

# Crime and Corruption and Other Legislation Amendment Bill 2024

## Explanatory Notes

### Short title

Crime and Corruption and Other Legislation Amendment Bill 2024.

### Policy objectives and the reasons for them

The overarching objective of the Bill is to improve the operation and performance of the Crime and Corruption Commission (CCC) through making a range of legislative amendments, principally to the *Crime and Corruption Act 2001* (CC Act).

The majority of the Bill's amendments implement the Government's response to various recommendations in the following reports:

- the Parliamentary Crime and Corruption Committee's (PCCC) Report No. 97, *Review of the Crime and Corruption Commission* (Report No. 97);
- the PCCC's Report No. 106, *Review of the Crime and Corruption Commission's activities* (Report No. 106);
- the PCCC's Report No. 108, *Inquiry into the Crime and Corruption Commission's investigation of former councillors of Logan City Council; and related matters* (Report No. 108); and
- the report of the Commission of Inquiry relating to the Crime and Corruption Commission (the CCC COI report).

Amendments also respond to the CCC's report, *Culture and corruption risks in local government: Lessons from an investigation into Ipswich City Council (Operation Windage)* (Windage Report).

The Bill also makes other key policy changes to:

- apply journalist shield laws to the CCC;
- enable the CCC to give notices by email and allow the appearance of a person via audio and audiovisual link at CCC hearings in certain circumstances;
- ensure inspecting entities can report on contraventions of telecommunications interception warrant conditions or restrictions; and
- permit the transfer of the data and records of the Inquiry into the Future Role, Structure, Powers and Operations of the Criminal Justice Commission (known as the Connolly-Ryan Inquiry) to Queensland State Archives (QSA) for storage while retaining the role of the Parliamentary Crime and Corruption Commissioner (Parliamentary Commissioner) in determining applications for access to the data and records.

The Bill also includes some miscellaneous minor or technical amendments.

## **PCCC Reports**

The PCCC is established under the CC Act as the oversight body that monitors and reviews the performance of the CCC. Section 292 of the CC Act requires the PCCC to undertake and table a report on its review of the activities of the CCC and report on any action required in relation to the CC Act or the functions, powers and operations of the CCC, by the end of each five yearly period following the day on which the last report was completed. Reports No. 97 and 106 were completed pursuant to section 292 of the CC Act.

Report No. 97 was tabled in the Legislative Assembly on 30 June 2016 and made 29 recommendations in total.

The Government response, which was tabled on 16 December 2016, supported in full or in-principle all 23 (of 29) recommendations of Report No. 97 directed to the Government.

Report No. 106 was tabled on 30 June 2021 and made 30 recommendations in total, including recommendations relating to the PCCC's previous Report No. 97 on its statutory review of the CCC in 2016.

The Government response to Report No. 106, which was tabled on 17 December 2021, supported in full or in-principle 20 of the 22 recommendations that were addressed to the Government and noted the eight remaining recommendations addressed to the PCCC, Queensland Parliament (through the Speaker of the Legislative Assembly) and the CCC.

On 2 December 2021, Report No. 108 was tabled in the Legislative Assembly.

Report No. 108 made 14 findings and six recommendations with a view to improving the CCC's culture, role, processes and governing legislation, enhancing public confidence in the CCC's performance and ensuring that where mistakes have been made, they are not repeated in the future. All recommendations, except Recommendation 4, were directed to the Government.

On 31 January 2022, the Queensland Government response to Report No. 108 was tabled, supporting all recommendations directed to Government.

The Bill contains amendments in response to the following PCCC report recommendations:

- recommendation 6 of Report No. 97 for a review of Chapters 3 and 4 of the CC Act to develop uniform provisions with generic application to CCC functions where appropriate and clarify what specific privileges are abrogated or unaffected by the provisions of the CC Act;
- recommendations 1, 3 and 4 of the PCCC in Report No. 106 and recommendation 5 of Report No. 108 relating to appointment, qualifications and tenure;
- recommendation 5 of Report No. 106 relating to the CCC giving directions for the performance of duties by CCC officers engaged under section 256 of the CC Act;

- recommendation 9 of Report No. 106 and recommendation 27 of Report No. 97 relating to public interest disclosures by CCC officers; and
- recommendation 28 of Report No. 106 relating to the Parliamentary Commissioner's own initiative investigations.

### **Recommendation 6 of Report No. 97, review of Chapters 3 and 4**

Chapters 3 and 4 of the CC Act deal with compulsory powers, hearings and privilege claims. Different powers and processes apply depending on the function being exercised. For example, in Chapter 3, powers to issue notices to produce or discover are contained in section 74 for crime investigations, specific intelligence operations (crime) and the witness protection function, section 74A for confiscation related investigations, and section 75 for corruption investigations and specific intelligence operations (corruption).

The CC Act enables certain claims of privilege and reasonable excuse to be made in relation to the exercise of these powers, while abrogating other claims of privilege. Different provisions apply in relation to refusal to answer questions and deciding claims of reasonable excuse and privilege, again depending on the function under which the hearing is being conducted. Additionally, the application of the definition of 'privilege' in the CC Act has created inconsistency and ambiguity and it is unclear what, if any, use immunity applies in some circumstances.

The issues relating to Chapters 3 and 4 are largely a legacy of the merger of the Criminal Justice Commission (CJC) and Queensland Crime Commission (QCC) to form the then Crime and Misconduct Commission (now the CCC). The resulting legislation, the *Crime and Misconduct Act 2001* (CMA; now the CC Act), was drafted to preserve the CJC's misconduct (now corruption) function as set out in the *Criminal Justice Act 1989* (CJ Act) and the QCC's crime function as contained in the *Crime Commission Act 1997*. The situation was further complicated in 2002 when additional provisions were inserted into the CMA to confer a civil confiscation function, and again in 2013 with the addition of intelligence function hearings.

Recommendation 6 of Report No. 97, which was supported in the Queensland Government response, required a review of Chapters 3 and 4 of the CC Act. The key objectives of the review undertaken further to this recommendation were to:

- rationalise the existing legislative provisions that set out the coercive powers available to the CCC when performing its functions with a view to developing uniform provisions with generic application to CCC functions, where appropriate;
- clarify which privileges are either abrogated or unaffected by the provisions of the CC Act with the objective of rationalising claims that may be made in the exercise of the CCC's powers; and
- streamline processes and procedures where possible to minimise confusion, reduce inconsistencies and improve operational effectiveness.

The focus of this review was not about strengthening the powers of the CCC but about clarifying the application of the power and privilege provisions where possible and appropriate.

Further, the review did not seek to substantively encompass the powers and processes provided under the CC Act in relation to confiscation related investigations. Confiscation powers are provided to support the CCC's role under Chapters 2 and 2A of the *Criminal Proceeds Confiscation Act 2002* (CPCA), which also includes separate investigative powers that are subject to oversight by the Supreme Court.

### *Journalist shield laws*

When introducing a statutory framework to provide better protection of the identity of journalists' confidential sources into the *Evidence Act 1977* (Evidence Act), the Government committed to examining these laws as part of the review of Chapters 3 and 4 of the CC Act.

The Evidence Act establishes a framework to protect the journalist-informant relationship (known as shield laws) by creating a qualified journalist privilege, meaning that a journalist or relevant person, such as a journalist's employer or editor, is not compellable to answer a question or produce a document that would disclose the identity of a confidential informant or enable their identity to be ascertained unless ordered by a court. However, disclosure may be ordered by the court if the public interest in the informant's identity being disclosed outweighs:

- any likely adverse effect of the disclosure on the informant or another person; and
- the public interest in the communication of facts and opinions to the public by the news media and the ability of the news media to access sources of facts.

The framework under the Evidence Act is not intended, other than in relation to search warrants, to apply to the CCC or proceedings under the CC Act.

### *Technology-based arrangements*

As part of the review of Chapters 3 and 4 of the CC Act, consideration was also given to the inclusion of provisions based on some temporary COVID-19 related provisions.

The *Justice Legislation (COVID-19 Emergency Response—Proceedings and Other Matters) Regulation 2020* (Proceedings Regulation), which expired on 30 April 2022, contained temporary modifications to the CC Act to ensure that technology-based arrangements could be used for the giving of notices and the conduct of CCC hearings during the pandemic.

## **Recommendations 1, 3 and 4 of Report No. 106 and Recommendation 5 of Report No. 108, *appointments, qualifications and tenure***

### *Qualifications for ordinary commissioners*

The CCC consists of a full-time Commissioner appointed as Chairperson, a part-time Commissioner who is the Deputy Chairperson, and three part-time Commissioners who are Ordinary Commissioners. In addition, it must have a Chief Executive Officer (CEO).

Under section 225 of the CC Act, to be qualified for appointment as an Ordinary Commissioner a person must have the ‘qualifications, experience or standing appropriate to assist the CCC to perform its functions’.

The PCCC commented that, given the nature of the CCC and its functions, it considered it appropriate to have a number of executive positions for which legal background and experience should be required, but that there should also be representation from other sectors.

Recommendation 1 of Report No. 106 was that the CC Act be amended to require at least two persons to have a demonstrated interest and ability in community affairs, public administration or organisational leadership, to be qualified for appointment as Ordinary Commissioners.

The Government response supported recommendation 1 noting that while section 225 of the CC Act already permitted persons with a variety of experiences to be qualified for appointment as Ordinary Commissioners, the Government supported diversity and inclusion within the CCC and therefore committed to progressing the amendment in the interests of making these requirements explicit.

#### *PCCC consideration of appointments*

Under section 228 of the CC Act, the Minister may nominate a person for appointment to the office of Chairperson, Deputy Chairperson, Ordinary Commissioner or CEO only if the Minister has consulted the PCCC and (except for an appointment as Chairperson) the Chairperson, and the nomination is made with the bipartisan support of the PCCC. There are currently no explicit provisions relating to the timeframes for bipartisan support of the PCCC for appointments or enabling publication of information relating to the consideration of appointments.

Recommendation 3 of Report No. 106 was that for the consideration of nominees for appointment as Commissioners (including the Chairperson) and CEO, the Government give consideration to developing a mechanism to ensure nominees are appropriately considered by the PCCC, and any delay in progressing consideration of appointments be able to be publicly discussed.

The Government response supported recommendation 3 in-principle noting that further consideration would be given to the processes for the consideration of nominees for appointment by the PCCC.

#### *Tenure*

Currently, under section 231 of the CC Act the maximum term of appointment of the Chairperson, Deputy Chairperson, Ordinary Commissioners and the CEO is 10 years. This period can be made up of multiple terms of up to five years.

Under section 247 of the CC Act a senior officer is also appointed for a term not longer than five years but may be appointed for a further term if the CCC considers that the person’s performance as a senior officer has been of the highest standard and the person is likely to continue to contribute at a high standard to the CCC’s performance. Generally, a senior officer must not hold office for more than 10 years in total; however,

there is a limited exception which allows senior officers to hold office for up to 15 years in total if the reappointment is necessary for the efficient operation of the CCC.

Recommendation 4 of Report No. 106 was that consideration be given to amending the CC Act to provide for a single non-renewable appointment for the Chairperson and Ordinary Commissioners of the CCC, not exceeding seven years.

The Government response supported recommendation 4, noting that it accepts that reducing the maximum term of appointment of the Chairperson and Ordinary Commissioners from ten to seven years will help to address the potential for a Commissioner to, or perceived to, be impacted by the imperative for re-appointment and will give consideration to amending the CC Act to reduce the term of appointments.

Recommendation 5 of Report No. 108 recommended that DJAG consider issues regarding the tenure of senior officers, and take into account the CCC's adoption of the PCCC's position in relation to single, non-renewable appointments for the CCC Chairperson, Deputy Chairperson and Ordinary Commissioners, in conjunction with its consideration of relevant recommendations of Report No. 106.

The Government response to Report No. 108 supported recommendation 5, noting that the Government agreed to consider the tenure of senior officers alongside implementation of the Government's response to Report No. 106 which committed to consider amendments to the CC Act relating to a single non-renewable appointment for the Chairperson and Ordinary Commissioners of the Commission.

**Recommendation 5 of Report No. 106, *directions for the performance of duties by CCC officers***

Recommendation 5 of Report No. 106 was that section 257 of the CC Act be amended to enable the CCC to issue directions for the performance of duties by CCC officers who are employed by the CCC under section 256 of the CC Act.

CCC officers can be employed by the CCC as commission staff (section 254), seconded officers (section 255), or engaged as an agent (section 256). Section 257 of the CC Act currently provides a power to the CCC to issue directions for the performance of duties by persons employed under section 254 and 255. No similar power exists for agents engaged under section 256.

The Government response supported recommendation 5 in principle noting that it accepted the policy intent of the recommendation and would progress the necessary amendments to the CC Act to enable the CCC to issue directions to persons engaged under section 256.

**Recommendation 9 of Report No. 106, *public interest disclosures***

Recommendation 9 of Report No. 106 was that the Government consider legislative amendments to enable CCC officers to make lawful disclosures and be afforded the same protections as those engaged in a unit of public administration (UPA) under the public interest disclosure (PID) framework.

Recommendation 9 was supported in-principle, noting the Government agrees with the PCCC that CCC officers should be able to make lawful disclosures and be afforded the

same protections as those persons engaged in a UPA under the PID framework. The Government response also noted that, due to the definition of “corrupt conduct” in the CC Act, there is a gap in protection for CCC officers because it is not a UPA (pursuant to section 20(2) of the CC Act) and this issue requires ongoing consideration and consultation would be undertaken on the most appropriate form of amendments to address the underlying policy intent of this recommendation.

This recommendation followed on from Recommendation 27 in Report No. 97 that the CC Act be amended to enable CCC officers to make lawful disclosures concerning suspected corrupt conduct and improper conduct and that the amendments also ensure an officer who makes a disclosure is entitled to the same protections granted to public sector employees under the *Public Interest Disclosure Act 2010* (PID Act).

Recommendation 27 was supported in-principle, with the Government response noting that further consideration was required as to the legislative amendments which would best achieve the outcome and that targeted consultation would need to occur with the CCC, the PCCC and the Queensland Ombudsman to determine the most appropriate PID model for CCC officers, including details around how it will operate in practice and the oversight mechanisms.

### **Recommendation 28 of Report No. 106, *Parliamentary Commissioner investigations***

Under section 314(4) of the CC Act the Parliamentary Commissioner has a function to commence investigations on their own initiative into various matters if:

- the matter relates to conduct of a CCC officer that involves or may involve corrupt conduct; and
- the Parliamentary Commissioner is satisfied, on reasonable grounds:
  - (i) the CCC has not adequately dealt with the matter; or
  - (ii) the CCC may not adequately deal with the matter; or
  - (iii) it is in the public interest.

However, as the CCC is not considered a UPA under the CC Act, the PCCC noted in Report No. 106 that purely internal conduct of a CCC officer cannot be corrupt conduct and therefore cannot be investigated by the Parliamentary Commissioner under the own-initiative provisions.

Recommendation 28 of Report No. 106, which was supported by the Government, was that section 314 of the CC Act be amended, to clarify that the Parliamentary Commissioner has the function to investigate on his or her own initiative a matter which relates to the conduct of a CCC officer, that would, if the person were an officer in a UPA, be corrupt conduct.

### **CCC COI report**

The Commission of Inquiry relating to the Crime and Corruption Commission (CCC COI) commenced on 7 February 2022. The Honourable Gerald Edward (Tony) Fitzgerald AC KC was appointed as Chairperson and the Honourable Alan Wilson KC as Commissioner. The CCC COI handed its report to Government on 9 August 2022.

The CCC COI report identified two key risks with respect to the CCC's operational model:

- the risk of institutional capture of the CCC by the Queensland Police Service (QPS); and
- the risk of corruption investigations adopting an overly 'law enforcement' approach, at the expense of other responses like systemic or organisational changes intended to promote prevention.

The CCC COI made 32 recommendations intended to address these issues and restore public trust and confidence in the CCC.

On 9 August 2022, the CCC Chairperson issued a statement indicating the CCC's intention to immediately commence implementing the recommendations.

On 16 August 2022, the Honourable Anastacia Palaszczuk MP, then Premier and Minister for the Olympic and Paralympic Games tabled the CCC COI report in the Legislative Assembly and advised Parliament that Cabinet had accepted in-principle all recommendations.

After considering various options, the CCC COI was firmly of the opinion that, exceptional circumstances aside, the Director of Public Prosecution's (DPP's) advice should be required before a charge arising from a corruption investigation is laid. The CCC COI noted that corruption investigations by the CCC are often high profile or high value, complex and attract significant media attention and public scrutiny and the need for confidence and trust in the current-day CCC lends weight to the use of the DPP as an external review mechanism prior to seconded police officers at the CCC laying charges arising out of corruption investigations. This provides a layer of impartiality to the decision-making process, and an independent check and balance which continues throughout the court processes.

Recommendation 25 of the CCC COI report is that the CC Act be amended as necessary to give effect to the following changes:

- other than in exceptional circumstances, before a charge is laid by a seconded police officer during, or following, a corruption investigation, the CCC must seek the opinion of the DPP concerning whether a charge may properly be brought having regard to the two-tier test in the Director's Guidelines;
- notwithstanding any other law or any other provision of the CC Act, if the DPP advises that a charge should not be brought, the seconded police officer must not charge contrary to that advice;
- if the DPP advises a charge may properly be brought and a decision is made by the seconded police officer not to charge, the CCC must report to the PCCC and the Parliamentary Commissioner about the decision made; and
- if, because of exceptional circumstances, charges are laid without the DPP having first provided its opinion on whether charges may properly be brought, the CCC must, as soon as reasonably practicable, report to the DPP in relation to the charge laid and obtain the DPP's opinion about the soundness of the decision to charge.



Recommendation 26 of the CCC COI report was that the CCC and the DPP develop a Memorandum of Understanding outlining the practices and procedures for the referral of matters and the provision of advice, including timeframes.

Recommendations 27 and 28 of the CCC COI report require the CCC to report to the Minister, PCCC and the Parliamentary Commissioner regarding the arrangement for the provision of advice by the DPP to the CCC, and about the effectiveness and utility of the Memorandum of Understanding, including timeframes and timeliness of the advice provided by the DPP.

