

Queensland

Crime and Corruption Act 2001

Current as at 1 July 2025

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Crime and Corruption Act 2001

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Crime and Corruption Act 2001

An Act to provide for the establishment and operation of a Crime and Corruption Commission, and a Parliamentary Crime and Corruption Committee, and for other purposes

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Crime and Corruption Act 2001*.

2 Commencement

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

3 Act binds all persons

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

(2) Subsection (1) does not make the State, the Commonwealth or another State liable to be prosecuted for an offence.

Part 2 Purpose

4 Act's purposes

(1) The main purposes of this Act are—

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(a) to combat and reduce the incidence of major crime; and

(b) to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector.

(2) The Act also has as the purpose to facilitate the commission's involvement in a confiscation related investigation.

5 How Act's purposes are to be achieved

(1) The Act's purposes are to be achieved primarily by establishing a permanent commission to be called the Crime and Corruption Commission.

(2) The commission is to have investigative powers, not ordinarily available to the police service, that will enable the commission to effectively investigate major crime and criminal organisations and their participants.

(3) Also, the commission is to—

(a) investigate cases of corrupt conduct, particularly more serious cases of corrupt conduct; and

(b) help units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so.

(4) Further, the commission has particular powers for confiscation related investigations for supporting its role under the Confiscation Act.

Part 3 Overview

6 Purpose of pt 3

The purpose of this part is to briefly outline the responsibilities of relevant entities under this Act.

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7 Crime and Corruption Commission

The Crime and Corruption Commission has primary responsibility for the achievement of the Act's purposes.

8 Crime Reference Committee

The Crime Reference Committee—

(a) has responsibility for—

(i) referring major crime to the commission for investigation; and

(ii) authorising the commission to undertake specific intelligence operations; and

(b) has a coordinating role for investigations into major crime conducted by the commission in cooperation with any other law enforcement agency.

9 Parliamentary Crime and Corruption Committee

The Parliamentary Crime and Corruption Committee is a standing committee of the Legislative Assembly with particular responsibility for monitoring and reviewing the commission's performance.

10 Parliamentary Crime and Corruption Commissioner

The Parliamentary Crime and Corruption Commissioner is an officer of the Parliament who helps the Parliamentary Crime and Corruption Committee in the performance of its functions.

11 Public Interest Monitor

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

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Part 4 Interpretation

Division 1 Definitions

12 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

Division 2 Corrupt conduct

13 Purpose of div 2

This division provides for the meaning of corrupt conduct for this Act.

Note—

Under section 35(3), the commission, in performing its corruption function under section 33(1)(b), must focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct within a unit of public administration.

14 Definitions for div 2

In this division—

appointment means appointment in a unit of public administration.

conduct includes—

(a) neglect, failure and inaction; and

(b) conspiracy to engage in conduct; and

(c) attempt to engage in conduct.

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15 Meaning of *corrupt conduct*

(1) ***Corrupt conduct*** means conduct of a person, regardless of whether the person holds or held an appointment, that—

(a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—

(i) a unit of public administration; or

(ii) a person holding an appointment; and

(b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that—

(i) is not honest or is not impartial; or

(ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or

(iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and

(c) would, if proved, be—

(i) a criminal offence; or

(ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

(2) ***Corrupt conduct*** also means conduct of a person, regardless of whether the person holds or held an appointment, that—

(a) impairs, or could impair, public confidence in public administration; and

(b) involves, or could involve, any of the following—

(i) collusive tendering;

(ii) fraud relating to an application for a licence, permit or other authority under an Act with a

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purpose or object of any of the following (however described)—

(A) protecting health or safety of persons;

(B) protecting the environment;

(C) protecting or managing the use of the State's natural, cultural, mining or energy resources;

(iii) dishonestly obtaining, or helping someone to dishonestly obtain, a benefit from the payment or application of public funds or the disposition of State assets;

(iv) evading a State tax, levy or duty or otherwise fraudulently causing a loss of State revenue;

(v) fraudulently obtaining or retaining an appointment; and

(c) would, if proved, be—

(i) a criminal offence; or

(ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.

16 Conduct happening over time, or at any time, may be corrupt conduct

(1) Conduct may be corrupt conduct even though—

(a) it happened before the relevant commencement; or

(b) some or all of the effects or elements necessary to constitute corrupt conduct happened before the relevant commencement; or

(c) a person involved in the conduct is no longer the holder of an appointment.

(2) Conduct engaged in by, or in relation to, a person at a time when the person is not the holder of an appointment may be corrupt conduct, if the person becomes the holder of an appointment.

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(3) In this section—

relevant commencement means—

(a) generally—the commencement of this Act; and

(b) for corrupt conduct under section 15(2)—the commencement of that subsection.

17 Conduct outside Queensland may be corrupt conduct

Conduct may be corrupt conduct regardless of—

(a) where the conduct happens; or

(b) whether the law relevant to the conduct is a law of Queensland or of another jurisdiction.

18 Conspiracy or attempt to engage in conduct may be corrupt conduct

A conspiracy or an attempt to engage in conduct is not excluded from being corrupt conduct if, had the conspiracy or attempt been brought to fruition by the taking of a further step, the further step could constitute or involve—

(a) an offence; or

(b) grounds for terminating a person's services in a unit of public administration, if the person is or were the holder of an appointment in the unit.

19 Corrupt conduct not affected by time limitations

Conduct does not stop being corrupt conduct only because a proceeding or an action for an offence to which the conduct is relevant can no longer be brought or continued or that action for termination of services because of the conduct can no longer be taken.

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Division 3 Units of public administration

20 Meaning of *unit of public administration*

(1) Each of the following is a ***unit of public administration***—

(a) the Legislative Assembly, and the parliamentary service;

(b) the Executive Council;

(c) a department;

(d) the police service;

(da) a local government;

(e) a corporate entity established by an Act or that is of a description of a corporate entity provided for by an Act which, in either case, collects revenues or raises funds under the authority of an Act;

(f) a noncorporate entity, established or maintained under an Act, that—

(i) is funded to any extent with State moneys; or

(ii) is financially assisted by the State;

(g) a State court, of whatever jurisdiction, and its registry and other administrative offices;

(h) another entity prescribed under a regulation.

(2) However, none of the following is a unit of public administration—

(a) the commission;

(b) the parliamentary commissioner;

(c) the entity consisting of—

(i) the parliamentary commissioner; and

(ii) officers and employees of the parliamentary service assigned to the parliamentary commissioner; and

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(iii) persons engaged to provide the parliamentary commissioner with services, information or advice;

(d) an entity declared by an Act not to be a unit of public administration.

(3) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1)(h) prescribing an entity to be a unit of public administration only if the Minister—

(a) is satisfied the entity—

(i) is supported directly or indirectly by government funds or other government assistance; or

(ii) is an entity over which government is in a position to exercise control; or

(iii) is established under an Act; or

(iv) is given public functions under an Act; and

(b) considers it is in the public interest for the entity to be prescribed as a unit of public administration.

(4) In deciding whether it would be in the public interest for the entity to be prescribed as a unit of public administration, the Minister may have regard to each of the following matters—

(a) if the entity is a company, whether it is a company limited by shares;

(b) the size of the entity, having regard to the number of the entity's employees or the entity's turnover;

(c) the purpose of the entity, including whether it is performing functions that are generally identified with the functions of government;

(d) the extent to which functions of the entity have previously been performed by government;

(e) the extent to which the entity has been the subject of an adverse comment by a regulatory or investigatory body such as the auditor-general or the commission;

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(f) any other relevant matter.

(5) Also, for subsection (1)(h), an entity may be prescribed under a regulation to be a unit of public administration in relation to only a part of the entity's functions.

21 Holding appointment in unit of public administration

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

Division 4 References to major crime and corruption

22 References to major crime or corruption include suspected major crime or suspected corruption

(1) A reference to major crime includes, in the context of a crime investigation, suspected major crime.

(2) A reference to corruption includes, in the context of a complaint or a corruption investigation, suspected corruption.

Division 5 Terrorist acts

22A Meaning of *terrorist act*

(1) An action is a ***terrorist act*** if—

(a) it does any of the following—

(i) causes serious harm that is physical harm to a person;

(ii) causes serious damage to property;

(iii) causes a person's death;

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(iv) endangers the life of someone other than the person taking the action;

(v) creates a serious risk to the health or safety of the public or a section of the public;

(vi) seriously interferes with, seriously disrupts, or destroys an electronic system; and

(b) it is done with the intention of advancing a political, religious or ideological cause; and

(c) it is done with the intention of—

(i) coercing, or influencing by intimidation, the government of the Commonwealth, a State or a foreign country, or of part of a State or a foreign country; or

(ii) intimidating the public or a section of the public.

(2) A threat of action is a ***terrorist act*** if—

(a) the threatened action is likely to do anything mentioned in subsection (1)(a)(i) to (vi); and

(b) the threat is made with the intentions mentioned in subsection (1)(b) and (c).

(3) However, an action or threat of action is not a ***terrorist act*** if the action or threatened action—

(a) is advocacy, protest, dissent or industrial action; and

(b) is not intended—

(i) to cause serious harm that is physical harm to a person; or

(ii) to cause a person's death; or

(iii) to endanger the life of a person, other than the person taking the action; or

(iv) to create a serious risk to the health or safety of the public or a section of the public.

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(4) A reference in this section to a person or property is a reference to a person or property wherever situated, within or outside the State (including within or outside Australia).

(5) In this section—

electronic system includes any of the following electronic systems—

(a) an information system;

(b) a telecommunications system;

(c) a financial system;

(d) a system used for the delivery of essential government services;

(e) a system used for, or by, an essential public utility;

(f) a system used for, or by, a transport system.

physical harm includes unconsciousness, pain, disfigurement, infection with a disease and physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

public includes the public of another State or of a country other than Australia.

serious harm means harm, including the cumulative effect of any harm, that—

(a) endangers, or is likely to endanger, a person's life; or

(b) is, or is likely to be, significant and longstanding.

threat includes a threat made by conduct, whether express or implied and whether conditional or unconditional.

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Chapter 2 Commission functions, investigations, reporting and statements

Part 1 Prevention

23 Commission's prevention function

The commission has a function (its ***prevention function***) of helping to prevent major crime and corruption.

24 How commission performs its prevention function

Without limiting the ways the commission may perform its prevention function, the commission performs the function by—

(a) analysing the intelligence it gathers in support of its investigations into major crime and corruption; and

(b) analysing the results of its investigations and the information it gathers in performing its functions; and

(c) analysing systems used within units of public administration to prevent corruption; and

(d) using information it gathers from any source in support of its prevention function; and

(e) providing information to, consulting with, and making recommendations to, units of public administration; and

(f) providing information relevant to its prevention function to the general community; and

(g) ensuring that in performing all of its functions it has regard to its prevention function; and

(h) generally increasing the capacity of units of public administration to prevent corruption by providing

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advice and training to the units and, if asked, to other entities; and

(i) reporting on ways to prevent major crime and corruption.

Part 2 Crime

Division 1 Crime functions

25 Commission's crime function

The commission has a function (its ***crime function***)—

(a) to investigate major crime referred to it, under division 2, by the reference committee; and

(b) to investigate, under an authorisation under section 55D, incidents that threaten, have threatened or may threaten public safety that criminal organisations or participants in criminal organisations have engaged in, are engaging in, or are planning to engage in.

26 How commission performs its crime function

Without limiting the ways the commission may perform its crime function, the commission performs its crime function by—

(a) investigating major crime referred to it, under division 2, by the reference committee; and

(b) when conducting investigations under paragraph (a), gathering evidence for—

(i) the prosecution of persons for offences; and

(ii) the recovery of the proceeds of major crime; and

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(iii) the recovery of other property liable to forfeiture, or a person's unexplained wealth, under the Confiscation Act; and

(c) liaising with, providing information to, and receiving information from, other law enforcement agencies and prosecuting authorities, including agencies and authorities outside the State or Australia, about major crime.

Division 2 Referrals by reference committee

26A Definitions for div 2

In this division—

general referral see section 27(4).

referral means—

(a) a specific referral; or

(b) a general referral.

specific referral see section 27(2).

27 Referrals to commission

(1) The reference committee may refer—

(a) a particular incident of major crime to the commission for investigation; or

(b) major crime to the commission for investigation.

Examples of major crime that may be referred under paragraph (b)—

- terrorism
- criminal paedophilia facilitated by the use of the internet by offenders to groom children or distribute obscene material depicting children

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- organised crime engaged in by a class of person or involving offences of a particular type, for example, money laundering
- criminal activity involving drug trafficking and violence engaged in by members of (*generally identified*) motorcycle gangs and their associates

(2) A reference under subsection (1)(a) is called a ***specific referral***.

(3) A specific referral must identify—

(a) the particular incident of major crime to be investigated by the commission; and

(b) at least 1 of the following—

(i) the persons involved, or suspected of being involved, in the particular incident of major crime;

(ii) the activity constituting, or suspected of constituting, the particular incident of major crime.

(4) A reference under subsection (1)(b) is called a ***general referral***.

(5) A general referral—

(a) must identify the major crime to be investigated by the commission; and

(b) may identify either or both of the following—

(i) the persons involved, or suspected of being involved, in the major crime;

(ii) the activities constituting, or suspected of constituting, the major crime.

(6) A referral may relate to any circumstances implying, or any allegations, that a particular incident of major crime, or major crime, may have been committed, may be being committed, or may in the future be committed.

(7) A referral may be made by the reference committee—

(a) for a specific referral—

(i) on its own initiative; or

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(ii) if asked by the senior executive officer (crime); or

(iii) if asked by the commissioner of police; or

(b) for a general referral—

(i) on its own initiative; or

(ii) if asked by the senior executive officer (crime).

(8) A referral must be in writing.

28 Matters about which the reference committee must be satisfied before making a referral

(1) The reference committee may make a specific referral only if it is satisfied—

(a) the police service has carried out an investigation into the particular incident of major crime that has not been effective; and

(b) further investigation into the particular incident of major crime is unlikely to be effective using powers ordinarily available to police officers; and

(c) it is in the public interest to refer the particular incident of major crime to the commission for investigation.

(2) The reference committee may make a general referral only if it is satisfied it is in the public interest to refer the major crime to the commission for investigation.

(3) Without limiting the matters to which the reference committee may have regard in deciding whether it is in the public interest to refer a particular incident of major crime, or major crime, to the commission for investigation, the reference committee may have regard to the following—

(a) the number of persons that may be involved;

(b) the degree of planning and organisation likely to be involved;

(c) the seriousness of, or the consequences of, the particular incident of major crime or the major crime;

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(d) the person or persons likely to be responsible for planning and organising the particular incident of major crime or the major crime;

(e) the likely involvement of the person or persons in similar activities;

(f) the financial or other benefits likely to be derived by any person;

(g) whether investigation by the commission is a justifiable use of resources.

(4) Also, without limiting the matters to which the reference committee may have regard in deciding whether it is in the public interest to refer major crime to the commission for investigation (that is, a general referral), the reference committee may have regard to the likely effectiveness of investigation into the major crime using powers ordinarily available to the police service.

29 Reference committee may give commission directions about investigations

(1) The reference committee may give the commission directions imposing limitations on a crime investigation, including limitations on the exercise of the commission's powers for the investigation.

(2) The reference committee may also direct the commission to end a particular crime investigation if the committee considers—

(a) it may be more appropriate for another entity to undertake the investigation; or

(b) it may be more effective for another entity to undertake the investigation; or

(c) investigation by the commission is not a justifiable use of resources; or

(d) investigation by the commission is not in the public interest.

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

(4) To remove any doubt, it is declared that section 29(2)(d) is not limited by section 28(3) or (4).

29A Reference committee must consider whether to give commission directions in relation to particular crime investigation under general referral

(1) This section applies if the senior executive officer (crime) notifies the reference committee under section 277 that the commission has commenced a particular crime investigation under a general referral.

(2) The reference committee must, as soon as practicable after the reference committee is notified, consider whether to give the commission a direction under section 29(1) or (2) in relation to the particular crime investigation.

30 Amendment of referral to investigate

The reference committee may amend the terms of a referral to the commission on its own initiative or if asked by the senior executive officer (crime).

30A Review and lapse of general referrals

(1) The reference committee must review each general referral within 5 years of it being made or last confirmed under subsection (5).

(2) In conducting the review, the reference committee must give fresh consideration to the matters mentioned in section 28(2) to (4) as if a reference in the subsections to a referral were a reference to a confirmation under subsection (5).

(3) The senior executive officer (crime) may make submissions to the reference committee about its decision on the review if the general referral was initially requested by the senior executive officer (crime).

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(4) The reference committee may ask the senior executive officer (crime) to help the committee to conduct the review, and, if asked, the senior executive officer (crime) must give the committee the help it needs to conduct the review.

(5) In deciding the review, the reference committee may—

(a) confirm the referral with or without amendment; or

(b) replace the referral with a referral to the commissioner of police under section 31; or

(c) end the referral.

(6) If the reference committee does not act under subsection (5) before the end of the 5 year period mentioned in subsection (1), the referral lapses.

31 Referrals to police service

(1) The reference committee may refer a particular incident of major crime, or major crime, to the commissioner of police for investigation if it is satisfied that the matter is not appropriate for investigation or continued investigation by the commission.

(2) The referral must be written.

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

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

Division 3 Dealing with major crime

32 Police task forces and other operational agreements

(1) The chairperson may make arrangements with the commissioner of police for the establishment of a police task force to help the commission to carry out a crime investigation.

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(2) A police task force is under the control and direction of the commissioner of police.

(3) The commission may enter into operational agreements with other entities, including an entity mentioned in section 275(d).

Part 3 Corruption

Division 1 Corruption functions

33 Commission's corruption functions

(1) The commission has the following functions for corruption (the ***corruption functions***)—

(a) to raise standards of integrity and conduct in units of public administration;

(b) to ensure a complaint about, or information or matter involving, corruption is dealt with in an appropriate way, having regard to the principles set out in section 34.

(2) The commission's ***corruption functions*** also include—

(a) investigating and otherwise dealing with—

(i) conduct liable to allow, encourage or cause corrupt conduct; and

(ii) conduct connected with corrupt conduct; and

(b) investigating whether corrupt conduct or conduct mentioned in paragraph (a)(i) or (ii) may have happened, may be happening or may happen.

34 Principles for performing corruption functions

It is the Parliament's intention that the commission apply the following principles when performing its corruption functions—

(a) **Cooperation**

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- to the greatest extent practicable, the commission and units of public administration should work cooperatively to prevent corruption
- the commission and units of public administration should work cooperatively to deal with corruption

(b) **Capacity building**

- the commission has a lead role in building the capacity of units of public administration to prevent and deal with cases of corruption effectively and appropriately

(c) **Devolution**

- subject to the cooperation and public interest principles and the capacity of the unit of public administration, action to prevent and deal with corruption in a unit of public administration should generally happen within the unit

(d) **Public interest**

- the commission has an overriding responsibility to promote public confidence—
  - in the integrity of units of public administration and
  - if corruption does happen within a unit of public administration, in the way it is dealt with
- the commission should exercise its power to deal with particular cases of corruption when it is appropriate having primary regard to the following—
  - the capacity of, and the resources available to, a unit of public administration to effectively deal with the corruption
  - the nature and seriousness of the corruption, particularly if there is reason to believe that

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corruption is prevalent or systemic within a unit of public administration

- any likely increase in public confidence in having the corruption dealt with by the commission directly.

35 How commission performs its corruption functions

(1) Without limiting how the commission may perform its corruption functions, it performs its corruption functions by doing 1 or more of the following—

(a) expeditiously assessing complaints about, or information or matters (also ***complaints***) involving, corruption made or notified to it;

(b) referring complaints about corruption within a unit of public administration to a relevant public official to be dealt with by the public official;

(c) performing its monitoring role for police misconduct as provided for under section 47(1);

(d) performing its monitoring role for corrupt conduct as provided for under section 48(1);

(e) dealing with complaints about corrupt conduct, by itself or in cooperation with a unit of public administration;

(f) investigating and otherwise dealing with, on its own initiative—

(i) the incidence, or particular cases, of corruption throughout the State; or

(ii) the matters mentioned in section 33(2);

(g) assuming responsibility for, and completing, an investigation, by itself or in cooperation with a unit of public administration, if the commission considers that action to be appropriate having regard to the principles set out in section 34;

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(h) when conducting or monitoring investigations, gathering evidence for or ensuring evidence is gathered for—

(i) the prosecution of persons for offences; or

(ii) disciplinary proceedings against persons;

(i) assessing the appropriateness of systems and procedures adopted by a unit of public administration for dealing with complaints about corruption;

(j) providing advice and recommendations to a unit of public administration about dealing with complaints about corruption in an appropriate way;

(k) providing information generally about how it performs its corruption functions by reporting and making statements to the public;

(l) reporting on investigations to appropriate authorities and entities if it decides that prosecution proceedings or disciplinary action should be considered;

(m) providing information to the public and to appropriate authorities and entities, by reporting and making public statements, about particular complaints or particular investigations if the commission considers it appropriate and necessary in the circumstances to do so to—

(i) provide transparency about how it performs its corruption functions; or

(ii) assure the public and other authorities and entities that allegations of corruption are appropriately dealt with; or

(iii) continuously improve the integrity of, and reduce the incidence of corruption in, the public sector.

(2) In performing its corruption functions in a way mentioned in subsection (1), the commission should, whenever possible, liaise with a relevant public official.

(3) In performing its corruption function under section 33(1)(b), the commission must focus on more serious cases of corrupt

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conduct and cases of systemic corrupt conduct within a unit of public administration.

35A Chief executive officer may issue direction about commission's corruption function about complaints

(1) The chief executive officer may issue a direction about how commission officers are to decide whether a complaint involves, or may involve, a more serious case of corrupt conduct or a case of systemic corrupt conduct within a unit of public administration.

(2) In issuing a direction under subsection (1), the chief executive officer is subject to the direction and control of the chairperson.

(3) A commission officer must comply with a direction issued under subsection (1).

35B Publication of information about how commission performs its corruption function about complaints

(1) The chief executive officer must publish, on a publicly accessible website of the commission, information about the commission's systems and procedures for dealing with complaints about corruption.

(2) The information published on the website must include the following—

(a) the standard timeframes adopted by the commission for assessing, investigating and completing its dealing with complaints about corruption;

(b) the standard procedures adopted by the commission for assessing and investigating complaints about corruption;

(c) how the commission monitors the progress of complaints about corruption being dealt with by the commission to ensure they are being dealt with in a timely way;

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(d) what action the commission takes if the standard timeframes are not met for a complaint about corruption being dealt with by the commission to ensure the complaint is dealt with in a timely way.

Division 2 How to make a complaint

36 Complaining about corruption

(1) A person may make a complaint about corruption to the commission for the purpose of the commission dealing with the complaint under section 35.

(2) Subsection (1) does not limit to whom a person can complain about corruption.

Examples—

1 A person may complain directly to the commissioner of police about corruption.

2 A person may complain directly to the chief executive of a government department about corruption happening within the department.

(3) A person may also give information or matter involving corruption to the commission.

Examples of information or matter involving corruption that may be given to the commission—

- information given to the commission through a commission activity, including, for example—
  - evidence given by a witness at a commission hearing
  - information obtained through telephone interception or a covert operation
  - evidence gathered through a corruption investigation
  - a routine departmental audit report
  - an intelligence report from a law enforcement agency
  - a Crime Stoppers report
  - information about a significant police event such as a death in police custody or police shooting

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- information or matter referred to the commission by a coroner, a court, a commission of inquiry or another investigative body or public inquiry

Division 3 Duty to notify

37 Duty to notify commission of police misconduct

(1) This section applies if the commissioner of police reasonably suspects that a complaint, or information or matter (also a ***complaint***), involves police misconduct.

(2) The commissioner of police must notify the commission of the complaint, subject to section 40.

38 Duty to notify commission of corrupt conduct

(1) This section applies if a public official reasonably suspects that a complaint, or information or matter (also a ***complaint***), involves, or may involve, corrupt conduct.

(2) The public official must notify the commission of the complaint, subject to section 40.

39 Duty to notify is paramount

(1) The duty of a public official to notify the commission of a complaint under section 37 or 38 must be complied with despite—

(a) the provisions of any other Act, other than the *Police Service Administration Act 1990*, section 6A.1(3); or

(b) any obligation the person has to maintain confidentiality about a matter to which the complaint relates.

(2) Subsection (1) does not affect an obligation under another Act to notify corruption.

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40 Commission may issue directions about notifications

(1) The commission may issue directions about the following—

(a) the kinds of complaints a public official must notify, or need not notify, the commission of under section 37 or 38;

(b) how and when a public official must notify the commission of complaints under section 37 or 38.

(2) Before issuing a direction, the commission must consult with, and consider the views of—

(a) the relevant public official; and

(b) if the direction relates to the chief executive officer of a public service entity under the *Public Sector Act 2022*—the Public Sector Commission under that Act.

(3) In particular, if a direction would require the commissioner of police to disclose information otherwise protected by the *Police Powers and Responsibilities Act 2000*, section 266 or the *Drugs Misuse Act 1986*, section 119, the commission may issue the direction, but before doing so must have regard to the desirability of protecting confidentiality.

(4) A public official must comply with a direction given under subsection (1).

(5) The commission may use or disclose information mentioned in subsection (3) in the administration of this Act, but must maintain the confidentiality of the information to the greatest practicable extent.

40A Record of alleged corrupt conduct not notified

(1) This section applies if a public official decides that a complaint, or information or matter, about alleged corrupt conduct is not required to be notified to the commission under section 38.

(2) The public official must make a record of the decision.

(3) The record must include—

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(a) the details of the complaint or information or matter; and

(b) the evidence on which the public official relied in making the decision; and

(c) any other reasons for the decision.

(4) The commission may ask a public official to give the commission access to a record made under this section in a stated way and by a stated time.

