquiry [CJA,s59]

Clause 375 .—provides continuity of possession of records relating to the commission of inquiry and for provisions of the *Special Prosecutor Act 1988* to continue to apply.

Transitional regulation-making power

Clause 376 .— provides an extensive transitional regulation –making power to facilitate the transition. The clause and the regulation expire one year after commencement.

Acts amended

Clause 377 .—provides that schedule 1 amends the Acts mentioned in it.

SCHEDULE 1

This schedule contains the consequential amendments to other legislation necessitated by the repeal of the *Criminal Justice Act 1989* and *Crime Commission Act 1997*.

SCHEDULE 2

This schedule sets out the dictionary of key definitions for the Act.