## **Windage Report**

On 14 August 2018, the CCC tabled the Windage Report following an investigation by the CCC into allegations of corruption related to the Ipswich City Council. The Windage Report concluded that private companies established by local governments can create corruption risks through a lack of oversight and transparency. Recommendation 3(b) of the Windage Report was that councils' controlled entities (CCEs) should be deemed to be UPAs, bringing these entities within the oversight of the CCC and also subjecting them to the *Right to Information Act 2009* (RTI Act).

The CC Act provides a mechanism whereby entities may be prescribed as UPAs, bringing them within the jurisdiction of the CCC. However, there are no CCEs (or any other entities) currently prescribed.

## **Connolly-Ryan Inquiry records**

The Connolly-Ryan Inquiry was established as a Commission of Inquiry under the *Commissions of Inquiry Act 1950* in October 1996 to examine and make recommendations in relation to the future role, structure, powers and operations of the then CJC and various other matters. The Connolly-Ryan Inquiry was terminated in August 1997 following the issuing of an injunction by the Supreme Court restraining the Commissioners from proceeding on the basis of ostensible bias on the part of one of the Commissioners.

Section 118U(1) of the (now repealed) CJ Act provided for possession, custody and control of the Connolly-Ryan Inquiry records to vest in the then Parliamentary Criminal Justice Commissioner. Under section 374 of the CC Act, the Parliamentary Commissioner continues to have responsibility for the data and records and they are stored at Parliament House. Section 374 provides the data and records can only be accessed by persons who satisfy the Parliamentary Commissioner that they have a legitimate need of access to the data and the records.

Since 2010 the Connolly-Ryan Inquiry records have been stored in the Legislative Council strongroom. There is limited storage capacity in the Legislative Council and Legislative Assembly strongrooms and the relocation of the Connolly-Ryan Inquiry records has been under consideration for some time.

## Other amendments

### Delegation of Minister's functions

The policy objective of the amendment to section 281 (Delegation of Minister's functions) of the *Public Sector Act 2022* (the PS Act) is to broaden the scope of persons to whom the Minister may delegate the Minister's functions under section 192 (Functions) of the Act. This approach is expected to provide administrative flexibility and achieve greater efficiencies.

Currently under section 281 of the PS Act, the Minister may only delegate the Minister's functions under section 192 of the Act to the chairperson of the Public Sector Governance Council (the chairperson). Subdelegation is not permitted.

The Minister for this purpose is the Premier. The chairperson is the chief executive of the department in which the *Parliament of Queensland Act 2001* (POQ Act) is administered, being the Director-General of the Department of the Premier and Cabinet (DPC).

### Reporting on telecommunications interception warrants

One of the main objectives of the *Telecommunications Interception Act 2009* (TI Act) is to establish a recording, reporting and inspection regime which enables the Commonwealth Minister to declare the QPS and the CCC as agencies under the Commonwealth TI Act that are able to apply for use of telephone intercepts in the investigation of serious offences.

Under the TI Act the Parliamentary Commissioner undertakes audits and inspections of CCC compliance as the inspecting entity for the CCC. The Public Interest Monitor is the inspecting entity for the QPS.

Section 24 of the TI Act provides that the inspecting entity must report annually to the Attorney-General about the results of inspections. Under section 25, if the inspecting entity considers an agency officer has contravened the Commonwealth TI Act or that the chief officer of an agency has contravened sections 16 or 20, the inspecting entity may include in the inspection report, a report on the contravention. In preparing the report on the contravention, the inspecting entity must allow the chief officer of the agency to comment on the report and must include in the report any comments made.

An equivalent provision in the Commonwealth TI Act was amended in 2016 to reflect that a contravention of a condition or restriction in a warrant issued under the Commonwealth TI Act was a matter to be reported on as part of the Commonwealth Ombudsman's reporting obligations. It has been the practice of the Parliamentary Commissioner to report on contraventions of warrant conditions or restrictions consistent with the amendment to the Commonwealth TI Act.

## **Achievement of policy objectives**

The Bill will achieve the policy objectives by making amendments to the CC Act, PID Act, PS Act, RTI Act and the TI Act.

## **PCCC Report amendments**

The Bill contains a range of amendments to the CC Act and PID Act in response to various PCCC report recommendations.

## **Review of Chapters 3 and 4**

### *Overview*

The amendments in the Bill arising from the review of Chapters 3 and 4 are designed to streamline the CCC's enforcement powers by:

- providing single processes outside a hearing for the discovery of information and production of documents and things across all relevant functions;
- ensuring consistency across functions for attendance and consideration of matters at a hearing; and
- streamlining related offence provisions for failure to comply with the exercise of enforcement powers.

The Bill also inserts new Chapter 4A into the CC Act relating to the definition of privilege and the processes for dealing with claims of reasonable excuse (including claims based on privilege) in response to the exercise of the CCC's coercive powers.

The provisions in new Chapter 4A are designed to:

- simplify the definition of privilege across all CCC functions and clarify the abrogation of self-incrimination privilege across all functions;
- provide uniform processes applying across all relevant functions for the determination of claims of reasonable excuse, including privilege; and
- provide uniform provisions for the safekeeping of documents or things where a claim of reasonable excuse or privilege is raised.

In line with the focus of the review outlined above, the Bill's amendments do not substantively alter the provisions for confiscation related investigations. However, following the re-drafting of parts of the CC Act required as a result of the review of Chapters 3 and 4, some amendments have been made to these provisions for the sake of achieving consistency in drafting approach.

### *Enforcement powers*

New Division 1, Subdivision 1 of Chapter 3 deals with production powers and provides for a single set of provisions to require production of a document or thing outside of a hearing applying to a crime investigation, a specific intelligence operation (crime), a corruption investigation, a specific intelligence operation (corruption) and the witness protection function.

The provisions allow the chairperson to issue a person with a notice to produce where the chairperson reasonably suspects a person possesses a document or thing relevant to an investigation, operation or function. The provisions set out the form the notice to

produce must take, allow for immediate production in specified circumstances and create a single offence for failure to comply with a notice to produce, unless the person has a reasonable excuse.

New Subdivision 2 contains provisions in relation to the power to require production of documents or things for confiscation related investigations. These provisions are available where the chairperson believes on reasonable grounds that a person possesses a document or thing relevant to a confiscation related investigation.

New Subdivision 3 relates to immediate production at a hearing and applies to a crime investigation, a specific intelligence operation (crime), a corruption investigation and a specific intelligence operation (corruption). The provisions apply where a presiding officer at a commission hearing believes on reasonable grounds that a witness at the hearing possesses a document or thing relevant to an investigation or operation and may require the witness to produce the document or thing immediately.

The existing power in section 82 of the CC Act to give a notice to attend a hearing (attendance notice) to give evidence or produce a document or thing is retained but amended to remove the power to require attendance at a hearing solely to establish a reasonable excuse or claim of privilege in crime, specific intelligence operations (crime) and witness protection function hearings. It will still be possible to give notice under this section to attend a hearing to produce a document or thing where a hearing may be held.

New Division 2 of Chapter 3 provides for a streamlined set of provisions relating to discovery powers which apply to crime investigations, specific intelligence operations (crime), corruption investigations and specific intelligence operations (corruption). Under these provisions the Chairperson may issue a notice to discover, set out the form the notice to discover must take and create a single offence for failure to comply with the notice to discover unless the person has a reasonable excuse.

New Division 3A of Chapter 3 provides for entry and search powers on official premises for corruption investigations.

New Part 2, Division 2 of Chapter 4 creates a single offence applying across all relevant functions for a failure to produce documents or things at a hearing in response to an attendance notice or an immediate production requirement (hearing) while new Part 2, Division 3 creates a single offence applying across all relevant functions for a failure to answer a question about a claim of reasonable excuse made at a commission hearing, put to the person at the hearing by the presiding officer.

#### *Procedure on claims of reasonable excuse, including privilege*

Part 2 of new Chapter 4A will provide a revised process by which the CCC deals with claims of reasonable excuse which distinguishes between whether the claim is made outside (Division 1) or inside a hearing (Division 2).

For claims made outside a hearing (Division 1), a two-step process will apply. This process applies to claims of reasonable excuse made under 76(1) in response to a notice to produce issued under new section 73 or made under 81H(1) in relation to a notice to

discover issued under new sections 81E and 81F or where privilege is claimed under new section 81M(2) during an authorised search of official premises (section 81L).

Firstly, the commission officer, to whom the document or thing or information was required to be given, must consider the claim and may withdraw the requirement or advise the person that the claim will be dealt with under Part 2. The person will then have at least seven days to make written submissions about the claim. Part 2, Division 1, Subdivision 2 provides safekeeping provisions for documents or things subject to a determination of a claim and the requirement is not withdrawn by the commission officer.

Secondly, if the commission officer does not decide to withdraw the requirement, a claim proceeds to consideration by a deciding officer (who is the chairperson or a senior officer employed under section 245 of the CC Act and meets other specified criteria, including that they are not the original commission officer or part of the original investigation etc.) who must consider and decide the claim. Where the claim of reasonable excuse is not based on privilege, the deciding officer may either decide to amend or withdraw the requirement or to insist on compliance with the requirement. Where the claim is based on privilege, the deciding officer may make various decisions depending on the type of privilege being claimed and whether the claim is established or not. For claims based on privilege, the deciding officer may also decline to decide a claim of privilege and apply to have the matter determined by the Supreme Court. The deciding officer may choose this option where, for example, they are unable to decide the claim because they do not have enough information.

Part 2, Division 2 sets out how claims of reasonable excuse made at a hearing in response to a notice to attend a hearing to give evidence or to produce a stated document or thing will be dealt with. At the hearing, the presiding officer must consider the claim and after hearing the person's submissions, decide the claim or, in the case of a claim of reasonable excuse based on privilege, decide the claim or decline to decide the claim. Part 2, Division 2, Subdivision 2 provides safekeeping provisions for documents or things subject to a determination of a claim at a hearing and the requirement is not withdrawn by the presiding officer.

When considering a claim under Part 2 neither the commission officer, deciding officer or presiding officer may access any document or thing the subject of a claim.

Where a claim of reasonable excuse not based on privilege is found not to be established, the deciding officer or presiding officer must give the person written reasons for the decision and an application notice advising them that there is a right to seek leave to appeal to the Supreme Court.

For a claim of privilege, the action that may be taken by the deciding officer or presiding officer depends on the nature of the privilege being claimed. Division 3 provides for how claims of privilege are to be decided by a deciding officer or presiding officer under Divisions 1 and 2. In all cases where a person is still required to comply with a requirement, they must be given reasons for the decision and an application notice advising them that they may apply to a Supreme Court judge for a determination of the claim. In cases where the deciding officer or presiding officer declines to decide a claim of reasonable excuse not based on privilege the person must also be given reasons for

the decision and a notice advising the person that the person may be required to attend before the Supreme Court to establish the claim.

Part 3 of new Chapter 4A sets out how applications are to be dealt with by the Supreme Court.

Division 1 deals with claims of reasonable excuse not based on privilege. Where either a deciding officer or a presiding officer finds that a claim of reasonable excuse not based on privilege is not established the person may seek leave to apply to the Supreme Court about the decision.

Division 2 deals with claims of reasonable excuse based on privilege. Where either a deciding officer or a presiding officer finds that a claim of reasonable excuse based on privilege is not established the person may apply (as of right) to the Supreme Court to decide the claim. Where a deciding officer or presiding officer has declined to decide a claim of reasonable excuse based on privilege, the Chairperson may apply to the Supreme Court to decide the claim.

In all cases the relevant application to the Supreme Court must be made within 7 days of the person receiving either the application notice for the decision of the deciding officer or presiding officer advising the person that they may apply to the Supreme Court or the notice following the decision of a deciding officer or presiding officer declining to decide a claim advising the person that they may be required to attend before the Supreme Court to establish the claim.

Where the Supreme Court considers a claim, the Court is required to deal with the matter expeditiously and may hear the application in any way it considers appropriate. The application is to be heard in closed court (subject to a discretion to permit a person's presence in the interests of justice) and the court may access any document, thing or information the subject of the claim. The burden of proof is on the person who seeks to avoid compliance with the CCC requirement, except in the case of a claim of journalist privilege where the burden of proof rests on the journalist or relevant person to establish the claim but then shifts to the CCC to establish why the privilege should be overridden in the public interest. Costs of the application are to be borne by the CCC unless otherwise ordered by the court. Where a document or thing has been delivered to a registrar of the Supreme Court in accordance with the safekeeping provisions, the Supreme Court must make an order that the document or thing be given to the CCC or to the person, depending on the outcome of the substantive application. The Supreme Court also has discretion to make any other order it considers appropriate in the circumstances, including orders about restricting access to material related to the application.

Part 4 of new Chapter 4A deals with claims of privilege in relation to search warrants and seizure of evidence in relation to a corruption investigation. In line with the existing position under the CC Act, these claims are not the subject of initial consideration by the CCC and are dealt with by the Supreme Court only under new Chapter 4A. Claims of journalist privilege in relation to a search warrant for corruption are dealt with under the existing provisions for search warrants under the Evidence Act, Part 2, Division 2B, Subdivision 3.

The CCC's powers for confiscation related investigations are not included in the new processes for dealing with claims of reasonable excuse, including privilege. Consistent with the current CC Act, after initial consideration by a CCC officer, all claims must be determined by the Supreme Court. The provisions dealing with claims made in confiscation related investigations are contained in Part 6 of new Chapter 4A but have been revised to ensure drafting consistency with other provisions in new Chapter 4A and to apply journalist privilege to confiscations claims.

### *Journalist shield laws*

The Bill amends the CC Act to apply a qualified journalist privilege under the CC Act consistent with the Evidence Act.

Journalist privilege will apply across all CCC functions, including confiscation.

Key definitions of 'journalist', 'relevant person', 'informant' and 'news medium' for the purposes of the privilege are defined consistently with corresponding definitions in the Evidence Act.

Similar to the Evidence Act, the amendments in the Bill create a presumption that a journalist or relevant person is not required to comply with a CCC requirement to produce a document or thing or information or to answer a question if doing so would disclose the identity of the informant or enable their identity to be ascertained. The presumption will apply where an informant gives a document, thing or information to a journalist, in the normal course of the journalist's activities as a journalist, in the expectation the document, thing or information may be published in a news medium and the journalist promises the informant not to disclose the informant's identity as the source of the document, thing or information.

Further, in line with the Evidence Act provisions, there are no requirements in relation to the form the promise must take (it may be oral or written) and also no express requirement in relation to the time at which the promise must be given, however, it is intended that the promise be reasonably proximate to when the informant gives the information to the journalist.

Consideration of claims of journalist privilege are incorporated into the new procedures for dealing with claims of reasonable excuse and privilege in new Chapter 4A of the CC Act introduced by the Bill.

Under new Chapter 4A of the CC Act, claims of journalist privilege in the context of most CCC functions proceed through a process of preliminary consideration by the CCC.

Where a person claiming journalist privilege disagrees with the decision of the CCC they will have the right to have the matter decided by the Supreme Court. The journalist or relevant person will have the onus of proving the claim of journalist privilege is established. The Supreme Court may make an order requiring the journalist or relevant person to produce the document, thing or information or answer the question (despite the privilege) if satisfied the public interest in disclosing the informant's identity outweighs: any likely adverse effect of the disclosure on the informant or another person; and the public interest in the communication of facts and opinions to the public

by the news media and the news media's ability to access sources of facts. The CCC will bear the onus of establishing the public interest in disclosing the identity of the informant in accordance with the relevant test despite the established claim of privilege.

The Bill ensures that existing provisions under the Evidence Act will continue to apply to the execution of search warrants by a CCC officer (including a police officer seconded to the CCC) under the CC Act.

The CC Act (sections 110A and 111) also provides a general power to seize evidence where a place is lawfully entered under a search warrant. A thing may be seized where it is reasonably suspected to be evidence of an indictable offence or, where a confiscation related investigation is being conducted, it is suspected that the thing may be confiscation related evidence.

Where a claim of journalist privilege is made in respect of a document or thing that has been seized under section 110A or 111 of the CC Act, the Bill provides for either the person making the claim or the CCC to apply to the Supreme Court to decide the claim.

### *Technology-based arrangements*

The Bill contains amendments to the CC Act to provide the CCC with the ability to give notices by email and allow the appearance of a person via audio or audiovisual link at CCC hearings provided certain conditions are met.

As the amendments are designed to operate in an environment where the disruptions of the COVID-19 pandemic have significantly lessened or no longer exist, the threshold requirements for their use and the safeguards applying differ from the temporary modified arrangements contained in the Proceedings Regulation.

## **Appointments, qualifications and tenure**

### *Qualifications for ordinary commissioners*

The Bill amends section 225 of the CC Act to require at least two persons to have a demonstrated interest and ability in community affairs, public administration or organisational leadership, to be qualified for appointment as Ordinary Commissioners.

### *PCCC consideration of appointments*

The Bill amends section 228 of the CC Act to introduce a 30 day timeframe (with possible two week extension) within which the PCCC must notify the Minister whether an appointment has bipartisan support. Further, the PCCC functions under section 292 of the CC Act are amended to include publishing (as part of its annual report) information about the PCCC's participation in the appointment process under section 228.

### *Tenure*

The amendments in the Bill respond to PCCC recommendations and are designed to enhance the independence of the CCC Commissioners and represent an appropriate balance between providing for increased flexibility in senior executive appointments to allow for retention of corporate knowledge and a succession pipeline for more senior



positions and the need to guard against stakeholder capture and other corruption risks within the CCC as a core integrity agency in Queensland.

The Bill makes a range of amendments in relation to tenure of Commissioners and CCC officers by:

- replacing existing section 231 with a new section 231 to introduce a seven-year fixed non-renewable term for the Chairperson, Deputy Chairperson and Ordinary Commissioners;
- inserting new section 231A to ensure retention of the current requirement for appointment of the CEO;
- amending section 247 of the CC Act to retain the requirement for up to five-year appointments for senior officers and the requirement for notice to the PCCC with the existing performance standards to be met before re-appointment but removing the pre-condition which places a limit on extending maximum tenure from 10 to 15 years and include a new provision allowing tenure limits to be reset after ten years has elapsed for a person who has permanently left the CCC; and
- amending section 247A of the CC Act so that the requirement to give notice to the PCCC will arise where a senior officer has been appointed to a further term and that term will result in the senior officer holding office for a period in excess of 10 years.

### **Directions for the performance of duties by CCC officers**

The Bill amends section 257 of the CC Act to enable the CCC to issue directions on the performance of duties by commission officers who are engaged by the CCC under section 256 of the CC Act.