(5) A public official must comply with a request made of the official under subsection (4).

Division 4 Dealing with complaints and other matters

Subdivision 1 Commissioner of police

41 Responsibility of commissioner of police

(1) The commissioner of police has primary responsibility for dealing with complaints about, or information or matter the commissioner of police reasonably suspects involves, police misconduct.

(2) The commissioner of police also has a responsibility to deal with a complaint about, or information or matter involving, corrupt conduct that is referred to the commissioner of police by the commission.

42 Dealing with complaints—commissioner of police

(1) The commissioner of police must expeditiously assess complaints, or information or matter (also a ***complaint***) made or notified to, or otherwise coming to the attention of, the commissioner of police.

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(2) The commissioner of police must deal with a complaint about police misconduct in the way the commissioner of police considers most appropriate, subject to the commission's monitoring role.

(3) If the commissioner of police is satisfied that—

(a) a complaint—

(i) is frivolous or vexatious; or

(ii) lacks substance or credibility; or

(b) dealing with the complaint would be an unjustifiable use of resources;

the commissioner of police may take no action or discontinue action taken to deal with the complaint.

(4) The commissioner of police may, in an appropriate case, ask the commission to deal with a complaint about police misconduct or to deal with the complaint in cooperation with the commissioner of police.

(5) If the commission refers a complaint about corrupt conduct to the commissioner of police to be dealt with, the commissioner of police must deal with the complaint in the way the commissioner of police considers most appropriate, subject to the commission's monitoring role.

(6) Without limiting how the commissioner of police may deal with a complaint about corrupt conduct, the commissioner of police may ask the commission to deal with the complaint in cooperation with the commissioner of police.

(7) If a person makes a complaint that is dealt with by the commissioner of police, the commissioner of police must give the person a response stating—

(a) if no action is taken on the complaint by the commissioner of police or action to deal with the complaint is discontinued by the commissioner of police—the reason for not taking action or discontinuing the action; or

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(b) if action is taken on the complaint by the commissioner of police—

(i) the action taken; and

(ii) the reason the commissioner of police considers the action to be appropriate in the circumstances; and

(iii) any results of the action that are known at the time of the response.

(8) However, the commissioner of police is not required to give a response to the person—

(a) if the person has not given the person's name and address or does not require a response; or

(b) if the response would disclose information the disclosure of which would be contrary to the public interest.

Subdivision 2 Other units of public administration

43 Responsibility of public officials, other than the commissioner of police

A public official, other than the commissioner of police, has a responsibility to deal with a complaint about, or information or matter involving, corrupt conduct that is referred to it by the commission.

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

(1) This section does not apply to the police service.

(2) A public official must deal with a complaint about, or information or matter (also a ***complaint***) involving, corrupt conduct in the way the public official considers most appropriate, subject to the commission's monitoring role.

(3) If the public official is satisfied that—

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(a) a complaint—

(i) is frivolous or vexatious; or

(ii) lacks substance or credibility; or

(b) dealing with the complaint would be an unjustifiable use of resources;

the public official may take no action or discontinue action taken to deal with the complaint.

(4) A public official may, in an appropriate case, ask the commission to deal with a complaint in cooperation with the public official.

(5) If a person makes a complaint that is dealt with by the public official, the public official must give the person a response stating—

(a) if no action is taken on the complaint by the public official or action to deal with the complaint is discontinued by the public official—the reason for not taking action or discontinuing the action; or

(b) if action is taken on the complaint by the public official—

(i) the action taken; and

(ii) the reason the public official considers the action to be appropriate in the circumstances; and

(iii) any results of the action that are known at the time of the response.

(6) However, the public official is not required to give a response to the person—

(a) if the person has not given the person's name and address or does not require a response; or

(b) if the response would disclose information the disclosure of which would be contrary to the public interest.

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Subdivision 3 Commission

45 Responsibility of commission

(1) The commission has primary responsibility for dealing with complaints about, or information or matter involving, corrupt conduct.

(2) The commission is responsible for monitoring how the commissioner of police deals with police misconduct.

46 Dealing with complaints—commission

(1) The commission deals with a complaint about, or information or matter (also a ***complaint***) involving, corruption by—

(a) expeditiously assessing each complaint about corruption made or notified to it, or otherwise coming to its attention; and

(b) taking the action the commission considers most appropriate in the circumstances having regard to the principles set out in section 34.

(2) The commission may take the following action—

(a) deal with each complaint about corrupt conduct that it considers should not be referred to a public official to be dealt with;

(b) refer a complaint about corrupt conduct to a public official to be dealt with by the public official or in cooperation with the commission, subject to the commission's monitoring role;

(c) without limiting paragraph (b), refer a complaint about corrupt conduct of a person holding an appointment in a unit of public administration that may involve criminal activity to the commissioner of police to be dealt with;

(d) if it is a complaint about police misconduct notified to the commission by the commissioner of police—allow

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the commissioner of police to continue to deal with the complaint, subject to the commission's monitoring role;

(e) if it is a complaint about police misconduct made to the commission by someone other than the commissioner of police—give the complaint to the commissioner of police to be dealt with, subject to the commission's monitoring role;

(f) if a public official asks the commission to deal with a complaint or to deal with a complaint in cooperation with the public official—

(i) deal with the complaint; or

(ii) deal with the complaint in cooperation with the public official; or

(iii) advise the public official that the commission considers that it is appropriate that the public official continue to deal with the complaint, subject to the commission's monitoring role;

(g) if the commission is satisfied that—

(i) the complaint—

(A) is frivolous or vexatious; or

(B) lacks substance or credibility; or

(C) is not made in good faith; or

(D) is made primarily for a mischievous purpose; or

(E) is made recklessly or maliciously; or

(ii) dealing with the complaint—

(A) would not be in the public interest; or

(B) would be an unjustifiable use of resources; or

(iii) the subject matter of the complaint—

(A) is not within the commission's functions; or

(B) has been dealt with by another entity;

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take no action or discontinue action.

(3) For taking action, or action taken, under subsection (2) for a complaint, the commission may require a public official to provide stated information about the complaint in the way and at the times the commission directs.

(4) A public official must comply with a requirement made under subsection (3).

(5) If a person makes a complaint that is dealt with by the commission, the commission must give the person a response stating—

(a) if no action is taken by the commission on the complaint or action to deal with the complaint is discontinued by the commission—the reason for not taking action or discontinuing the action; or

(b) if action is taken on the complaint by the commission—

(i) the action taken; and

(ii) the reason the commission considers the action to be appropriate in the circumstances; and

(iii) any results of the action that are known at the time of the response.

Note—

See section 48B in relation to limitations on the commission's findings, recommendations and statements.

(6) However, the commission is not required to give a response—

(a) to the person if—

(i) the person has not given the person's name and address or does not require a response; or

(ii) the commission has given a notice, or is entitled to give a notice, under section 216 to the person in relation to the complaint; or

(b) that discloses information the disclosure of which would be contrary to the public interest.

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(7) Nothing in this part limits the commission from providing information about the conduct of a person to a public official for use in the proper performance of the public official's functions.

46A Dealing with matters mentioned in s 33(2)

(1) This section applies to a matter mentioned in section 33(2).

(2) The commission deals with the matter by—

(a) assessing the matter; and

(b) if the commission considers it appropriate, investigating the matter; and

(c) taking the action the commission considers most appropriate in the circumstances having regard to the public interest principle set out in section 34(d).

(3) For dealing with the matter, the commission may require a public official to provide stated information about the matter in the way and at the times the commission directs.

(4) A public official must comply with a requirement made under subsection (3).

47 Commission's monitoring role for police misconduct

(1) The commission may, having regard to the principles stated in section 34—

(a) issue advisory guidelines for the conduct of investigations by the commissioner of police into police misconduct; or

(b) review or audit the way the commissioner of police has dealt with police misconduct, in relation to either a particular complaint or a class of complaint; or

(c) assume responsibility for and complete an investigation by the commissioner of police into police misconduct.

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(2) The commissioner of police must give the commission reasonable help to undertake a review or audit or to assume responsibility for an investigation.

(3) If the commission assumes responsibility for an investigation, the commissioner of police must stop the commissioner's investigation or any other action that may impede the investigation if directed to do so by the commission.

(4) In this section—

complaint, about police misconduct, includes information or matter involving police misconduct.

48 Commission's monitoring role for corrupt conduct

(1) The commission may, having regard to the principles stated in section 34—

(a) issue advisory guidelines for the conduct of investigations by public officials into corrupt conduct; or

(b) review or audit the way a public official has dealt with corrupt conduct, in relation to either a particular complaint or a class of complaint; or

(c) require a public official—

(i) to report to the commission about an investigation into corrupt conduct in the way and at the times the commission directs; or

(ii) to undertake the further investigation into the corrupt conduct that the commission directs; or

(d) assume responsibility for and complete an investigation by a public official into corrupt conduct.

(2) The public official must—

(a) give the commission reasonable help to undertake a review or audit or to assume responsibility for an investigation; and

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(b) comply with a requirement made under subsection (1)(c).

(3) If the commission assumes responsibility for an investigation, the public official must stop the official's investigation or any other action that may impede the investigation if directed to do so by the commission.

(4) In this section—

complaint, about corrupt conduct, includes information or matter involving corrupt conduct.

Subdivision 4 Miscellaneous provisions

48A Policy about how complaints involving public official are to be dealt with

(1) A public official must, in consultation with the chairperson, prepare a policy about how the unit of public administration for which the official is responsible will deal with a complaint that involves or may involve corruption of the public official.

(2) The policy may nominate a person other than the public official to notify the commission of the complaint under section 37 or 38, and to deal with the complaint under subdivision 1 or 2, on behalf of the public official.

(3) If the policy includes a nomination as mentioned in subsection (2), this Act applies as if a reference about notifying or dealing with the complaint to the public official were a reference to the nominated person.

Example of operation of subsection (3)—

If a policy prepared under this section for a unit of public administration includes a nomination as mentioned in subsection (2)—

(a) under section 38 as applying under subsection (3), the nominated person must notify the commission of complaints about the relevant public official that the person suspects involve or may involve corrupt conduct; and

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(b) under section 35(1)(b) as applying under subsection (3), the commission may refer complaints about the relevant public official to the nominated person for the nominated person to deal with; and

(c) under section 42 or 44 as applying under subsection (3), the nominated person must deal with complaints about the relevant public official referred to the nominated person by the commission.

(4) In this section—

complaint includes information or matter.

48B Limitation on commission's findings, recommendations and statements

(1) Despite any other law, including sections 46, 64, 64A and 65A, the commission must not—

(a) make any finding or statement that a person has or has not engaged in, or is or is not engaging in or about to engage in, corruption; or

(b) make any finding, recommendation or statement that—

(i) a person should be prosecuted for a criminal offence or be the subject of disciplinary action; or

(ii) prosecution proceedings or disciplinary action should be considered in relation to a person; or

(c) make any finding or statement that there is evidence, or insufficient evidence, supporting the start of a proceeding against a person.

(2) However, subsection (1)(b)(ii) and (c) does not apply in relation to—

(a) a report under division 5 or a proceeding relating to the report; or

(b) any information or document that the commission is required to provide to the parliamentary committee or parliamentary commissioner.

(3) To remove any doubt, it is declared that subsection (1) does not prevent the commission making a factual statement—

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(a) about a matter or thing that is already in the public domain; or

(b) to indicate that the commission has reported on a corruption investigation under division 5.

Division 5 Action following investigation

49 Reports about complaints dealt with by the commission

(1) This section applies if the commission investigates (either by itself or in cooperation with a public official), or assumes responsibility for the investigation of, a complaint about, or information or matter involving, corruption and decides that prosecution proceedings or disciplinary action should be considered.

(2) The commission may report on the investigation to any of the following as appropriate—

(a) a prosecuting authority, for the purposes of any prosecution proceedings the authority considers warranted;

(b) the Chief Justice, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;

(c) the Chief Judge of the District Court, if the report relates to conduct of a District Court judge;

(d) the President of the Childrens Court, if the report relates to conduct of a person holding judicial office in the Childrens Court;

(e) the Chief Magistrate, if the report relates to conduct of a magistrate;

(f) the chief executive officer of a relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.

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(3) If the commission decides that prosecution proceedings for an offence under the Criminal Code, section 57 should be considered, the commission must report on the investigation to the Attorney-General.

(4) A report made under subsection (2) or (3) must contain, or be accompanied by, all relevant information known to the commission that—

(a) supports a charge that may be brought against any person as a result of the report; or

(b) supports a defence that may be available to any person liable to be charged as a result of the report; or

(c) supports the start of a proceeding under section 219F, 219FA or 219G against any person as a result of the report; or

(d) supports a defence that may be available to any person subject to a proceeding under section 219F, 219FA or 219G as a result of the report.

(5) In this section—

prosecuting authority does not include the director of public prosecutions.

50 Commission may apply to QCAT about corrupt conduct

(1) This section applies if the commission—

(a) reports to the chief executive officer of a unit of public administration under section 49(2)(f); and

(b) considers there is evidence supporting the start of a disciplinary proceeding against a prescribed person in the unit of public administration in relation to a complaint about, or information or matter involving, corruption.

(2) The commission may apply, as provided under the QCAT Act, to QCAT for an order under section 219I against the prescribed person.

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(3) In this section—

prescribed person means—

(a) a person—

(i) who is a member of the police service; or

(ii) being a member of the police service, whose employment as a member of the police service ends after the corrupt conduct happens, regardless of whether the employment ends before or after the start of a disciplinary proceeding for the corrupt conduct; or

(b) a person (other than a judge or holder of judicial office, or a member of the police service)—

(i) who holds an appointment in a unit of public administration; or

(ii) who held an appointment in a unit of public administration that ended after the corrupt conduct happened, regardless of whether the appointment ended before or after the start of a disciplinary proceeding for the conduct.

51 Other action for corruption

(1) Nothing in this part limits the action that may lawfully be taken by the commission or a unit of public administration to discipline or otherwise deal with a person for corruption.

Example—

The commissioner of police may bring a disciplinary charge against a police officer under the *Police Service Administration Act 1990*.

(2) Subsection (1) is subject to sections 47 and 48.

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Part 4 Research, intelligence and other functions

Division 1 Research

52 Research functions

(1) The commission has the following functions—

(a) to undertake research to support the proper performance of its functions;

(b) to undertake research into the incidence and prevention of criminal activity;

(c) to undertake research into any other matter relating to the administration of criminal justice or relating to corruption referred to the commission by the Minister;

(d) to undertake research into any other matter relevant to any of its functions.

(2) Without limiting subsection (1)(a), the commission may undertake research into—

(a) police service methods of operations; and

(b) police powers and the use of police powers; and

(c) law enforcement by police; and

(d) the continuous improvement of the police service.

Division 2 Intelligence

53 Intelligence functions

The commission has the following functions (its ***intelligence functions***)—

(a) to undertake intelligence activities, including specific intelligence operations authorised by the reference

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committee, to support the proper performance of its functions;

(b) to hold intelligence function hearings;

(c) to analyse the intelligence data collected to support its functions;

(d) to minimise unnecessary duplication of intelligence data;

(e) to ensure that intelligence data collected and held to support its functions is appropriate for the proper performance of its functions.

54 Database of intelligence information

The commission must build up a database of intelligence information for use in support of all of its functions using for the purpose information acquired by it from any source available to it, including, for example—

(a) its own operations; and

(b) the police service; and

(c) sources of the Commonwealth or any State supplying intelligence information to it.

55 Access to intelligence information held by police service

The commissioner of police must give the chairperson access to intelligence information held by the police service as required by the chairperson as soon as possible after receiving the request.

Division 2A Specific intelligence operations

55A Authorising specific intelligence operation

(1) The section applies if the reference committee is satisfied that there are reasonable grounds to suspect that—

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(a) a criminal organisation, or a participant in a criminal organisation, has engaged in, is engaging in, or is planning to engage in, criminal activity; or

(b) a person, regardless of whether the person holds an appointment, has engaged in, is engaging in, or is planning to engage in corruption to support or help a criminal organisation or a participant in a criminal organisation.

(2) The reference committee may authorise the commission to undertake a specific intelligence operation, including by holding hearings.

(3) The authorisation must be in writing and identify—

(a) the criminal organisation or participant to be investigated by the commission; and

(b) the suspected criminal activity or corruption; and

(c) the purpose of the intelligence operation.

(4) The authorisation may relate to any circumstances implying, or any allegations, that particular criminal activity or corruption, is reasonably suspected.

(5) The authorisation may be made by the reference committee—

(a) on its own initiative; or

(b) if asked by the senior executive officer (crime) or the senior executive officer (corruption).

(6) In this section—

criminal activity means any act or omission that involves the commission of an offence.

hold an appointment means hold an appointment in a unit of public administration.

55B Matters reference committee must consider

(1) The reference committee may authorise the commission to undertake a specific intelligence operation under section 55A only if it is satisfied—

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(a) as required under the section; and

(b) it is in the public interest to authorise the commission to undertake the specific intelligence operation.

(2) In considering the public interest, the reference committee may also have regard to the likely effectiveness of an investigation into criminal activity or corruption without the use of powers available to the commission under this division.

(3) In this section—

criminal activity means any act or omission that involves the commission of an offence.

55C Reference committee may give commission directions

(1) The reference committee may give the commission directions imposing limitations on the commission's intelligence operation under an authorisation under section 55A, including limitations on the exercise of the commission's powers for the operations.

(2) The reference committee may also direct the commission to end a specific intelligence operation under an authorisation if the committee considers—

(a) it may be more appropriate for another entity to undertake the intelligence operation; or

(b) it may be more effective for another entity to undertake the intelligence operation; or

(c) undertaking an intelligence operation is not a justifiable use of the commission's resources; or

(d) the commission undertaking an intelligence operation is not in the public interest.

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

(4) The reference committee may amend the terms of an authorisation on its own initiative or if asked by the senior

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executive officer (crime) or the senior executive officer (corruption).

(5) To remove any doubt, it is declared that subsection (2)(d) is not limited by section 55B(2).

Division 2B Immediate responses to threats to public safety

55D Authorising immediate response

(1) This section applies if the reference committee is satisfied there are reasonable grounds to suspect that a criminal organisation or a participant in a criminal organisation has engaged in, is engaging in, or is planning to engage in, an incident that threatens, has threatened or may threaten public safety.

(2) The reference committee may authorise the commission to do either or both of the following in response to, or to prevent, the threat to public safety—

(a) undertake an investigation into the incident;

(b) conduct a hearing in relation to the incident.

(3) The authorisation must be in writing and identify—

(a) the criminal organisation or participant that has engaged in, is engaging in, or is planning to engage in, the incident; and

(b) the nature of the incident; and

(c) the purpose of the investigation or hearing.

(4) The authorisation may be made by the reference committee—

(a) on its own initiative; or

(b) if asked by the senior executive officer (crime) or the senior executive officer (corruption).

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55E Matters reference committee must consider

(1) The reference committee may authorise the commission to undertake the investigation or conduct the hearing only if the committee is satisfied—

(a) as required under section 55D(1); and

(b) it is in the public interest to authorise the commission to undertake the investigation or conduct the hearing in response to, or to prevent, the threat to public safety.

(2) In considering the public interest, the reference committee may also have regard to the likely effectiveness of an investigation into criminal activity or corruption without the use of powers available to the commission under this division.

(3) In this section—

criminal activity means any act or omission that involves the commission of an offence.

55F Reference committee may give commission directions

(1) The reference committee may give the commission directions imposing limitations on the commission's investigation or hearing under an authorisation under section 55D, including limitations on the exercise of the commission's powers for the investigation or hearing.

(2) The reference committee may also direct the commission to end an investigation or hearing under an authorisation under section 55D if the committee considers—

(a) it may be more appropriate for another entity to undertake the investigation or conduct the hearing; or

(b) it may be more effective for another entity to undertake the investigation or conduct the hearing; or

(c) undertaking the investigation or conducting the hearing is not a justifiable use of the commission's resources; or

(d) it is not in the public interest for the commission to undertake the investigation or conduct the hearing.

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

(4) The reference committee may amend the terms of an authorisation on its own initiative or if asked by the senior executive officer (crime) or the senior executive officer (corruption).

(5) To remove any doubt, it is declared that subsection (2)(d) is not limited by section 55D(2).

Division 3 Other functions

56 Commission's other functions

The commission also has the following functions—

(a) the witness protection function;

Note—

See also the *Witness Protection Act 2000*.

(b) a civil confiscation function;

Note—

See also the *Criminal Proceeds Confiscation Act 2002*.

(c) a function conferred under another Act.

Part 5 Performance of functions

57 Commission to act independently etc.

The commission must, at all times, act independently, impartially and fairly having regard to the purposes of this Act and the importance of protecting the public interest.

58 Independence of holders of judicial office

(1) The commission, when performing its functions or exercising its powers in relation to the procedures and operations of State

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courts or in relation to the conduct of a judicial officer, must proceed having proper regard for, and proper regard for the importance of preserving, the independence of judicial officers.

(2) To the extent a commission investigation is, or would be, in relation to conduct of a judicial officer, the commission's authority to conduct the investigation is limited to investigating corrupt conduct of a kind that, if established, would warrant the judicial officer's removal from office.

(3) However, subsection (2) does not apply to a commission investigation that is, or would be, in relation to conduct of a judicial officer—

(a) other than in the judicial officer's capacity as a judicial officer; and

(b) as a member or representative of a decision-making body in a unit of public administration.

Examples of decision-making bodies—

a governing body, a board of management

(4) To the extent a commission investigation is, or would be, in relation to conduct of a judicial officer, the investigation must be conducted in accordance with appropriate conditions and procedures agreed by the chairperson and the Chief Justice from time to time.

(5) A commission hearing in relation to the conduct of the judicial officer must be conducted by the chairperson.

(6) The functions and powers of the commission are to be performed and exercised by the chairperson who is to be taken to constitute the commission for the investigation.

(7) However, the chairperson may delegate the chairperson's functions and powers under this section, including the functions and powers mentioned in subsection (6), for a commission investigation mentioned in subsection (3) to a senior officer.

(8) In this section—

judicial officer means—

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(a) a judge of, or other person holding judicial office in, a State court; or

(b) a member of a tribunal that is a court of record.

59 Commission to cooperate with other entities

(1) The commission and units of public administration are to work cooperatively to achieve optimal use of available resources.

(2) In performing its functions, the commission must—

(a) liaise with, and coordinate its activities with the activities of, units of public administration to avoid needless duplication of the work of the units for the purpose of performing the commission's functions; and

(b) have regard to the activities, findings and recommendations of entities outside the State, including outside Australia, that have functions similar to the commission—

(i) to relate and adapt the activities, findings and recommendations of the entities to the needs of the State; and

(ii) to avoid needless duplication of the work of the entities for the purpose of performing the commission's functions.

60 Use and disclosure of information, document or thing

(1) The commission may use any information, document or thing in the commission's possession in performing the commission's functions.

(2) The commission may give intelligence information or other information to any entity the commission considers appropriate, including, for example—

(a) a unit of public administration; and

(b) a law enforcement agency; and

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(c) the auditor-general; and

(d) a commissioner under the *Electoral Act 1992*; and

(e) the ombudsman.

Note—

See section 213 in relation to making a record of, or wilfully disclosing, information given to a person under this section on the understanding, express or implied, that the information is confidential.

61 Commission's functions not to limit proper performance of similar functions by other entities

(1) The conferral of functions on the commission does not limit police power or the power of another entity to perform similar functions.

(2) Subsection (1) is subject to sections 47 and 48.

Part 6 Reporting and statements

Division 1 Preliminary

63 Application of part

This part does not apply in relation to the commission's performance of its crime function.

63A Definitions for part

In this part—

action includes a decision to take no action or discontinue action.

corruption matter means—

(a) a complaint about, or information or matter (also a ***complaint***) involving, corruption made or notified to the commission, or otherwise coming to its attention,

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whether or not the complaint has been assessed or any action has been taken in relation to the complaint under section 46; or

(b) a corruption investigation, whether or not the investigation is complete.

Division 2 Commission reports

64 Commission reports—general

(1) The commission may report in performing its functions.

(2) The commission must include in each of the reports—

(a) any recommendations, including, if appropriate and after consulting with the commissioner of police, a recommendation that the Police Minister give a direction to the commissioner of police under the Police Service Administration Act, section 4.6; and

(b) an objective summary of all matters of which it is aware that support, oppose or are otherwise relevant to its recommendations.

Note—

See section 48B in relation to limitations on the commission's findings, recommendations and statements.

(3) If the Police Minister decides not to give a direction under the Police Service Administration Act, section 4.6 following a recommendation made under subsection (2)(a), the Police Minister must table in the Legislative Assembly, after giving the reasons—

(a) a copy of the recommendation; and

(b) the Minister's reasons for not giving the direction.

(4) The commission may also include in a report any comments it may have on the matters mentioned in subsection (2)(b).

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(5) To remove any doubt, it is declared that, subject to section 63, the commission may report simultaneously in the performance of 1 or more of its functions.

(6) This section does not apply to a report under part 3, division 5.

(7) In this section—

Police Minister means the Minister administering the Police Service Administration Act.

Police Service Administration Act means the *Police Service Administration Act 1990*.

64A Commission reports—particular corruption matters

(1) Without limiting section 64, the commission may report on a corruption matter under section 64(1).

(2) In making a decision about reporting on a corruption matter under section 64(1), including the preparation of prescribed content and the inclusion of comments under section 64(4) in the report, the commission must consider the following matters—

(a) the need for accountability and transparency in government and the public sector;

(b) whether the report will be for the public benefit;

(c) whether the commission has finalised its assessment of the corruption matter, and any action taken in relation to the corruption matter, under section 46;

(d) the seriousness of the corruption matter;

(e) whether the report may prejudice—

(i) any proceeding that the commission is aware of, or any reasonably foreseeable future proceeding, in relation to the corruption matter; or

(ii) an investigation by the commission or other law enforcement agency;

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(f) if a person's identity is readily apparent, or can reasonably be ascertained, from the report—

(i) whether the standing and status of the person warrants greater public scrutiny; and

Examples—

- the person holds a senior role in the public service
- the person is an independent statutory office holder
- the person is an elected official

(ii) whether the report may unreasonably damage the person's health, safety or wellbeing; and

(iii) the seriousness of the person's conduct; and

(iv) whether the person consents to being identified; and

(v) whether the report may unreasonably interfere with the person's privacy or reputation;

(g) any other relevant matter.

(3) Subsection (2) does not limit or otherwise affect—

(a) the operation of section 57; or

(b) the application of any other law to the commission's decision.

Example of another law that may apply to the commission's decision—

Human Rights Act 2019, section 58

(4) To remove any doubt, it is declared that the commission may report on a corruption matter under subsection (1) regardless of whether the commission has reported on the matter under section 49.

Note—

See also section 331.

(5) In this section—

prescribed content, for a report, means—

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(a) an objective summary of matters that must be included in the report under section 64(2)(b); or

(b) a fair statement of a person's submission that must be included in the report under section 69B(5) or 69D(4).

65 Commission reports—court procedures

(1) This section applies to a commission report about—

(a) the procedures and operations of a State court; or

(b) the procedures and practices of the registry or administrative offices of a State court.

(2) The report may be given only to—

(a) the Chief Justice, if the report deals with matters relevant to the Supreme Court; or

(b) the Chief Judge of the District Court, if the report deals with matters relevant to the District Court; or

(c) the President of the Childrens Court, if the report deals with matters relevant to the Childrens Court; or

(d) the Chief Magistrate, if the report deals with matters relevant to the Magistrates Courts; or

(e) the judicial officer, or the principal judicial officer if there is more than 1 judicial officer, in the court, or the system of courts, to which the matters dealt with in the report are relevant.

Division 2A Public statements about particular corruption matters

65A Public statements

(1) The commission may make a statement to the public about a corruption matter (a ***public statement***).

(2) A public statement may be made in the way the commission considers appropriate.

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Examples of ways to make a public statement—

- issuing a media release
- making a verbal statement at a press conference
- publishing information on the commission's website

(3) A public statement must not include any recommendations in relation to a corruption matter other than a recommendation included in a commission report on the corruption matter that has been tabled in the Legislative Assembly, or published, under section 69.

Note—

See also section 48B.

(4) In making a decision about making a public statement about a corruption matter under subsection (1), including the information to be included in the statement, the commission must consider the following matters—

(a) the need for accountability and transparency in government and the public sector;

(b) whether the statement will be for the public benefit;

(c) whether the commission has finalised its assessment of the corruption matter, and any action taken in relation to the corruption matter, under section 46;

(d) the seriousness of the corruption matter;

(e) whether the statement may prejudice—

(i) any proceeding that the commission is aware of, or any reasonably foreseeable future proceeding, in relation to the corruption matter; or

(ii) an investigation by the commission or other law enforcement agency;

(f) whether the statement is the most appropriate and suitable means of releasing information about the corruption matter to the public;

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Examples of when a public statement may be the most appropriate and suitable means of releasing information—

- to provide information about a procedural step taken by the commission in relation to a complaint about, or information or matter involving, corruption
- to provide factual information about the outcome of a charge or other proceeding resulting from a corruption investigation

(g) if a person's identity is readily apparent, or can reasonably be ascertained, from the statement—

(i) whether the standing and status of the person warrants greater public scrutiny; and

Examples—

- the person holds a senior role in the public service
- the person is an independent statutory office holder
- the person is an elected official

(ii) whether the statement may unreasonably damage the person's health, safety or wellbeing; and

(iii) the seriousness of the person's conduct; and

(iv) whether the person consents to being identified; and

(v) whether the statement may unreasonably interfere with the person's privacy or reputation;

(h) any other relevant matter.

(5) Subsection (4) does not limit or otherwise affect—

(a) the operation of section 57; or

(b) the application of any other law to the commission's decision.

Example of another law that may apply to the commission's decision—

Human Rights Act 2019, section 58

(6) This section does not limit section 174, other than to the extent mentioned in section 174(3).

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(7) In this section—

information, for a statement, includes—

(a) any comments and other material that may be included in the statement; and

(b) a fair statement of a person's submission that must be included in the statement under section 69B(5) or 69D(4).

Division 3 Confidential information

66 Maintaining confidentiality of information

(1) Despite any other provision of this Act or another law about reporting, or the making of a statement to the public, if the commission considers that confidentiality should be strictly maintained in relation to information in its possession (***confidential information***)—

(a) the commission need not make a report or statement on the matter to which the information is relevant; or

(b) if the commission makes a report or statement on the matter, it need not disclose the confidential information or refer to it in the report or statement.

(2) If the commission decides not to make a report or statement to which confidential information is relevant or, in a report or statement, decides not to disclose or refer to confidential information, the commission—

(a) may disclose the confidential information in a separate document to be given to—

(i) the Speaker; and

(ii) the Minister; and

(b) must disclose the confidential information in a separate document to be given to the parliamentary committee.

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(3) A member of the parliamentary committee or a person appointed, engaged or assigned to help the committee must not disclose confidential information disclosed to the parliamentary committee or person under subsection (2)(b) until the commission advises the committee there is no longer a need to strictly maintain confidentiality in relation to the information.

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

(4) Despite subsection (2)(b), the commission may refuse to disclose information to the parliamentary committee if—

(a) a majority of the commissioners considers confidentiality should continue to be strictly maintained in relation to the information; and

(b) the commission gives the committee reasons for the decision in as much detail as possible.

(5) A document mentioned in subsection (2)(a) or (b) is not a commission report for section 69.

(6) In this section—

report includes a draft report mentioned in section 69B(2)(a)(i)(A) or 69D(2)(a)(i)(A).

statement includes a draft statement mentioned in section 69B(2)(a)(ii)(A) or 69D(2)(a)(ii)(A).

67 Register of confidential information

(1) The commission must maintain a register of information withheld under section 66(4) and advise the parliamentary committee immediately after the need to strictly maintain confidentiality in relation to the information ends.

(2) The parliamentary committee or a person appointed, engaged or assigned to help the committee who is authorised for the purpose by the committee may, at any time, inspect in the register information the commission has advised the

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committee is no longer required to be strictly maintained as confidential.

(3) The parliamentary commissioner may inspect information on the register at any time, regardless of whether the commission has advised the parliamentary committee the information is no longer required to be strictly maintained as confidential.

(4) The parliamentary committee may not require the parliamentary commissioner to disclose to the committee information inspected by the commissioner on the register, unless the commission has advised the committee the information is no longer required to be strictly maintained as confidential.

68 Giving of reasons

Information or reasons mentioned in section 66(2) or (4) or 67(1)—

(a) may be given in writing or orally; and

(b) are not a commission report or part of a commission report for section 69.

Division 4 Tabling requirements

69 Commission reports to be tabled

(1) A commission report, signed by the chairperson, must be given to—

(a) the chairperson of the parliamentary committee; and

(b) the Speaker; and

(c) the Minister.

(2) The Speaker must table the report in the Legislative Assembly on the next sitting day after the Speaker receives the report.

(3) If the Speaker receives the report when the Legislative Assembly is not sitting, the Speaker must deliver the report

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and any accompanying document to the clerk of the Parliament.

(4) The clerk must authorise the report and any accompanying document to be published.

(5) A report published under subsection (4) is taken, for all purposes, to have been tabled in and published by order of the Legislative Assembly and is to be granted all the immunities and privileges of a report so tabled and published.

(6) This section does not apply to a commission report to which section 65 applies.

Division 4A Procedural provisions

69A Definitions for division

In this division—

adverse comment, about a person, means adverse comment, whether true or not, by any person, including the commission, about a person whose identity is readily apparent, or can reasonably be ascertained, regardless of whether the person is identified by name.

related evidence, in relation to adverse comment about a person, means evidence and other information or material in the possession of the commission on which the adverse comment about the person is based.

related evidence summary see section 69B(2)(b).

relevant person, in relation to a commission report, means the chairperson of the parliamentary committee, the Speaker or the Minister.

69B Adverse comment

(1) This section applies if the commission proposes to make an adverse comment about a person in—

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(a) a commission report required to be tabled in the Legislative Assembly, or published, under section 69; or

(b) a public statement.

(2) Without limiting the commission's obligation to provide procedural fairness to the person, before the commission gives the commission report to a relevant person or makes the public statement, the commission must—

(a) give the person—

(i) in relation to a commission report—

(A) a copy of the report in draft form (the ***draft report***); or

(B) an extract from the draft report containing the adverse comment; or

(ii) in relation to a public statement—

(A) a copy of the statement in draft form (the ***draft statement***); or

(B) if the draft statement applies to more than 1 person—the part of the draft statement that applies to the person; and

(b) give the person a copy of any related evidence, or a summary of the substance or significant part of any related evidence (a ***related evidence summary***), that is not contained in the draft report or extract from the draft report, or the draft statement or part of the draft statement; and

(c) give the person a written notice—

(i) inviting the person to make a submission to the commission on—

(A) the draft report or extract from the draft report, or the draft statement or part of the draft statement; and

(B) the related evidence or related evidence summary; and

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(ii) stating the day, not earlier than 30 days after the notice is given, by which the submission must be made to the commission.

(3) Within 14 days after receiving the notice, the person may apply to the commission for an extension of time, of no more than 60 days unless there are exceptional circumstances, in which to make a submission.

(4) The commission must consider any submission received from the person by the day stated in the notice or within any extended time for making a submission granted by the commission or the Supreme Court under section 69C.

(5) If after considering a submission under subsection (4) the commission still proposes to include adverse comment about the person in the commission report or public statement, the commission must ensure the person's submission is also fairly stated in the report or statement.

(6) If the commission proposes to include further adverse comment about the person in the commission report or public statement, in addition to the adverse comment mentioned in subsection (1), subsections (2) to (5) apply to the further adverse comment.

(7) Subsection (2) does not apply in relation to a public statement if—

(a) the statement only provides a factual and objective summary of a commission report; and

(b) the commission has complied with this section in relation to the report.

(8) To remove any doubt, it is declared that subsection (2)(b) does not require the commission to give a person a copy of evidence and other information or material in its possession if the commission considers the confidentiality of the evidence, information or material should be strictly maintained.

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69C Application to court for extension of time to make submission

(1) This section applies if—

(a) a person applies for an extension of time under section 69B(3) (the ***extension application***); and

(b) the commission decides to refuse the extension application.

(2) The commission must give the person an information notice for its decision.

(3) Within 14 days after receiving the information notice, the person may apply to the Supreme Court to decide the extension application.

(4) The commission must not give the commission report to a relevant person or make the public statement before—

(a) the end of the period in which a person may apply to the Supreme Court under subsection (3); or

(b) if an application is made under subsection (3)—the application is decided or withdrawn.

(5) The Supreme Court must deal with an application under subsection (3) expeditiously.

(6) The application may be heard in closed court.

(7) The Supreme Court may hear the application in any way it considers appropriate, including, for example, by hearing the matter afresh.

(8) On hearing the application, the Supreme Court may—

(a) affirm the commission's decision; or

(b) set aside the commission's decision and grant an extension of time, of no more than 60 days unless there are exceptional circumstances, within which the person may make a submission to the commission on—

(i) the draft report or extract from the draft report, or the draft statement or part of the draft statement; and

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(ii) the related evidence or related evidence summary.

(9) The Supreme Court must give reasons for the court's decision, which may be given orally.

(10) In this section—

information notice, for a decision, means a written notice stating the following information—

(a) the decision;

(b) the reasons for the decision;

(c) that the person to whom the notice is given may apply to the Supreme Court under subsection (3) in relation to the decision;

(d) how, and the period within which, the application may be made;

(e) the effect of subsection (4).

69D Other identifying information

(1) This section applies if—

(a) the commission proposes to include identifying information about a person in—

(i) a commission report required to be tabled in the Legislative Assembly, or published, under section 69; or

(ii) a public statement; and

(b) section 69B does not apply.

(2) Before the commission report is given to a relevant person or the public statement is made, the commission may—

(a) give the person—

(i) in relation to a commission report—

(A) a copy of the report in draft form (the ***draft report***); or

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(B) an extract from the draft report containing the identifying information; or

(ii) in relation to a public statement—

(A) a copy of the statement in draft form (the ***draft statement***); or

(B) if the draft statement applies to more than 1 person—the part of the draft statement that applies to the person; and

(b) give the person a written notice—

(i) inviting the person to make a submission to the commission on the draft report or extract from the draft report, or the draft statement or part of the draft statement; and

(ii) stating the day, not earlier than 30 days after the notice is given, by which the submission must be made to the commission.

(3) The commission must consider any submission received from the person by the day stated in the notice.

(4) If the person makes a submission to the commission in response to the notice mentioned in subsection (2)(b) and the commission still proposes to include the identifying information in the commission report or public statement, the commission must ensure the person's submission is also fairly stated in the report or statement.

(5) In this section—

identifying information means any comment, information, opinion or other material that identifies a person or from which a person can reasonably be identified.

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Division 5 General

70 Giving material to tribunal inquiring into judge's misbehaviour or incapacity

(1) This section applies if a tribunal established under the *Constitution of Queensland 2001*, section 61 is inquiring into whether a Supreme Court judge or a District Court judge has misbehaved in a way that justifies removal from a judicial office or is incapable of performing the duties of a judicial office.

(2) At the tribunal's request, the commission must give the tribunal all material in the commission's possession relevant to the subject of the tribunal's inquiry, including any relevant report of the commission.

71 Giving other information to parliamentary committee

The commission may, with the parliamentary committee's consent, give the parliamentary committee information, orally or in writing, whether or not at the request of the committee, that is not included in a commission report given to the chairperson of the committee under section 69.

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Chapter 3 Powers

Part 1 Particular powers to require information or attendance

Division 1 Particular powers in relation to units of public administration

Subdivision 1 Crime investigations and specific intelligence operations (crime)

72 Power to require information or documents

(1) This section applies only for a crime investigation or specific intelligence operation (crime).

(2) The chairperson may, by notice given to a person holding an appointment in a unit of public administration, require the person, within the reasonable time and in the way stated in the notice, to give an identified commission officer—

(a) an oral or written statement of information of a stated type relevant to a crime investigation or specific intelligence operation (crime) that is in the possession of the unit; or

(b) a stated document or other stated thing, or a copy of a stated document, relevant to a crime investigation or specific intelligence operation (crime) that is in the unit's possession; or

(c) all documents of a stated type, or copies of documents of the stated type, containing information relevant to a crime investigation or specific intelligence operation (crime) that are in the unit's possession.

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(3) The chairperson may, by notice given to a person holding an appointment in a unit of public administration, require the person—

(a) to attend before an identified commission officer at a reasonable time and place stated in the notice; and

(b) at the time and place stated in the notice, to give to the officer a document or thing stated in the notice that—

(i) relates to the performance by the unit of the unit's functions; and

(ii) is relevant to a crime investigation or specific intelligence operation (crime).

(4) The person must comply with a notice under subsection (2) or (3), unless the person has a reasonable excuse.

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

(5) A person who fails to comply with a notice under subsection (2) or (3) does not commit an offence if—

(a) the information, document or thing is subject to privilege; or

(b) a provision of another Act prescribed under a regulation for this subsection excuses compliance with the requirement.

Note—

If a claim of privilege is made, the commission officer is required to consider the claim under section 77 and, if the requirement is not withdrawn, the person may be required to attend at a commission hearing to establish the claim.

(6) A person does not, by complying with a notice under subsection (2) or (3) in relation to the information, document or thing—

(a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the information, document or thing; or

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(b) incur any civil liability in relation to the information, document or thing.

(7) The notice must—

(a) state whether it relates to a crime investigation or a specific intelligence operation (crime); and

(b) for a notice requiring a statement of information—indicate briefly the general nature of the information by reference to a particular matter or to the type of information sought; and

(c) for a notice requiring the giving of a document or other thing—identify the document or thing sufficiently to enable the person to know what is required.

Subdivision 2 Corruption investigations

73 Power to enter etc.

(1) This section applies only for a corruption investigation.

(2) The chairperson may, by notice, authorise a commission officer to exercise powers under this section.

(3) A commission officer authorised under subsection (2) may—

(a) enter and search official premises; or

(b) inspect any document or thing found in or on official premises that is, or might be, relevant to the corruption investigation; or

(c) seize and remove from official premises any document or thing found in or on the premises that is relevant to a corruption investigation; or

(d) make copies of or extracts from a document mentioned in paragraph (b) or (c); or

(e) require a person holding an appointment in a unit of public administration to give the officer reasonable help

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to exercise the powers mentioned in paragraphs (b) to (d).

(4) A person does not, by allowing the exercise of a power under subsection (3) in relation to a document or thing—

(a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the document or thing; or

(b) incur any civil liability in relation to the document or thing.

(5) However, the commission officer must not exercise a power under subsection (3)(b), (c) or (d) if the chief executive officer of the unit, or a person authorised by the chief executive officer for the purpose, claims that the document or thing is subject to privilege.

Note—

If a claim of privilege is made, the commission officer is required to consider the claim under section 80 and, if the requirement is not withdrawn, the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 196.

(6) A commission officer exercising powers under this section must, if asked by the occupier of the official premises, or a person acting for the occupier, produce for inspection by the occupier or person the chairperson's authority under which the officer purports to act.

(7) In this section—

official premises means premises occupied or used by, or for the official purposes of, a unit of public administration, but does not include any part of premises that is occupied or used by or for the purposes of any State court.

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Division 2 Notice to produce or discover

Subdivision 1 Crime investigations, specific intelligence operations (crime) and witness protection function

74 Notice to produce for crime investigation, specific intelligence operation (crime) or witness protection function

(1) This section applies only for the following—

(a) a crime investigation;

(b) a specific intelligence operation (crime);

(c) the witness protection function.

(2) The chairperson may, by notice (***notice to produce***) given to a person, require the person, within the reasonable time and in the way stated in the notice, to give an identified commission officer a stated document or thing that the chairperson believes, on reasonable grounds, is relevant to a crime investigation, a specific intelligence operation (crime) or the witness protection function.

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

(a) a crime investigation; or

(b) a specific intelligence operation (crime); or

(c) without specifying which, a crime investigation or the witness protection function.

(3) If the notice to produce is given in the context of a crime investigation or specific intelligence operation (crime), the notice may be given whether or not the commission is conducting a hearing for the investigation or operation.

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

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(a) the security of a protected person; or

(b) the integrity of the witness protection program or other witness protection activities of the commission.

(4) The notice to produce may require the immediate production of a document or thing to a stated commission officer if the chairperson believes, on reasonable grounds, that—

(a) for a notice given in the context of a crime investigation, delay in the production of the document may result in—

(i) its destruction, removal or concealment; or

(ii) serious prejudice to the conduct of the investigation; or

(b) for a notice given in the context of a specific intelligence operation (crime), delay in the production of the document may result in—

(i) its destruction, removal or concealment; or

(ii) serious prejudice to the conduct of the operation; or

(iii) the loss of an opportunity to obtain timely intelligence—

(A) in advance of a significant event; or

(B) that may help prevent a risk to public safety; or

(c) for a notice given in the context of the witness protection function, delay in the production of the document may threaten—

(i) the security of a protected person; or

(ii) the integrity of the witness protection program or other witness protection activities of the commission.

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

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

(6) A person does not, by complying with the notice to produce in relation to the document or thing—

(a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the document or thing; or

(b) incur any civil liability in relation to the document or thing.

(7) A person who fails to comply with a notice does not commit an offence if the document or thing is subject to privilege.

Note—

If a claim of privilege is made, the commission officer is required to consider the claim under section 77 and, if the requirement is not withdrawn, the person may be required to attend at a commission hearing to establish the claim.

(8) A document or thing produced under this section is taken to have been seized under a warrant under part 2.

Subdivision 1A Confiscation related investigations

74A Notice to produce for confiscation related investigation

(1) This section applies only for a confiscation related investigation.

(2) The chairperson may, by notice (***notice to produce***) given to a person, require the person, within the reasonable time and in the way stated in the notice, to give an identified commission officer a stated document or thing that the chairperson believes, on reasonable grounds, is relevant to a confiscation related investigation.

(3) The notice to produce may require the immediate production of a document or thing to a stated commission officer if the chairperson believes, on reasonable grounds, that delay in the production of the document or thing may result in—

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(a) its destruction, removal or concealment; or

(b) serious prejudice to the conduct of the investigation.

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

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

(5) A person does not, by complying with the notice to produce in relation to the document or thing—

(a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the document or thing; or

(b) incur any civil liability in relation to the document or thing.

(6) A person who fails to comply with a notice does not commit an offence if the document or thing is subject to privilege.

Note—

If a claim of privilege is made, the commission officer is required to consider the claim under section 78B and, if the requirement is not withdrawn, the chairperson may apply to a Supreme Court judge to decide the claim.

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

Subdivision 2 Corruption investigations and specific intelligence operations (corruption)

75 Notice to discover information

(1) This section applies—

(a) only for a corruption investigation or a specific intelligence operation (corruption); and

(b) only if the chairperson reasonably suspects that a person, whether or not the person holds an appointment

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in a unit of public administration, has information, or possession of a document or thing, relevant to the investigation or operation.

(2) The chairperson may, by notice (***notice to discover***) given to the person, require the person, within the reasonable time and in the way stated in the notice, to give an identified commission officer—

(a) an oral or written statement of information of a stated type relevant to the investigation or operation that is in the person's possession; or

(b) a stated document or other stated thing, or a copy of a stated document, relevant to the investigation or operation that is in the person's possession; or

(c) all documents of a stated type, or copies of documents of the stated type, containing information relevant to the investigation or operation that are in the person's possession.

(3) The person must comply with the notice.

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

(4) A person does not, by complying with the notice to discover in relation to the information, document or thing—

(a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the information, document or thing; or

(b) incur any civil liability in relation to the information, document or thing.

(5) A person who fails to comply with the notice does not commit an offence if the information, document or thing—

(a) is subject to privilege; or

(b) is a secret process of manufacture applied by the person solely for a lawful purpose.

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Note—

If a claim of privilege is made, the commission officer is required to consider the claim under section 80 and, if the requirement is not withdrawn, the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 196.

(6) The chairperson may require the person to give an oral statement of information under oath and a written statement of information by way of statutory declaration.

(7) The notice to discover must—

(a) state whether it relates to a corruption investigation or a specific intelligence operation (corruption); and

(b) if it requires a statement of information—indicate briefly the general nature of the information the person is suspected of having, by reference to a particular matter or to the type of information sought; and

(c) if it requires the giving of a document or other thing—identify the document or thing sufficiently to enable the person to know what is required.

(8) The notice—

(a) may provide that its requirement may be met by some person acting for the person to whom it is directed; and

(b) may specify the person or class of person who may so act.

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

75A Application of div 2A

This division applies only for a crime investigation, a corruption investigation or an intelligence function hearing.

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75B Power to require immediate production

(1) The presiding officer at a commission hearing may require a witness at the hearing to immediately produce a stated document or thing that the presiding officer believes, on reasonable grounds, is—

(a) in the witness's possession; and

(b) relevant to the investigation.

Note—

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

(2) The presiding officer may adjourn the hearing to allow the person to comply with the requirement.

(3) The person does not, by complying with the requirement—

(a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the document or thing; or

(b) incur any civil liability in relation to the document or thing.

Division 3 Procedure on claim of privilege

Subdivision 1 Crime investigations and specific intelligence operations (crime)

76 Application of sdiv 1

This subdivision applies if a person claims privilege under section 72 or 74 in relation to information or a document or thing.

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77 Commission officer to consider claim

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

Note—

If the requirement is not withdrawn, the person may be given an attendance notice under section 82 to attend at a commission hearing to establish the claim.

78 Procedure for documents subject to claim of privilege

(1) If—

(a) the claim is made in relation to a document or thing the person is required to give or produce to the commission; and

(b) the person acknowledges that the document or thing is in the person's possession; and

(c) the commission officer does not withdraw the requirement;

the commission officer must require the person to immediately seal the document or thing and give it to the commission officer for safe keeping.

(2) The person must immediately seal the document or thing and give it to the commission officer for safe keeping.

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

(3) The commission officer must—

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

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

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

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

(5) The commission must return any sealed document or thing given to the commission officer by a person under subsection (2) within 7 days if the commission has not by the end of that period given the person an attendance notice under section 82(1)(a)(iii).

Subdivision 1A Confiscation related investigations

78A Application of sdiv 1A

This subdivision applies if a person claims privilege under section 74A in relation to a document or thing.

78B Commission officer to consider claim of privilege

The commission officer must consider the claim and may withdraw the requirement in relation to which the claim is made or advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 195B.

78C Procedure for documents subject to claim of privilege

(1) If—

(a) the claim is made in relation to a document or thing the person is required to give or produce to the commission; and

(b) the document or thing is in the person's possession or the person acknowledges that the document or thing is in the person's possession; and

(c) the commission officer does not withdraw the requirement;

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the commission officer must require the person to immediately seal the document or thing and give it to the commission officer for safe keeping.

(2) The person must immediately seal the document or thing (the ***sealed evidence***) under the supervision of the commission's representative.

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

(3) The person and the commission's representative must immediately deliver the sealed evidence to a registrar of the Supreme Court to be held in safe custody.

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

(4) The registrar must keep the sealed evidence in safe custody until—

(a) application is made to a Supreme Court judge to decide the claim of privilege; or

(b) the end of 3 court days after the day on which the document or thing is given to the registrar, if an application has not been made under paragraph (a); or

(c) the registrar is told by the person and commission representative that agreement has been reached on the disposal of the sealed evidence.