### **Public interest disclosures**

The Bill amends section 13 of the PID Act to provide that in relation to a public interest disclosure made by a public officer which concerns the conduct of a CCC officer, the reference to corrupt conduct applies as if the CCC were a UPA.

### **Parliamentary Commissioner investigations**

The Bill amends section 314 of the CC Act to ensure that the Parliamentary Commissioner can investigate on their own initiative a matter relating to a CCC officer that would otherwise be considered corrupt conduct.

### **DPP advice on charges for corruption offences arising from CCC corruption investigations**

The Bill amends the CC Act to provide a legislative requirement for the CCC to seek the advice of the DPP on corruption offences arising from a corruption investigation, to implement recommendation 25 of the CCC COI report.

Unless exceptional circumstances apply, before a prosecuting authority (such as the QPS or police officers seconded to the CCC), can commence a prosecution for a corruption offence arising from a corruption investigation, the CCC must seek the written advice of the DPP on whether a person should be prosecuted, and if so, for what

offences. The CCC must provide the DPP with a report on the corruption investigation and include all relevant information known to the CCC.

Where a prosecution is commenced without first seeking advice because of exceptional circumstances, the CCC must seek the DPP's written advice as soon as reasonably practicable. The CCC must give a copy of the DPP's written advice to the prosecuting entity as soon as reasonably practicable after it is received. The prosecuting entity must inform the person and the court of receipt of the advice, and either inform the person and the court the charge is consistent with the advice or take steps consistent with the advice, for example amending or withdrawing the charge.

A notice must be filed in court by the prosecuting entity as soon as practicable after the prosecution is commenced setting out specified matters. A copy of the notice must also be given to the person. The notice will be one of two approved forms, depending on how the prosecution is commenced.

Where the DPP provides written advice to the CCC that a prosecution should be commenced, and the prosecuting authority declines to commence the prosecution, the CCC must inform the PCCC and Parliamentary Commissioner.

Legal professional privilege will attach to the DPP's written advice and confidential communications between the CCC and the DPP made in, or for the performance of, the DPP's function relating to the giving of advice under the new provisions in the Bill.

The Bill also amends the CC Act to require the CCC and the DPP to enter a memorandum of understanding to facilitate the operation of the new process for the prosecution of corruption offences. Consistent with the CCC COI report, the memorandum of understanding must (at a minimum) provide for:

- the information that must be included in a request by the CCC for the DPP's advice, including, for example, the CCC's view on the appropriate charges to be laid and any legal issues identified by the CCC;
- processes to avoid unreasonable delays in the making of requests for advice by the CCC and the giving of advice by the DPP, including setting timeframes for requests and advices;
- processes for how the DPP will deal with information received in a report given by the CCC for the purposes of giving advice;
- how the CCC and the DPP will communicate and liaise, including how contrary views of the CCC and the DPP will be resolved;
- processes for the provision of additional evidence by the CCC to the DPP; and
- the information that must be included in the advice from the DPP, including, for example, reasons for recommending a particular charge be laid against a person.

The memorandum of understanding may also provide guidance on what constitutes exceptional circumstances for the purposes of commencing a prosecution before seeking the DPP's advice.

The CCC must publish a copy of the memorandum of understanding (entered into pursuant to recommendation 26) on its website.

To implement recommendations 27 and 28, the Bill provides that the CCC must advise the Minister as soon as practicable after the MOU is entered into and that the CCC must

also report at regular intervals to the Minister, PCCC and Parliamentary Commissioner on the effectiveness and utility of the memorandum. These reports must include information about the timeliness of advice provided by the DPP.

## **Criteria for prescribing entities as UPAs**

The Bill amends section 20 of the CC Act to introduce clear criteria, including a public interest test, for prescribing an entity as a UPA. The amendments also clarify that an entity may be prescribed as a UPA in relation to only a part of the entity's functions.

## **Connolly-Ryan Inquiry records**

The Bill amends the CC Act to:

- enable the Parliamentary Commissioner to request the State Archivist to keep, store and preserve the Connolly-Ryan Inquiry records, and give persons access to the records in accordance with a decision of the Parliamentary Commissioner;
- if such a request is made, require the State Archivist to accept transfer of the Connolly-Ryan Inquiry records from the Parliamentary Commissioner and give the State Archivist the above discrete functions on behalf of the Parliamentary Commissioner;
- provide that the State Archivist must comply with the separate access regime for the Connolly-Ryan Inquiry records which enables a person to apply to the State Archivist to access the inquiry records, but the State Archivist must not provide a person with access unless the Parliamentary Commissioner has informed the State Archivist in writing that the Parliamentary Commissioner is satisfied that the person has a legitimate need to access those records;
- require the Parliamentary Commissioner to give regular consideration to whether the access restrictions in the CC Act remain appropriate and whether the Connolly-Ryan Inquiry records should become public records under the *Public Records Act 2002*, with the first review to occur no later than 15 years after commencement and subsequent reviews at five year intervals; and
- require the Parliamentary Commissioner to inform the State Archivist in writing of the outcome of each review and, after consultation with the State Archivist, inform the responsible Minister once satisfied that the restriction on access is no longer required.

A consequential amendment is also made to the RTI Act to maintain the exclusion of the Connolly-Ryan Inquiry records from the operation of the RTI Act irrespective of who has access to and/or possession of/control of the records.

## **Other amendments**

### **Delegation of Minister's functions**

There are a broad range of ministerial functions under section 192 of the PS Act. Currently, the only person, other than the Premier, who may perform these functions is the chairperson (being the Director-General of DPC).

Permitting delegation to the Director-General of DPC, or any other appropriately qualified person, enables the Premier to delegate functions to a broader range of people.

Given the range of functions under section 192 of the PS Act, the amendment is expected to achieve increased efficiencies and administrative flexibility as the Premier will have greater choice in delegating functions. The continued prohibition of subdelegation will ensure that the Premier can maintain appropriate levels of control of any delegated function.

### **Reporting on telecommunications interception warrants**

The Bill amends section 25 of the TI Act to include a provision clarifying that a contravention of a condition or restriction in a warrant issued under Part 2-5 of the Commonwealth TI Act is a contravention of the Commonwealth TI Act.

### **Other technical/minor amendments**

The Bill contains some minor and technical amendments to the CC Act and TI Act to:

- replace incorrect references to the ‘commission’ with reference to ‘committee’ in section 290 of the CC Act;
- ensure consistency and clarify the relationship between sections 84 (Notice may be a confidential document), 180 (Conduct of hearings) and 202 (Publication of names, evidence etc.) of the CC Act;
- categorise offences carrying a maximum penalty of 5 years imprisonment as misdemeanours and ensure that section 219 of the CC Act applies on the basis that they are an indictable offence; and
- clarify that the reference to the authority’s records in section 29 of the TI Act means the authority’s Part 2-5 warrant records.

### **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives other than by legislative amendment.

### **Estimated cost for government implementation**

Other than the amendments in the Bill relating to the requirement for advice from the DPP on corruption offences, the Bill’s amendments are not expected to present any significant additional costs for government. Any implementation costs will be absorbed from existing agency resources.

Implementing the requirement for the CCC to seek advice from the DPP has resourcing implications for the CCC and the Office of the Director of Public Prosecutions (ODPP). Recommendation 30 of the CCC COI report was that the Queensland Government provide adequate additional resources to the DPP to enable it to provide its advice to the CCC in a timely manner.

In the 2023-24 State Budget, the Queensland Government noted it is providing increased funding of \$32.4 million over 5 years and \$6.4 million per annum ongoing to implement the Government response to the CCC COI and other reforms to enhance the operations of the CCC (including \$20.8 million over 5 years and \$3.4 million per annum ongoing for the CCC).

## Consistency with fundamental legislative principles

Breaches of fundamental legislative principles raised by the amendments are addressed below.

*Whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation provides appropriate protection against self-incrimination (Legislative Standards Act 1992 (LSA), section 4(3)(f))*

Clauses 12, 17-19, 25-28, and 32, which make amendments to consolidate and streamline the CCC's powers in Chapters 3 and 4 of the CC Act, take care to maintain the existing balance between providing the CCC with adequate powers to investigate and take action against major crime and corruption and providing a person subject to those powers with natural justice and safeguards against overreach.

The Bill represents a potential departure from the fundamental legislative principle (FLP) that requires that legislation has sufficient regard to the rights and liberties of individuals and, more specifically, that the legislation provides appropriate protection against self-incrimination (LSA section 4(2)(a) and section 4(3)(f)).

The Bill includes provisions providing powers to issue notices to require:

- the production of documents or things (including at a hearing); and
- an oral or written statement of information.

In relation to these notices or requirements to answer questions at a CCC hearing, a person is not excused from producing the document, thing or information or answering a question, on the ground that producing the document, thing or information or answering the question may tend to incriminate the person. Except for the compelled production of a document or thing in a corruption investigation, the person has a direct use immunity under section 197 of the CC Act to ensure that the answer, document, thing or statement given or produced is not admissible in evidence against the individual in any civil, criminal or administrative proceeding with limited stated exceptions, including where the individual consents or the proceeding is about the falsity or misleading nature of an answer, document, thing or statement given. These provisions in the Bill are consistent with the immunity already given to witnesses at criminal and corruption investigation hearings conducted by the CCC and are intended to represent a consolidation and streamlining of provisions.

Consistent with the current position, the Bill does not confer derivative use immunity. The evidence can be used as the basis for investigations that could lead to further evidence, which is then admissible in criminal proceedings against the person who gave the answer or produced the document. The inclusion of derivative use immunity could potentially thwart prosecutions by allowing the defendant to seek the exclusion of evidence on the basis that it derived indirectly from evidence given at the examination.

With respect to the compelled production of a document or thing in a corruption investigation, the absence of a use immunity is also consistent with the current position. This is appropriate given the objective purpose of corruption investigations is not to gather evidence for a successful criminal prosecution, but rather to uncover systemic corruption to protect the integrity of public institutions. It is also appropriate that

persons holding positions in UPAs or dealing with UPAs not be afforded immunity in respect of documents or things which may be evidence of corruption.

The special investigation powers for the CCC were introduced because the normal police powers of investigation were considered inadequate to allow complete information about major crime or corruption to be obtained. The justification for the powers is that it enables investigators to more fully obtain information about significant wrongdoing that is harmful to the community and detrimental to the public sector and this in turn allows appropriate prosecution or disciplinary action to be taken. It is considered that the benefit of fact finding about issues of importance to the wellbeing of society as a whole outweighs the detriment to the person.

***Whether legislation has sufficient regard to rights and liberties of individuals, depends on whether:***

- ***the legislation does not reverse the onus of proof in criminal proceedings without adequate justification (LSA, section 4(3)(d))***
- ***consequences imposed by the legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation (LSA, section 4(2)(a))***

The Bill represents a potential departure from the FLPs requiring that legislation has sufficient regard to the rights and liberties of individuals and, more specifically, that the legislation should not reverse the onus of proof in criminal proceedings without adequate justification and that penalties should be proportionate to offences (LSA section 4(2)(a) and section 4(3)(d)).

The Bill introduces single offence provisions for failures to comply with various requirements which either carry a maximum penalty of 85 penalty units or 1 year's imprisonment or, for offences relating to a hearing, a maximum penalty of 200 penalty units or 5 years imprisonment. The offences in relation to hearings are classified as misdemeanours and are indictable offences.

Offences provide for a reasonable excuse and that a person does not commit an offence where they have made a claim of reasonable excuse under new Chapter 4A as inserted by the Bill, and the CCC withdraws the requirement or the Supreme Court orders that the CCC withdraws the requirement. To the extent that section 76 of the *Justices Act 1886* operates to place the onus on the defendant to prove the existence of any exemption, proviso or condition, the offence provisions may reverse the onus of proof. However, it is considered appropriate to include a reasonable excuse and require the person claiming the excuse to establish the claim, given the matters giving rise to the claim are likely to be peculiarly within the person's knowledge. For example, the person will be best placed to give evidence about extraneous circumstances preventing them from complying with an investigation requirement. A reversal may be justified where the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.

The penalty amounts applying to the offences in the Bill are consistent with current comparable offence provisions under the CC Act and are designed to support the CCC in the effective and timely investigation of serious crime and corruption matters by ensuring that non-compliance with investigation requirements carries serious

consequences. Given the nature of CCC hearings, including the fact that they carry sanctions in relation to contempt, higher maximum penalties are considered warranted.

***Whether legislation has sufficient regard to rights and liberties of individuals, depends on whether legislation is consistent with the principles of natural justice (LSA, section 4(3)(b))***

The common law recognises three main principles of natural justice: the right to be heard; unbiased decision making and procedural fairness.

The proposed amendments in clauses 16 and 22 (to the extent that clause 22 inserts new section 182A) represent a potential departure from the FLP that requires that legislation has sufficient regard to the rights and liberties of individuals, including adherence to obligations to provide procedural fairness (LSA sections 4(2)(a), (3)(b)).

The method of giving a notice by email may compromise the recipient's understanding of the effect of the notice, and their corresponding rights and obligations, thereby diminishing the adequacy of the notice with respect to any consequent action the CCC may be entitled to take.

The safeguard in the Bill requiring the chairperson of the CCC to be satisfied that the person or their lawyer has given the CCC an email address for the purpose of receiving the notice is intended to significantly reduce the likelihood that the person might fail to appreciate the significance of the notice. In addition, the requirement that notices may only be given by email in circumstances where the chairperson is satisfied this is appropriate having regard to a range of matters, will act to ensure that potential limitations on the rights and liberties of individuals are minimised. The fact that the alternative process cannot be relied upon for notices requiring immediate production of a document or thing or notices requiring immediate attendance at a CCC hearing is also an important safeguard.

The alternative process for giving notices is considered reasonable and justified to provide the CCC with the ability to use such measures in circumstances where recourse to the usual means of service of notices is not practicable or desirable. The potential for any adverse impacts on individuals is limited as a person is able to choose between either receiving a notice by email or receiving it in the usual way.

The power given by new section 182A in clause 22 to allow a person to appear remotely rather than personally at a CCC hearing also potentially infringes the obligation to provide procedural fairness to the extent that remote attendance may result in a witness presenting as a less credible or persuasive witness than they would have if they had appeared in person or may negatively impact members of the community who have limited access to, or familiarity with, technology-based facilities or who may be otherwise disadvantaged by the use of such facilities.

The potential for any infringement of this right is minimised by the requirement which allows for remote appearance via audiovisual or audio link only where the presiding officer considers this is suitable and appropriate having regard to a range of considerations. In addition, the amendment specifically preserves, with necessary changes, the operation of all other provisions in the CC Act relating to hearings. For example, section 180 of the CC Act will continue to require that the presiding officer

for the hearing act in such a way as to ensure a fair and proper consideration of the issues. Section 181 of the CC Act, which provides that a witness at a commission hearing may be legally represented, and section 182 of the CC Act, which requires the presiding officer at a hearing to arrange for an interpreter if necessary, will also continue to apply. These safeguards will ensure that matters such as an individual's capacity to understand and engage in the proceedings and consult privately with their legal representative and the desirability of attendance by an audiovisual link rather than an audio link are considered for each decision allowing for remote appearance of a person at a hearing.

***Whether legislation has sufficient regard to rights and liberties of individuals (LSA, section 4(2)(a))***

Amendments relating to the application of journalist privilege

The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues are relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals (LSA section 4(2)(a)).

The proposed amendments in clause 32 applying shield laws to the CCC supports the rights of an individual to privacy and confidentiality. However, ultimately the Supreme Court may order a journalist or relevant person to disclose the identity of a confidential informant or provide information that may enable their identity to be ascertained. This power to compel the disclosure may be a departure from FLPs in relation to privacy and confidentiality.

The departure is justified as it is the result of the court balancing competing rights. Before making the order, the court must balance the public interest in disclosing the informant's identity against any likely adverse effect of the disclosure on the informant or another person, and the public interest in the communication of facts and opinion to the public by the news media and the ability of the news media to access sources of facts. The effects of the departure are also mitigated by providing that a court may only make such an order if it is in the public interest and may restrict who may have access to the disclosed information or how the information may be used or published.

The right of individuals to exercise freedom of speech is also relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals. The amendments in the Bill adopt a qualified privilege meaning that a journalist or relevant person cannot be compelled to disclose the identity of a confidential informant who has been promised confidentiality unless the public interest requires the disclosure. This may be a departure from the FLP in relation to freedom of speech as it may limit news media and the general public's right to seek, receive, and express information. The departure is justified as it is the result of the court balancing competing rights, including the right to freedom of speech, the right to privacy, and the right to a fair hearing.

The right of individuals to the protection of their reputation is also relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals. As noted above, the proposed amendments will provide that a journalist or relevant person cannot be compelled to give evidence or comply with a CCC requirement if giving the evidence or complying with the requirement would disclose



the identity of a confidential informant or enable their identity to be ascertained, unless the public interest lies in favour of the disclosure and a decision or order is made requiring the person to produce the document, thing or information or answer the question. If a decision or order requiring disclosure is not made, this may be a departure from the FLPs as maintaining the confidentiality of the informant may affect the outcome of the CCC's investigation, which may be detrimental to a person's reputation, or may prevent a person whose reputation has been damaged as a result of information provided by the informant from taking legal action against the informant if they are unable to discover their identity. The departure is justified as the decision to refuse to compel disclosure is the result of the balancing of competing rights.

#### Amendments relating to DPP advice on corruption offences

The proposed amendments in clause 7 represent a potential departure from the FLP that requires that legislation has sufficient regard to the rights and liberties of individuals, in terms of the potential infringement of individual rights to privacy and to receive a fair hearing (LSA section 4(2)(a)). As the CCC will be required to provide a report relating to the corruption investigation containing all relevant information known to the CCC, this may include personal information identifying the person the subject of the corruption investigation and the facts surrounding the alleged offending. This will impact on a person's right to privacy.

Any person employed in the ODPP is subject to section 24A of the *Director of Public Prosecutions Act 1984* which states that a person must not disclose confidential information that came to the person's knowledge because of the employment or because of an opportunity given by the employment (subject to some exceptions, including that disclosure that is required under a requirement of a court). This will ensure that there will only be limited access to the material which includes the details of the person the subject of the corruption investigation, any police intelligence in support of the charges, compelled evidence and facts surrounding the alleged offending by the DPP directly.

Additionally, as the report to the DPP may include self-incriminating information obtained by use of the CCC's coercive powers, this may impact on a person's right to fair hearing. Coerced material may need to be considered for the DPP to form a proper view in relation to a charge for a corruption offence.

A range of safeguards are in place to reduce any interference with a person's right to fair hearing. The internal governance of the ODPP will ensure that a trial prosecutor is quarantined from any compelled evidence that might taint a prosecution. The memorandum of understanding must provide processes for how the DPP deals with material received for the purposes of giving advice which it would not ordinarily receive as a prosecuting entity.

Additionally, the Director's Guidelines provides for duties of prosecutors to act fairly and impartially and ensure that the prosecution case is presented properly and with fairness to the accused. Further, the CC Act contains a number of safeguards in relation to the use of compelled material to ensure the fair trial of the accused,<sup>1</sup> including rendering coerced evidence inadmissible against the person and providing for orders prohibiting publication and disclosure of coerced evidence.

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<sup>1</sup> Sections 180, 197, 202 and 331(2) of the CC Act.

***Whether legislation has sufficient regard to the institution of Parliament (LSA, section 4(4))***

Clause 4 amends section 20 of the CC Act to provide criteria which must be considered before an entity may be prescribed as a UPA under the CC Act. Clause 45 further allows a regulation to be made prescribing a provision of the CC Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* (Cth) (the Corporations Act).

The amendments may depart from the FLP that legislation has sufficient regard to the institution of Parliament (LSA section 4(2)(b)). Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, the legislation allows the delegation of legislative power only in appropriate cases and to appropriate persons; and sufficiently subjects the exercise of delegated legislative power to the scrutiny of the Legislative Assembly; and authorises the amendment of an Act only by another Act (LSA section 4(4)).

The amendments providing for criteria which must be considered before an entity may be prescribed as a UPA do not create any additional delegation of legislative power but rather provide guidance on the face of the enabling legislation about when prescription of an entity by regulation may be appropriate. This will assist in providing greater transparency in relation to decisions to prescribe entities.

The amendments allowing a regulation to be made prescribing a provision of the CC Act to be a Corporations legislation displacement provision are justified on the basis that they are necessary to provide flexibility to ensure that if a corporation is prescribed in the future to be a public authority under the CC Act, consideration can be given at that time to provisions of the Corporations legislation which should be displaced to give effect to provisions in the CC Act. Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

Further, any regulation prescribing an entity as a UPA or prescribing a provision of the CC Act to be a Corporations legislation displacement provision pursuant to the amended section will continue to require tabling in the Legislative Assembly and be subject to disallowance. Any departure from FLPs in the context of the amendments to section 20 is therefore considered justified.

## **Consultation**

The PCCC recommendations addressed in this Bill were informed by public submissions and hearings as part of the PCCC's processes.

The CCC COI involved a call for public submissions to assist in addressing the matters raised by its terms of reference. 87 submissions were received. As noted at page 14 of its report, the CCC COI also undertook targeted consultation with a broad range of institutions, agencies and individuals and invited submissions from various organisations and persons.

Targeted consultation with key stakeholders was undertaken in relation to the underlying policy for applying journalist shield laws to the CCC.

Targeted consultation with key stakeholders was undertaken during the drafting of the Bill, including with the CCC, ODPP, relevant statutory bodies and office holders, legal stakeholders, academics and peak journalist bodies. Feedback received was taken into account in finalising the Bill.

## **Consistency with legislation of other jurisdictions**

The amendments in the Bill are specific to the legislative framework of the State of Queensland. All other Australian jurisdictions have integrity bodies, many, like the CCC, can exercise powers above and beyond ordinary law enforcement to compel evidence in varying degrees. Apart from Western Australia, Queensland's CCC is unique in terms of its vesting of crime and corruption functions. A number of other jurisdictions have separate crime commissions in addition to their integrity bodies, which similarly exercise special powers to compel cooperation with their investigations.

The application of shield laws to integrity/anti-corruption and crime commissions in other jurisdictions is complex and varied.

The CCC COI noted (at page 128 of its report) that all other Australian jurisdictions (except South Australia) permit interaction between the DPP and the respective state or territory integrity body. The relationships are managed through memorandums of understanding or protocols developed to govern and formalise their interactions.

The amendment to the PS Act is specific to delegation arrangements in the State of Queensland.

## Notes on provisions

### Part 1 Preliminary

*Clause 1* states that the Act may be cited as the *Crime and Corruption and Other Legislation Amendment Act 2024* (CCOLA Act).

*Clause 2* provides for a range of provisions in the Bill to commence on a day to be fixed by proclamation. These provisions relate to:

- all amendments to chapters 3 and 4 of the CC Act except those provisions for technology-based arrangements;
- new chapter 4A for the procedure on claims of reasonable excuse, including privilege;
- the CCC COI; and
- appointments, tenure and qualifications.

### Part 2 Amendment of *Crime and Corruption Act 2001*

*Clause 3* provides that part 2 amends the CC Act.

*Clause 4* amends section 20 (Meaning of *unit of public administration*) to insert new subsections (3) to (5). These new subsections introduce mandatory requirements that the Minister must be satisfied of before recommending to the Governor in Council the making of a regulation under subsection (1)(h) prescribing an entity to be a UPA. The requirements in new subsection (3) are that the entity:

- is supported directly or indirectly by government funds or other government assistance; or
- is an entity over which government is in a position to exercise control; or
- is established under an Act; or
- is given public functions under an Act.

Under new subsection (3), the Minister must also consider it is in the public interest for the entity to be prescribed as a UPA. New subsection (4) sets out a range of matters to which the Minister may have regard in determining the public interest.

The reference to ‘government’ in new subsections (4) and (5) is not limited and is intended to cover both state and local government.

New subsection (5) provides that an entity may be prescribed under a regulation to be a UPA in relation to only a part of the entity’s functions.

The Bill (*clause 45*) also allows for a regulation to be made prescribing a provision of the CC Act to be a Corporations legislation displacement provision in respect of a corporation within the meaning of the Corporations Act that is also prescribed under section 20 to be a UPA.

The Bill is not intended to alter the operation of section 156 (Application of Crime and Corruption Act) of the *Government Owned Corporations Act 1993*.

*Clause 5* inserts a new heading for chapter 2, part 3, division 5, subdivision 1 (Reports about corruption complaints) before section 49.

*Clause 6* amends section 49 (Reports about complaints dealt with by the commission) to omit section 49(2)(a) and replace it with new section 49(2)(a) consequential to the amendments in clause 7. A note is also inserted to provide new section 49B applies if the commission intends reporting to a prosecuting authority in relation to a corruption offence arising from a corruption investigation.

New subsection (4A) provides that a report made by the commission under subsection (2)(a) or (3) must be accompanied by written advice provided to the commission by the director of public prosecutions under new section 49B inserted by clause 7.

The definition of '*prosecuting authority*' in section 49(5) is amended to clarify that a prosecuting authority includes a police officer seconded to the commission under section 255, but does not include the director of public prosecutions. The definition is not intended to exclude other entities, such as the QPS, but would not include the CCC.

New subsections (4A) and (5) will be renumbered as subsections (5) and (6).

*Clause 7* inserts a new chapter 2, part 3, division 5, subdivision 2 (Prosecution of corruption offences) containing new sections 49A to 49G.

New section 49A (Definitions for subdivision) provides definitions for terms that are specific to the subdivision, including defining '*commence*' and '*prosecuting entity*'. A '*prosecuting entity*' may include the QPS or the director of public prosecutions. '*Prosecuting authority*' is also defined consistent with section 49(5).

New section 49B (Commencing prosecution) provides that the section applies where the commission intends to report on a corruption investigation to a prosecuting authority to consider whether to commence a prosecution against a person for a corruption offence arising from the investigation. The definitions of '*corruption offence*' and '*corruption investigation*' are contained in schedule 2 of the Act.

Before reporting to the prosecuting authority, the commission must report on the corruption investigation to the director of public prosecutions and seek written advice about whether a person should be prosecuted for a corruption offence/s arising from an investigation.

The commission's report must provide the director of public prosecutions with all relevant information known to the commission that supports a charge and any available defence. Relevant information includes that compelled by the commission using its powers under the Act. This information is only to be provided for the purposes of the director of public prosecutions providing advice under the provisions in the Bill and is not for the purpose of carrying out any prosecution.

Despite any other law (under the Act, another Act or the common law), the prosecuting authority may commence a prosecution for corruption offences arising from an investigation only if the commission has sought the advice of the director of public

prosecutions, and the director of public prosecutions has given the commission written advice that the person should be prosecuted for the corruption offence.

New section 49C (Commencing prosecution in exceptional circumstances) provides for the commencement of a prosecution against a person for a corruption offence arising from the corruption investigation in exceptional circumstance where the commission has not sought advice from the director of public prosecutions. In this situation, the commission must seek the written advice of the director of public prosecutions in relation to the charge against the person, as soon as reasonably practicable. The commission is required to provide a report to the director of public prosecutions when seeking the advice. The report should contain the same information as a report provided under new section 49B(3).

Whether exceptional circumstances exist will depend on the particular facts and circumstances. The CCC COI noted this may be in emergent situations where an arrest is essential. This example has been included in the Bill to provide guidance.

Subsection 49C(4) provides that (where exceptional circumstances exist) as soon as reasonably practicable after receiving the written advice of the director of public prosecutions the commission must give a copy to the prosecuting entity (unless the prosecuting entity is the director of public prosecutions) and the Attorney-General if the prosecution relates to an offence under section 57 (False evidence before Parliament) of the Criminal Code.

Subsection 49C(5) requires the prosecuting entity to, as soon as reasonably practicable after receiving the written advice, inform the person and the court that the advice has been received from the director of public prosecutions and either inform them that the charge is consistent with that advice or otherwise take steps consistent with the advice.

New section 49D (Process after commencing prosecution) provides for the process after a prosecution for a corruption offence arising from a corruption investigation is commenced. A notice in the approved form is to be filed in court and given to the accused person. The contents of the notice will depend on whether the prosecution is commenced under new section 49B or 49C.

New section 49E (Process if charge recommended but not laid) provides that where the director of public prosecutions provides written advice about a charge following a request for the advice from the commission, and recommends that a person be charged with a corruption offence and the prosecuting authority declines to commence a prosecution, the commission must inform the Parliamentary Crime and Corruption Committee (parliamentary committee) and parliamentary commissioner of this fact.

New section 49F (Application of legal professional privilege to communications between commission and director of public prosecutions) ensures that confidential communications made between the director of public prosecutions and the commission in the performance of the director's function of giving written advice under this subdivision is subject to legal professional privilege. The privilege is not waived merely through compliance with other requirements in the Act.

Subsection (4) in new section 49F provides that, to remove any doubt, nothing in this provision is intended to otherwise affect the operation of disclosure obligations on the prosecuting entity required in the course of the prosecution, i.e. materials forming part of a brief of evidence provided to the director of public prosecutions e.g. a bench charge sheet or statement of the accused person in the possession of the director of public prosecutions.

New section 49G (Memorandum of understanding) provides that the commission and the director of public prosecutions must enter into a memorandum of understanding to facilitate the operation of providing advice for the prosecution of corruption offences under this subdivision.

Without limiting what the memorandum of understanding may cover, section 49G(2) sets out various matters which must be included and section 49G(3) provides that it may also provide guidance on exceptional circumstances for the purposes of section 49C(1).

The memorandum of understanding must be published on the commission's website. As soon as practicable after it is entered into, the commission must also advise the Minister of the fact. The commission must report at regular intervals to the Minister, the parliamentary committee and the parliamentary commissioner on the effectiveness and utility of the memorandum and information about the timeliness of advice provided by the director of public prosecutions.

*Clause 8* inserts a new heading for chapter 2, part 3, division 5, subdivision 3 (Applications to QCAT about corrupt conduct) before section 50 consequential to clause 7 and consistent with clause 9.

*Clause 9* amends section 50 (Commission may prosecute corrupt conduct) to replace the section 50 heading with 'Commission may apply to QCAT about corrupt conduct' to clarify that the commission does not charge, nor prosecute (criminal offences) in its own power or authority.<sup>2</sup>

*Clause 10* inserts a new heading (General) for chapter 2, part 3, division 5, subdivision 4 before section 51.

*Clause 11* amends section 69 (Commission reports to be tabled) to insert in subsection (2) references to sections 49B(2)(a) and 49C(2)(a) so that the section does not apply to reports under those provisions.

*Clause 12* amends chapter 3, part 1, divisions 1 to 3 by replacing chapter 3, part 1, divisions 1 to 3 with new divisions 1 to 3A. New division 1 is headed 'Production powers' and the new subdivision 1 heading is 'Power to require production for particular investigations, operations and functions'.

New section 72 (Application of subdivision) provides that subdivision 1 (Power to require production for particular investigations, operations and functions) applies to a

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<sup>2</sup> See page 111 of the CCC COI report.

crime investigation, a specific intelligence operation (crime), a corruption investigation, a specific intelligence operation (corruption) and the witness protection function.

New section 73 (Notice to produce) recasts section 72(2)(b) and (c), section 74(2) and section 75(2)(b) and (c) of the CC Act to provide for a single notice to produce to be utilised across all commission functions with the exception of the commission's civil confiscation function. The section allows the chairperson to give a person a notice to produce if the chairperson reasonably suspects that the person possesses a document or thing relevant to an investigation, operation or function. The notice to produce must state the reasonable period and the way it must be complied with and may be given whether or not a hearing is being conducted. For the witness protection function a notice to produce may only be given if considered necessary by the chairperson to protect the security of a protected person or the integrity of the witness protection program or other witness protection activities of the commission.

New section 74 (Immediate production) recasts section 74(4) of the CC Act and extends the power for immediate production to a corruption investigation and a specific intelligence operation (corruption). The section provides that a notice to produce may require a document or thing to be produced immediately in certain urgent circumstances.

New section 75 (Form of notice to produce) recasts section 72(7), section 74(2A) and section 75(7) – (8) of the CC Act into a single provision to apply across all commission functions with the exception of the commission's civil confiscation function. The new section provides for the information that a notice may and must contain. The notice may include a statement that a person acting for the person to whom it is directed may comply with the notice and specify the person or class of person who may so act. However, the notice must sufficiently identify the document or thing so that the person knows what is being sought and must state how the person may make a claim of reasonable excuse.

New section 76 (Offence not to comply with notice to produce) recasts sections 72(4) – (5), section 74(5), section 74(7), section 75(3) and section 75(5) of the CC Act and makes it an offence not to comply with a notice to produce given under section 73 unless a person has a reasonable excuse (which includes a claim of privilege). The offence is punishable by 85 penalty units or one year's imprisonment. However, a person who fails to comply with a notice does not commit an offence (where a claim of reasonable excuse is considered under new chapter 4A) if the commission withdraws the requirement the subject of the notice to produce or the Supreme Court orders the commission to withdraw the requirement the subject of the notice to produce (subsection (2)).

Subsection (2) will not be sufficient to excuse non-compliance where a person has raised a claim of reasonable excuse which is considered under the processes provided by chapter 4A, parts 2 – 3 but which does not result in the notice being withdrawn.

It is not a reasonable excuse to fail to comply with the notice to produce because it might tend to incriminate the person. This makes clear that the self-incrimination privilege is abrogated. A note is also inserted to clarify that claims of self-incrimination privilege are dealt with under chapter 4A. While a person is required to comply with a



notice to produce regardless of whether or not a claim of self-incrimination privilege is found to be established, consideration under the process in new chapter 4A ensures that where the privilege is established a person will have the benefit of a direct use immunity in respect of any document, thing or information provided in response to the notice to produce under section 197 of the CC Act.

New section 77 (Miscellaneous) provides that a person does not, by complying with a notice to produce in relation to a document or thing contravene any statutory or commercial obligation to maintain secrecy nor do they incur any civil liability. The section also provides that when a document or thing is produced under the provisions of the subdivision it is taken to have been seized under a search warrant under part 2, consistent with the current provisions.

New subdivision 2 is headed 'Power to require production for confiscation related investigation'. New subdivision 2 replaces section 74A of the CC Act with minor changes to reflect consistent drafting with new subdivision 1.

New section 78 (Application of subdivision) provides that subdivision 2 (Power to require production for confiscation related investigation) applies to a confiscation related investigation.

New section 79 (Notice to produce) allows the chairperson to give a person a notice to produce if the chairperson believes on reasonable grounds that the person possesses a document or thing relevant to a confiscation related investigation. The notice to produce must state the reasonable period and the way it must be complied with.

New section 80 (Immediate production) provides that a notice to produce may require a document or thing to be produced immediately in certain urgent circumstances.

New section 81 (Form of notice to produce) is a new provision and provides for the information that a notice may and must contain. The notice may include a statement that a person acting for the person to whom it is directed may comply with the notice and specify the person or class of person who may so act. However, the notice must sufficiently identify the document or thing so that the person knows what is being sought and must state how the person may make a claim of reasonable excuse.

New section 81A (Offence not to comply with notice to produce) makes it an offence not to comply with a notice to produce unless a person has a reasonable excuse. The offence is punishable by 85 penalty units or one year's imprisonment. However, a person who fails to comply with a notice does not commit an offence where the person has made a claim of reasonable excuse based on privilege (which has been dealt with under new chapter 4A, part 6) and the commission withdraws the requirement the subject of the notice to produce or the Supreme Court orders the commission to withdraw the requirement the subject of the notice to produce (subsection (2)).

Subsection (2) will not be sufficient to excuse non-compliance where a person has raised a claim of reasonable excuse based on privilege which is considered under the processes provided by chapter 4A, part 6 but which does not result in the notice being withdrawn.

A claim of self-incrimination privilege is not a reasonable excuse for not complying with the notice to produce. This makes clear that the self-incrimination privilege is abrogated. A note is also inserted to clarify that claims of self-incrimination privilege are dealt with under chapter 4A, part 6.

New section 81B (Miscellaneous) provides that a person does not, by complying with a notice to produce in relation to a document or thing contravene any statutory or commercial obligation to maintain secrecy nor do they incur any civil liability. The section also provides that when a document or thing is produced under the provisions of the subdivision it is taken to have been seized under a search warrant under part 2, consistent with the current provisions.

New subdivision 3 is headed ‘Power to require immediate production at hearing’.

New section 81C (Application of subdivision) provides that subdivision 3 (Power to require immediate production at hearing) applies to a crime investigation, a specific intelligence operation (crime), a corruption investigation and a specific intelligence operation (corruption).