(5) The registrar must—

(a) if an application is made to a Supreme Court judge to decide the claim of privilege—dispose of the sealed evidence in the way ordered by the judge; or

(b) if an application is not made by the end of 3 court days after the day on which the document or thing is given to the registrar—return the sealed evidence to the person; or

(c) if the person and commission representative give the registrar notice that an agreement on the disposal of the

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sealed evidence has been reached—dispose of the sealed evidence in the way agreed.

Subdivision 2 Corruption investigations and specific intelligence operations (corruption)

79 Application of sdiv 2

This subdivision applies if a person claims privilege under section 73, 75, 94 or 111 in relation to information or a document or thing.

80 Commission officer to consider claim of privilege

The commission officer must consider the claim and may withdraw the requirement in relation to which the claim is made or advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 196.

81 Procedure for documents subject to claim of privilege

(1) If—

(a) the claim is made in relation to a document or thing the person is required to give or produce to the commission; and

(b) the document or thing is in the person's possession or the person acknowledges that the document or thing is in the person's possession; and

(c) the commission officer does not withdraw the requirement;

the commission officer must require the person to immediately seal the document or thing and give it to the commission officer for safe keeping.

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(2) The person must immediately seal the document or thing (the ***sealed evidence***) under the supervision of the commission's representative.

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

(3) The person and the commission's representative must immediately deliver the sealed evidence to a registrar of the Supreme Court to be held in safe custody.

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

(4) The registrar must keep the sealed evidence in safe custody until—

(a) application is made to a Supreme Court judge to decide the claim of privilege; or

(b) the end of 3 court days after the day on which the document or thing is given to the registrar, if an application has not been made under paragraph (a); or

(c) the registrar is told by the person and commission representative that agreement has been reached on the disposal of the sealed evidence.

(5) The registrar must—

(a) if an application is made to a Supreme Court judge to decide the claim of privilege—dispose of the sealed evidence in the way ordered by the judge; or

(b) if an application is not made by the end of 3 court days after the day on which the document or thing is given to the registrar—return the sealed evidence to the person; or

(c) if the person and commission representative give the registrar notice that an agreement on the disposal of the sealed evidence has been reached—dispose of the sealed evidence in the way agreed.

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Division 4 Notice to attend

82 Notice to attend hearing—general

(1) The chairperson may issue a notice (***attendance notice***) requiring a person to attend at a commission hearing at a stated time and place for 1 or more of the following purposes until excused—

(a) for a hearing in relation to a crime investigation or corruption investigation—

(i) to give evidence; or

(ii) to produce a stated document or thing; or

(iii) to establish a reasonable excuse or claim of privilege under section 72 or 74;

(b) for a witness protection function hearing—to establish the reasonable excuse or claim of privilege the subject of the hearing;

(c) for an intelligence function hearing—

(i) to give evidence; or

(ii) to produce a stated document or thing.

(2) An attendance notice must state—

(a) whether it is issued in the context of—

(i) a crime investigation; or

(ii) without specifying which, a crime investigation or the witness protection function; or

(iii) a corruption investigation; or

(iv) the intelligence function; and

(b) so far as reasonably practicable, the general nature of the matters about which the person may be questioned at the commission hearing.

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(3) A person does not, by giving evidence or producing a stated document or thing at a hearing in compliance with an attendance notice—

(a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the evidence, document or thing; or

(b) incur any civil liability in relation to the evidence, document or thing.

(4) A failure to comply with subsection (2)(b) does not prevent the commission from questioning the person about—

(a) for an attendance notice issued in the context of a crime investigation or corruption investigation—any matter that relates to an investigation; or

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

(c) for an attendance notice issued in the context of an intelligence function hearing—any matter that relates to the matter for which the attendance notice was issued.

(5) A person given an attendance notice must not—

(a) fail, without reasonable excuse, to attend as required by the notice; or

(b) fail, without reasonable excuse, to continue to attend as required by the presiding officer until excused from further attendance.

Maximum penalty—200 penalty units or 5 years imprisonment.

(6) If the commission hearing is being held under an authorisation under section 55D, the chairperson may issue an attendance notice requiring a person to attend immediately at the commission hearing at a stated place.

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(7) This section, other than subsection (6), is subject to section 85.

83 Notice to attend hearing—prisoner, patient or forensic disability client

(1) If the attendance before the commission of a prisoner is required, the chairperson may, by notice given to the chief executive (corrective services), direct that chief executive to produce the prisoner named in the notice at a stated time and place.

(2) If the attendance before the commission of a patient detained in an authorised mental health service under the *Mental Health Act 2016* is required, the chairman may, by notice given to the administrator of the service, direct the administrator to produce the patient named in the notice at a stated time and place.

(2A) If the attendance before the commission of a forensic disability client detained in the forensic disability service is required, the chairperson may, by notice given to the forensic disability service administrator, direct the forensic disability service administrator to produce the client named in the notice at a stated time and place.

(3) A direction mentioned in subsection (1), (2) or (2A) is lawful authority to the person to whom it is given for production of the prisoner, patient or forensic disability client as directed.

(4) The person to whom the direction is given must comply with the direction.

(5) A prisoner, patient or forensic disability client produced under this section remains in the custody of the chief executive (corrective services), hospital administrator or forensic disability service administrator.

(6) In this section—

administrator, of an authorised mental health service, see the *Mental Health Act 2016*, schedule 3.

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authorised mental health service see the *Mental Health Act 2016*, schedule 3.

forensic disability client means a forensic disability client within the meaning of the *Forensic Disability Act 2011*.

forensic disability service means the forensic disability service within the meaning of the *Forensic Disability Act 2011*.

forensic disability service administrator means the administrator within the meaning of the *Forensic Disability Act 2011*.

prisoner means a person in the custody of the chief executive (corrective services).

Division 5 Confidential documents

84 Notice may be a confidential document

(1) A notice given by the chairperson under this part may provide that it is a confidential document.

(2) A person must not disclose the existence of a confidential document to anyone else, unless the person has a reasonable excuse.

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

(3) It is a reasonable excuse for a person to disclose the existence of a confidential document if—

(a) the disclosure is made for the purpose of—

(i) seeking legal advice in relation to the document or an offence against subsection (2); or

(ii) obtaining information in order to comply with the document; or

(iii) making a complaint to the parliamentary committee about the document; or

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(iv) the administration of this Act; and

(b) the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the document to anyone else unless the person has a reasonable excuse.

Division 6 Restriction on power

85 Notices requiring immediate attendance may be issued only by or with the approval of a Supreme Court judge

(1) The chairperson may issue an attendance notice requiring a person to attend immediately at a commission hearing at a stated place only with the approval of a Supreme Court judge.

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

(2) The judge may approve the issue of the attendance notice only if the judge is satisfied, on reasonable grounds, that—

(a) for a notice issued in the context of a crime investigation or corruption investigation, delay in attendance might result in—

(i) the commission of an offence; or

(ii) an offender or suspected offender absconding; or

(iii) the loss or destruction of evidence; or

(iv) serious prejudice to the conduct of an investigation being conducted by the commission; or

(b) for a notice issued in the context of a witness protection function hearing, delay in attendance and resolution of the reasonable excuse or claim of privilege the subject of the hearing might threaten—

(i) the security of a protected person; or

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(ii) the integrity of the witness protection program or other witness protection activities of the commission; or

(c) for a notice issued in the context of an intelligence function hearing under an authorisation under section 55A, delay in attendance might result in the loss of an opportunity to obtain timely intelligence—

(i) in advance of a significant event; or

(ii) that may help prevent a risk to public safety.

Note—

An attendance notice issued under section 82(6) that requires the immediate attendance of someone at a commission hearing does not require the court's approval under this section.

(3) Subsection (3A) applies to an attendance notice issued in the context of a crime investigation or corruption investigation or the performance of the intelligence function under an authorisation under section 55A.

(3A) The notice need not state the general nature of the matters about which the person may be questioned if the chairperson is satisfied that, in the particular circumstances of the investigation or the performance of the function, stating the matters would prejudice the effectiveness of the investigation or the performance of the function.

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

(a) information about the identity or former identity of a protected person; or

(b) details about the protection given to a protected person or the reasons for the protection; or

(c) information about the identity of any person if the information would threaten—

(i) the security of a protected person; or

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(ii) the integrity of the witness protection program or other witness protection activities of the commission.

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

Division 7 Giving notices

85AA Giving notices by email—general

(1) This section applies in relation to a notice that may be given under division 1, 2 or 4 in relation to an investigation, operation or function, other than—

(a) a notice requiring immediate production of a document or thing; or

(b) an attendance notice requiring immediate attendance at a commission hearing.

(2) The chairperson may give the notice to a person by sending the notice by email to—

(a) the person's email address; or

(b) the email address of a lawyer representing the person.

(3) However, the chairperson may give the notice under subsection (2) only if the chairperson is satisfied—

(a) that it is appropriate to give the notice by email; and

(b) that—

(i) the person gave the commission the person's email address or the email address of a lawyer representing the person for the purpose of receiving under this section—

(A) all notices for the investigation, operation or function; or

(B) all notices of a particular type for the investigation, operation or function; or

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(C) all notices given during a particular period for the investigation, operation or function; or

(D) a particular notice for the investigation, operation or function; or

(ii) a lawyer representing the person gave the commission the lawyer's email address for the purpose of receiving under this section—

(A) all notices for the investigation, operation or function; or

(B) all notices of a particular type for the investigation, operation or function; or

(C) all notices given during a particular period for the investigation, operation or function; or

(D) a particular notice for the investigation, operation or function.

(4) In deciding whether it is appropriate to give the notice by email, the chairperson may have regard to—

(a) whether the notice is a confidential document under section 84; and

(b) the number and identity of persons who may have access to the account of the email address given to the commission by the person or the person's lawyer; and

(c) the relevance of the document, thing or information the subject of the notice to the investigation, operation or function; and

(d) any other matter the chairperson considers relevant.

(4A) To remove any doubt, it is declared that the chairperson may give the notice to a person under subsection (2) even if—

(a) it is a notice to be given to a person that has entered into an agreement with the chairperson under section 85AB(2); and

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(b) the notice is of a particular type to be given to the person by email under the agreement.

(5) This section does not limit the operation of the *Acts Interpretation Act 1954*, part 10 or the Corporations Act.

(6) The *Electronic Transactions (Queensland) Act 2001* does not apply to the giving of a notice under this section.

85AB Giving notices by email—agreements

(1) This section applies in relation to a notice that may be given under division 1, 2 or 4 in relation to an investigation, operation or function, other than—

(a) a notice requiring immediate production of a document or thing; or

(b) an attendance notice requiring immediate attendance at a commission hearing.

(2) The chairperson may enter into an agreement with a person for the purpose of giving notices of a particular type to the person, under this section, by sending the notices to an email address specified in the agreement.

Examples of notices of a particular type—

- notices requiring production of financial records
- notices to produce a document or thing
- notices given under section 83

(3) In deciding whether to enter into an agreement with a person under subsection (2), the chairperson must have regard to—

(a) whether it is appropriate to enter into the agreement; and

(b) the ability of the person to maintain the confidentiality of notices of the particular type proposed to be given by email under the agreement; and

(c) any involvement by the person in an investigation, operation or function to which notices of the particular type relate; and

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(d) the number of notices of the particular type proposed to be given by email under the agreement; and

(e) any other matter the chairperson considers relevant.

(4) The chairperson may give a notice to a person by sending the notice by email to the person's email address specified in an agreement entered into under subsection (2).

(5) This section does not limit the operation of the *Acts Interpretation Act 1954*, part 10 or the Corporations Act.

(6) The *Electronic Transactions (Queensland) Act 2001* does not apply to the giving of a notice under this section.

(7) To remove any doubt, it is declared that more than 1 email address may be specified in an agreement mentioned in subsection (2) for the purpose of giving notices of a particular type to a person under this section.

Part 2 Search warrants generally

85A Definitions for part

In this part—

access information, for a digital device, means information necessary for a person to access or read device information from the device.

Examples—

userid, username, passcode, password

device information, from a digital device, means—

(a) information stored on the device; or

(b) information accessed, communicated or distributed by using the device, including by using an application on the device.

Examples—

- images stored on a computer
- location data stored on or sent from a mobile phone

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- emails or text messages sent from a smart phone
- messages or videos distributed from a social media application on a tablet computer

digital device—

(a) means a device on which information may be stored or accessed electronically; and

(b) includes a computer, memory stick, portable hard drive, smart phone and tablet computer.

employee includes a person who works under a contract for services.

issuer see section 86(6).

relevant evidence means—

(a) evidence of the commission of major crime or corruption; or

(b) evidence that may be confiscation related evidence.

specified person—

1 A *specified person*, in relation to a digital device at, or seized from, a place for which a search warrant is or was issued, means any of the following persons—

(a) a person reasonably suspected of having committed an offence for which the search warrant is or was issued;

(b) the owner of the device;

(c) a person in possession of the device;

(d) an employee of the owner or person in possession of the device;

(e) a person who uses or has used the device;

(f) a person who is or was a system administrator for the computer network of which the device forms or formed a part.

2 A person mentioned in any of paragraphs (1)(a) to (e) is a *specified person* only if the person has, or is likely to

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have, knowledge about how to gain access to the digital device.

3 A person mentioned in paragraph (1)(f) is a *specified person* only if the person has, or is likely to have, knowledge about how to gain access to the computer network of which the device forms or formed a part.

86 Search warrant applications

(1) An authorised commission officer may apply for a warrant to enter and search a place (***search warrant***) to obtain—

(a) evidence of the commission of major crime or corruption being investigated by the commission; or

(b) evidence that may be confiscation related evidence.

(2) The application may be made to a magistrate or Supreme Court judge, unless the application must be made to a Supreme Court judge under subsection (3).

(3) The application must be made to a Supreme Court judge if, when entering and searching the place, it is intended to do anything that may cause structural damage to a building.

(4) An application under this section—

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

(b) must fully disclose all matters, of which the authorised commission officer is aware, both favourable and adverse to the issuing of the warrant sought; and

(c) must include information required under a regulation about any search warrants issued within the previous year in relation to the place or a person suspected of being involved in—

(i) the commission of the major crime or corruption to which the application relates; or

(ii) the confiscation related activity to which the application relates; or

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(iii) the qualifying offence, or suspected qualifying offence, to which the application relates.

(5) Subsection (4)(c) applies only to—

(a) information kept in a register that the commission officer may inspect; and

(b) information the officer otherwise actually knows.

(6) The magistrate or judge (the ***issuer***) may refuse to consider the application until the commission officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

Example—

The issuer may require additional information supporting the application to be given by statutory declaration.

87 Issue of search warrant

(1) The issuer may issue the search warrant only if satisfied there are reasonable grounds for suspecting evidence of the commission of major crime or corruption, or confiscation related evidence—

(a) is at the place; or

(b) is likely to be taken to the place within the next 72 hours.

(2) The issuer may provide in the warrant that the warrant is a confidential document.

88 Order in search warrants about documents

The issuer may, in the search warrant, order the person in possession of documents at the place to give to a commission officer all documents of a type stated in the warrant.

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88A Order in search warrant about device information from digital device

(1) The issuer may, in the search warrant, order a specified person to do any of the following in relation to a digital device at the place—

(a) give a commission officer access to the device;

(b) give a commission officer access information for the device or any assistance necessary for the officer to gain access to device information from the device;

(c) allow a commission officer to—

(i) use access information for the device to gain access to device information from the device; or

(ii) examine device information from the device to find out whether the information may be relevant evidence; or

(iii) make a copy of device information from the device that may be relevant evidence, including by using another digital device; or

(iv) convert device information from the device that may be relevant evidence into documentary form, or another form, that enables the information to be understood by a commission officer.

(2) The issuer may also, in the search warrant, order that a specified person is required to do a thing mentioned in subsection (1)(b) or (c) in relation to a digital device seized and removed from the place, after the device has been removed.

(3) An order made under subsection (2) must state—

(a) the time at or by which the specified person must give a commission officer the information or assistance mentioned in subsection (1)(b); and

(b) the place where the specified person must provide the information or assistance; and

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(c) any conditions to which the provision of the information or assistance is subject; and

(d) that failure to comply with the order may be dealt with under the Criminal Code, section 205A.

88B Order after digital device has been seized

(1) This section applies if—

(a) a digital device is seized under the search warrant and removed from the place; and

(b) either—

(i) the search warrant did not contain an order made under section 88A(1) or (2); or

(ii) the search warrant contained an order made under section 88A(1) or (2) but further access information is required for a commission officer to gain access to device information from the device that may be relevant evidence.

(2) On the application of an authorised commission officer, a magistrate or a judge may make an order requiring a specified person to do a thing mentioned in section 88A(1)(b) or (c).

(3) An application made under subsection (2)—

(a) may be made at any time after the warrant has been issued; and

(b) must be made—

(i) if the search warrant was issued by a judge—to a Supreme Court judge; or

(ii) if the search warrant was issued by a magistrate—to a magistrate.

(4) An order made under subsection (2) must state—

(a) the time at or by which the specified person must give a commission officer the information or assistance mentioned in section 88A(1)(b); and

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(b) the place where the specified person must provide the information or assistance; and

(c) any conditions to which the provision of the information or assistance is subject; and

(d) that failure to comply with the order may be dealt with under the Criminal Code, section 205A.

(5) A magistrate or a judge may make an order under subsection (2) only if satisfied there are reasonable grounds for suspecting that device information from the digital device may be relevant evidence.

88C Compliance with order about device information from digital device

A person is not excused from complying with an order made under section 88A(1) or (2) or 88B(2) on the basis that complying with the order might tend to incriminate the person or expose the person to a penalty.

89 Search warrant may be a confidential document

(1) If the search warrant provides that it is a confidential document, a person must not disclose the existence of the warrant to anyone else unless the person has a reasonable excuse.

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

(2) It is a reasonable excuse for a person to disclose the existence of the warrant if—

(a) the disclosure is made—

(i) for the purpose of seeking legal advice in relation to the warrant or an offence against subsection (1); or

(ii) for the purpose of obtaining information in order to comply with the warrant; or

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(iii) for the purpose of making a complaint to the commission or the parliamentary committee about the warrant; or

(iv) in the course of the administration of this Act; and

(b) the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the warrant to anyone else unless the person has a reasonable excuse.

90 When search warrant ends

(1) A search warrant issued because there are reasonable grounds for suspecting there is evidence of the commission of major crime or corruption or confiscation related evidence at a place ends 7 days after it is issued.

(2) A search warrant issued because there are reasonable grounds for suspecting evidence of the commission of major crime or corruption or confiscation related evidence is likely to be taken to a place within the next 72 hours ends 72 hours after it is issued.

91 What search warrant must state

(1) A search warrant must state—

(a) that a stated commission officer or all commission officers may enter the place and exercise search warrant powers at the place; and

(b) brief particulars of the major crime, corruption, confiscation related activity, qualifying offence or suspected qualifying offence for which the warrant is issued; and

(c) the evidence, if any, that may be seized under the warrant; and

(d) if the warrant is to be executed at night, the hours when the place may be entered; and

(e) the day and time the warrant ends.

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(2) If a magistrate or a judge makes an order under section 88 or 88A(1) or (2), the warrant must also state that failure, without reasonable excuse, to comply with the order may be dealt with under—

(a) for section 88—the Criminal Code, section 205; or

(b) for section 88A(1) or (2)—the Criminal Code, section 205A.

92 Powers under search warrants

(1) An authorised commission officer has the following powers under a search warrant (***search warrant powers***)—

(a) power to enter the place stated in the warrant (the ***relevant place***) and to stay on it for the time reasonably necessary to exercise powers authorised under the warrant and this section;

(b) power to pass over, through, along or under another place to enter the relevant place;

(c) power to search the relevant place for anything sought under the warrant;

(d) power to open anything in the relevant place that is locked;

(e) power to detain anyone at the relevant place for the time reasonably necessary to find out if the person has anything sought under the warrant;

(f) power to detain a person found at the relevant place for the time taken to search the place if the officer reasonably suspects the person has been involved in the unlawful activity, the confiscation related activity or the qualifying offence;

(g) power to dig up land;

(h) power to seize a thing found at the relevant place, or on a person found at the relevant place, that the officer reasonably suspects may be evidence of the commission

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of the unlawful activity or an indictable offence or confiscation related evidence;

(i) power to muster, hold and inspect any animal the officer reasonably suspects may be evidence of the commission of the unlawful activity or confiscation related evidence;

(j) power to photograph anything the officer reasonably suspects may be evidence of the commission of the unlawful activity or confiscation related evidence;

(k) power to remove wall or ceiling linings or floors of a building, or panels of a vehicle, to search for evidence of the commission of the unlawful activity or confiscation related evidence.

(2) Also, an authorised commission officer has the following powers if authorised under a search warrant (also ***search warrant powers***)—

(a) power to search anyone found at the relevant place for anything sought under the warrant that can be concealed on the person;

(b) power to do whichever of the following is authorised—

(i) to search anyone or anything in or on or about to board, or be put in or on, a vehicle;

(ii) to take a vehicle to, and search for evidence of the commission of the unlawful activity that may be concealed in a vehicle at, a place with appropriate facilities for searching the vehicle.

(3) Power to do anything at the relevant place that may cause structural damage to a building may be exercised only if the warrant—

(a) authorises the exercise of the power; and

(b) is issued by a Supreme Court judge.

(4) In this section—

qualifying offence, for a search warrant, means the qualifying offence, or suspected qualifying offence, to which the warrant relates.

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unlawful activity, for a search warrant, means the major crime or corruption to which the warrant relates.

93 Copy of search warrant to be given to occupier

(1) If a commission officer executes a search warrant for a place that is occupied, the officer must—

(a) if the occupier of the place is present—give to the occupier a copy of the warrant and a statement summarising the person's rights and obligations under the warrant; or

(b) if the occupier is not present—leave the copy in a conspicuous place.

(2) However, if the search warrant is a confidential document and the occupier is not present, the officer—

(a) is not required to comply with subsection (1)(b); and

(b) must give to the occupier a copy of the warrant and a statement summarising the person's rights and obligations under the warrant as soon as practicable after executing the warrant.

(3) If the officer reasonably suspects giving the person the copy may frustrate or otherwise hinder the investigation or another investigation, the officer may delay complying with subsection (1), but only for so long as—

(a) the officer continues to have the reasonable suspicion; and

(b) that officer or another officer involved in the investigation remains in the vicinity of the place to keep the place under observation.

94 Limitation on search warrant powers for corruption investigations

(1) This section applies if—

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(a) an authorised commission officer who is exercising search warrant powers for a corruption investigation wishes to inspect, photograph or seize a document or thing under the warrant; and

(b) a person who is entitled to claim the privilege claims the document or thing is subject to privilege.

(2) The authorised commission officer must consider the claim and may withdraw the requirement in relation to which the claim is made or advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 196.

(3) If the commission officer does not withdraw the requirement, section 81 applies.

(4) In this section—

privilege does not include privilege on the ground of confidentiality.

Part 3 Search of place to prevent loss of evidence

95 Application of part

This part applies only for a crime investigation.

96 Search to prevent loss of evidence

(1) This section applies if an authorised commission officer reasonably suspects—

(a) a thing at or about a place, or in the possession of a person at or about a place, is evidence of the commission of major crime being investigated by the commission; and

(b) unless the place is immediately entered and searched—

(i) the evidence may be concealed or destroyed; or

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(ii) the forensic value of the evidence may be diminished.

(2) An authorised commission officer may enter the place and exercise search warrant powers, other than power to do something that may cause structural damage to a building, at the place as if they were conferred under a search warrant.

97 Post-search approval

(1) As soon as reasonably practicable after exercising powers under section 96, the authorised commission officer must apply to a magistrate in writing for an order approving the search (***post-search approval order***).

(2) The application must be sworn and state the grounds on which it is sought.

(3) The applicant need not appear at the consideration of the application, unless the magistrate otherwise requires.

(4) The magistrate may refuse to consider the application until the authorised commission officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

98 Making of post-search approval order

(1) The magistrate may make a post-search approval order only if satisfied the search was conducted in the context of a crime investigation and either of the following apply—

(a) in the circumstances existing before the search, there were grounds for the authorised commission officer to reasonably suspect—

(i) a thing at or about the place, or in the possession of a person at or about the place, was evidence of the

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commission of major crime being investigated by the commission; and

(ii) unless the place was immediately entered and searched—

(A) the evidence may have been concealed or destroyed; or

(B) the forensic value of the evidence may have been diminished;

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

(2) The magistrate may also make an order under section 118 or 119, whether or not a post-search approval order is made.

99 Appeal

(1) Within 28 days after either of the following happens, the authorised commission officer may appeal against the order to the Supreme Court—

(a) a magistrate refuses to make a post-search approval order;

(b) a magistrate makes an order under section 98(2).

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

(3) The court may make an order under section 118 or 119, whether or not the appeal is upheld.

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Part 4 Searching persons

Division 1 General provisions

100 General provisions about searches of persons

An authorised commission officer lawfully searching a person under this Act must—

(a) ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person; and

(b) take reasonable care to protect the person's dignity; and

(c) unless an immediate and more thorough search of the person is necessary, restrict a search of the person in public to an examination of outer clothing; and

(d) if a more thorough search of the person is necessary but does not have to be conducted immediately, conduct a more thorough search of the person out of public view, for example, in a room of a shop or, if a police station is nearby, in the police station.

Example for paragraph (c)—

A more thorough search may be immediately necessary because the officer reasonably suspects the person to be searched may have a bomb strapped to the person's body or has a concealed firearm or knife.

100A Gender safeguard for searches of persons

(1) This section applies to a search of a person conducted by an authorised commission officer.

(2) This section does not apply if an immediate search of the person is necessary.

Example—

An immediate search may be necessary because it is reasonably suspected that the person may have a bomb strapped to the person's body or a concealed firearm or knife.