New section 81D (Power to require immediate production) recasts section 75B of the CC Act and provides that the presiding officer at a commission hearing may require a witness to immediately produce a stated document or thing (*immediate production requirement (hearing)*) that the presiding officer believes on reasonable grounds is in the witness’s possession and is relevant to the investigation. The presiding officer may adjourn the hearing to allow the person to comply with the requirement. A note is also inserted to see section 185 for the offence of refusal to produce the document or thing. A person does not, by complying with an immediate production requirement (hearing) in relation to a document or thing contravene any statutory or commercial obligation to maintain secrecy nor do they incur any civil liability.

The power to issue an attendance notice for a hearing is found in section 82 and includes the power to issue a notice to attend a hearing for the purposes of producing a stated document or thing.

New division 2 is headed ‘Discovery powers’.

New section 81E (Notice to discover—crime investigation or specific intelligence operation (crime)) recasts section 72(2)(a) of the CC Act and allows the chairperson to give a person holding an appointment in a unit of public administration a notice to discover to give an identified commission officer an oral or written statement of information the chairperson reasonably suspects is possessed by the unit of public administration and relevant to a crime investigation or specific intelligence operation (crime). A notice to discover may be given whether or not a hearing is being conducted for the investigation or operation. The person may be required to give an oral statement under oath (which includes an affirmation, declaration and promise as per Schedule 1 of the *Acts Interpretation Act 1954* (AI Act)) or a written statement of information by statutory declaration.

New section 81F (Notice to discover—corruption investigation or specific intelligence operation (corruption)) recasts section 75(2)(a) and (6) of the CC Act and allows the

chairperson to give a person a notice to discover to give an identified commission officer an oral or written statement of information where the chairperson reasonably suspects the person is in possession of information relevant to a corruption investigation or specific intelligence operation (corruption). A notice to discover may be given whether or not a hearing is being conducted for the investigation or operation. The person may be required to give an oral statement under oath or a written statement of information by statutory declaration.

New section 81G (Form of notice to discover) provides for the information that a notice may and must contain. The notice may include a statement that a person acting for the person to whom it is directed may comply with the notice and specify the person or class of person who may so act. However, the notice must sufficiently identify the document or thing so that the person knows what is being sought, state a reasonable period within which the information is to be given, the way in which the information is to be given and how the person may make a claim of reasonable excuse.

New section 81H (Offence not to comply with notice to discover) makes it an offence to not comply with a notice to discover given under section 81E or 81F unless the person has a reasonable excuse. The offence is punishable by 85 penalty units or one year's imprisonment. However, a person who fails to comply with a notice to discover does not commit an offence if the person has made a claim of reasonable excuse (considered under new chapter 4A) and the commission withdraws the requirement the subject of the notice to discover or the Supreme Court orders the commission to withdraw the requirement the subject of the notice to discover (subsection (2)).

Subsection (2) will not be sufficient to excuse non-compliance where a person has raised a claim of reasonable excuse which is considered under the processes provided by chapter 4A, parts 2 – 3 but which does not result in the notice being withdrawn.

A claim of self-incrimination privilege is not a reasonable excuse for not complying with the notice to discover. This makes clear that the self-incrimination privilege is abrogated. A note is also inserted to clarify that claims of self-incrimination privilege are dealt with under chapter 4A.

New section 81I (Miscellaneous) provides that a person does not, by complying with a notice to discover in relation to information contravene any statutory or commercial obligation to maintain secrecy nor do they incur any civil liability.

New division 3 is headed 'Legal professional privilege'.

New section 81J (Waiver of claim of legal professional privilege) provides that it is not a reasonable excuse for the offence provisions in sections 76(1), 81A(1) or 81H(1) if, in relation to a claim of legal professional privilege, the person has authority to waive the privilege and waives it; or alternatively, the privilege is waived by a person having authority to waive it. A note is also inserted to clarify that claims of legal professional privilege by a person where the person has no authority to waive the privilege are dealt with under chapter 4A, part 5.

New division 3A is headed 'Entry and search powers'.

New section 81K (Application of division) provides that division 3A (Entry and search powers) applies for a corruption investigation.

New sections 81L (Authorisation of entry and search of official premises) and 81M (Power to enter and search etc.) recast section 73 of the CC Act. New section 81L provides that the chairperson may issue a notice authorising a commission officer to enter and search official premises for the purposes of a corruption investigation. Official premises are defined as premises used for the official purposes of a unit of public administration with the exception of any part of premises used or occupied by a State court. The commission officer must show the authority for inspection by the occupier or a person acting for the occupier if requested.

New section 81M (Power to enter and search etc.) provides for the things that a commission officer may do under a section 81L authorisation to enter and search official premises. The commission officer may inspect any document or thing that is, or might be relevant to the corruption investigation, seize and remove any document or thing that is relevant to a corruption investigation or make copies or take extracts from any such documents or things. The powers in subsections 81M(1)(c) and (d) to seize and remove or make copies or take extracts are not limited to the particular corruption investigation for which the authorisation was issued but reflect the “chance discovery” rule to enable the commission officer to deal with documents or things relevant to any corruption investigation which are found during the inspection. The provision also provides that in executing the search the commission officer must not inspect any document or thing that is, or might be relevant to the corruption investigation, seize and remove any such document or thing or make copies or take extracts from any such documents or things, if the chief executive officer of the unit of public administration claims that the document or thing is subject to privilege. A note is included that claims of privilege are dealt with under chapter 4A.

New section 81N (Miscellaneous) provides that a person does not contravene a statutory or commercial secrecy obligation or restriction or incur any civil liability by allowing a commission officer to enter and search official premises in accordance with a notice to enter and search official premises.

*Clause 13* amends section 82 (Notice to attend hearing—general) to delete references to issuing attendance notices for hearings purely to establish a reasonable excuse or claim of privilege for a crime investigation or the witness protection function and makes other amendments to the section consequential to these changes. Claims of reasonable excuse, including privilege, for the witness protection function are to be considered under the new process for consideration of claims outside of a hearing under the new chapter 4A. New subsection (5A) which is re-numbered as subsection (6) is inserted to clarify that the offence in subsection (5) is a misdemeanour.

*Clause 14* amends section 84 (Notice may be a confidential document) to omit sections 84(2) and (3). These matters are now dealt with in section 202.

*Clause 15* amends section 85 (Notices requiring immediate attendance may be issued only by or with the approval of a Supreme Court judge) consequential to the removal of the power to hold a hearing to establish a reasonable excuse or claim of privilege for

the witness protection function and makes other changes consequential to the amendments to section 82.

*Clause 16* amends chapter 3, part 1 to insert a new division 7 (Giving notices), which contains new section 85AA.

New section 85AA (Giving notices by email) provides for an alternative means of giving notices for the notices that may be given under divisions 1, 2 or 4 but does not apply to a notice requiring immediate production of a document or thing or an attendance notice requiring immediate attendance at a commission hearing. The provision allows such notices to be given by email provided the chairperson is satisfied that it is appropriate to give the notice by email and that the person or their lawyer gave the commission their email address for the purpose of receiving a notice under the section. Where the person is represented by a lawyer, the provision also allows for the lawyer to consent to receiving multiple notices relating to the particular investigation, operation or function. The provision also sets out a range of matters to which the chairperson may have regard to when deciding whether it is appropriate to email a notice.

Subsection (2) provides that a notice may be given under the Act by the chairperson sending the notice by email to the person's email address or that of their lawyer.

The section also provides that it does not limit the operation of part 10 of the AI Act, which provides for means of service of documents where an Act requires or permits a document to be served on a person. Further, it is clarified that the *Electronic Transactions (Queensland) Act 2001*, which provides a regulatory framework to facilitate the use of electronic transactions in Queensland, does not apply to notices given by email in accordance with the section.

*Clause 17* amends section 94 (Limitation on search warrant powers for corruption investigations) to bring the process for consideration by the Supreme Court of claims of privilege made under the section into line with the revised process applying to production and discovery of documents and things under chapters 3 and 4 (as amended by the Bill) and new chapter 4A. Other than a claim of journalist privilege, claims of privilege under section 94 in relation to documents or things will still be considered by the Supreme Court but under the new procedure set out in chapter 4A, part 4. A note is included that claims of journalist privilege are dealt with under the Evidence Act part 2, division 2B, subdivision 3. The definition of privilege for the purposes of the section is amended to make clear that a claim of privilege cannot be made under the section on the ground of either confidentiality or self-incrimination. There is no change to the existing provision by excluding self-incrimination privilege because the current definition of 'privilege' in the CC Act for the purposes of section 94 does not include 'self-incrimination privilege' in the context of a corruption investigation. Further, consistent with the common law, self-incrimination privilege may not be claimed in response to powers exercised under a search warrant.

*Clause 18* amends section 110A (General power to seize evidence—confiscation related investigation). Section 110A provides a commission officer conducting a confiscation related investigation with certain powers of seizure when executing a search warrant (akin to the chance discovery rule).

Subclause (1) makes a consequential amendment to subsection (3) so that where a claim of privilege is made in relation to a document or thing the commission officer must consider the claim and may either decide to withdraw the requirement in relation to which the claim is made; or decide not to withdraw the requirement and advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 205ZZH.

Subclause (2) makes a consequential amendment to subsection (4) by replacing the reference to section 78C with a reference to chapter 4A, part 6, division 3.

*Clause 19* amends section 111 (General power to seize evidence—corruption investigation). Section 111 provides a commission officer conducting a corruption investigation with certain powers of seizure when executing a search warrant (akin to the chance discovery rule).

Subclause (1) makes a consequential amendment to subsection (3) so that where a claim of privilege is made in relation to a document or thing the commission officer must consider the claim and may either decide to withdraw the requirement in relation to which the claim is made; or decide not to withdraw the requirement and advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 205ZW.

Subclause (2) makes a consequential amendment to subsection (4) so that the reference to section 81 is replaced with a reference to chapter 4A, part 4, division 3.

The definition of privilege for the purposes of the section is amended by subclause (3) to make clear that a claim of privilege cannot be made under the section on the ground of either confidentiality or self-incrimination.

*Clause 20* amends the chapter 4 heading (Hearings and deciding claims of privilege and excuse) to replace the heading with ‘Hearings and claims of reasonable excuse, including privilege’. The clause also amends the chapter 4, part 1 heading (Proceedings) to replace the heading with ‘Hearings’.

*Clause 21* amends section 177 (Whether hearings are to be open or closed) to omit section 177(2)(b) and omit ‘or (b)’ in section 177(2)(c) and renumber as section 177(2)(b). The amendments remove the references to witness protection function hearings consequential to other amendments in the Bill which remove the ability to issue an attendance notice for the witness protection function.

*Clause 22* inserts new sections 182A to 182C after section 182.

New section 182A (Use of audiovisual link or audio link for remote appearance) enables a person to attend a commission hearing by audiovisual link or audio link in certain circumstances. The terms ‘audio link’ and ‘audiovisual link’ are defined in subsection (10). Where a person attends a hearing remotely, subsection (9) provides that the provisions of the CC Act applying to hearings continue to apply to a hearing held under new section 182A with necessary changes.

A person may not appear remotely at a commission hearing if their attendance at the hearing is required under an immediate attendance notice (subsection (1)).

A person may attend a hearing remotely if the presiding officer is satisfied of a range of requirements as set out in subsection (3) including whether attendance at the hearing by an audiovisual link or audio link is appropriate. In deciding whether such attendance is appropriate the presiding officer may have regard to the matters mentioned in subsection (4).

Subsection (6) confirms the confidentiality of any communications between the person and their lawyer even though the person and their lawyer are not at the same place, while subsection (7) confirms that subsection (6) does not limit the operation of any other protection that may apply to the communication.

Subsection (8) states that section 60 (Use and disclosure of information, document or thing) does not apply to a confidential communication between the person and their lawyer. This clarifies that if, for example, the commission overheard any confidential communication or it was inadvertently recorded by the commission, that such information could not be used by the commission in performing its functions under the CC Act.

New section 182B (Return of sealed documents or things for decision on claim of reasonable excuse at hearing—return to person) recasts section 186(1) of the CC Act and provides a process for the production of documents or things at a hearing for which privilege has been previously claimed. This clause requires the commission to hand the sealed evidence back to the witness at the hearing to allow the witness to either comply with the requirement to produce or seek to establish a claim of privilege or other reasonable excuse for not producing it.

New section 182C (Return of sealed documents or things for decision on claim of reasonable excuse at hearing—return to another person) recasts section 186(2) of the CC Act and provides a process for the production of documents or things at a hearing for which privilege has been previously claimed by another person. This clause requires the commission to hand the sealed evidence back to the witness at the hearing to allow the witness to either comply with the requirement to produce or seek to establish a claim of privilege or other reasonable excuse for not producing it.

*Clause 23* amends the chapter 4, part 2 heading (Refusals and claims of privilege and reasonable excuse) to replace the heading with ‘Refusals and restrictions on use’.

*Clause 24* amends section 183 (Refusal to take oath) to insert subsection (2) to clarify that an offence against subsection (1) is a misdemeanour.

*Clause 25* amends chapter 4, part 2, divisions 2 to 4 by replacing chapter 4, part 2, divisions 2 to 4 with new divisions 2 and 3.

New division 2 is headed ‘Refusal to produce’.

New section 184 (Application of division) provides that division 2 (Refusal to produce) applies to a crime investigation, a specific intelligence operation (crime), a corruption

investigation, and a specific intelligence operation (corruption). The provisions do not apply to the witness protection function as other amendments in the Bill remove the ability to issue an attendance notice for a hearing to establish a reasonable excuse or claim of privilege in the context of the witness protection function.

New section 185 (Refusal to produce document or thing) recasts section 185(1) and (2) and section 188 of the CC Act and makes it an offence to not comply with a requirement to bring and produce a document or thing at a commission hearing under an attendance notice or immediate production requirement (hearing) if the document or thing is in the person's possession. The offence is punishable by 200 penalty units or five years imprisonment and is a misdemeanour. However, a person who fails to produce the document or thing does not commit an offence if the person has a reasonable excuse. A note is also inserted to clarify that claims of reasonable excuse are dealt with under chapter 4A. It is not a reasonable excuse to fail to comply with the attendance notice or immediate production requirement (hearing) because it might tend to incriminate the person. This makes clear that the self-incrimination privilege is abrogated. A note is also inserted to clarify that claims of self-incrimination privilege are dealt with under chapter 4A.

New section 186 (Claim of reasonable excuse) sets out when a person will not commit an offence against section 185(1) following a claim of reasonable excuse being made under the Act. A person who fails to comply with section 185(1) does not commit an offence if the person has made a claim of reasonable excuse (considered under new chapter 4A) and the commission withdraws the requirement the subject of the attendance notice or immediate production requirement (hearing) or the Supreme Court orders the commission to withdraw the requirement the subject of the attendance notice or immediate production requirement (hearing).

New section 187 (Waiver of claim of legal professional privilege) makes clear that a claim of legal professional privilege that is waived by a person with the requisite authority will not be a reasonable excuse for a person for an offence against section 185(1). A note is also inserted to clarify that the procedure for a claim of legal professional privilege by a person where the person has no authority to waive the privilege is dealt with under chapter 4A, part 5.

New division 3 is headed 'Refusal to answer'.

New section 188 (Application of division) provides that division 3 (Refusal to answer) applies to a crime investigation, a specific intelligence operation (crime), a corruption investigation, and a specific intelligence operation (corruption). The provisions do not apply to the witness protection function as other amendments in the Bill remove the ability to issue an attendance notice for a hearing to establish a reasonable excuse or claim of privilege in the context of the witness protection function.

New section 189 (Refusal to answer question) recasts sections 190 and 192 of the CC Act and makes it an offence for a person attending as a witness at a commission hearing to fail to answer a question put to them by the presiding officer. The offence is punishable by 200 penalty units or five years imprisonment and is a misdemeanour. However, a person who fails to comply does not commit an offence if the person has a reasonable excuse. It is not a reasonable excuse that answering the question might tend



to incriminate the person. This makes clear that the self-incrimination privilege is abrogated. A note is also inserted to clarify that claims of self-incrimination privilege are dealt with under chapter 4A. Subsection (4) makes clear that the person commits an offence under subsection (1) if the person remains silent.

New section 190 (Claim of reasonable excuse) sets out that a person will not commit an offence against section 189(1) if the person has made a claim of reasonable excuse (considered under new chapter 4A) and the commission withdraws the question or the Supreme Court orders the commission to withdraw the question.

New section 191 (Claim of legal professional privilege) makes clear that a claim of legal professional privilege that is waived by a person with the requisite authority will not be a reasonable excuse for a person for an offence against section 189(1). Subsection (2) provides that if a person mentioned in section 189(1) refuses to answer a question on the ground the answer to the question would disclose a communication to which legal professional privilege attaches and the person has no authority to waive the privilege, subsection (3) applies. Subsection (3) makes it an offence for the person to fail to tell the presiding officer, if required by the presiding officer, the name and address of the person to whom or by whom the communication was made. The offence is punishable by 200 penalty units or five years imprisonment and is a misdemeanour.

*Clause 26* amends section 197 (Restriction on use of privileged answers, documents, things or statements disclosed or produced under compulsion) to insert new section 197(1)(d) to recast section 188(4) of the CC Act by clarifying that for a document or thing produced, the document or thing is produced other than in the context of a corruption investigation.

*Clause 27* amends section 198 (Contempt of person conducting commission hearing) to provide that a failure by a person, under section 185, to produce a document or thing at a commission hearing under an attendance notice or immediate production requirement (hearing) without reasonable excuse and a failure by a person, under section 189, to answer a question without reasonable or lawful excuse are contraventions relating to a hearing which may be certified as contempt of a presiding officer. The changes are consequential to the replacement of sections 185 and 188 with new section 185 and the replacement of sections 190 and 192 with new section 189. The process for dealing with contempt provides a scheme by which a person in contempt of the presiding officer of a commission hearing may be punished as an alternative to a criminal prosecution. 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.

*Clause 28* amends section 199 (Punishment of contempt) to provide that a failure by a person, under section 185, to produce a document or thing at a commission hearing under an attendance notice or immediate production requirement (hearing) without reasonable excuse and a failure by a person, under section 189, to answer a question without reasonable or lawful excuse must be punished by imprisonment. The changes are consequential to the replacement of sections 185 and 188 with new section 185 and the replacement of sections 190 and 192 with new section 189.

*Clause 29* amends section 200A (Confidentiality of particular proceedings) to omit subsections (1)(a) to (c) and insert new subsections (1)(a) to (c) to clarify that this section applies to the following proceedings: a proceeding for contempt under section 199; an application under section 205ZH, 205ZJ or 205ZK; and an appeal against a decision in one of the listed proceedings. The changes are consequential to the replacement of section 195 and also extend the confidentiality requirements under the section to all claims dealt with by the Supreme Court under chapter 4A, part 3.

*Clause 30* amends section 202 (Publication of names, evidence etc.) to replace the word ‘Publication’ in the section 202 heading with ‘Disclosure’. Section 202(1) is also amended to omit the word ‘publish’ and insert the word ‘disclose to anyone else’. A new section 202(1)(c) is also inserted to include information that might enable the existence of a notice that is a confidential document under section 84 to be ascertained, as information that cannot be disclosed without the commission’s written consent or contrary to the commission’s order. This provision replaces the offence previously found in section 84(2) of the CC Act and relates to notices to attend a hearing and notices to produce a document or thing, but the provision does not operate unless the notice specifically contains a direction under section 84 that it is a confidential document. Section 202(2), (3) and (4) are also amended to omit the word ‘publication’ and insert the word ‘disclosure’.

New sections 202(3A), (3B) and (3C) are inserted to include the matters previously found in section 84(3) of the CC Act. The provisions provide that no offence occurs against section 202(1)(c) if the person has a reasonable excuse. It is a reasonable excuse for this provision if the disclosure to another is made for certain defined purposes and the person informs the person to whom the disclosure is made that it may be an offence to disclose the existence of the confidential document to anyone else. The defined purposes for which a disclosure of the existence of a notice that is a confidential document may be made are seeking legal advice in relation to the document or the offence in subsection (1)(c), seeking information in order to comply with the document, making a complaint to the parliamentary committee about the document or for the administration of the Act. Section 202(5) is omitted and section 202(3A) to (4) are renumbered as sections 202(4) to (7).

*Clause 31* amends section 205 (Legal assistance) to replace the references to appeal under section 195 of the CC Act with updated references to the relevant sections (sections 205ZH and 205ZJ) under which a person may apply to the Supreme Court to consider a claim of reasonable excuse in the context of a crime investigation, intelligence function or the witness protection function. For the same investigations or functions a person may also seek legal assistance where a person has received a notice under section 205I(b) or section 205T(b) where a deciding officer or presiding officer has declined to decide a claim of reasonable excuse based on privilege. For the same investigations or functions a person, given a notice under section 205G(b) that they may make written submissions to the commission about a claim, is also able to apply for financial help under the section to enable them to obtain legal services. These matters were previously considered at a hearing for which legal services may have been sought under section 205.

*Clause 32* inserts a new chapter 4A (Procedure on claims of reasonable excuse, including privilege) after chapter 4.

New part 1 is headed 'Preliminary'.

New section 205A (Definitions for chapter) provides definitions for chapter 4A, including 'informant', 'journalist', 'journalist privilege', 'news medium', 'privilege', and 'relevant person' in a way that is consistent with these definitions in the Evidence Act.

New section 205B (Meaning of *privilege*) defines 'privilege' in relation to an answer, information, communication, document or thing, to mean parliamentary privilege, legal professional privilege, public interest immunity, a claim on the ground of confidentiality, self-incrimination privilege or journalist privilege. However, for certain sections, discrete provisions operate to exclude some of these privileges. For example, section 111, which relates to the general power to seize evidence for a corruption investigation, specifically excludes confidentiality or self-incrimination privilege.

New section 205C (Who is a *journalist*) defines the term 'journalist' in line with the definition in section 14R of the Evidence Act. A 'journalist' captures persons engaged and active in gathering and assessing information about matters of public interest and preparing the information, or providing comment or opinion on or analysis of the information, for publication in a news medium. The provision also sets out various matters relevant to the determination of whether a person is a journalist.

New section 205D (Journalist privilege relating to identity of informants) provides that a journalist or relevant person will be able to claim journalist privilege in response to a commission requirement to produce a document or thing or information or to answer a question at a commission hearing. The provision will apply if an informant gives a document, thing or information to a journalist, in the normal course of the journalist's activities as a journalist, in the expectation the document, thing or information may be published in a news medium, and the journalist promises not to identify them as the source of the information. Subject to the operation of chapter 4A, the journalist or a relevant person for a journalist cannot be compelled to comply with the commission requirement if doing so would disclose the identity of an informant as the source of the document, thing or information or enable the identity of the informant as the source of the document, thing or information to be ascertained.

However, for a relevant person for a journalist (as defined under new section 205A) journalist privilege can only operate (subject to chapter 4A) to relieve the relevant person from complying with a commission requirement where the relevant person becomes aware of the identity of the informant as the source of the document, thing or information in the normal course of their work with the journalist or as result of an investigation or proceeding under the CC Act.

Subsection (4) states that, to remove any doubt, the section does not prevent a person from disclosing the informant's identity as the source of the provided information. This includes a situation where the informant consents to disclosure.

New section 205E (Part of document or thing) makes clear that a claim of reasonable excuse in relation to a document or thing required to be produced under the Act may be confined to only part of the document or thing. Also, subsection (2) clarifies that a

reference in chapter 4A to a document or thing includes a reference to a part of the document or thing.

New part 2 is headed 'Claims dealt with by commission'.

New division 1 is headed 'Claims made outside of hearings'.

New subdivision 1 is headed 'Dealing with claims'.

New section 205F (Application of subdivision) provides that subdivision 1 applies if a person claims a reasonable excuse under section 76(1) or 81H(1) and production was not required to be made at a hearing. The subdivision also applies if a person claims privilege under section 81M(2). New subsection (3) clarifies that reference to a requirement in relation to a document or thing in the subdivision includes a reference to a commission officer exercising a power under section 81M(1) in relation to the document or thing.

New section 205G (Commission officer to consider claim) provides a process by which the commission officer who has required the document, thing or information to be given must consider a claim of reasonable excuse and may then either withdraw the requirement or decide not to withdraw the requirement and give the person a written notice containing certain information. This includes telling the person that they may make written submissions about the claim to the commission by a certain date which must be at least 7 days after the notice is given.

New section 205H (Deciding officer to decide claim or decline to decide claim) provides a process for deciding a claim if the requirement is not withdrawn under section 205G. After considering the claim and any written submissions the deciding officer (chairperson or an independent senior officer) must then either decide the claim in accordance with section 205J or division 3 or, for a claim of reasonable excuse based on privilege, in the circumstances may decline to decide the claim. An example is provided as to the circumstances when a deciding officer may decline to decide a claim. When considering the matter, the deciding officer is not permitted to access the document, thing or information the subject of the claim and must deal with the claim expeditiously. New section 205J and division 3 deal with the decisions the deciding officer may make when deciding a claim. A definition of senior officer is provided to ensure the commission officer who decides the claim is independent of the investigation or operation to which the requirement relates, is at a level equivalent to or above the commission officer's level and has the appropriate qualifications to decide the claim.

New section 205I (Deciding officer declines to decide claim of reasonable excuse based on privilege) provides that where the deciding officer declines to decide a claim of privilege, the officer must give the person reasons for the decision and a notice advising the person that the person may be required to attend before the Supreme Court to establish the claim.

New section 205J (Reasonable excuse not based on privilege) provides for the decisions the deciding officer may make when deciding a claim of reasonable excuse not based on privilege under section 205H. If the claim is established, the deciding officer may amend or withdraw the requirement to which the claim relates. If the claim is not

established, the officer must require the person to comply with the requirement. However, the person must be given reasons for the decision and an application notice advising them that they may apply to the Supreme Court about the decision. The person must apply for leave to make the application under section 205ZH.

New subdivision 2 is headed 'Procedures for documents and things'.

New section 205K (Application of subdivision) provides that subdivision 2 (Procedures for documents and things) applies if a person makes a claim of reasonable excuse in relation to a document or thing the person is required to give or produce to the commission, other than at a hearing, and the person acknowledges that the document or thing is in their possession, and the commission officer who required the document or thing to be given decides not to withdraw the requirement under new section 205G(b), and new section 205ZZC (which relates to waiver of claims of legal professional privilege) does not apply.

New section 205L (Procedure for claims made outside of hearings) recasts sections 78 and 81 of the CC Act which apply slightly different processes for the safekeeping of documents or things subject to a claim depending on the section and function under which the claim was made. The new section provides a uniform process for the safekeeping of documents or things the subject of a claim of reasonable excuse outside a hearing and will apply consistently when a claim of reasonable excuse is made in response to a requirement to give a document or thing to a commission officer.

The section provides for the sealing of documents or things the subject of a claim of reasonable excuse, requires the commission officer who is given the sealed document or thing to give the person a receipt and to place the items at the commission's premises for safe keeping and provides penalties for contravention. Under the revised process, the sealed document or thing will be kept in safe custody until the claim is resolved or an application to the Supreme Court is made in which case it will be lodged with the registrar until the matter is resolved (see new section 205P (Procedure if person or chairperson applies to Supreme Court)).

New section 205M (Procedure if requirement is withdrawn) provides that if a requirement is withdrawn under section 205J or division 3 the sealed document or thing (sealed under section 205L) must be returned to the person within 7 days.

New section 205N (Procedure if chairperson does not apply to Supreme Court after deciding officer declines to decide claim) provides for the document or thing sealed under 205L to be returned to the person, within a specified time, if the deciding officer has declined to decide a claim under section 205I and the chairperson fails to apply to the Supreme Court under section 205ZK within the 7 day period allowed.

New section 205O (Procedure if person does not apply to Supreme Court) provides authority for the commission to access the document or thing sealed under section 205L if the person with the right to do so does not apply to the Supreme Court under section 205ZH or 205ZJ, within the period allowed, to decide the claim of reasonable excuse.

New section 205P (Procedure if person or chairperson applies to Supreme Court) provides a process for the immediate delivery, by the commission's representative, of

the document or thing sealed under section 205L to a registrar of the Supreme Court for safe keeping until the claim is dealt with where an application has been made by the person to the Supreme Court under section 205ZH or section 205ZJ within the period allowed; or where an application has been made by the chairperson to the Supreme Court under section 205ZK within the period allowed. The commission's representative must notify the person that the sealed document or thing has been delivered to the registrar. The section provides maximum penalties of 85 penalty units or 1 year's imprisonment for failing to immediately deliver the sealed document or thing, or the unauthorised opening of the sealed document or thing.

New section 205Q (Action by registrar) provides for the actions the registrar may take in relation to the sealed document or thing delivered under section 205P. The section provides that the document or thing must be kept in safe custody and makes provision for when and how the document or thing may be disposed of by the registrar. If an application to the Supreme Court under section 205ZH, 205ZJ or 205ZK is decided, the document or thing must be disposed of in accordance with the order made by the Supreme Court. Where the registrar is given notice from the person and the commission's representative that an agreement has been reached, the registrar must dispose of the document or thing in accordance with that agreement.

New division 2 is headed 'Claims made in hearings'.

New subdivision 1 is headed 'Dealing with claims'.

New section 205R (Application of subdivision) provides for the application of subdivision 1 (Dealing with claims) in certain specified circumstances relating to consideration of a claim at a commission hearing. The circumstances are where a person claims a reasonable excuse under section 81H(1) in relation to a requirement to give a statement of information under a notice to discover and the statement was required to be given at a hearing; where a person claims a reasonable excuse under section 185(1) in relation to a document or thing required to be produced under an attendance notice or immediate production requirement (hearing); or where a person claims a reasonable excuse under section 189(1) in relation to a requirement to answer a question.

New section 205S (Presiding officer to decide claim or decline to decide claim) requires the presiding officer to consider the claim of reasonable excuse and to hear the person's submissions. The presiding officer must then either decide the claim in accordance with section 205U or division 3 or, for a claim of reasonable excuse based on privilege in the circumstances may decline to decide the claim. An example is provided as to the circumstances when a presiding officer may decline to decide the claim of privilege. Subsection (2) makes clear that the presiding officer is not permitted to access the document, thing or information to which the claim relates when considering the matter. New section 205U and division 3 deal with the decisions the presiding officer may make when deciding a claim.

New section 205T (Presiding officer declines to decide claim of reasonable excuse based on privilege) provides that where the presiding officer declines to decide a claim of reasonable excuse based on privilege, the officer must give the person reasons for the decision and a notice advising the person that the person may be required to attend before the Supreme Court to establish the claim.

New section 205U (Reasonable excuse not based on privilege) provides for the decisions the presiding officer may make when deciding a claim, under section 205S, of reasonable excuse not based on privilege. If the claim is established, the presiding officer may amend or withdraw the requirement to which the claim relates. If the claim is not established, the presiding officer must require the person to comply with the requirement. However, the person must be given reasons for the decision and an application notice advising them that they may apply to the Supreme Court about the decision. The person may apply for leave to appeal under section 205ZH.

New subdivision 2 is headed 'Procedures for documents and things'.

New section 205V (Application of subdivision) provides that subdivision 2 applies if a person makes a claim of reasonable excuse in relation to a document or thing the person is required to give or produce to the commission at a hearing, the person acknowledges that the document or thing is in their possession, new section 205ZZC (which relates to waiver of claims of legal professional privilege) does not apply and either:

- the presiding officer declines to decide the claim under section 205T; or
- where the presiding officer has decided the claim, the presiding officer does not withdraw the requirement under new section 205U or division 3 and the person informs the presiding officer that they wish to apply to or consider applying to a Supreme Court judge under section 205ZH or 205ZJ in relation to the document or thing or that they do not intend to comply with the requirement.

New section 205W (Procedure for claims made in hearings) provides a process for the safekeeping of documents or things the subject of a claim of reasonable excuse at a hearing to which subdivision 2 applies. The presiding officer must require the person to immediately seal the document or thing and give it to the presiding officer for safekeeping. The section requires the commission's representative and, if practicable, the person to immediately deliver the sealed document or thing to a registrar of the Supreme Court for safe keeping and provides penalties for contravention of its requirements.

New section 205X (Action by registrar—if presiding officer declined to decide claim) provides for the actions the registrar may take in relation to the sealed document or thing delivered under section 205W(3) if the presiding officer has declined to decide the claim under section 205T. The section provides that the document or thing must be kept in safe custody and makes provision for when and how the document or thing may be disposed of by the registrar. If no application to the Supreme Court under section 205ZK is made by the commission within the period allowed, the document or thing must be given to the person. If an application to the Supreme Court under section 205ZK is made by the commission within the period allowed, the document or thing must be disposed of in accordance with the order made by the Supreme Court. Where the registrar is given notice from the person and the commission's representative that an agreement has been reached, the registrar must dispose of the document or thing in accordance with that agreement.

New section 205Y (Action by registrar—if presiding officer did not withdraw requirement) provides for the actions the registrar may take in relation to the sealed document or thing delivered under section 205W(3) if the requirement mentioned in

section 205V(2)(b) applies. The section provides that the document or thing must be kept in safe custody and makes provision for when and how the document or thing may be disposed of by the registrar. The section provides that the document or thing must be given to the commission who may access it if no application is made under section 205ZH or 205ZJ within the period allowed. If an application to the Supreme Court is made within the period allowed, the document or thing must be disposed of in accordance with the order made by the Supreme Court. Where the registrar is given notice from the person and the commission's representative that an agreement has been reached, the registrar must dispose of the document or thing in accordance with that agreement.

New division 3 is headed 'Deciding claims of privilege'.

New section 205Z (Purpose and application of division) provides that division 3 sets out how claims of privilege being considered by a deciding officer under division 1 or a presiding officer under division 2 are decided; and the circumstances in which, even when a claim of confidentiality, self-incrimination privilege or journalist privilege is established, a person can be required to produce a document, thing or information, or answer a question. Subsection (2) clarifies that a reference to a requirement in relation to a document or thing includes a reference to a commission officer exercising a power under section 81M(1) in relation to the document or thing.

New section 205ZA (Parliamentary privilege) provides for the actions the deciding officer or presiding officer must take after deciding a claim of parliamentary privilege. Parliamentary privilege is not abrogated by the CC Act and if the privilege is established, the officer must withdraw the requirement to which the claim relates. If the privilege is not established, section 205ZG(2) applies.

New section 205ZB (Legal professional privilege) provides for the actions the deciding officer or presiding officer must take when deciding a claim of legal professional privilege. Legal professional privilege is not abrogated by the CC Act and if the privilege is established, the officer must withdraw the requirement to which the claim relates. If the privilege is established but has been waived by a person with relevant authority, the person must comply with the requirement to which the claim relates. If the privilege is not established, section 205ZG(2) applies.

New section 205ZC (Public interest immunity) provides for the actions the deciding officer or presiding officer must take when deciding a claim of public interest immunity. Public interest immunity is not abrogated by the CC Act and in considering the claim the officer will balance two competing interests; that is, the harm or prejudice to the public interest in disclosing the document, thing or information against the public interest in ensuring the proper administration of justice by disclosing the document, thing or information. If public interest immunity is established, the officer must withdraw the requirement to which the claim relates. If public interest immunity is not established, section 205ZG(2) applies.

New section 205ZD (Confidentiality) provides for the actions the deciding officer or presiding officer must take when deciding a claim of confidentiality. The deciding officer or presiding officer must require the person to produce the document, thing or information or answer the question if confidentiality is established and it would not be



against the public interest for the document, thing or information to be produced or the question to be answered. If a requirement is made of the person, section 205ZG(2) applies. If the claim is established and it would be against the public interest for production to be made or the question answered, the deciding officer or presiding officer must withdraw the requirement to which the claim relates. If confidentiality is not established, section 205ZG(2) applies.

New section 205ZE (Self-incrimination privilege) provides for the outcome of a decision by a deciding officer or presiding officer about a claim of self-incrimination privilege. The new section provides that if the deciding officer determines that self-incrimination privilege is established, the person must comply with the requirement the subject of the claim. This is a consequence of the abrogation of the self-incrimination privilege by the CC Act. The new section includes a note pointing to the application of section 197 if self-incrimination privilege is established. If the privilege is not established, section 205ZG(2) applies.