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(3) Subject to this section, the person conducting the search must, if reasonably practicable, be of the same gender as the person being searched.

(4) The person to be searched must be given—

(a) an explanation of the search process; and

(b) a reasonable opportunity to express a preference about the gender of the person who is to conduct the search.

(5) A preference may be expressed in a way that would require different persons to search the upper body, lower body or head of the person.

(6) A preference must be accommodated unless—

(a) there are reasonable grounds to believe the preference is expressed for an improper purpose; or

(b) it is not reasonably practicable to accommodate the preference.

Notes—

1 An improper purpose includes the following—

- a lewd or otherwise offensive purpose;
- an attempt to frustrate the process.

2 It is expected that it will be reasonably practicable to accommodate a genuine preference expressed in terms of a preference for a man or a woman. In other cases, the availability of a suitable person may be a determining factor.

(7) The search or part of the search may be conducted by a different authorised commission officer, or under the direction of the authorised commission officer by a person who is not an authorised commission officer, if reasonably necessary—

(a) to ensure that the person conducting the search and the person being searched are of the same gender; or

(b) to accommodate a preference expressed by the person being searched; or

(c) to address a concern related to gender in a way that minimises embarrassment and offence.

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(8) Also, the authorised commission officer may conduct the search or part of the search despite not being of the same gender as the person being searched if, in the circumstances, that is the most appropriate way to address a concern related to gender.

101 Taking a person to another place for search

(1) If it is impracticable to search for a thing that may be concealed on a person where the person is, the authorised commission officer may take the person to a place with adequate facilities for conducting the search.

Example—

To search a person out of public view and cause minimal embarrassment to the person, a person in a casino may be taken to another room in the casino.

(2) Before taking a person to another place for a search because it is impracticable to search for a thing that may be concealed on the person where the person is, the authorised commission officer must consider the following—

(a) whether the thing sought may be concealed on the person;

(b) whether, for an effective search, the search should be conducted somewhere else;

(c) the need to protect the dignity of the person.

102 Limitation on period of detention for search

An authorised commission officer who detains a person for a search must not detain the person any longer than is reasonably necessary for the purpose.

103 Dealing with persons who obstruct search of person

(1) If a person (the ***obstructing person***) obstructs an authorised commission officer conducting a lawful search of the

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obstructing person or another person, an authorised commission officer must, if reasonably practicable—

(a) warn the obstructing person it is an offence to obstruct an authorised commission officer in the performance of the officer's duties; and

(b) give the obstructing person a reasonable opportunity to stop obstructing the search.

(2) It may not be reasonably practicable for an authorised commission officer to comply with subsection (1) if, for example—

(a) there is an immediate or sudden need to use force because, for example, the person is struggling with an authorised commission officer; or

(b) there is a reasonable expectation that, if warned, the person may immediately dispose of, or destroy, evidence; or

(c) an immediate search is necessary to protect the safety of any person.

Division 2 Searches involving removal of clothing

104 Application of division

This division applies only for a crime investigation.

105 Removal of clothing for search

An authorised commission officer conducting the search of a person under this Act may require a person to remove all items of clothing or all items of outer clothing from the upper or lower part of the body.

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106 Protecting the dignity of persons during search

(1) If reasonably practicable—

(a) the authorised commission officer must, before conducting the search—

(i) tell the person that the person will be required to remove clothing during the search; and

(ii) tell the person why it is necessary to remove the clothing; and

(iii) ask for the person's cooperation; and

(b) the person must be given the opportunity to remain partly clothed during the search, for example, by allowing the person to dress the person's upper body before being required to remove items of clothing from the lower part of the body.

(2) The search must be conducted in a way providing reasonable privacy for the person.

Example for subsection (2)—

Reasonable privacy may be provided by conducting the search in a way that ensures, as far as reasonably practicable, the person being searched can not be seen by anyone who does not need to be present.

(3) Also, the search must be conducted as quickly as reasonably practicable and the person searched must be allowed to dress as soon as the search is finished.

(4) A regulation may prescribe other requirements and procedures for ensuring the effective carrying out of the search.

107 Special requirements for searching children and persons with impaired capacity

(1) If a person to be searched is a child, or a person with impaired capacity, who may not be able to understand the purpose of the search, the authorised commission officer must conduct the search in the presence of a support person.

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(2) However, the officer may search the person in the absence of a support person if the officer reasonably suspects—

(a) delaying the search is likely to result in evidence being concealed or destroyed; or

(b) an immediate search is necessary to protect the safety of a person.

108 If video cameras monitor place where person is searched

(1) If a video camera monitors the area where the person is searched, the authorised commission officer must—

(a) ensure the camera is turned off; or

(b) conduct the search out of view of the camera.

(2) If the video camera is not turned off, a recording of the search must not be shown to anyone other than—

(a) the person searched or the person's lawyer; or

(b) a doctor treating the person searched; or

(c) a person deciding if a proceeding is to be started against the person for an offence; or

(d) an authorised commission officer investigating an offence involving the person; or

(e) an authorised commission officer, police officer, lawyer, public prosecutor or witness involved in a proceeding against the person; or

(f) a court.

Part 5 Seizing property

109 Definitions for pt 5

In this part—

court includes QCAT exercising its jurisdiction under this Act.

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prosecution includes starting a disciplinary proceeding for corrupt conduct before QCAT.

110 General power to seize evidence—crime investigation

(1) This section applies if a commission officer conducting a crime investigation lawfully enters a place, or is at a public place, and finds at the place a thing the officer reasonably suspects is evidence of the commission of major crime that the commission is investigating.

(2) The officer may seize the thing, whether or not as evidence under a warrant and, if the place is entered under a warrant, whether or not the warrant was issued for the major crime.

(3) Also, the officer may—

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

(b) stay at the place and re-enter it for the time reasonably necessary to remove the thing from the place.

(4) If the thing is seized at a place entered under a covert search warrant, section 117 applies as if the thing had been seized under the warrant.

(5) Otherwise, sections 113 to 115 apply as if the thing had been seized under a warrant under part 2.

110A General power to seize evidence—confiscation related investigation

(1) This section applies if a commission officer conducting a confiscation related investigation who lawfully enters a place under a search warrant—

(a) finds at the place a thing the officer reasonably suspects is—

(i) confiscation related evidence for any confiscation related investigation being conducted by the commission; or

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(ii) admissible evidence of an indictable offence against the law of the Commonwealth or of any State; and

Note—

Subparagraph (ii) deals with the possibility that other evidence of offences may be found at the place even though entry is made for the purpose of finding confiscation related evidence.

(b) reasonably believes that it is necessary to seize the thing—

(i) to prevent its loss, destruction, mutilation or concealment; or

(ii) to prevent its use for a confiscation related activity or for committing an offence of a kind mentioned in paragraph (a).

(2) The officer may seize the thing.

(3) However, if a person who is entitled to claim the privilege claims the document or thing is subject to privilege, the commission officer must consider the claim and may—

(a) withdraw the requirement in relation to which the claim is made; or

(b) advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 195B.

(4) If a claim of privilege is made and the commission officer does not withdraw the requirement, section 78C applies.

(5) In this section—

privilege does not include privilege on the ground of confidentiality.

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111 General power to seize evidence—corruption investigation

(1) This section applies if a commission officer conducting a corruption investigation who lawfully enters a place under a search warrant—

(a) finds at the place a thing the officer reasonably suspects is admissible evidence of an indictable offence against the law of the Commonwealth or of any State; and

(b) reasonably believes that it is necessary to seize the thing—

(i) to prevent its loss, destruction, mutilation or concealment; or

(ii) to prevent its use for committing an offence of a kind mentioned in paragraph (a).

(2) The officer may seize the thing.

(3) However, if a person who is entitled to claim the privilege claims the document or thing is subject to privilege, the authorised commission officer must consider the claim and may—

(a) withdraw the requirement in relation to which the claim is made; or

(b) advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 196.

(4) If a claim of privilege is made and the commission officer does not withdraw the requirement, section 81 applies.

(5) In this section—

privilege does not include privilege on the ground of confidentiality.

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112 Receipt for seized property

(1) If a commission officer seizes anything under this chapter, other than under a covert search warrant, the officer must, as soon as is reasonably practicable after seizing the thing—

(a) if the person from whom it is seized is present—give to the person a receipt for the thing; or

(b) otherwise—leave a receipt for the thing in a conspicuous place.

(2) The receipt must describe the thing seized and include any other information required under a regulation.

(3) However, if the officer reasonably suspects giving the person the receipt may frustrate or otherwise hinder the investigation or another investigation, the officer may delay complying with subsection (1), but only for so long as—

(a) the officer continues to have the reasonable suspicion; and

(b) the officer or another officer involved in the investigation remains in the vicinity of the place to keep it under observation.

(4) Also, this section does not apply if the officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned.

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

113 Application for order in relation to seized things

(1) Within 30 days after a commission officer seizes anything under this chapter (other than section 165), the officer must apply to a magistrate for an order under section 114 about the thing seized, unless—

(a) a proceeding has been started in which the thing may be relevant; or

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(b) consent to the continued keeping of the thing has been given by the owner or the person who had lawful possession of the thing before it was seized; or

(c) it is destroyed or dealt with under the authority of another Act; or

(d) an order has been made about the thing under section 156(4).

(2) The commission officer must also make an application to a magistrate for an order under section 114 about the thing seized within 30 days after either of the following happens—

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

(b) the consent of the owner of the thing or the person who had lawful possession of the thing before it was seized is withdrawn.

(3) An application under subsection (1) or (2) must be accompanied by any warrant under which the thing is seized, with a record on it under section 339.

114 Orders magistrate may make in relation to seized thing

The magistrate may, in relation to the seized thing, order—

(a) that it be kept in the possession of the commission or another law enforcement agency—

(i) until the end of any investigation in relation to which the thing may be relevant and for a reasonable time afterwards to enable the commission to decide whether a charge is to be laid; or

(ii) until the end of any proceeding in which the thing may be relevant; or

(iii) until the end of any appeal against a decision in a proceeding in which the thing is relevant; or

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(b) that it be returned, or photographed and returned, to its owner or the person who had lawful possession of it before it was seized on condition that the owner or person undertakes to produce it before a court in any later proceeding involving the thing; or

(c) that it be returned to the person who the magistrate believes is lawfully entitled to possess it; or

(d) if the person entitled to possess the thing is unknown, that the thing be disposed of; or

(e) that it be disposed of or destroyed; or

(f) that it be dealt with by way of a proceeding under section 118 or 119; or

(g) that it be dealt with by way of proceeding under the *Justices Act 1886*, section 39; or

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

115 Disposal of seized things at end of proceeding

(1) At the end of a proceeding, a court may make any of the following orders in relation to a thing seized—

(a) an order for the return, forfeiture, destruction or disposal of the thing;

(b) an order that the thing be dealt with by way of a proceeding under the *Justices Act 1886*, section 39;

(c) an order that the commission retain the thing until it is dealt with according to law.

(2) A thing that is forfeited under an order under this Act becomes the property of the State.

116 Right to inspect seized documents

(1) Unless a justice otherwise orders, the commission, or another law enforcement agency in whose possession it is, must allow

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a person who would be entitled to a document in the possession of the commission or an agency—

(a) to inspect it at any reasonable time and from time to time; and

(b) to take extracts from or make copies of it.

(2) The commission or the other law enforcement agency may refuse to comply with subsection (1) if the commission or agency reasonably suspects complying with the subsection will enable the person to repeat or continue an offence of which the document is evidence or to commit another offence.

117 Return of seized things

The commission, or another law enforcement agency in whose possession it is, must return a seized thing in the possession of the commission or agency to its owner—

(a) if the thing is required as evidence for a prosecution and subject to any order made by a court—at the end of the prosecution and any appeal from the prosecution; or

(b) immediately the commission or agency stops being satisfied its retention as evidence is necessary.

118 Application by owner etc. for return of things

(1) This section applies to a thing that has been in the possession of the commission for at least 30 days.

(2) A person who claims to have a legal or equitable interest in the thing may apply to a magistrate for an order that the thing be delivered to the person.

(3) The person must give each of the following a copy of the application and notice of the day, time and place fixed for hearing the application—

(a) the chairperson;

(b) anyone else the person reasonably believes has a legal or equitable interest in the thing.

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(4) The magistrate may order that the thing be delivered to a person on any conditions the magistrate considers appropriate if satisfied—

(a) the person may lawfully possess the thing; and

(b) it is appropriate that the thing be delivered to the person.

(5) However, the magistrate must not order the delivery of a thing to the person if the magistrate is reasonably satisfied the thing—

(a) may be evidence in a proceeding started in relation to the thing; or

(b) is a thing used in or for manufacturing a dangerous drug; or

(c) may be subject to a forfeiture proceeding, including a forfeiture proceeding relating to an interstate serious offence under the Confiscation Act.

119 Application by commission officer for order if ownership dispute

(1) This section applies if there is a question about the ownership of a thing that has been in the possession of the commission for at least 30 days.

(2) A commission officer may apply to a magistrate for an order declaring who is the owner of the thing.

(3) The officer must give anyone the officer reasonably believes has a legal or equitable interest in the thing a copy of the application and notice of the day, time and place fixed for hearing the application.

(4) The magistrate may make the order the magistrate considers appropriate.

(5) If the magistrate can not decide who owns the thing, the magistrate may make the orders the magistrate considers appropriate for the disposal of the thing.

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Part 5A Monitoring and suspension orders

Division 1 Interpretation and application

119A Meaning of *financial institution*

In this part—

financial institution includes—

(a) a corporation that is (or that, if it had been incorporated in Australia, would be) a financial corporation within the meaning of the Commonwealth Constitution, section 51(xx); and

(b) another entity that permits persons to deposit money with it for use by, or at the direction of, the persons for gaming or betting.

119B Application of pt 5A

This part applies only for the purposes of enhancing the commission's powers under the Confiscation Act.

Division 2 Monitoring orders

119C Monitoring order applications

(1) An authorised commission officer may apply to a Supreme Court judge for an order (***monitoring order***) directing a financial institution to give information to a commission officer about a named person.

(2) The application—

(a) may be made without notice to any party; and

(b) must—

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(i) be sworn and state the grounds on which the order is sought; and

(ii) include information required under a regulation about any monitoring orders issued within the previous year in relation to an account held with the financial institution by the named person.

(3) Subsection (2)(b) applies only to—

(a) information kept in a register that the authorised commission officer may inspect; and

(b) information the authorised commission officer otherwise actually knows.

(4) The judge may refuse to consider the application until the authorised commission officer gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

119D Making of monitoring order

The Supreme Court judge may make the monitoring order only if satisfied there are reasonable grounds for suspecting that the person named in the application—

(a) has been, or is about to be, involved in a serious crime related activity; or

(b) has acquired directly or indirectly, or is about to acquire directly or indirectly, serious crime derived property.

119E What monitoring order must state

(1) The monitoring order must order a financial institution to give information obtained by the institution about transactions conducted through an account held by the named person with the institution and state—

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(a) the name or names in which the account is believed to be held; and

(b) the type of information the institution is required to give; and

(c) the period, of not more than 3 months from the date of its making, the order is in force; and

(d) that the order applies to transactions conducted during the period stated in the order; and

(e) that the information is to be given to any commission officer or to a stated commission officer and the way in which the information is to be given.

(2) In this section—

transaction conducted through an account includes—

(a) the making of a fixed term deposit; and

(b) in relation to a fixed term deposit—the transfer of the amount deposited, or any part of it, at the end of the term.

119F When period stated in monitoring order starts

A monitoring order has effect from the start of the day notice of the order is given to the financial institution.

119G Offence to contravene monitoring order

A financial institution that has been given notice of a monitoring order must not knowingly—

(a) contravene the order; or

(b) provide false or misleading information in purported compliance with the order.

Maximum penalty—1,000 penalty units.

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119H Existence and operation of monitoring order not to be disclosed

(1) A financial institution that is or has been subject to a monitoring order must not disclose the existence or the operation of the order to any person other than—

(a) a commission officer; or

(b) an officer or agent of the institution (an ***institution officer***), for ensuring the order is complied with; or

(c) a lawyer, for obtaining legal advice or representation in relation to the order.

(2) A person to whom the existence or operation of a monitoring order has been disclosed, whether under subsection (1) or under the provision as originally made or remade or otherwise, must not—

(a) while the person is a commission officer, institution officer or lawyer, disclose the existence or operation of the order other than to another person to whom it may be disclosed under subsection (1) but only for—

(i) if the person is a commission officer—performing the person's duties; or

(ii) if the person is an institution officer—ensuring the order is complied with or obtaining legal advice or representation in relation to the order; or

(iii) if the person is a lawyer—giving legal advice or making representations in relation to the order; or

(b) when the person is no longer a commission officer, institution officer or lawyer, make a record of, or disclose, the existence or the operation of the order in any circumstances.

(3) Subsection (2) does not prevent a commission officer disclosing the existence or operation of a monitoring order—

(a) for, or in relation to, a legal proceeding; or

(b) in a proceeding before a court.

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(4) A commission officer can not be required to disclose to any court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) commits a crime.

Maximum penalty—350 penalty units or 7 years imprisonment.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

(7) In this section—

officer, of a financial institution, means—

(a) a secretary, executive officer or employee of the financial institution; or

(b) anyone who, under the Confiscation Act, is a director of the financial institution.

Division 3 Suspension orders

119I Suspension order application

(1) An authorised commission officer may apply to a Supreme Court judge for an order (***suspension order***) directing a financial institution to give information to a commission officer about a named person.

(2) The application—

(a) may be made without notice to any person; and

(b) must—

(i) be sworn and state the grounds on which the order is sought; and

(ii) include information required under a regulation about any suspension orders issued within the

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previous year in relation to an account held with the financial institution by the named person.

(3) Subsection (2)(b)(ii) applies only to—

(a) information kept in a register that the authorised commission officer may inspect; and

(b) information the authorised commission officer otherwise actually knows.

(4) The judge may refuse to consider the application until the authorised commission officer gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

119J Making of suspension order

The Supreme Court judge may make the suspension order only if satisfied there are reasonable grounds for suspecting that the person named in the application—

(a) has been, or is about to be, involved in a serious crime related activity; or

(b) has acquired directly or indirectly, or is about to acquire directly or indirectly, serious crime derived property.

119K What suspension order must state

(1) The suspension order must order a financial institution—

(a) to notify a commission officer immediately of any transaction that has been initiated in connection with an account held with the institution by a person named in the order; and

(b) to notify a commission officer immediately if there are reasonable grounds for suspecting that a transaction is about to be initiated in connection with the account; and

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(c) to refrain from completing or effecting the transaction for 48 hours, unless a named commission officer gives the financial institution written consent to the transaction being completed immediately.

(2) In addition, the suspension order must state—

(a) the name or names in which the account is believed to be held; and

(b) the type of information the institution is required to give; and

(c) the period, of not more than 3 months from the date of its making, the order is in force; and

(d) that the order applies to transactions conducted during the period stated in the order; and

(e) that the information is to be given to any commission officer or to a stated commission officer and the way in which the information is to be given.

119L When period stated in suspension order starts

A suspension order has effect from the time notice of the order is given to the financial institution.

119M Contravention of suspension order

A financial institution that has been given notice of a suspension order must not knowingly—

(a) contravene the order; or

(b) provide false or misleading information in purported compliance with the order.

Maximum penalty—1,000 penalty units.

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119N Existence and operation of suspension order not to be disclosed

(1) A financial institution that is or has been subject to a suspension order must not disclose the existence or the operation of the order to any person other than—

(a) a commission officer; or

(b) an officer or agent of the institution (an ***institution officer***), for ensuring the order is complied with; or

(c) a lawyer, for obtaining legal advice or representation in relation to the order.

(2) A person to whom the existence or operation of a suspension order has been disclosed, whether under subsection (1) or under the provision as originally made or remade or otherwise, must not—

(a) while the person is a commission officer, institution officer or lawyer, disclose the existence or operation of the order other than to another person to whom it may be disclosed under subsection (1) but only for—

(i) if the person is a commission officer—performing the person's duties; or

(ii) if the person is an institution officer—ensuring the order is complied with or obtaining legal advice or representation in relation to the order; or

(iii) if the person is a lawyer—giving legal advice or making representations in relation to the order; or

(b) when the person is no longer a commission officer, institution officer or lawyer, make a record of, or disclose, the existence or the operation of the order in any circumstances.

(3) Subsection (2) does not prevent a commission officer disclosing the existence or operation of a suspension order—

(a) for, or in relation to, a legal proceeding; or

(b) in a proceeding before a court.

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(4) A commission officer can not be required to disclose to any court the existence or operation of a suspension order.

(5) A person who contravenes subsection (1) or (2) commits a crime.

Maximum penalty—350 penalty units or 7 years imprisonment.

(6) A reference in this section to disclosing the existence or operation of a suspension order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the suspension order.

(7) In this section—

officer, of a financial institution, means—

(a) a secretary, executive officer or employee of the financial institution; or

(b) anyone who, under the Confiscation Act, is a director of the financial institution.

Part 6 Surveillance devices

Division 1 Non-application of Public Records Act 2023

120 Public Records Act 2023 does not apply to divs 2–3

The *Public Records Act 2023* does not apply to activities or records under divisions 2 and 3.

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Division 2 Use of surveillance devices under warrant of Supreme Court judge

121 Surveillance warrant applications

(1) This section applies if the chairperson reasonably believes a person has been, is, or is likely to be, involved in corruption being investigated by the commission.

(2) An authorised commission officer may, with the chairperson's approval, apply to a Supreme Court judge for a warrant (***surveillance warrant***) authorising the use of a surveillance device.

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

(4) The application must—

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

(b) fully disclose all matters, of which the authorised commission officer is aware, both favourable and adverse to the issuing of the warrant sought; and

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

(5) The place specified in the application (the ***relevant place***) may be a public place and may be described by reference to a class of place.

(6) Subsection (4)(c) only applies to—

(a) information kept in a register that the officer may inspect; and

(b) information the officer otherwise actually knows.

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

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(8) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

122 Who may be present at consideration of application for surveillance warrant

(1) The judge must hear an application for a surveillance warrant in the absence of anyone other than the following—

(a) the applicant;

(b) a monitor;

(c) someone the judge permits to be present;

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

(2) Also, the judge must hear the application—

(a) in the absence of the person proposed to be placed under surveillance (the ***relevant person***) or anyone likely to inform the relevant person of the application; and

(b) without the relevant person having been informed of the application.

123 Consideration of application for surveillance warrant

Before deciding an application for a surveillance warrant, the judge must, in particular, and being mindful of the highly intrusive nature of using a surveillance device, consider the following—

(a) the nature and seriousness of the corruption;

(b) the likely extent of interference with the privacy of—

(i) the relevant person; or

(ii) any other occupant of the relevant place;

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if the warrant is issued;

(c) the extent to which issuing the warrant would help prevent, detect, or provide evidence of the commission of, the corruption;

(d) the benefits derived from the issue of any previous surveillance warrants in relation to the relevant person or the relevant place;

(e) the extent to which officers investigating the corruption have used or can use conventional ways of investigation;

(f) how much the use of conventional ways of investigation would be likely to help in the investigation of the corruption;

(g) how much the use of conventional ways of investigation would prejudice the investigation of the corruption because of delay or for another reason;

(h) any submissions made by a monitor.

124 Issue of surveillance warrant

(1) After considering the application, the judge may issue a surveillance warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing—

(a) the relevant person has been, is, or is likely to be, involved in the corruption and is likely to be at the relevant place; or

(b) evidence of the corruption is likely to be obtained using a surveillance device at the relevant place.

(2) The judge may issue a surveillance warrant authorising the use of a surveillance device in the office of a practising lawyer only if the application for the warrant relates to the lawyer's involvement in corruption.

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

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(a) a condition requiring regular reporting to a judge on activities under the warrant; and

(b) a condition requiring that, if a listening device is to be used in a public place or class of place, the officer, before installing or using the device, must have a reasonable belief that the relevant person is or will be in the place where the device is to be used.

Example for subsection (3)(b)—

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

125 What surveillance warrant must state

A surveillance warrant must state the following—

(a) that a commission officer or any commission officer may exercise surveillance powers under the warrant;

(b) the name of the relevant person, if known;

(c) the place or class of place where the surveillance device authorised under the warrant may be used;

(d) any conditions the judge imposes under section 124(3);

(e) the day and time the warrant starts and when the warrant ends.

126 Report on use of surveillance devices

(1) This section applies if, because of a condition of a surveillance warrant, a commission officer gives to a judge a report on activities under the warrant.

(2) The judge may, after considering the report, require the destruction of any recording made that is not related to the corruption mentioned in the warrant, unless the recording

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relates to the investigation by the commission of other corruption.

127 Duration and extension of surveillance warrants

(1) A surveillance warrant is in force until the earlier of the following—

(a) the day stated in the warrant;

(b) the day the investigation under the warrant ends.

(2) However, despite the investigation ending, the warrant continues in force until the day stated in the warrant if, as a result of using the surveillance device, evidence is gained of other corruption.

(3) The warrant may be extended from time to time on application and the provisions of this division for an application for a warrant apply to an application for an extension, with necessary changes.

(4) Despite the ending of the warrant under subsection (1) or (2), the commission officer may continue to exercise powers under the warrant, but only to the extent necessary to remove the surveillance device to which the warrant relates.

128 Power under surveillance warrants

A commission officer to whom a surveillance warrant is directed may, subject to the warrant, lawfully exercise any of the following powers under the warrant (***surveillance powers***)—

(a) power to enter a stated place or class of place, covertly or through subterfuge, to install a surveillance device;

(b) power to install and use a surveillance device to intercept and record private conversations;

(c) power to remove a thing to another place to install a surveillance device in the thing;

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(d) power to use an assistant to translate or interpret conversations intercepted under the warrant;

(e) power to take electricity for using a surveillance device;

(f) power to use reasonable force—

(i) to enter a place to install a surveillance device; or

(ii) to install a surveillance device;

(g) power to use 1 or more surveillance devices in the same place;

(h) power to pass through, over, under or along a place to get to the place where the surveillance device is to be used.