New section 205ZF (Journalist privilege) sets out the test for the deciding officer or presiding officer to require the journalist or relevant person to comply with the requirement to which the claim relates, despite a claim of journalist privilege having been established. The deciding officer or presiding officer must be satisfied the public interest in disclosing the informant's identity outweighs any likely adverse effect of the disclosure on the informant or another person and the public interest in the communication of facts and opinion to the public by the news media and the ability of the news media to access sources of facts. In deciding whether to make a requirement, the deciding officer or presiding officer may have regard to the matters set out in subsection (3). Where the deciding officer or presiding officer is not satisfied that the public interest lies in favour of disclosing the informant's identity then they must withdraw the requirement to which the claim of journalist privilege relates. If a requirement of the journalist or relevant person is made under subsection (2)(a), section 205ZG(2) applies. If journalist privilege is not established, section 205ZG(2) applies.

New section 205ZG (Claim not established or requirement made) applies where, following consideration of a claim of privilege, the deciding officer or presiding officer decides that the claim is not established or decides that despite the claim being established the person is to comply with the requirement to which the claim relates. The officer must give the person reasons for the decision and an application notice for the decision.

New part 3 is headed 'Claims dealt with by Supreme Court'.

New division 1 is headed 'Claims of reasonable excuse not based on privilege'.

New section 205ZH (Applications about decisions of deciding officers and presiding officers) provides a process by which a person may apply to the Supreme Court to consider the decision of a deciding officer under section 205J(2), or the decision of a presiding officer under section 205U(2), that a claim by a person of reasonable excuse not based on privilege is not established. The person must first obtain the leave of the Supreme Court to make the application. Leave may not be granted unless, if the application relates to a document or thing that was in the person's possession, it has been delivered to the registrar, and in all cases, there is either a significant prospect of

success, or there is an important question of law involved. The person must apply for leave to apply within 7 days after the person received the application notice under the relevant section. The application for leave must state the grounds of the application for leave. This test is modelled on current section 195 but will only apply to matters where the claim of reasonable excuse is not based on privilege.

New section 205ZI (Supreme Court to decide claim) provides a process for deciding an application if leave is granted under section 205ZH. The burden of proof is on the person making the application. When considering the matter, the court is able to access the document, thing or information the subject of the claim and may hear the application in any way it considers appropriate including by hearing the matter afresh. An application must be dealt with expeditiously and in closed court, although the court may allow another person to be present at the hearing if it is in the interests of justice. After considering the claim of reasonable excuse and hearing submissions, the court may order the person to produce the document, thing or information or answer the question, or order the commission to withdraw the requirement to which the claim relates. The court must give reasons for its decision, which may be given orally. Unless otherwise ordered by the court on the ground that the claim is frivolous or vexatious, the costs of the application are to be paid by the commission.

New division 2 is headed ‘Claims of reasonable excuse based on privilege’.

New section 205ZJ (Applications about decisions of deciding officers and presiding officers) provides a process by which a person may apply to the Supreme Court to decide a claim of reasonable excuse based on privilege the subject of a decision of a deciding officer or presiding officer under part 2, division 3 that the claim of reasonable excuse based on privilege is not established; or a decision of a deciding officer or presiding officer to make a requirement of a person under section 205ZD(2) or section 205ZF(2)(a). The person must apply within 7 days after the person received the application notice under the relevant section and may apply only once in relation to a particular requirement to produce information or a document or thing or to answer a question.

New section 205ZK (Applications after deciding officer or presiding officer declines to decide claim) provides a process by which the chairperson may apply to the Supreme Court to decide a claim of reasonable excuse based on privilege the subject of a decision of a deciding officer, under section 205I, or a presiding officer, under section 205T, to decline to decide the claim. The chairperson must apply within 7 days after the person received the notice under the relevant section. Section 205N and section 205X deal with what happens if the matter relates to a document or thing if the chairperson does not make an application under the section.

New section 205ZL (Supreme Court to decide claim) provides a process for deciding an application made under section 205ZJ or section 205ZK. The burden of proof, other than for a claim of journalist privilege, is on the person seeking to withhold the document, thing or information, seeking not to answer a question or seeking to prevent the exercise of authority. For a claim of journalist privilege, the burden of proof for establishing the claim is on the journalist or relevant person for the journalist; but, where the commission seeks to insist on a requirement despite a claim of journalist privilege being established, then the commission has the onus of proving each of the

matters mentioned in section 205ZS(1). When considering the matter, the court is able to access the document, thing or information the subject of the claim and may hear the application in any way it considers appropriate including by hearing the matter afresh. An application must be dealt with expeditiously and in closed court, although the court may allow another person to be present at the hearing if it is in the interests of justice. After considering the claim of reasonable excuse based on privilege and hearing submissions, the court must decide the claim under part 3, division 3. The court must give reasons for its decision, which may be given orally. Unless otherwise ordered by the court on the ground that the claim is frivolous or vexatious, the costs of the application are to be paid by the commission. Part 3, divisions 3 and 4 deal with the orders the judge may make when deciding a claim.

New division 3 is headed ‘Deciding claims of privilege’.

New section 205ZM (Purpose of division) provides that division 3 provides for how the Supreme Court will decide claims of privilege under: division 2 (Claims of reasonable excuse based on privilege); part 4 (Claims made in relation to search warrants and seizures), division 2; and part 6 (Claims made in confiscation related investigations), division 2.

New section 205ZN (Parliamentary privilege) provides for the orders the court must make in relation to deciding a claim of parliamentary privilege. Parliamentary privilege is not abrogated by the CC Act and if the court finds that the privilege is established, the court must order the commission to withdraw the requirement to which the claim relates. If the privilege is not established, the court must order the person to produce the document, thing or information or answer the question.

New section 205ZO (Legal professional privilege) provides for the orders the court must make in relation to deciding a claim of legal professional privilege. Legal professional privilege is not abrogated by the CC Act in response to the exercise of the commission’s coercive powers under chapter 3 and if the court finds that the privilege is established, the court must order the commission to withdraw the requirement to which the claim relates. If the privilege is found to be established but has been waived by a person with relevant authority, the court must order the person to comply with the requirement to which the claim relates. If the privilege is not established, the court must order the person to produce the document, thing or information or answer the question.

New section 205ZP (Public interest immunity) provides for the orders the court must make in relation to deciding a claim of public interest immunity. Public interest immunity is not abrogated by the CC Act and a claim will be decided in accordance with the common law. If public interest immunity is found to be established, the court must order the commission to withdraw the requirement to which the claim relates. If public interest immunity is found not established, the court must order the person to produce the document, thing or information or answer the question. Currently, section 195B and section 196 of the Act may create some uncertainty about the way a claim of public interest immunity is to be considered. The new provision is intended to clarify this.

New section 205ZQ (Confidentiality) provides for the orders the court must make in relation to deciding a claim of confidentiality. The person must be ordered to produce

the document, thing or information or answer the question if the court finds that the claim of confidentiality is established and it would not be against the public interest for the document, thing or information to be produced or the question to be answered. If the court finds that the claim is established and it would be against the public interest for production to be made or the question answered, the court must order the commission to withdraw the requirement to which the claim relates. If the claim of confidentiality is found not established, the court must order the person to produce the document, thing or information or answer the question. Subsection (5) makes clear that the section does not apply to a claim under section 94(2)(b) or 111(3)(b) as claims of confidentiality are not available to be made under those sections.

New section 205ZR (Self-incrimination privilege) provides for the orders the court must make in relation to a claim of self-incrimination privilege and provides that whether or not self-incrimination privilege is found to be established, the court must order the person to produce the document, thing or information or answer the question. This is a consequence of the abrogation of the self-incrimination privilege by the CC Act. The new section includes a note pointing to the application of section 197 if self-incrimination privilege is established. Subsection (2) makes clear that the section does not apply to a claim under section 94(2)(b) or 111(3)(b) as claims of self-incrimination privilege are not available to be made under those sections.

New section 205ZS (Journalist privilege) provides for the orders the court may or must make in relation to deciding a claim of journalist privilege. The person may be ordered to produce the document, thing or information or answer the question if journalist privilege is established and, on balance, the public interest in disclosing the identity of the informant outweighs: any likely adverse effect of the disclosure on the informant or another person; the public interest in the communication of facts and opinion to the public by the news media; and the public interest in the ability of the news media to access sources of facts. If the court does not make such an order, the court must order the commission to withdraw the requirement. In deciding whether to make the order, the court may have regard to the matters mentioned in section 205ZF(3)(a) to (j) and any other relevant matter. If journalist privilege is not established, the court must order the person to produce the document, thing or information or answer the question. The section does not apply to claims made in relation to search warrants which are instead dealt with under the Evidence Act.

New division 4 is headed 'Other orders'.

New section 205ZT (Access to, or return of, documents and things) provides for the orders the court must make about disposal of a document or thing which was delivered to a registrar of the Supreme Court under section 205P or 205W. The section sets out when the court must make an order directing that the document or thing be given to the commission. However, if the court orders the commission under section 205ZI(9)(b) or division 3 to withdraw a requirement in relation to the document or thing, the court must also make an order directing that the document or thing be given to the person.

New section 205ZU (Ancillary orders) provides for the court to make any other order considered appropriate in the circumstances. This includes orders about the non-disclosure of material, including a document, thing or information given to the court in proceedings for an application. In line with new section 205E, a reference to a document

or thing in the section includes a reference to a part of the document or thing and, accordingly, the orders the court may make may relate to a part only of a document or thing.

New Part 4 is headed ‘Claims made in relation to search warrants and seizures’.

New division 1 is headed ‘Preliminary’.

New section 205ZV (Application of part) provides that part 4 applies to a decision of a commission officer under section 94(2)(b) or 111(3)(b) not to withdraw a requirement of a person in relation to a document or thing.

New division 2 is headed ‘Supreme Court to decide claim’.

New section 205ZW (Applications to Supreme Court) provides a process for deciding a claim where a person makes a claim of privilege under the applicable sections in relation to a document or thing. Either the chairperson or the person making the claim may apply to the Supreme Court 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 document or thing or to prevent the exercise of authority. The court may hear the application in any way it considers appropriate and, after considering the claim of privilege and hearing submissions the court, must decide the claim. For a claim made under section 94(2)(b), the court will decide the claim under part 3, division 3 other than sections 205ZQ to 205ZS as claims of confidentiality and self-incrimination privilege may not be made under section 94 and journalist privilege is dealt with under the Evidence Act. For a claim made under section 111(3)(b), the court will decide the claim under part 3, division 3 other than sections 205ZQ and 205ZR as claims of confidentiality and self-incrimination privilege may not be made under section 111. The court must give reasons for its decision, which may be given orally. Unless otherwise ordered by the court on the ground that the claim is frivolous or vexatious, the costs of the application are to be paid by the commission.

New section 205ZX (Access to, or return of, documents and things) provides for the orders the court must make about disposal of a document or thing. If the person is ordered to produce the document or thing and it was delivered to the registrar under section 205ZZ, the court must also make an order directing that the document or thing be given to the commission. However, if the court orders the commission to withdraw the requirement in relation to a document or thing that was delivered to the registrar, the court must also make an order directing that the document or thing be given to the person mentioned in section 205ZZ(1).

New section 205ZY (Ancillary orders) provides for the court to make any other order considered appropriate in the circumstances. This includes orders about the non-disclosure of material, including a document or thing given to the court in the proceedings for an application. In line with new section 205E, a reference to a document or thing in the section includes a reference to a part of the document or thing and, accordingly, the orders the court may make may relate to a part only of a document or thing.

New division 3 is headed ‘Procedures for documents and things’.

New section 205ZZ (Procedures for documents and things subject to claim) applies if the document or thing is in a person's possession or a person acknowledges the document or thing is in the person's possession and provides that the commission officer must require the person to seal the document or thing and give it to the commission officer for safekeeping. Subsection (2) makes clear that the person in possession may or may not be the person entitled to claim privilege in relation to the document or thing under section 94 or section 111. The section requires the commission's representative and, if practicable, the person to immediately deliver the sealed document or thing to a registrar of the Supreme Court for safekeeping and provides penalties for contravention of its requirements.

New section 205ZZA (Action by registrar) provides for the actions the registrar may take in relation to the sealed document or thing delivered under section 205ZZ. The section provides that the document or thing must be kept in safe custody and makes provision for when and how they may be disposed of by the registrar. The section provides that the document or thing must be returned to the person if no application is made, or agreement reached, within 3 business days and otherwise must be disposed of in accordance with the order made by the Supreme Court or, where the registrar is given notice from the person and the commission's representative that an agreement has been reached, disposed of in accordance with that agreement.

New part 5 is headed 'Procedure for claims of legal professional privilege'.

New section 205ZZB (Application of part) provides that part 5 applies if a claim of legal professional privilege is made by a person in relation to a document or thing that is required to be given or produced to the commission, whether or not at a hearing; and the person has no authority to waive the privilege; and either:

- for a document or thing not required to be produced at a hearing, the commission officer who required the document or thing to be given has decided not to withdraw the requirement under section 205G(b); or
- for a document or thing required to be produced at a hearing, the presiding officer does not withdraw the requirement under part 2, division 3.

New section 205ZZC (Procedure for claims of legal professional privilege) provides a procedure for a document or thing required to be produced either outside of a commission hearing or at a hearing where a claim of legal professional privilege is made by a person who has no authority to waive the claim. If required to do so, the person must tell the commission officer or presiding officer the name and address of the person entitled to waive the privilege and seal the document or thing and give it to the commission for safekeeping. The new section requires the commission officer or presiding officer to give the person a receipt and place the item at the commission's premises for safe keeping. The new section provides penalties for contravention, including where the sealed document or thing is opened without authorisation under the Act or a court order.

New section 205ZZD (Access to sealed document or thing) provides for what happens to a sealed document or thing given to the commission under section 205ZZC. For all applicable investigations and functions, other than the witness protection function, the items must be returned to the person if the commission has not, within 3 months, given

the person entitled to waive the privilege a notice to attend a hearing and to produce the sealed document or thing.

In the context of a witness protection function, the sealed document or thing must be returned to the person if either the chairperson or the person entitled to waive the privilege has not, within 3 months, made an application under subsection (3) to the Supreme Court for the court to decide whether the claim of legal professional privilege is established. Sections 205ZL and 205ZO apply to the application under subsection (3). Witness protection matters are treated differently as there is no ability to hold a hearing to consider a claim of reasonable excuse, including privilege. If the Supreme Court decides that the claim of legal professional privilege in relation to the sealed document or thing is established, the court must order that the sealed document or thing be given to the person. If the Supreme Court decides that the claim of legal professional privilege is not established, the court must order that the sealed document or thing be given to the commission.

New part 6 is headed 'Claims made in confiscation related investigations'.

New division 1 is headed 'Preliminary'.

New section 205ZZE (Application of part) provides that part 6 (Claims made in confiscation related investigations) applies if a person claims privilege under section 81A(1) in relation to a requirement to produce a document or thing under a notice to produce or under section 110A(3) in relation to a document or thing found at a place that a commission officer proposed to seize. The section also provides that, in part 6, a reference to a requirement in relation to a document or thing includes a reference to a commission officer exercising a power under section 110A(2) in relation to the document or thing.

A note is also inserted to clarify that sections 205ZZF and 205ZZG only apply to claims of privilege under section 81A(1). Applications for claims of privilege in relation to documents or things found at a place under a search warrant and proposed to be seized by the commission officer under section 110A(2) are made directly to the Supreme Court under section 205ZZH.

New section 205ZZF (Commission officer to consider claim made under s 81A) provides a process by which the commission officer who has required the document or thing to be given under a notice to produce must consider a claim of privilege made under section 81A(1) and may then either withdraw the requirement or advise the person that they may be required to attend before the Supreme Court to establish the claim of privilege under section 205ZZH.

New section 205ZZG (Procedure for claims of legal professional privilege if person has no authority to waive privilege) provides a procedure where a claim of legal professional privilege is made under section 81A(1) by a person who has no authority to waive the claim. If required to do so, the person must tell the commission officer the name and address of the person entitled to waive the privilege and seal the document or thing and give it to the commission for safekeeping. The new section requires the commission officer to give the person a receipt and place the item at the commission's premises for safe keeping. The new section provides penalties for contravention,

including for where the sealed document or thing is opened without authorisation under the Act or a court order. The item must be returned to the person who gave it to the commission if the chairperson has not, within 3 months, made an application under section 205ZZH to the Supreme Court for the court to decide whether the claim of legal professional privilege is established. Subsection (6) requires the delivery by the commission's representative of the sealed document or thing to a registrar of the Supreme Court for safe keeping if the chairperson or the person make an application to the Supreme Court under section 205ZZH. The commission's representative must notify the person that the sealed document or thing has been delivered to the registrar. Subsections (8) and (9) provide for the actions the registrar must take in relation to the sealed document or thing, including for disposal in accordance with the order of the court or by agreement. The section provides penalties for contravention of its requirements.

New division 2 is headed 'Supreme Court to decide claim'.

New section 205ZZH (Applications to Supreme Court) provides a process for deciding a claim where a person makes a claim of privilege in relation to a document or thing in a confiscation related investigation. Either the chairperson or the person making the claim (including a person mentioned in 205ZZG(2)(a) who is entitled to waive legal professional privilege in relation to the document or thing) may apply to the Supreme Court to decide whether the claim is established and, if established, whether it is to be upheld. The burden of proof, other than for a claim of journalist privilege, is on the person seeking to withhold the document or thing or to prevent the exercise of authority. For a claim of journalist privilege, the burden of proof for establishing the claim is on the journalist or relevant person for the journalist; but, where the commission seeks to insist on a document or thing being given despite a claim of journalist privilege being established, then the commission has the onus of proving each of the matters mentioned in section 205ZS(1). The court may hear the application in any way it considers appropriate and, after considering the claim of privilege and hearing submissions, the court must decide the claim: if it was made under section 81A(1)—under part 3, division 3; or if it was made under 110A(3)—under part 3, division 3, other than sections 205ZQ and 205ZR. The court must give reasons for its decision, but these may be given orally. Unless otherwise ordered by the court on the ground that the claim is frivolous or vexatious, the costs of the application are to be paid by the commission.

New section 205ZZI (Access to, or return of, documents and things) provides for the orders the court must make about disposal of a document or thing. If the person is ordered to produce the document or thing and it was delivered to the registrar under section 205ZZG or section 205ZZK, the court must also make an order directing that the document or thing be given to the commission. However, if the court orders the commission to withdraw the requirement in relation to a document or thing that was delivered to the registrar, the court must also make an order directing that the document or thing be given to the person.

New section 205ZZJ (Ancillary orders) provides for the court to make any other order considered appropriate in the circumstances. This includes orders about the non-disclosure of material, including a document or thing given to the court in proceedings for an application. In line with new section 205E, a reference to a document or thing in



the section includes a reference to a part of the document or thing and, accordingly, the orders the court may make may relate to a part only of a document or thing.

New division 3 is headed ‘Procedure for documents and things’.

New section 205ZZK (Procedure for documents and things subject to claim) provides that the section applies if the document or thing is in a person’s possession or a person acknowledges that the document or thing is in their possession; and the commission officer decides not to withdraw the requirement in relation to the document or thing under section 110A(3)(b) or 205ZZF(2)(b); and section 205ZZG (which relates to waiver of claims of legal professional privilege) does not apply. The commission officer must require the person to seal the document or thing and give it to the commission officer for safekeeping. Subsection (2) makes clear that the person in possession may or may not be the person entitled to claim privilege in relation to the document or thing. The section requires the commission’s representative and, if practicable, the person to immediately deliver the sealed document or thing to a registrar of the Supreme Court for safe keeping and provides penalties for contravention of its requirements.

New section 205ZZL (Action by registrar) provides for the actions the registrar may take in relation to the sealed document or thing delivered under section 205ZZK. The section provides that the document or thing must be kept in safe custody and makes provision for when and how they may be disposed of by the registrar. The section provides that the document or thing is to be returned to the person if, after 3 business days has elapsed, no application under section 205ZZH has been made or agreement on disposal reached. If an application to the Supreme Court under section 205ZZH is made within the period allowed, the document or thing must be disposed of in accordance with the order of the Supreme Court. Where the registrar is given notice from the person and the commission’s representative that an agreement has been reached, the registrar must dispose of the document or thing in accordance with that agreement.

*Clause 33* amends section 211 (Inquiry or detriment to witness) consequential to the amendments in clause 12 above. The amendment also clarifies the intended operation of the offence by inserting the word ‘other’ before the word ‘person’ in paragraphs (a) to (c) of the section to make it clear that the injury or detriment is directed towards the other person because of their actions, as specified in paragraphs (a) to (c).

*Clause 34* amends section 225 (Qualifications for appointment—chief executive officer and ordinary commissioners) to introduce a new requirement for at least two of the three ordinary commissioners to have a demonstrated interest and ability in community affairs, public administration or organisational leadership. The amendment implements Recommendation 1 of PCCC Report No. 106.

*Clause 35* amends section 228 (Prior consultation and bipartisan support for appointments) to introduce a 30-day timeframe (with a possible two week extension if requested) within which the PCCC must notify the Minister whether an appointment to the position of commissioner (including the Chairperson) or Chief Executive Officer (CEO) has bipartisan support. The amendment, together with the amendments to section 292, is intended to address Recommendation 3 of the PCCC Report No. 106.

*Clause 36* replaces section 231 (Duration of appointment) with two new sections. New section 231 (Duration of commissioners' appointments) provides for a seven-year fixed non-renewable term for persons appointed as commissioners. The amendment implements Recommendation 4 of the PCCC Report No. 106. New section 231A (Duration of chief executive officer's appointment) recasts section 231 of the CC Act as it applied to the CEO and provides for the term of appointment for the CEO of the commission. The effect of the provisions in relation to the position of CEO is unchanged and the term of appointment for the CEO may not be longer than five years, but a CEO may be reappointed for a further term or terms provided the total period a person is appointed is no longer than 10 years.

*Clause 37* amends section 247 (Duration of appointment) to remove the pre-condition under which the maximum term of a senior officer could only be extended from 10 to 15 years if the re-appointment was necessary for the efficient operation of the commission. The amendment provides for a total maximum 15-year term for a senior officer and includes an example. The provision for individual terms of appointment of no longer than five years is not affected by the amendment. The amendments also do not affect the requirement that a senior officer may only be reappointed for a further term if the commission considers that the person's performance as a senior officer has been of the highest standard and the person is likely to continue to contribute at a high standard to the commission's performance. Additionally, the amendments insert new subsections allowing the maximum tenure limit to be reset after ten years has elapsed for a person who has permanently left the commission where it is proposed to again appoint the person as a senior officer in the commission. The amendments are intended to address Recommendation 5 of the PCCC Report No. 108 and are designed to enhance the independence of the commission, ensure flexibility is retained for shorter appointment terms and provide some increased flexibility in senior executive appointments to allow for retention of corporate knowledge and a succession pipeline.

*Clause 38* amends section 247A (Notice to parliamentary committee) consequential to the amendments to section 247 (Duration of appointment). Under the amendment, the existing requirement for the CEO to notify the parliamentary committee will be replaced with a requirement to provide notice to the parliamentary committee if a senior officer is reappointed for a further term under section 247(2) and the appointment will result in the person holding office in the commission as a senior officer for more than 10 years in total. Consistent with section 247(2), the notice must state the basis on which the commission considers the person's performance as a senior officer has been of the highest standard and why the person is likely to continue to contribute at a high standard to the commission's performance.

*Clause 39* amends section 257 (Commission officers) to extend the power for the commission to issue directions under section 257(2) for the performance of duties to commission officers who are engaged under section 256 (Engagement of agents). Under section 256, the commission may engage suitably qualified persons to provide it with services, information or advice to meet temporary circumstances. Such persons are engaged on the terms and conditions decided by the commission and not under the *Public Sector Act 2022*. The amendment implements Recommendation 5 of Report No. 106.

*Clause 40* amends section 270 (Delegation—chairperson) to make an amendment to the reference to section 82(6) consequential to the re-numbering of sections 82(5A) to (7) by clause 13(10) of the Bill.

*Clause 41* amends section 290 (Minutes) to replace the references to ‘commission’ in subsections (2) and (3) with references to ‘committee’. The amendment corrects an anomaly in section 290 of the CC Act whereby subsections (2) and (3) incorrectly refer to ‘commission’ meetings when they should refer to ‘committee’ meetings, noting that the section relates to the minutes of the Crime Reference Committee.

*Clause 42* amends section 292 (Functions) to allow the PCCC to publish (as part of its annual report under the *Parliament of Queensland Act 2001*) information about the PCCC’s participation in the amended appointment process under section 228 (Prior consultation and bipartisan support for appointments) including the number of days within which the PCCC provided notification to the Minister in a particular matter, reasons for any delays in providing notification and, where appropriate, the reasons for withholding bipartisan support provided the reasons do not identify any personal information or other confidential information. Definitions of ‘personal information’ and ‘confidential information’ are included for the section. The amendments, together with the amendment to section 228, are intended to address Recommendation 3 of the PCCC Report No. 106.

*Clause 43* amends section 314 (Functions of parliamentary commissioner) by inserting a new subsection (8) so that, in relation to subsection (4)(a), the definition of ‘corrupt conduct’ is extended to include conduct that would, if the person were an officer in a unit of public administration, be corrupt conduct. The amendment implements Recommendation 28 of the PCCC Report No. 106.

*Clause 44* inserts new section 346C (Possession of and dealing with data and records of the CJC inquiry) to enable storage of the CJC inquiry data and records (records) at Queensland State Archives despite the records not being public records within the meaning of the *Public Records Act 2002*. Consistent with section 374 of the CC Act (which is omitted by the amendments) the records are vested in the parliamentary commissioner. The parliamentary commissioner may request the State Archivist to keep, store and preserve the records and to give persons access to the records if the parliamentary commissioner informs the State Archivist in writing that the commissioner is satisfied the person has a legitimate need to access them. Once the parliamentary commissioner makes a request, the State Archivist must comply with the request and is given the requested functions on behalf of the parliamentary commissioner.

Under new section 346C a person may apply to the State Archivist for access to the records; however, the test for access to be given to the records remains the same as under section 374 of the CC Act for the parliamentary commissioner to be satisfied the person has a legitimate need to access them. The State Archivist may only give a person access to the records in accordance with the section.

The section contains a mechanism to allow review of the appropriate restrictions on access to the records at some point in the future so that consideration can then be given

to whether the records should become public records with control to be transferred to a suitable public authority.

Subsections (7) to (10) will require the parliamentary commissioner, in consultation with the State Archivist, to review whether the access test provided for in the section remains appropriate and whether the records should become public records under the *Public Records Act 2002*. The first review must be carried out within 15 years after the commencement and subsequently at least every 5 years. Following the review, the parliamentary commissioner must write to the State Archivist to provide information about the outcome of the review. If the parliamentary commissioner is satisfied that the access test is no longer appropriate and the records should become public records, the parliamentary commissioner must provide this information to the Minister administering the Act.

*Clause 45* inserts new section 347A (Corporations legislation displacement) which provides that a regulation may declare a provision of the CC Act that applies in relation to a prescribed corporation (within the meaning of the Corporations Act that is prescribed under section 20 to be a unit of public administration for the CC Act) to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act. The regulation may be declared to apply in relation to the whole of the Corporations legislation or a particular provision of the Corporations legislation, or all prescribed corporations or a particular prescribed corporation.

*Clause 46* omits section 374 (Parliamentary commissioner to have possession of and deal with records of the CJC inquiry) consequential to the amendment in clause 44.

*Clause 47* inserts new chapter 8, part 20 (Crime and Corruption and Other Legislation Amendment Act 2024) into the Act relating to the commencement of the CCOLA Act.

New section 459 (Application of ch 2, pt 3, div 5, sdiv 2 to prosecution of corruption offences) clarifies that new subdivision 2 (Prosecution of corruption offences) applies in relation to the prosecution of a corruption offence that is commenced against a person only where the prosecution is commenced after commencement of new section 459. However, it is irrelevant whether or not the investigation which led to the prosecution started before or after the commencement of new section 459.

New section 460 (Claims of reasonable excuse) provides a transitional provision to clarify that the provisions of the CC Act as amended by the CCOLA Act apply in certain specific circumstances where a notice has been issued prior to commencement.

No transitional provisions are otherwise provided for in respect of the Bill's amendments providing the commission with powers to issue a range of notices in respect of its various functions. Section 20 of the AI Act will operate to ensure that:

- any notices issued under the current CC Act and in force at commencement are to continue to be taken as valid and enforceable under the pre-amended CC Act; and
- any claims of reasonable excuse or privilege made prior to commencement will be enforceable under the pre-amended CC Act and this will be the case regardless of whether or not the claim itself was raised before or after commencement.

Further, the amendments are not intended to affect hearings underway at the time of commencement, subject to the operation of new section 462.

With respect to new notices issued after commencement of the CCOLA Act, the provisions of the CC Act as amended by the CCOLA Act would apply regardless of whether the investigation to which the notice relates was on foot prior to commencement. Any claims raised in respect of such notices would also be dealt with under the amended provisions, i.e. under new chapter 4A.

New section 461 (Misdemeanours) provides that reclassification of the offence of non-compliance with an attendance notice under section 82(5) and refusal to take oath under section 183 as misdemeanour offences only applies where the offence is committed after the commencement of new sections 82(6) and 183(2) which are inserted into these offence provisions.

New section 462 (Attendance at commission hearings under s 182A) provides that a person may attend a hearing under an audiovisual link or audiolink, as provided for by section 182A, regardless of whether or not the attendance notice was issued before or after the commencement of the section. Section 182A commences on assent of the CCOLA Act. Section 462 will ensure that for attendance notices issued immediately prior to assent, and still in force at the time of commencement, a person will be able to appear remotely at the hearing under the attendance notice.

New section 463 (When document, thing or information given to journalist) provides for the application of journalist privilege to information given to a journalist before or after commencement of section 205D(1)(c). This aligns with the approach to journalist privilege in section 157 of the Evidence Act whereby journalist privilege applies to information given to a journalist before or after the commencement of the amending Act introducing the journalist privilege framework.

New section 464 (Reference in s 211) provides that a reference to section 81F in section 211(c) is taken to include a reference to the former section 75 which is omitted by clause 12 and recast as section 81F. This will ensure that the offence may continue to operate where an offence is committed against another person in relation to their compliance with a notice issued under former section 75.

New section 465 (Application of s 225 to existing ordinary commissioners and particular new appointments) provides for the transitional arrangements for the application of the revised qualifications for ordinary commissions under section 34 of the CCOLA Act. Section 465 ensures that a commissioner holding appointment at the time of commencement of the amendments to section 225 continues to hold office on the basis of section 225 before it was amended. Section 465(2) ensures that where a new appointment of an ordinary commissioner occurs after commencement, and none of the existing commissioners hold the new qualifications, the requirement that at least two ordinary commissioners have a demonstrated interest, and an ability, in community affairs, public administration or organisational leadership does not apply provided that the commissioner to be appointed has those qualifications.

New section 466 (Application of provisions about responses to consultation on nominations under s 228) provides that the new requirements under sections 228(2) and (3) for the parliamentary committee to notify the Minister, in writing, within 30 days as to whether a nomination has bipartisan support of the committee, or to inform the Minister that more time is required to consider the nomination, only apply if consultation by the Minister on the appointment commences after commencement. Section 466 further provides that the new requirement in section 292(1)(h) for the committee to publish information about its involvement in the nomination of a person for appointment under section 228 in its annual report only applies if the Minister's consultation in relation to the nomination commenced after commencement.

New section 467 (Application of former s 231 to commissioners) provides that section 231 as in force immediately before the commencement continues to apply to a sitting commissioner. This means that a sitting commissioner at the time of commencement will be eligible for re-appointment for a further term of up to five years provided that the total term does not exceed 10 years.

New section 468 (Application of s 257 to particular commission officers) provides that section 257 (Commission officers) as amended by the CCOLA Act will apply to a commission officer engaged under section 256 (Engagement of agents) only if the person was engaged after commencement of the section or if the officer was engaged before commencement, the officer is further engaged after the commencement and the engagement is a replacement or renewal of the existing engagement. The amendment to section 257 commences on assent of the CCOLA Act. This approach ensures that existing contractual arrangements for persons engaged under section 256 are not impacted by the ability of the commission to issue directions to persons engaged under section 256 once the amendment to section 257 comes into force.

New section 469 (Application of former s 374 to particular applications for access to data and records of CJC inquiry) provides that until the parliamentary commissioner makes a request of the State Archivist to take the data and records of the CJC inquiry (records) a person may continue to apply for access to the records under former section 374(2). New section 469 further provides that where a request for access under former section 374(2) is made before commencement and has yet to be decided, or is made after commencement but the parliamentary commissioner has yet to request the archivist to take the records, then the parliamentary commissioner must give the person access to the records if satisfied the person has a legitimate need to access the records. Effectively, this means the previous access arrangements under the former section 374(2) will continue to apply until a request is made to the State Archivist to take the records. However, this situation will change once the request to the State Archivist under section 346C(2) is made so that where an application remains undecided immediately after the parliamentary commissioner has made a request of the State Archivist to take the records, then the new access arrangements under section 346C(5) will apply.

*Clause 48* amends schedule 2 (Dictionary) to omit definitions which are no longer required and provide new definitions of 'application notice', 'commence' a prosecution against a person, 'commission's representative', 'deciding officer', 'immediate production requirement (hearing)', 'informant', 'journalist', 'journalist privilege', 'news medium', 'official premises', 'prosecuting authority' and 'prosecuting entity'. A

consequential change is made to the definition of ‘relevant person’. Consequential changes are also made to the definitions of ‘notice to discover’, ‘notice to produce’ and ‘privilege’ with the former definitions omitted and new definitions inserted.

### **Part 3      Amendment of *Public Interest Disclosure Act 2010***

*Clause 49* provides that part 3 amends the PID Act.

*Clause 50* amends section 13 (Disclosure by a public officer) to insert new subsections (4) and (5) to provide that subsection (1)(a)(i) applies to a commission officer as though the commission were a unit of public administration, and to insert definitions for ‘commission officer’ and ‘unit of public administration’. This will enable commission officers to make lawful disclosures under section 13(a)(i) and be afforded the same protections as those engaged in a unit of public administration under the PID framework. This amendment is intended to address Recommendation 9 of PCCC Report No. 106 and Recommendation 27 of PCCC Report No. 97.

*Clause 51* replaces the chapter 8 heading (Transitional provisions for Public Interest Disclosure Act 2010) with ‘Transitional provisions’. A new part 1 (Transitional provisions for Act No. 39 of 2010) is also inserted.

*Clause 52* amends section 73 (Definitions for ch 8) to replace in the heading ‘ch 8’ with ‘part’. Section 73 is also amended to replace ‘chapter’ with ‘part’.

*Clause 53* replaces the chapter 9 heading (Transitional provision for Public Service and Other Legislation Amendment Act 2012) with a new part 2 ‘Transitional provision for Public Service and Other Legislation Amendment Act 2012’.

*Clause 54* inserts a new part 3, ‘Transitional provision for Crime and Corruption and Other Legislation Amendment Act 2024’ into chapter 8 (Transitional provisions), as amended by the Bill.

New section 79 (Application of s 13 to conduct of commission officer) provides that section 13, as amended by the CCOLA Act, applies to the conduct of a commission officer whether the conduct occurs before or after, or both before and after, the commencement of the Act.

### **Part 4      Amendment of the *Public Sector Act 2022***

*Clause 55* provides that part 4 amends the PS Act.

*Clause 56* amends section 281 (Delegation of Minister’s functions) to replace the reference to the ‘chairperson of the council’ with a reference to ‘the chief executive of the department in which the POQ Act is administered; or another appropriately qualified person’. This amendment appropriately broadens the scope of persons to whom a ministerial function under section 192 of the PS Act may be delegated. The amendment does not alter the existing requirement that a delegation cannot be subdelegated.

## **Part 5      Amendment of *Right to Information Act 2009***

*Clause 57* provides that part 5 amends the RTI Act.

*Clause 58* amends schedule 1 (Documents to which this Act does not apply), section 3 (Particular documents under *Crime and Corruption Act 2001*) to insert new subsection (g) to clarify that the data and records mentioned in new section 346C of the CC Act are documents to which this Act does not apply. This maintains the existing non-application of the RTI Act with respect to the Connolly-Ryan Inquiry records.

## **Part 6      Amendment of *Telecommunications Interception Act 2009***

*Clause 59* provides that part 6 amends the TI Act.

*Clause 60* amends section 25 (Inspecting entity may report on other contraventions) to include new subsection (3) declaring that for the purposes of subsection (1), a contravention of a condition or restriction specified in a warrant is a contravention of a provision of the Commonwealth Act.

*Clause 61* amends section 29 (Dealing with information for purposes of inspection and report) to insert the words ‘part 2-5 warrant’ after ‘the authority’s’ to clarify they are part 2-5 warrant records.