Division 3 Other provisions about surveillance devices

129 Restriction about records and access to surveillance warrant applications etc.

(1) This section applies to the following (***relevant proceeding***)—

(a) an application to a Supreme Court judge for—

(i) a surveillance warrant; or

(ii) the extension of a surveillance warrant;

(b) an order made under an application mentioned in paragraph (a).

(2) Despite the *Recording of Evidence Act 1962*, a transcript of a relevant proceeding must not be made.

(3) Also, no record of the application or of any order made in a relevant proceeding is to be available for search by any person, except by direction of a Supreme Court judge.

(4) A person must not publish a report of a relevant proceeding.

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

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(5) A person is not entitled to search information in the custody of a court in relation to a relevant proceeding, unless a Supreme Court judge otherwise orders in the interests of justice.

(6) Nothing in this section prevents a person who was present at a relevant proceeding from giving oral evidence to a court about things that happened at the proceeding.

130 Disclosure of information obtained using surveillance warrant

(1) This section applies to information that has not been disclosed in a proceeding in open court and was obtained by using a surveillance warrant (the ***relevant information***).

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

(a) the judge who issued the warrant; or

(b) a judge hearing an application for—

(i) an extension of the warrant; or

(ii) a warrant in relation to the same or a different person; or

(c) a court taking evidence about a charge of an offence in which the relevant information is evidence; or

(d) QCAT hearing a matter, in the exercise of its jurisdiction under this Act, in which the relevant information is evidence; or

(e) the chairperson or a person authorised by the chairperson; or

(f) a commission officer, police officer or other law enforcement officer involved in—

(i) the investigation into the corruption for which the powers were exercised; or

(ii) an investigation of any indictable offence started because of information obtained under the warrant or linked to the offence under investigation; or

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(iii) a proceeding in which the information is evidence; or

(g) a declared agency; or

(h) a public prosecutor, but only for—

(i) use in a proceeding in which the information is evidence; or

(ii) an application for an extension of the warrant; or

(iii) the issue of another surveillance warrant; or

(i) a public official, but only for taking disciplinary action; or

(j) a lawyer representing a person in a proceeding in which the information is evidence; or

(k) a monitor; or

(l) a person transcribing or making copies of recordings.

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

(3) In this section—

commission officer includes a former commission officer.

131 Destruction of records

(1) The commission must keep all information obtained under a surveillance warrant and transcripts of recordings or photographs made or taken under the warrant in a secure place.

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

(3) Subsection (2) does not prevent information or other matter being preserved for any period or indefinitely if, in the chairperson's opinion, it is relevant to—

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(a) any offence of which someone has been convicted if there is a possibility that an issue about the conviction may arise; or

(b) an ongoing investigation.

Part 6A Controlled operations and controlled activities for corruption offences

Division 1 Preliminary

132 Object of pt 6A

The object of this part is to ensure the effective investigation of corruption offences by—

(a) enabling particular commission officers to approve the conduct of controlled operations that may involve particular commission officers and others engaging in activities that may be unlawful as part of the investigation of a suspected corruption offence; and

(b) ensuring anything that may be approved or authorised under this part is approved or authorised only in appropriate circumstances; and

(c) ensuring, as far as practicable, only appropriately trained persons act as covert operatives under an approval under this part; and

(d) ensuring a person who may act as a covert operative under an approval under this part engages in otherwise unlawful activities only as part of the controlled operation for which the person is a covert operative; and

(e) providing appropriate protection from civil and criminal liability for persons acting in accordance with this part; and

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(f) clarifying the status of evidence obtained by persons who engage in controlled operations or controlled activities under this part.

133 Investigation of minor matters not affected

The enactment of this part is not to affect the investigation of minor matters or investigative activities that, by their nature, can not be planned but involve the participation of commission officers who are police officers in activities that may be unlawful.

134 Lawfulness of particular actions

To remove doubt, it is declared—

(a) that it is lawful for a person acting in accordance with this part—

(i) to recommend that other persons be authorised to engage in an activity that may be unlawful as part of an investigation of a suspected corruption offence; or

(ii) to authorise other persons to engage in an activity that may be unlawful as part of an investigation of a suspected corruption offence; and

(b) that it is lawful for a person acting as a covert operative under an approval under section 141, 142 or 143 to engage in activities stated in the approval that may be unlawful as part of the investigation of a suspected corruption offence; and

(c) that it is lawful for the chairperson, or a senior executive officer, acting in accordance with procedures established by the chairperson, to authorise a police officer or a commission officer to engage in a stated controlled activity for the commission; and

(d) that it is lawful for a person acting under an authority given under section 146I to engage in a controlled

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activity in accordance with the authority and procedures established by the commission.

135 Controlled operations and activities generally

(1) From the commencement of this part, a controlled operation or controlled activity in relation to a suspected corruption offence may be approved only in accordance with this part.

(2) Also, a function conferred in relation to the activities of the commission under this part is only conferred for the purpose of a function conferred on the commission relating to suspected corruption offences.

Division 2 Controlled operations committee

136 Declaration of controlled operations committee

The controlled operations committee established under the *Police Powers and Responsibilities Act 2000* is the controlled operations committee for this part.

137 Committee's functions

For this part, the committee has the function to consider and make recommendations about applications referred to the committee by the chairperson for—

(a) an approval for a controlled operation; or

(b) variation of an approval for a controlled operation.

138 Provisions applying to committee and committee's annual report

(1) The *Police Powers and Responsibilities Act 2000*, chapter 11, part 2, applies to the committee for this part as if—

(a) a reference to a controlled operation were a reference to a controlled operation under this part; and

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(b) a reference to an authority for a controlled operation, or a variation of a controlled operation, were a reference to an approval or variation under this part; and

(c) a reference to an offence were a reference to a corruption offence.

(2) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the committee must prepare and give the chairperson of the parliamentary committee a written report on the committee's activities under this Act.

(3) The chairperson of the parliamentary committee must table a copy of the annual report in the Legislative Assembly within 14 sitting days after receiving the report.

(4) The annual report must not contain information that—

(a) discloses or may lead to the disclosure of the identity of—

(i) any covert operative; or

(ii) any person who has been, is being, or is to be, investigated; or

(b) indicates a particular investigation has been, is being, or is to be, conducted.

Division 3 Approval of controlled operations

139 Application for approval

(1) An authorised commission officer may apply to the approving officer for approval to conduct an operation under this part (***controlled operation***).

(2) The approving officer must be the chairperson or a senior executive officer.

(3) However, if a person to be investigated under a proposed controlled operation is or may be a police officer—

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(a) the application must be made to the chairperson; and

(b) the chairperson is the approving officer for the proposed operation.

(4) The application must be written and include enough information to enable the approving officer to properly consider whether the proposed operation should be approved.

(5) In particular, the application must state the following for the proposed controlled operation—

(a) an identifying name or number;

(b) a description of the suspected corruption offence in relation to which it is proposed to conduct the operation;

(c) if a previous application relating to the same corruption offence has been made under this division, whether the application was approved or refused;

(d) the name of each person who it is intended will act as a covert operative for the operation;

(e) a precise description of each otherwise unlawful activity a covert operative who is not a commission officer may be required to engage in as part of the operation;

(f) a description of the general classes of otherwise unlawful activities a covert operative who is a commission officer may be required to engage in as part of the operation.

(6) For subsection (5)(c), an application made under the *Police Powers and Responsibilities Act 2000*, chapter 10, part 2, division 3 as in force at any time before the commencement of this section is taken to have been made under this division.

Editor's note—

As previously enacted, this was a reference to the *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled operations and controlled activities), part 2 (Controlled operations), division 3 (Approval of controlled operations). The reference was changed by 2006 Act No. 26, sections 84 and 86.

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140 Application must be referred to committee

(1) The approving officer must refer the application to the committee without deciding the application.

(2) However, if the approving officer considers the application does not have enough merit to justify referring it to the committee, the approving officer may refuse to refer the application to the committee.

(3) This section is subject to sections 141 and 142.

141 Particular controlled operations

(1) This section applies to an application made to the chairperson under section 139(3) for approval to conduct a controlled operation.

(2) The chairperson may approve the application without referring it to the committee but, before approving the application, the chairperson must consult with the independent member and obtain the independent member's agreement to the proposed operation.

(3) However, the chairperson may approve an application made to the chairperson in urgent circumstances without complying with subsection (2), but must consult with the independent member about the controlled operation as soon as possible after approving the application.

142 Procedure in urgent circumstances other than if s 141 applies

(1) This section applies to an application for approval to conduct a controlled operation made to an approving officer in urgent circumstances.

(2) However, this section does not apply if section 141 applies.

(3) The approving officer may approve the application without referring it to the committee, but must refer the application to the committee as soon as practicable after approving it.

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(4) The committee may consider the application as if the approval had not been given.

(5) The approving officer must consider the committee's recommendations on the application but is not bound by the recommendations.

143 Consideration and approval of application

(1) After considering the committee's recommendations on an application for approval to conduct a controlled operation, the approving officer may approve or refuse to approve the application.

(2) The approving officer must not approve an application under section 139, 141 or 142 if the approving officer considers, because of the way the proposed controlled operation is to be conducted, it is probable that any of the following will happen in the operation—

(a) injury to, or the death of, a person;

(b) serious damage to property;

(c) a serious loss of property;

(d) someone could be encouraged or induced by a covert operative to engage in criminal activity of a kind the person could not reasonably be expected to have engaged in if not encouraged or induced by the covert operative to engage in it.

(3) Also, the approving officer must not approve the application unless satisfied—

(a) the purpose of the proposed controlled operation is to gather evidence of a corruption offence; and

(b) a controlled operation represents an effective use of public resources for investigating the corruption offence; and

(c) any proposed covert operative for the operation has received appropriate training for the purpose; and

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(d) if a proposed covert operative for the operation is not a commission officer, it is wholly impractical in the circumstances for a commission officer to perform the role the proposed covert operative is to perform in the operation; and

(e) the committee has recommended the controlled operation be approved.

(4) Subsection (1) and (3)(e) do not apply to the approval of a controlled operation mentioned in section 141 or 142.

144 What approval must state

(1) An approval for a controlled operation must be written and state the following—

(a) a description of the suspected corruption offence to which the controlled operation relates;

(b) the period, of not more than 6 months, for which the approval has effect;

(c) the name of each covert operative who may engage in otherwise unlawful activities for the purposes of the operation;

(d) a precise description of each otherwise unlawful activity a person who is not a commission officer may engage in while acting as a covert operative for the operation;

(e) a description of the general classes of otherwise unlawful activities a commission officer may be required to engage in while acting as a covert operative for the operation;

(f) any conditions the approving officer considers appropriate.

(2) For subsection (1)(c), it is enough to state an assumed name or code name in the approval if the actual identity of the covert operative is included in a register kept for the purpose by the chairperson.

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145 Effect of approval

It is lawful for a person named in an approval of a controlled operation—

(a) to act as a covert operative for the controlled operation to which the approval relates; and

(b) to engage in the otherwise unlawful activity described in the approval for the purposes of the controlled operation.

Division 4 Variation of approval for controlled operation

146 Application to vary approval

(1) An authorised commission officer may apply to the approving officer for a variation of an approval for a controlled operation.

(2) However, if, the chairperson was the approving officer for the controlled operation because the operation relates to a person who is or may be a police officer, the application must be made to the chairperson.

(3) The application must be written and include enough information to enable the approving officer to properly consider whether the approval should be varied and if so how it should be varied.

(4) In particular, the application must state the following for the controlled operation—

(a) the identifying name or number for the operation;

(b) a description of the suspected corruption offence in relation to which the operation was approved;

(c) if a previous application for variation of the approval for the operation has been made under this division, whether the approval was varied because of the application;

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(d) if it is intended to change particulars relating to persons who are or are intended to be covert operatives, the name of each person to whom the change relates and particulars of the change sought;

(e) if it is intended to change the description of the suspected corruption offence in relation to which the operation was approved, a description of the suspected corruption offence for which approval is sought.

(5) For subsection (4)(c), an application made under the *Police Powers and Responsibilities Act 2000*, chapter 10, part 2, division 4 as in force at any time before the commencement of this section is taken to have been made under this division.

Editor's note—

As previously enacted, this was a reference to the *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled operations and controlled activities), part 2 (Controlled operations), division 4 (Variation of approval for controlled operation). The reference was changed by 2006 Act No. 26, sections 84 and 86.

146A Application must be referred to committee

(1) The approving officer must refer the application to the committee without deciding the application.

(2) However, if the approving officer considers the application does not have enough merit to justify referring it to the committee, the approving officer may refuse to refer the application to the committee.

(3) This section is subject to sections 146B and 146C.

146B Particular controlled operations

(1) This section applies if an application for the variation of an approval for a controlled operation is made to the chairperson under section 146(2).

(2) The chairperson may approve the application without referring it to the committee but, before approving the application, the chairperson must consult with the

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independent member and obtain the independent member's agreement to the proposed variation.

(3) However, the chairperson may approve an application made to the chairperson in urgent circumstances without complying with subsection (2), but must consult with the independent member about the variation as soon as possible after approving it.

146C Procedure in urgent circumstances other than if s 146B applies

(1) This section applies to an application for the variation of an approval for a controlled operation that is made to an approving officer in urgent circumstances.

(2) However, this section does not apply if section 146B applies.

(3) The approving officer may approve the application without referring it to the committee, but must refer the application to the committee as soon as practicable after approving it.

(4) The committee may consider the application as if the approval had not been given.

(5) The approving officer must consider the committee's recommendations on the application but is not bound by the recommendations.

146D When approval may be given

The approving officer must not approve the application unless reasonably satisfied the variation is necessary for the continued effective investigation of the corruption offence.

146E How approval may be varied

(1) The approving officer may vary the approval but only by—

(a) extending the period of the approval from time to time by not more than 6 months at a time; or

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(b) changing particulars about who may act as a covert operative under the approval; or

(c) changing particulars of the corruption offence to which the approval relates.

(2) The approval mentioned in section 145, as varied under subsection (1), has the effect mentioned in section 145.

Division 6 Authorising controlled activities

146I Authorised controlled activities

(1) This section applies if the chairperson or a senior executive officer considers it is reasonably necessary for a police officer or a commission officer to engage in conduct that—

(a) is directed to obtaining evidence of the commission of a suspected corruption offence by a police officer (***relevant officer***); and

(b) involves the following (a ***controlled activity***)—

(i) a single meeting between a police officer or commission officer and the relevant officer, whether or not the meeting was the result of a written or oral communication with the person;

(ii) deliberately concealing the true purpose of the communication between the police officer or commission officer and the relevant officer;

(iii) the commission by the police officer or commission officer of otherwise unlawful activity.

(2) The chairperson or senior executive officer may, in accordance with any policy of the commission, authorise a police officer or commission officer to engage in a stated controlled activity.

(3) The authority must be written and state the controlled activity the police officer or commission officer is authorised to engage in.

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(4) The person authorised to engage in the controlled activity must comply with any relevant policy of the commission.

Division 7 Miscellaneous

146J Disclosure of information

(1) This section applies to a person to whom the existence of any of the following (***relevant information***) becomes known—

(a) an application for—

(i) approval of a controlled operation; or

(ii) a variation of an approval given for a controlled operation;

(b) a decision of the committee to recommend the approval of, or the variation of an approval for, a controlled operation, and the committee's recommendation;

(c) an approval of—

(i) a controlled operation; or

(ii) a variation of an approval given for a controlled operation;

(d) information about a controlled operation;

(f) the actual identity of a covert operative.

(2) The person must not disclose relevant information, other than—

(a) for the purposes of this part; or

(b) with the approval of the commission; or

(c) to the extent—

(i) the information has generally been made known; or

(ii) it is in the public interest to disclose the information.

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

146K Protection from liability

(1) This section applies to each of the following persons (a ***relevant person***)—

(a) a member of the committee;

(b) the chairperson;

(c) a senior executive officer;

(d) a person who is or was a covert operative;

(e) a person who, as part of a controlled operation, provides a covert operative with help, including by giving the covert operative things necessary for the purposes of the controlled operation;

(f) a person who authorised a controlled activity;

(g) a person who is or was authorised under this part to engage in a controlled activity.

(2) A relevant person does not incur civil liability for an act done, or omission made, under this part.

(3) If subsection (2) prevents a civil liability attaching to the person, the liability attaches instead to the State.

(4) Also, a relevant person does not incur criminal liability for an act done, or omission made—

(a) in accordance with an approval given for a controlled operation; or

(b) in accordance with—

(i) an authority given for a controlled activity; or

(ii) the commission's policy about controlled activities.

(5) In addition, a relevant person who is a police officer or a commission officer does not incur criminal liability for an act

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done, or omission made, that, because of a controlled operation, was reasonably necessary for—

(a) protecting the safety of any person; or

(b) protecting the identity of a covert operative; or

(c) taking advantage of an opportunity to gather evidence in relation to a corruption offence not mentioned in the approval.

(6) However, subsection (5) does not relieve a police officer or a commission officer from criminal liability for an act done or omission made if the act or omission results in—

(a) injury to, or the death of, a person; or

(b) serious damage to property; or

(c) a serious loss of property; or

(d) someone being encouraged or induced by a covert operative to engage in criminal activity of a kind the person could not reasonably be expected to have engaged in if not encouraged or induced by the covert operative to engage in it.

(7) This section does not limit the *Police Service Administration Act 1990*, section 10.5.

146L Admissibility of evidence obtained through controlled operation

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

146M Evidentiary provision

(1) In a proceeding, a certificate of the chairperson stating any of the following is evidence of the things it states—

(a) at a stated time a stated person was an approving officer for this Act;

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(b) at a stated time a stated person was a covert operative;

(c) on a stated day a stated person approved the conduct of a stated controlled operation or controlled activity;

(d) on a stated day a stated person varied an approval for a stated controlled operation in a stated way.

(2) For subsection (1)(b), it is enough to state an assumed name or code name in the certificate if the actual identity of the covert operative is included in a register kept for the purpose by the chairperson.

146N Powers not to be delegated

(1) Powers of an approving officer under this part may not be delegated.

(2) Also, powers of the chairperson or a senior executive officer under section 146I may not be delegated.

(3) Subsections (1) and (2) apply despite any other Act.

Part 6B Assumed identities

Division 1 Preliminary

146O Purpose of pt 6B

The main purpose of this part is to facilitate investigations and intelligence gathering in relation to corruption offences.

146P How purpose is achieved

The purpose is to be achieved primarily by providing for the lawful acquisition and use of an assumed identity.

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146Q Definitions for pt 6B

In this part—

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

agency means—

(a) an issuing agency; or

(b) the commission.

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

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

authorised person means—

(a) an authorised civilian; or

(b) an authorised identity officer.

authority means an authority granted under section 146T to acquire or use an assumed identity, including the authority as varied under section 146W.

birth certificate approval see section 146Y.

conduct includes any act or omission.

doing a thing, includes failing to do the thing.

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

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

(a) is named in the authority; and

(b) issues evidence of identity as part of performing any function of the government.

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issuing agency means—

(a) a government issuing agency; or

(b) a non-government issuing agency.

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

(a) is named in the authority; and

(b) issues evidence of identity.

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

supervisor, of an authorised civilian, means the authorised commission officer, appointed under section 146T(3), who supervises or is to supervise the acquisition or use of an assumed identity by the authorised civilian.

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

146R Public Records Act 2023 does not apply to divs 2–7

The *Public Records Act 2023* does not apply to activities or records under divisions 2 to 7.

Division 2 Authorities for assumed identities

146S Application for authority to acquire or use assumed identity

(1) A commission officer may apply to the chairperson for an authority for the officer or another person to do either or both of the following—

(a) acquire an assumed identity;

(b) use an assumed identity.

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(2) A separate application must be made for each assumed identity to be acquired or used.

(3) An application—

(a) must be in writing in the form decided by the chairperson; and

(b) must contain all of the following information—

(i) the applicant's name;

(ii) if a person other than the applicant is to be authorised to acquire or use an assumed identity—that person's name;

(iii) if the person mentioned in subparagraph (ii) is not a commission officer—the name and rank or position of the person proposed to be appointed as supervisor, and an explanation of why it is necessary for a person who is not a commission officer to acquire or use the assumed identity;

(iv) details of the proposed assumed identity;

(v) reasons for the need to acquire or use an assumed identity;

(vi) details, to the extent known, of the investigation or intelligence gathering exercise in which the assumed identity will be used;

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

(4) The chairperson may require the applicant to give additional information about the application the chairperson considers appropriate for consideration of the application.

146T Deciding application

(1) After considering an application for an authority to acquire or use an assumed identity, and any additional information given under section 146S(4), the chairperson—

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(a) may grant an authority to acquire or use the assumed identity, with or without conditions; or

(b) may refuse the application.

(2) The chairperson must not grant an authority to acquire or use an assumed identity unless the chairperson is satisfied on reasonable grounds of all of the following—

(a) the assumed identity is necessary for the purposes of an investigation or intelligence gathering in relation to a corruption offence;

(b) the risk of abuse of the assumed identity by the authorised person under the authority is minimal;

(c) if the application is for authorisation of an assumed identity for a person who is not a commission officer—it would be impossible or impracticable in the circumstances for a commission officer to acquire or use the assumed identity for the purpose sought.

(3) If an authority is granted for an authorised civilian, the chairperson must appoint an authorised commission officer to supervise the acquisition or use of the assumed identity by the authorised civilian.

(4) An authority may also authorise—

(a) an application to the independent member for a birth certificate approval; or

(b) a request under section 146ZB.

(5) A separate authority is required for each assumed identity.

146U Form of authority

(1) An authority must be—

(a) in writing in the form decided by the chairperson; and

(b) signed by the person granting it.

(2) An authority must state all of the following—

(a) the name of the person granting the authority;

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(b) the date of the authority;

(c) details of the assumed identity under the authority;

(d) details of the evidence of the assumed identity that may be acquired under the authority;

(e) the conditions, if any, to which the authority is subject;

(f) why the authority is granted;

(g) if the authority relates to an authorised identity officer—the name of the official;

(h) if the authority relates to an authorised civilian—

(i) the name of the authorised civilian; and

(ii) the name of the civilian's supervisor under the authority; and

(iii) the period, of not more than 3 months, for which the authority remains in force.

(3) The authority also must state the following—

(a) whether it authorises an application to the independent member for a birth certificate approval;

(b) each issuing agency to which a request may be made under section 146ZB.

146V Period of authority

(1) An authority for an authorised identity officer remains in force until cancelled under section 146W.

(2) An authority for an authorised civilian remains in force until the end of the period stated in the authority under section 146U(2)(h)(iii), unless the authority is sooner cancelled under section 146W.

146W Variation or cancellation of authority

(1) The chairperson—

(a) may vary or cancel the authority at any time; and

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(b) must cancel the authority if satisfied, on a review under section 146X or otherwise, that use of the assumed identity under the authority is no longer necessary.

(2) The chairperson must give written notice of the variation or cancellation to—

(a) the authorised person to whom the authority relates; and

(b) if the authorised person is an authorised civilian—the authorised person's supervisor.

(3) The notice must state the reasons for the variation or cancellation.

(4) The variation or cancellation has effect on—

(a) the day the notice is given to the authorised person; or

(b) if a later day is stated in the notice—the later day.

146X Review of authority

(1) The chairperson must, at least once a year, review each authority granted by the chairperson and in force under this chapter.

(2) The purpose of a review is to decide whether use of the assumed identity under the authority is still necessary.

(3) If the chairperson is satisfied on a review that use of the assumed identity is no longer necessary, the chairperson must cancel the authority under section 146W.

(4) If the chairperson is satisfied on a review that use of the assumed identity is still necessary, the chairperson must record the chairperson's opinion, and the reasons for it, in writing.

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Division 3 Evidence of assumed identities

Subdivision 1 Creation of birth certificates for assumed identities

146Y Approval for creation of birth certificate for assumed identity

(1) The chairperson may apply to the independent member for authority to create a birth certificate (a ***birth certificate approval***) for an assumed identity for an authorised person.

(2) The application must be written and include enough information to enable the independent member to properly consider whether the birth certificate approval should be granted.

(3) The independent member may grant the birth certificate approval only if satisfied granting the approval is justified having regard to the nature of the activities undertaken or to be undertaken by the authorised person under the authority for the assumed identity.

(4) A birth certificate approval granted under this section must be written, signed by the independent member, and state that a named commission officer is authorised under this section to create a birth certificate for the purpose of concealing the identity of an authorised person.

146Z Giving effect to birth certificate approval

(1) On the production to the registrar-general, for inspection, of a birth certificate approval—

(a) the commission officer named in the approval may create a birth certificate as authorised under the approval; and

(b) the registrar-general must give the officer any help the officer reasonably requires for the purpose.

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(2) The commission officer must, if practicable, give the registrar-general at least 3 days notice of the day the officer intends to create the birth certificate under the birth certificate approval.

146ZA Destruction of birth certificate created under s 146Z

(1) This section applies in relation to a birth certificate created under a birth certificate approval (a ***created birth certificate***).

(2) As soon as practicable after the authority for an assumed identity to which the created birth certificate relates is cancelled, the chairperson—

(a) must cause the created birth certificate to be destroyed; and

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

Subdivision 2 Other provisions about evidence of assumed identities

146ZB Request for evidence of assumed identity

(1) This section applies if an authority authorises a request under this section.

(2) The chairperson may ask the chief executive officer of an issuing agency stated in the authority to—

(a) produce evidence of an assumed identity in accordance with the authority; and

(b) give evidence of the assumed identity to the authorised person named in the authority.

(3) The request must state a reasonable period for compliance with the request.

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(4) A request can not be made under this section for the creation of a birth certificate or a certified copy of a marriage certificate.

(5) In this section—

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

146ZC Government issuing agency to comply with request

The chief executive officer of a government issuing agency who receives a request under section 146ZB must comply with the request within the reasonable period stated in the request.

146ZD Non-government issuing agency may comply with request

The chief executive officer of a non-government issuing agency who receives a request under section 146ZB may comply with the request.

146ZE Cancelling evidence of assumed identity

(1) The chief executive officer of an issuing agency who produces evidence of an assumed identity under this part must cancel the evidence if directed in writing to do so by the chairperson.

(2) In this section—

cancel includes delete or alter an entry in a record of information.

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Subdivision 3 Protections and indemnities

146ZF Protection from criminal responsibility—officer of issuing agency

(1) A person who does something under subdivision 1 or 2 that, apart from this section, would be an offence, is not criminally responsible for the offence, if the thing is done to give effect to a birth certificate approval.

(2) Also, the chief executive officer, or an officer, of an issuing agency who does something that, apart from this section, would be an offence, is not criminally responsible for the offence if the thing is done to comply with a request under section 146ZB or a direction under section 146ZE.

146ZG Indemnity for issuing agency and officers in relation to creation of birth certificates

(1) This section applies if a birth certificate approval is produced to the registrar-general under section 146Z.

(2) The commission must indemnify the registrar-general, or an officer of the registrar-general, for any civil liability incurred by the registrar-general or officer, including reasonable costs, if—

(a) the liability is incurred because of something done by the registrar-general or officer to comply with section 146Z; and

(b) the requirements, if any, prescribed under a regulation have been met.

146ZH Indemnity for issuing agency and officers in relation to other evidence of assumed identities

(1) This section applies if the chairperson makes a request under section 146ZB or gives a direction under section 146ZE to the chief executive officer of an issuing agency.

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(2) The commission must indemnify the issuing agency, or an officer of the agency, for any civil liability incurred by the agency or officer, including reasonable costs, if—

(a) the liability is incurred because of something done by the agency or officer to comply with the request or direction in the course of duty; and

(b) the requirements, if any, prescribed under a regulation have been met.

146ZI Protection from criminal responsibility for particular ancillary conduct

(1) This section applies to conduct, for example aiding or enabling the commission of an offence or conspiring to commit an offence (***ancillary conduct***), for which a person may be criminally responsible because it involves conduct engaged in by another person for which the other person would, apart from section 146ZF, be criminally responsible (the ***related conduct***).

Note—

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

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

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Division 4 Effect of authorities

146ZJ Assumed identity may be acquired and used

(1) An authorised identity officer may acquire or use an assumed identity if the acquisition or use is—

(a) in accordance with an authority; and

(b) in the course of duty.

(2) An authorised civilian may acquire or use an assumed identity if the acquisition or use is in accordance with—

(a) an authority; and

(b) the directions of the authorised civilian's supervisor.

146ZK Protection from criminal responsibility—authorised person

If an authorised person does something that, apart from this section, would be an offence, the authorised person is not criminally responsible for the offence if—

(a) the thing is done in the course of acquiring or using an assumed identity under an authority; and

(b) the thing is done—

(i) for an authorised identity officer—in the course of duty; or

(ii) for an authorised civilian—in accordance with the directions of the authorised civilian's supervisor; and

(c) doing the thing would not be an offence if the assumed identity were the authorised person's real identity.

146ZL Indemnity for authorised person

(1) This section applies if the chairperson grants an authority.

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(2) The commission must indemnify the authorised person under the authority against any civil liability, including reasonable costs, incurred by the person, because of something done by the person if—

(a) the thing is done in the course of acquiring or using an assumed identity under the authority; and

(b) the thing is done—

(i) for an authorised identity officer—in the course of duty; or

(ii) for an authorised civilian—in accordance with the directions of the authorised civilian's supervisor; and

(c) the requirements, if any, prescribed under a regulation have been met.

(3) This section does not limit the *Police Service Administration Act 1990*, section 10.5.

146ZM Particular qualifications

(1) Sections 146ZK and 146ZL do not apply to anything done by an authorised person if—

(a) a particular qualification is needed to do the thing; and

(b) the person does not have the qualification.

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

146ZN Effect of being unaware of variation or cancellation of authority

(1) If an authority to acquire or use an assumed identity has been varied in a way that limits its scope, this part continues to apply to the authorised person to whom the authority relates as if it had not been varied in that way, for as long as the person—

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(a) is unaware of the variation; and

(b) is not reckless about the existence of the variation.

(2) If an authority to acquire or use an assumed identity has been cancelled, this part continues to apply to the authorised person to whom the authority related as if it had not been cancelled, for as long as the person—

(a) is unaware of the cancellation; and

(b) is not reckless about the existence of the cancellation.

(3) For this section, a person is reckless about the existence of the variation or cancellation of an authority if—

(a) the person is aware of a substantial risk that the variation or cancellation has happened; and

(b) having regard to the circumstances known to the person, it is unjustifiable to continue to use the assumed name in a way that was, but may no longer be, authorised by the authority because of the variation or cancellation.

Division 5 Misuse of assumed identity and information

146ZO Misuse of assumed identity

(1) An authorised identity officer commits an offence if—

(a) the official intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by the officer's authority; and

(b) the official knows that, or is reckless as to whether, the acquisition or use is not—

(i) in accordance with the officer's authority; or

(ii) in the course of duty.

Maximum penalty—2 years imprisonment.

(2) An authorised civilian commits an offence if—

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(a) the person intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by the person's authority; and

(b) the person knows that, or is reckless as to whether, the acquisition or use is not in accordance with—

(i) the person's authority; or

(ii) the directions of the person's supervisor under the authority.

Maximum penalty—2 years imprisonment.

(3) This section does not limit section 213.

146ZP Disclosing information about assumed identity

(1) A person commits an offence if—

(a) the person intentionally, knowingly or recklessly discloses any information; and

(b) the person knows that, or is reckless as to whether, the information reveals, or is likely to reveal, that an assumed identity acquired or used by another person is not the other person's real identity; and

(c) the person knows that, or is reckless as to whether, the disclosure is not made—

(i) in connection with the administration or execution of this part; or

(ii) for the purposes of any legal proceeding arising out of or otherwise related to this part or of any report of the proceedings; or

(iii) in accordance with any requirement imposed by law.

Maximum penalty—2 years imprisonment.

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

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(a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation or intelligence gathering in relation to corruption; or

(b) knows that, or is reckless as to whether, the disclosure of the information—

(i) endangers or will endanger the health or safety of any person; or

(ii) prejudices or will prejudice the effective conduct of an investigation or intelligence gathering in relation to corruption.

Maximum penalty—10 years imprisonment.

(3) This section does not affect section 213.

Division 6 Reporting and record keeping

146ZQ Report about authorities for assumed identities etc.

(1) As soon as practicable after the end of each financial year, the chairperson must give to the chairperson of the parliamentary committee a written report containing the following information in relation to the commission for the financial year—

(a) the number of authorities granted;

(b) a general description of the activities undertaken by authorised persons when using assumed identities under this part;

(c) the number of applications for an authority that were refused;

(d) a statement about whether or not any fraud or other unlawful activity was identified by an audit under section 146ZS;

(e) any other information relating to authorities, assumed identities or the administration of this part that the parliamentary commissioner considers appropriate.

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(2) The report must not contain information that, if made public, could reasonably be expected to—

(a) endanger a person's safety; or

(b) prejudice an investigation or prosecution; or

(c) compromise any law enforcement agency's operational activities or methodologies.

(3) The chairperson of the parliamentary committee must table a copy of the report in the Legislative Assembly within 14 sitting days after the chairperson receives the report.

(4) This section does not limit section 64.

146ZR Record keeping

(1) The chairperson must keep appropriate records about the commission's operations under this part.

(2) The records must contain all of the following information about each authority granted under this part in relation to the commission—

(a) the date on which the authority was granted and the name of the person who granted it;

(b) if the authority was varied or cancelled under this part—the date it was varied or cancelled, and the name of the person who varied or cancelled it;

(c) the name of the authorised person under the authority;

(d) details of the assumed identity to which the authority relates;

(e) details of any request made to an issuing agency under section 146ZB in relation to the authority;

(f) the general nature of the duties undertaken by the authorised person under the assumed identity;

(g) general details of relevant financial transactions entered into using the assumed identity;

(h) details of reviews of the authority under section 146X.

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146ZS Audit of records

(1) The chairperson must have the records kept under section 146ZR for each authority granted in relation to the commission audited by the parliamentary commissioner—

(a) at least once every 6 months while the authority is in force; and

(b) at least once in the 6 months after the cancellation or expiry of the authority.

(2) The parliamentary commissioner must give the chairperson a written report of the results of the audit.

Division 7 Delegation

146ZT Delegation generally

Other than as provided by this part, and despite any other Act or law to the contrary, the powers of the chairperson under this part may not be delegated to any other person.

146ZU Delegation—chairperson

(1) The chairperson may delegate any of the chairperson's powers under this part relating to the following to the chief executive officer or a senior executive officer—

(a) the granting, variation and cancellation of authorities;

(b) conducting reviews under section 146X;

(c) authorising the making of an application to the independent member for a birth certificate approval for an assumed identity;

(d) making requests under section 146ZB.

(2) Also, the chairperson may delegate to an authorised commission officer the chairperson's power under section 146Y to apply to the independent member for authority to create a birth certificate for an assumed identity.

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

Part 7 Covert searches for crime investigations

147 Application of pt 7

This part applies only for a crime investigation.

148 Covert search warrant applications

(1) An authorised commission officer, with the chairperson's approval, may apply to a Supreme Court judge for a warrant (***covert search warrant***) to enter and search a place for evidence of the commission of major crime being investigated by the commission.

(2) For subsection (1), an authorised commission officer who is a police officer must be of at least the rank of inspector.

(3) The application must—

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

(b) state that the covert search warrant is being sought to enter and search a place for evidence of the commission of major crime being investigated by the commission; and

(c) fully disclose all matters, of which the authorised commission officer is aware, both favourable and adverse to the issuing of the warrant sought; and

(d) include information required under a regulation about any warrants issued within the previous year in relation to the place or person suspected of being involved in the major crime to which the application relates.

(4) Subsection (3)(d) applies only to—

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(a) information kept in a register that the officer may inspect; and

(b) information the officer otherwise actually knows.

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

(6) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

149 Who may be present at consideration of application

(1) The judge must hear an application for a covert search warrant in the absence of anyone other than the following—

(a) the applicant;

(b) a monitor;

(c) someone the judge permits to be present;

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

(2) Also, the judge must hear the application—

(a) in the absence of the person the subject of the application (the ***relevant person***) or anyone likely to inform the relevant person of the application; and

(b) without the relevant person having been informed of the application.

150 Consideration of application

Before deciding the application, the judge must, in particular, and being mindful of the highly intrusive nature of the exercise of power under a covert search warrant, consider the following—

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(a) the nature and seriousness of the major crime being investigated;

(b) the extent to which issuing the warrant would help prevent, detect, or provide evidence of the commission of, the major crime;

(c) the benefits derived from any previous covert search warrants, search warrants or surveillance warrants in relation to the relevant person or place;

(d) the extent to which commission officers investigating the matter have used or can use conventional ways of investigation;

(e) how much the use of conventional ways of investigation would be likely to help in the investigation of the matter;

(f) how much the use of conventional ways of investigation would prejudice the investigation of the matter;

(g) any submissions made by a monitor.

151 Issue of covert search warrant

(1) After considering the application, the judge may issue the warrant if satisfied there are reasonable grounds for believing evidence of the commission of the major crime—

(a) is at the place; or

(b) is likely to be taken to the place within the next 72 hours.

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

152 What covert search warrant must state

A covert search warrant must state the following—

(a) that a stated commission officer, or any commission officer, may, with reasonable help and force, enter the place, covertly or by subterfuge and exercise covert search powers under the warrant;

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(b) the major crime for which the warrant was issued;

(c) any evidence or samples of evidence that may be seized under the warrant;

(d) that the warrant may be executed at any time of the day or night;

(e) that, if practicable, the search must be videotaped;

(f) the day and time the warrant starts and when the warrant ends, being not more than 30 days after the warrant starts;

(g) any conditions imposed under section 151(2).

153 Duration and extension of covert search warrant

(1) A covert search warrant is in force until the earlier of the following—

(a) when the warrant is stated to end;

(b) when the initial search is complete.

(2) However, the warrant may be extended from time to time on application.

(3) The provisions of this part for an application for a covert search warrant apply to an application for an extension, with all necessary changes.

154 Restriction about records and access to covert search warrant applications

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

(2) A person must not publish a report of a proceeding on an application for a covert search warrant or an extension of a covert search warrant.

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

(3) A person is not entitled to search information in the custody of the Supreme Court in relation to an application for a covert search warrant, unless a Supreme Court judge otherwise orders in the interests of justice.

(4) Nothing in this section prevents a person who was present at a proceeding on an application for a covert search warrant or an extension of a covert search warrant from giving oral evidence to a court about things that happened at the proceeding.

155 Powers under covert search warrant

A commission officer to whom a covert search warrant is directed may, subject to the warrant, lawfully exercise the following powers under the warrant (***covert search powers***)—

(a) power to enter the place stated in the warrant (the ***relevant place***), covertly or through subterfuge, as often as is reasonably necessary for the purposes of the warrant and stay at the place for the time reasonably necessary;

(b) power to pass over, through, along or under another place to enter the relevant place;

(c) power to search the relevant place for anything sought under the warrant;

(d) power to open anything at the relevant place that is locked;

(e) power to seize a thing or part of a thing found at the relevant place that the commission officer reasonably believes is evidence of the commission of major crime stated in the warrant;

(f) power to photograph anything the commission officer reasonably believes may provide evidence of the commission of major crime stated in the warrant;

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

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156 Report on covert search

(1) A commission officer must give to the Supreme Court judge who issued the covert search warrant and a monitor a report containing information required under a regulation on the exercise of the powers under the warrant.

(2) The report must be given to the judge and a monitor within 7 days after the warrant is executed or, if that is impracticable because of the unavailability of the judge, as soon as practicable after the warrant is executed.

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

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

(a) be held by the commission until any proceeding in which the thing may be evidence ends; or

(b) be dealt with in the way the judge orders.

Part 8 Additional powers with court's approval

157 Application of pt 8

(1) This part applies only for a corruption investigation or a crime investigation relating to terrorism.

(2) In this section—

terrorism includes something that is—

(a) preparatory to the commission of terrorism; or

(b) undertaken to avoid detection of, or prosecution for, terrorism.

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158 Additional powers warrant applications

(1) With the chairperson's approval, an authorised commission officer may apply to a Supreme Court judge for a warrant (***additional powers warrant***) authorising the use of powers under this part.

(2) For subsection (1), an authorised commission officer who is a police officer must be of at least the rank of inspector.

(3) The application must—

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

(b) state the powers sought; and

(c) fully disclose all matters, of which the applicant is aware, both favourable and adverse to the issuing of the warrant sought by the applicant.

(4) The applicant must advise any person the judge directs is to be advised of the application.

(5) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

159 Who may be present at consideration of application

(1) The judge must hear an application for an additional powers warrant in the absence of anyone other than the following—

(a) the applicant;

(b) someone the judge permits or directs to be present;

(c) a lawyer representing anyone mentioned in paragraphs (a) or (b).

(2) Also, the judge must hear the application—

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(a) in the absence of the person the subject of the application (the ***relevant person***) or anyone likely to inform the relevant person of the application; and

(b) without the relevant person having been informed of the application.

160 Consideration of application

Before deciding the application, the judge must, in particular, and being mindful of the highly intrusive nature of the exercise of power under an additional powers warrant, consider the following—

(a) the nature and seriousness of the corruption or terrorism being investigated;

(b) the significance to the commission's purposes of the objects of the proposed exercise of authority;

(c) the extent to which commission officers investigating the matter have used or can use other powers for the investigation;

(d) how much the use of the additional powers would be likely to help in the investigation of the matter;

(e) any submissions made by a monitor.

161 Issue of additional powers warrant

(1) After considering the application, the judge may issue the warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing that the use of the additional powers sought is justified in the particular circumstances of the case.

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

162 What additional powers warrant must state

An additional powers warrant must state the following—

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(a) that a stated commission officer, or any commission officer, may, with reasonable help and force, enter a place and exercise powers under the warrant;

(b) brief particulars of the corruption or terrorism for which the warrant is issued;

(c) any evidence or samples of evidence that may be seized under the warrant;

(d) that the warrant may be executed at any time of the day or night;

(e) the day and time the warrant starts and when the warrant ends;

(f) any conditions imposed under section 161(2).

163 Duration and extension of additional powers warrant

(1) An additional powers warrant is in force until the earlier of the following—

(a) when the warrant is stated to end;

(b) when the initial search is complete.

(2) However, the warrant may be extended from time to time on application.

(3) The provisions of this part for an application for an additional powers warrant apply to an application for an extension, with all necessary changes.

164 Restriction about records and access to additional powers warrant applications

(1) Despite the *Recording of Evidence Act 1962*, a transcript of an application for an additional powers warrant or an extension of an additional powers warrant and any order made on the application must not be made.

(2) A person must not publish a report of a proceeding on an application for an additional powers warrant or an extension of an additional powers warrant.

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

(3) A person is not entitled to search information in the custody of the Supreme Court in relation to an application for an additional powers warrant, unless a Supreme Court judge otherwise orders in the interests of justice.

(4) Nothing in this section prevents a person who was present at a proceeding on an application for an additional powers warrant or an extension of an additional powers warrant from giving oral evidence to a court about things that happened at the proceeding.

165 Powers under additional powers warrant

(1) A commission officer to whom an additional powers warrant is directed may, subject to the warrant, lawfully exercise the following powers under the warrant—

(a) power, at any time during business hours—

(i) to enter premises at which records of a financial entity or a suspected associate of a person being investigated are held; and

(ii) to inspect and make copies of, or take extracts from, the records so far as they relate to the affairs of the person being investigated;

(b) power to seize passports, other travel documents, instruments of title to property, securities and financial documents found in the possession or control of a person concerned in an investigation;

(c) power to require a person to give to the commission or officer 1 or more sworn affidavits or statutory declarations relating to the property of, financial transactions of, or movements of money or other assets by—

(i) for a corruption investigation—a person holding an appointment in a unit of public administration or

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someone associated with the person holding the appointment; or

(ii) for a crime investigation relating to terrorism—a person being investigated or a suspected associate of the person being investigated.

(2) In this section—

financial entity means—

(a) a financial institution; or

(b) an insurance company; or

(c) a stock and share broker; or

(d) a person engaged in a business of—

(i) investing money for others; or

(ii) providing credit facilities.

person being investigated means a person to whom an investigation by the commission relates.

suspected associate, of a person being investigated, means a person suspected of having a relevant association with the person being investigated.

Part 9 Warrants register

166 Register of warrants, warrant applications etc.

(1) The commission must keep a register of prescribed information in the way the commission considers appropriate.

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

(a) the commission;

(b) a monitor;

(c) the parliamentary commissioner.

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(3) However, if the commission considers it appropriate, the commission may, in writing, authorise a person who may not otherwise inspect the register to inspect the register on conditions the commission considers appropriate.

(4) The commission may authorise a person to inspect the register under subsection (3) only if it is satisfied the inspection is necessary—

(a) for an investigation into major crime or corruption, or a confiscation related investigation, for which information in the register may be relevant; or

(b) for maintaining the register; or

(c) for preparing an application under part 2, or part 6, division 2, or part 7 for a warrant or for an extension of a warrant; or

(d) to monitor compliance with this Act.

(5) A person authorised under subsection (3) to inspect the register may inspect it only to the extent necessary for the purpose for which the authority is given.

(6) In this section—

prescribed information means information prescribed under a regulation about—

(a) applications for—

(i) search warrants; or

(ii) surveillance warrants; or

(iii) extensions of surveillance warrants; or

(iv) covert search warrants; or

(v) extensions of covert search warrants; or

(vi) additional powers warrants; or

(vii) extensions of additional powers warrants; or

(viii) approvals for controlled operations or variations of approvals for controlled operations under this Act; or

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(ix) monitoring orders; or

(x) suspension orders; or

(b) a disclosure of information under section 130(2)(f)(ii) or (g).

Part 10 Arrest warrants

167 Arrest warrant application

(1) An authorised commission officer, with the chairperson's approval, may apply to a magistrate for a warrant for the apprehension of a person (***arrest warrant***) who has been given an attendance notice.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

168 Issue of arrest warrant

(1) The magistrate may issue a warrant for the apprehension of the person if the magistrate is satisfied—

(a) on sworn evidence before the magistrate—

(i) the person—

(A) has been given the attendance notice; and

(B) has, without reasonable excuse, failed to attend at the commission hearing as required by the notice; or

(ii) the person has made a representation that the person intends not to attend at a commission hearing as required by the attendance notice; and

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(b) it is in the public interest that the person be compelled to attend at the hearing to avoid prejudice to the conduct of an investigation.

(2) For subsection (1)(a)(ii), an arrest warrant may be issued even though the time stated in the attendance notice for the person to attend has not yet passed.

(3) In this section—

representation includes—

(a) an express or implied representation, whether oral or in writing; and

(b) a representation inferred from conduct; and

(c) a representation not intended by its maker to be communicated to or seen by another person.

169 What arrest warrant authorises

(1) The arrest warrant authorises any authorised commission officer or police officer (***authorised officer***) to whom it is addressed to enter a place, using the force reasonably necessary, and to stay for a reasonable time on the place to apprehend the person subject to the warrant.

(2) The person apprehended—

(a) must be brought immediately before a commission hearing; and

(b) may be detained in custody until excused from attendance at the hearing by the presiding officer at the hearing.

(3) The *Bail Act 1980* applies to a person taken into custody under an arrest warrant in the same way it applies to a person in custody charged with an offence.

(4) The arrest warrant may be executed by any authorised officer to whom it is addressed.

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(5) An authorised officer executing the arrest warrant may use the force that is reasonably necessary, including force to enter premises, to execute the warrant.

(6) However, before the authorised officer uses force that may cause damage to a place to gain entry to the place, the authorised officer must, if reasonably practicable—

(a) ask the occupier of the place to allow the authorised officer to enter the place; and

(b) give the occupier a reasonable opportunity to allow the entry.

170 Provision for overnight detention

Unless the arrest warrant otherwise provides, if the person is required to be detained overnight, the commission must arrange for the person to be provided with accommodation and meals to a standard comparable to that generally provided to jurors kept together overnight.

171 Person's liability for noncompliance with attendance notice unaffected by issue of arrest warrant

The issue of an arrest warrant for the apprehension of a person, or the apprehension of a person under the arrest warrant, does not relieve the person from any liability incurred by the person for noncompliance with an attendance notice.

Part 11 General

172 Commission officer may use assistance in exercising particular powers

(1) It is lawful for a commission officer exercising a power under this Act—

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(a) to seek the assistance of another person (an ***assistant***) the officer reasonably requires for performing a function of the commission; or

(b) to take onto a place any assistant, equipment, vehicle, animal or material the officer reasonably requires for exercising the power.

Examples—

1 A commission officer may seek the help of an electrician to install a listening device under a surveillance warrant.

2 A commission officer may seek the help of a translator to interpret conversations and visual images recorded using a surveillance device.

(2) The commission officer may authorise the assistant—

(a) to take stated action at the place; and

(b) to exercise stated powers the commission officer is authorised to exercise.

(3) However, the commission officer can not authorise the assistant to apprehend a person.

(4) The commission officer must, if practicable, tell the assistant—

(a) of the action the assistant is authorised to take; and

(b) of the assistant's powers under this section.

(5) Subsection (1) applies, in relation to animals, despite any other Act or law.

173 Protection for assistants from liability

(1) An assistant does not incur civil liability for an act done, or omission made, honestly and without negligence, while acting as an assistant.

(2) If subsection (1) prevents a liability attaching to an assistant, liability attaches instead to the State.

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174 Commission's powers generally

(1) Without limiting the commission's specific powers under this or another Act, the commission has power to do all things necessary or convenient to be done for or in connection with, or reasonably incidental to, the performance of its functions, including, for example, the power to make a statement to the public.

Note—

See, for example, the *Police Powers and Responsibilities Act 2000*, chapter 11 (Controlled operations).

(2) A person who is a member of a relevant office whose services are seconded to the commission under section 255 retains, and may exercise, all powers had by the person as a member of the office.

(3) The commission's power under subsection (1) in relation to the performance of its corruption functions, and its prevention function to the extent it relates to corruption, does not include power to make a statement to the public about—

(a) a particular complaint about, or information or matter involving, corruption; or

(b) a particular corruption investigation.

Note—

See chapter 2, part 6, division 2A.

(4) In this section—

relevant office means a unit of public administration or an office within a unit of public administration.

175 Supplying officer's details

(1) This section applies if a commission officer—

(a) searches a place under a warrant, other than a covert search warrant, under this chapter; or

(b) seizes any property, other than under a covert search warrant, under this chapter.

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(2) The officer must, as soon as is reasonably practicable, inform the person the subject of the power of the following—

(a) the fact that the officer is a commission officer;

(b) the officer's name;

(c) if the officer is a police officer, the officer's rank and station.

(3) If the officer is not a police officer in uniform, the officer must also produce for inspection the officer's identity card.

(4) If 2 or more officers are searching a place, only the officer in charge of the search is required to comply with subsections (2) and (3), unless a person asks another officer for the information.

Chapter 4 Hearings and deciding claims of privilege and excuse

Part 1 Proceedings

176 Commission may hold hearings

(1) The commission may authorise the holding of a hearing in relation to any matter relevant to the performance of its functions.

(2) Subsection (1) does not authorise the commission to hold a hearing for a confiscation related investigation.

(3) The commission may hold a hearing in relation to the performance of its intelligence function if the hearing is permitted under an authorisation under section 55A or 55D.

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177 Whether hearings are to be open or closed

(1) Generally, a hearing is not open to the public.

(2) However—

(a) for a hearing for a crime investigation, the commission may open the hearing to the public (***public hearing***) if it—

(i) considers opening the hearing will make the investigation to which the hearing relates more effective and would not be unfair to a person or contrary to the public interest; and

(ii) approves that the hearing be a public hearing; or

(b) for a witness protection function hearing, the commission may open the hearing to the public if it—

(i) considers opening the hearing will make the hearing more effective and—

(A) would not be unfair to a person or contrary to the public interest; and

(B) would not threaten the security of a protected person or the integrity of the witness protection program or other witness protection activities of the commission; and

(ii) approves that the hearing be a public hearing; or

(c) for a hearing other than a hearing mentioned in paragraph (a) or (b), the commission may open the hearing to the public if it—

(i) considers closing the hearing to the public would be unfair to a person or contrary to the public interest; and

(ii) approves that the hearing be a public hearing.

(3) A decision about whether a hearing should be a public hearing must not be delegated.

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(4) If the commission decides to open a hearing to the public, the presiding officer for the hearing may close the hearing for a particular purpose.

178 Who must conduct hearings

(1) The chairperson must conduct a public hearing.

(2) However, if the chairperson considers it necessary for the efficient operation of the commission, a public hearing may be conducted by a sessional commissioner or senior executive officer as decided by the chairperson.

(2A) More than 1 public hearing may be conducted at the same time.

(3) A closed hearing may be conducted by any of the following as decided by the chairperson—

(a) the chairperson;

(b) a sessional commissioner;

(c) a senior executive officer;

(d) another person qualified for appointment as the chairperson.

179 Who may be present at closed hearings

(1) The presiding officer conducting a closed hearing may give a direction about who may be present at the hearing.

(2) A person must not knowingly contravene a direction under subsection (1).

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

(3) In this section—

hearing includes part of a hearing.

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180 Conduct of hearings

(1) When conducting a hearing, the presiding officer—

(a) must act quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before the presiding officer; and

(b) is not bound by the rules of evidence; and

(c) may be informed of anything in the way the presiding officer considers appropriate; and

(d) may decide the procedures to be followed for the hearing.

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

(3) The presiding officer may, by order, prohibit the publication of—

(a) an answer given, or document or thing produced, at a commission hearing or anything about the answer, document or thing; or

(b) information that might enable the existence or identity of a person who is about to give or has given evidence before the commission at a hearing to be ascertained.

(4) The presiding officer is taken, for the purposes of the hearing, to be the commission.

181 Legal representation and examination

(1) A witness at a commission hearing may be legally represented at the hearing.

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

(a) the presiding officer; or

(b) counsel assisting the commission at the hearing; or

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(c) a person authorised by the presiding officer; or

(d) a lawyer representing the witness.

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

182 Right to interpreter

(1) This section applies if the presiding officer at a commission hearing reasonably suspects a witness is unable, because of inadequate knowledge of the English language or a physical disability, to understand what is being said or to speak with reasonable fluency in English.

(2) Before the witness is questioned, the presiding officer must arrange for the presence of an interpreter and delay the questioning until the interpreter is present.

182A Use of audiovisual link or audio link for remote attendance

(1) This section applies to a person who is required to attend a commission hearing under an attendance notice other than an attendance notice requiring immediate attendance at a commission hearing.

(2) The person may attend the hearing by an audiovisual link or audio link if the presiding officer is satisfied the requirements in subsection (3) are met.

(3) The requirements are—

(a) the person agrees to attend by an audiovisual link or audio link; and

(b) if the person's lawyer is present at the place where the presiding officer is presiding—both that place and the place where the person is located have facilities that will allow private communication between the person and the person's lawyer; and

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(c) it is appropriate for the person to attend the hearing by an audiovisual link or audio link.

(4) In deciding whether the requirement mentioned in subsection (3)(c) is met, the presiding officer may have regard to—

(a) the nature of the hearing and the importance of the hearing for the investigation to which it relates; and

(b) the ability of the person to comprehend and effectively participate in the hearing; and

(c) whether the person is represented by a lawyer or has received legal advice about attendance by an audiovisual link or audio link; and

(d) the desirability of attendance by an audiovisual link rather than an audio link, if an audiovisual link is available.

(5) Subsection (6) applies if the person's lawyer is present at the place where the presiding officer is presiding.

(6) A communication between the person and the person's lawyer is as confidential and as inadmissible in any proceeding as the communication would be if it took place between the person and the person's lawyer while in each other's presence.

(7) Subsection (6) does not limit any other protection applying to the communication.

(8) Section 60 does not apply to a communication that is confidential under subsection (6) or a recording of such a communication.

(9) Provisions of this Act applying to a hearing apply with necessary changes in relation to a hearing under this section.

(10) In this section—

audio link means facilities, including a telephone, that enable reasonably contemporaneous and continuous audio communication between persons at different places.

audiovisual link—

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(a) means facilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places; and

(b) includes videoconferencing.

Part 2 Refusals and claims of privilege and reasonable excuse

Division 1 Refusal to be sworn

183 Refusal to take oath

A person attending at a commission hearing to give sworn evidence must not fail to take an oath when required by the presiding officer.

Maximum penalty—200 penalty units or 5 years imprisonment.

Division 2 Refusal to produce

Subdivision 1 Crime investigations and intelligence and witness protection functions

184 Application of sdiv 1

This subdivision applies only in the context of—

(a) a crime investigation; or

(b) an intelligence function hearing; or

(c) a witness protection function hearing.

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185 Refusal to produce—claim of reasonable excuse

(1) A person required to produce a stated document or thing at a commission hearing under an attendance notice or a section 75B requirement must—

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

(b) produce the document or thing at the hearing, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 5 years imprisonment.

(2) A claim of privilege, other than legal professional privilege, is not a reasonable excuse for subsection (1)(b).

Note—

A refusal to produce a document or thing under a claim of legal professional privilege is considered under section 194.

(3) A claim of legal professional privilege is not a reasonable excuse for subsection (1)(b) if—

(a) the person has authority to waive the privilege and waives it; or

(b) the privilege is waived by a person having authority to waive it.

(4) The presiding officer must decide a claim of reasonable excuse mentioned in subsection (1)(b) under section 194.

(5) Subsection (6) applies if the person—

(a) at the hearing, refuses to produce the document or thing on the ground that legal professional privilege attaches to the document or thing; and

(b) has no authority to waive the privilege.

(6) The person must, if required by the presiding officer—

(a) tell the presiding officer the name and address of the person entitled to waive the privilege; and

(b) seal the document or thing and, at the hearing, give it to the commission for safe keeping.

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Maximum penalty—200 penalty units or 5 years imprisonment.

(7) The commission must—

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

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

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

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

(9) The commission must return the sealed evidence to the person who gave it to the commission if the commission has not, within 3 months after the day on which the sealed evidence was given to the commission, given the person entitled to waive the privilege a notice to attend a hearing and to produce the sealed evidence.

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

(1) If—

(a) a person has given to a commission officer under section 78 a sealed document or thing (the ***sealed evidence***); and

(b) the commission has given the person a notice to attend a hearing to produce the sealed evidence;

the commission must return the sealed evidence to the person at the hearing before the person is required at the hearing to produce the sealed evidence.

(2) If—

(a) a person has given the commission under section 185(6)(b) a sealed document or thing (also the ***sealed evidence***); and

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(b) the commission has given another person a notice to attend a hearing to produce the sealed evidence;

the commission must give the sealed evidence to the person attending the hearing before the person is required at the hearing to produce the sealed evidence.

Subdivision 2 Corruption investigations

187 Application of sdiv 2

This subdivision applies only in the context of a corruption investigation.

188 Refusal to produce—claim of reasonable excuse

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

(a) to an identified commission officer under a notice to discover under section 75; or

(b) at a commission hearing under an attendance notice; or

(c) under a section 75B requirement.

(2) The person must—

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

(b) produce the document or thing to the commission officer or at the hearing, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 5 years imprisonment.

(3) It is not a reasonable excuse for subsection (2)(b) to fail to produce the document or thing because producing the document or thing might tend to incriminate the person.

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(4) Section 197 does not apply to a document or thing produced under this section.

Division 3 Refusal to answer

Subdivision 1 Crime investigations and intelligence and witness protection functions

189 Application of sdiv 1

This subdivision applies only in the context of the following—

(a) a crime investigation;

(b) an intelligence function hearing; or

(c) a witness protection function hearing.

190 Refusal to answer question

(1) A witness at a commission hearing must answer a question put to the person at the hearing by the presiding officer, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 5 years imprisonment.

(2) The person is not entitled—

(a) to remain silent; or

(b) to refuse to answer the question on a ground of privilege, other than legal professional privilege.

(3) If—

(a) the person refuses to answer a question on the ground the answer to the question would disclose a communication to which legal professional privilege attaches; and

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(b) the person has no authority to waive the privilege;

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

Maximum penalty—200 penalty units or 5 years imprisonment.

Subdivision 2 Corruption investigations

191 Application of sdiv 2

This subdivision applies only in the context of a corruption investigation.

192 Refusal to answer question

(1) A witness at a commission hearing must answer a question put to the person at the hearing by the presiding officer.

Maximum penalty—200 penalty units or 5 years imprisonment.

(2) The person is not entitled—

(a) to remain silent; or

(b) to refuse to answer the question on the ground of the self-incrimination privilege or the ground of confidentiality.

(2A) The person is entitled to refuse to answer the question on the following grounds of privilege—

(a) legal professional privilege;

(b) public interest immunity;

(c) parliamentary privilege.

(3) If—

(a) the person refuses to answer a question on the ground the answer to the question would disclose a

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communication to which legal professional privilege attaches; and

(b) the person has no authority to waive the privilege;

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

Maximum penalty for subsection (3)—200 penalty units or 5 years imprisonment.

Division 4 Deciding claims

Subdivision 1 Crime investigations and intelligence and witness protection functions

193 Application of sdiv 1

This subdivision applies only in the context of the following—

(a) a crime investigation;

(b) an intelligence function hearing;

(c) a witness protection function hearing.

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

(1) This section applies if a person claims to have a reasonable excuse, including a reasonable excuse based on a claim of legal professional privilege, for not complying with a requirement made of the person at a commission hearing—

(a) to answer a question put to the person; or

(b) to produce a document or thing that the person was required to produce.

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(1A) The presiding officer must decide whether or not there is a reasonable excuse.

(1B) The presiding officer must decide, after hearing the person's submissions—

(a) that the requirement will not be insisted on; or

(b) that the officer is not satisfied the person has a reasonable excuse.

(2) If the presiding officer decides, after hearing the person's submissions, that the person has a reasonable excuse based on self-incrimination privilege for not complying with the requirement—

(a) the presiding officer may require the person to comply with the requirement; and

(b) section 197 applies in relation to the answer, document or thing given or produced.

(3) If the presiding officer decides the person did not have a reasonable excuse for not complying with the requirement, the presiding officer must—

(a) give the person reasons for the decision; and

(b) require the person to answer the question, or to produce the document or thing as required by the attendance notice, subject to the person's right of appeal under section 195; and

(c) advise the person that the person may appeal the presiding officer's decision to the Supreme Court within the time allowed under section 195.

Note—

A refusal to comply with the requirement to answer the question or produce the document or thing is an offence against section 185 or 192.

(4) If—

(a) the person is required to produce a document or thing under subsection (3); and

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(b) the person informs the presiding officer that the person wishes to appeal or consider an appeal under section 195;

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

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

(5) The commission must—

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

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

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

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

(7) If the person fails to apply for leave to appeal within the time allowed under section 195, or leave to appeal is refused under that section, the commission may access the sealed evidence.

195 Appeals to Supreme Court

(1) A person may appeal against a decision of a presiding officer given under section 194(3)(b) if—

(a) the person applies for leave to appeal the decision within 7 court days after the person is given the presiding officer's reasons for decision; and

(b) the Supreme Court grants leave to appeal.

(2) The Supreme Court may grant leave to appeal only if the court is satisfied—

(a) if the appeal relates to a document or thing—the document or thing has been given to the commission and placed in safe custody; and

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(b) in all cases—the appeal has a significant prospect of success or there is some important question of law involved.

(3) An application for leave to appeal must state the grounds of the application.

(4) The Supreme Court must deal with an application for leave to appeal and the appeal expeditiously.

(5) On hearing the appeal, the Supreme Court may make an order—

(a) affirming the presiding officer's decision; or

(b) setting aside the presiding officer's decision.

(6) If the court affirms the presiding officer's decision about a document or thing, the commission may access the document or thing.

(7) If the court sets aside the decision about a document or thing, the court must make an order directing that the document or thing be delivered to the person.

(8) A person may appeal only once under subsection (1) in relation to a particular reasonable excuse claimed by the person for not answering a question or producing a document or thing at a commission hearing.

(9) An application for leave to appeal, and an appeal, under this section are to be heard in closed court.

Note—

See also section 200A in relation to the confidentiality of proceedings under this section.

(10) However, the court may permit a person to be present at a hearing for the application for leave to appeal, or appeal, in the interests of justice.

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Subdivision 1A Confiscation related investigations

195A Application of sdiv 1A

This subdivision applies only in the context of a confiscation related investigation.

195B Supreme Court to decide claim of privilege

(1) This section applies if a person makes a claim of privilege under section 74A in relation to a document or thing.

(2) The chairperson or the person making the claim of privilege may apply to a Supreme Court judge to decide whether the claim is established and, if established, whether it is to be upheld.

(3) The burden of proof on the application is on the person who seeks to withhold the document or thing or to prevent the exercise of authority.

(4) The judge must consider submissions and decide whether the claim is established.

(5) If the judge decides that the claim is established on a ground of public interest immunity, the judge may order the person to produce the document or thing to the commission if the judge decides that, on balance, the public interest is better served by producing the document or thing.

(6) If the judge decides that the claim is established on a ground of confidentiality, the judge must order the person to produce the document or thing to the commission unless the judge decides that to produce the document or thing would be against the public interest.

(7) If the judge decides that the claim of self-incrimination privilege is established, the judge must order the person to produce the document or thing to the commission.

(8) Costs of an application made in relation to a claim of privilege are to be borne by the commission, unless otherwise ordered

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by the judge on the ground that the claim is frivolous or vexatious.

Subdivision 2 Corruption investigations

196 Supreme Court to decide claim of privilege

(1) This section applies if a person makes a claim of privilege under section 73, 75, 94 or 111 in relation to information or a document or thing or under section 192 in relation to a refusal to answer a question.

(2) The chairperson or the person making the claim of privilege may apply to a Supreme Court judge to decide whether the claim is established and, if established, whether it is to be upheld.

(3) The burden of proof on the application is on the person who seeks to withhold the information, document or thing or to prevent the exercise of authority.

(4) The judge must consider submissions and decide whether the claim is established.

(5) If the judge decides that the claim is established on a ground of public interest immunity, the judge may order the person to give the information or produce the document or thing to the commission if the judge decides that, on balance, the public interest is better served by giving the information or producing the document or thing.

(6) If the judge decides that the claim is established on a ground of confidentiality, the judge must order the person to give the information or produce the document or thing to the commission unless the judge decides that to give the information or produce the document or thing would be against the public interest.

(7) Costs of an application made in relation to a claim of privilege are to be borne by the commission, unless otherwise ordered by the judge on the ground that the claim is frivolous or vexatious.

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Division 5 Restrictions on use

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

(1) This section applies if—

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

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

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

(2) The answer, document, thing or statement given or produced is not admissible in evidence against the individual in any civil, criminal or administrative proceeding.

(3) However, the answer, document, thing or statement is admissible in a civil, criminal or administrative proceeding—

(a) with the individual's consent; or

(b) if the proceeding is about—

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

(ii) an offence against this Act; or

(iii) a contempt of a person conducting the hearing; or

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(c) if the proceeding is a proceeding, other than a proceeding for the prosecution of an offence, under the Confiscation Act and the answer, document, thing or statement is admissible under section 265 of that Act.

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

(5) In a commission hearing, the presiding officer may order that all answers or a class of answer given by an individual or that all documents or things or a class of document or thing produced by an individual is to be regarded as having been given or produced on objection by the individual.

(6) If the presiding officer makes an order under subsection (5), the individual is taken to have objected to the giving of each answer, or to the producing of each document or thing, the subject of the order.

(7) Subsection (2) does not prevent any information, document or other thing obtained as a direct or indirect consequence of the individual giving or producing the answer, document, thing or statement from being admissible in evidence against the individual in a civil, criminal or administrative proceeding.

Part 3 Contempt

198 Contempt of person conducting commission hearing

(1) A person is in contempt of the presiding officer conducting a commission hearing if the person—

(a) insults the member while the member is conducting the hearing; or

(b) deliberately interrupts the hearing; or

(c) at the hearing, contravenes a provision of this Act relating to the hearing; or

(d) creates or continues or joins in creating or continuing, a disturbance in or near a place where the presiding officer is conducting the hearing; or

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(e) does anything at the hearing or otherwise that would be contempt of court if the presiding officer were a judge acting judicially.

(2) The presiding officer may order that a person who under subsection (1) is in contempt of the commission at a hearing be excluded from the place where the hearing is being conducted.

(3) A commission officer, acting under the presiding officer's order, may, using necessary and reasonable help and force, exclude the person from the place.

(4) To remove any doubt, it is declared that the following contraventions relating to a hearing may be certified in writing to the Supreme Court under section 199 as a contempt of the presiding officer—

(a) a failure by a person, under section 183, to take an oath when required by the presiding officer;

(b) a failure by a person, under section 185 or 188, to produce a stated document or thing at a commission hearing under an attendance notice or a section 75B requirement without reasonable excuse;

(c) a failure by a person, under section 190 or 192, to answer a question put to the person at the hearing by the presiding officer without reasonable or lawful excuse.

198A Person in contempt may be detained

(1) If the presiding officer expresses an intention at the hearing to certify the contempt in writing to the Supreme Court, the presiding officer may, during the hearing, direct a police officer to detain the person for the purpose of bringing the person before the Supreme Court to be dealt with according to law.

(2) If the person is detained under subsection (1), the person must be brought before the court as soon as practicable.

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199 Punishment of contempt

(1) A person's contempt of the presiding officer conducting a commission hearing may be punished under this section.

(2) The presiding officer may certify the contempt in writing to the Supreme Court (the ***court***).

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

(4) The presiding officer may issue a warrant directed to a police officer or all police officers for the apprehension of the person to be brought before the Supreme Court to be dealt with according to law.

(5) The *Bail Act 1980* applies to the proceeding for the contempt started by the certification in the same way it applies to a charge of an offence.

(6) The court must inquire into the alleged contempt.

(7) The court must hear—

(a) witnesses and evidence that may be produced against or for the person whose contempt was certified; and

(b) any statement given by the person in defence.

(8) If the court is satisfied the person has committed the contempt, the court may punish the person as if the person had committed the contempt in relation to proceedings in the court.

(8A) However, the court must punish the person in contempt by imprisonment if—

(a) the contempt that is certified is—

(i) a failure by a person, under section 183, to take an oath when required by the presiding officer; or

(ii) a failure by a person, under section 185 or 188, to produce a stated document or thing at a commission hearing under an attendance notice or a section 75B requirement without reasonable excuse; or

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(iii) a failure by a person, under section 190 or 192, to answer a question put to the person at the hearing by the presiding officer without reasonable or lawful excuse; and

(b) the court is satisfied the person has committed the contempt.

(8B) The maximum punishment the court may impose for a contempt mentioned in subsection (8A) is—

(a) for the person's first contempt—10 years imprisonment; or

(b) for the person's second contempt—14 years imprisonment; or

(c) for the person's third or subsequent contempt—life imprisonment.

(8C) For subsection (8B)—

(a) despite any other law, a term of imprisonment imposed under subsection (8B) must be ordered to be served wholly in a corrective services facility; and

(b) if a person is punished for more than 1 contempt, unless there are exceptional circumstances, the punishment for the second contempt or third or subsequent contempt must be for a term of imprisonment that is longer than the term of imprisonment imposed on the person for the immediately preceding contempt; and

(c) the hearings mentioned in subsection (12), definition *second contempt*, may be the same hearing; and

(d) the hearings mentioned in subsection (12), definition *third or subsequent contempt*, may be the same hearing; and

(e) the failure by a person of a type mentioned in subsection (8A) that constitutes the person's second contempt, or third or subsequent contempt, may be the same failure by the person of a type mentioned in subsection (8A) that constituted the person's first contempt or other preceding contempt.

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(8D) A person punished by imprisonment under this section may be brought before the commission to ascertain whether the person wishes to purge the contempt.

(8E) A person imprisoned under this section may be brought before the Supreme Court, on the person's or the commission's application, for a declaration that the person has purged the contempt.

(8F) The court may order the person's discharge from prison before the end of the term—

(a) if it is satisfied that the person has purged the contempt; and

(b) it has heard the commission's submissions in relation to the application and the person's discharge from prison.

(9) The *Uniform Civil Procedure Rules 1999* apply to the court's investigation, hearing and power to punish, with necessary changes.

(9A) The court's hearing under this section is closed to the public.

Note—

See also section 200A in relation to the confidentiality of proceedings under this section.

(9B) However, the court may permit a person to be present at the hearing in the interests of justice.

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

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

(12) In this section—

first contempt, of a person, means a failure by the person of a type mentioned in subsection (8A).

second contempt, of a person, means a failure by the person of a type mentioned in subsection (8A) that takes place in relation to a hearing dealing with the same subject matter as

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that dealt with in the hearing in which the person's first contempt was certified and for which the person has served a term of imprisonment imposed under subsection (8B).

third or subsequent contempt, of a person, means a failure by the person of a type mentioned in subsection (8A) that takes place in relation to a hearing dealing with the same subject matter as that dealt with in the hearing in which the person's first contempt or other preceding contempt was certified and for which the person has served a term of imprisonment imposed under subsection (8B).

200 Conduct that is contempt and offence

(1) If conduct of an offender is both contempt of the presiding officer conducting a commission hearing and an offence, the offender may be proceeded against for the contempt or for the offence, but the offender is not liable to be punished twice for the same conduct.

(2) In this section—

offender means a person guilty, or alleged to be guilty, of contempt of the presiding officer conducting a commission hearing.

Part 4 General

200A Confidentiality of particular proceedings

(1) This section applies to the following (each ***the proceeding***)—

(a) an application for leave to appeal, or an appeal, under section 195;

(b) a proceeding for contempt under section 199;

(c) an appeal against a decision in a proceeding mentioned in paragraph (a) or (b).

(2) The proceeding, or a hearing in the proceeding, must not be mentioned on a published court list.

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Example of published court list—

daily law list

(3) If a party to the proceeding files an application or supporting material for the proceeding, the application or material must be accompanied by a notice to the registrar stating the application or material—

(a) is filed for a proceeding mentioned in subsection (1); and

(b) is a document to which subsections (4) to (6) apply.

(4) No record of proceedings is to be available for access by any person, unless the court has, on application by a person, given approval for the access.

(5) A person is not entitled to search information in the custody of a court in relation to the proceeding, unless the court otherwise orders in the interests of justice.

(6) Subsections (4) and (5) do not apply in relation to a party to the proceeding or a lawyer representing a party to the proceeding.

(7) Nothing in this section prevents the publication of reasons for a decision in the proceeding if the publication does not identify—

(a) a person; or

(b) information that may prejudice—

(i) an investigation being conducted by the commission; or

(ii) a specific intelligence operation being undertaken by the commission; or

(iii) the performance of another function of the commission.

(8) In this section—

record of proceedings includes—

(a) a transcript of the proceeding (whether written or otherwise); and

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(b) documents in the court file for the proceeding; and

(c) an appeal book in relation to the proceeding.

201 Commission must give evidence to defence unless court certifies otherwise

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

(2) On being asked by the defendant or the defendant's lawyer, the commission must give the evidence to the defendant or the defendant's lawyer unless the court makes an order under subsection (4).

(3) A request under subsection (2) may generally identify evidence to be given to the defendant or defendant's lawyer.

(4) On application by an authorised commission officer, the court must order that the evidence not be given to the defendant or defendant's lawyer if the court considers that it would be unfair to a person or contrary to the public interest to do so.

(5) Evidence given to a defendant or a defendant's lawyer under subsection (2) may be used only for the defence to the charge.

(6) A person who uses the evidence as permitted under subsection (5) does not contravene section 202.

202 Publication of names, evidence etc.

(1) A person must not, without the commission's written consent or contrary to the commission's order, publish—

(a) an answer given, or document or thing produced, at a commission hearing, or anything about the answer, document or thing; or

(b) information that might enable the existence or identity of a person who is about to give or has given evidence before the commission (***witness***) at a hearing to be ascertained.

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

(2) A person does not contravene subsection (1) if any of the following applies to the publication—

(a) the answer given, or document or thing produced, was given or produced at a public hearing and the publication is not contrary to the commission's order;

(b) the witness appeared at a public hearing and the publication is not contrary to the commission's order;

(c) the publication is made—

(i) for the purpose of defending a charge of an offence and is relevant to the defence; and

(ii) to a person charged with the offence or a lawyer representing a person charged with the offence;

(d) the publication is made for the purpose of making a submission to the parliamentary committee about the conduct of the commission's investigation;

(e) the publication is made for the purposes of a disciplinary proceeding or to start a prosecution for an offence.

(3) Also, a person does not contravene subsection (1)(b) if—

(a) the person is the witness, or the publication is made with the witness's implied or express consent; or

(b) the information mentioned in the provision has been generally made known by the witness or by the commission.

(4) The commission may apply to a Supreme Court judge for an order prohibiting a publication mentioned in subsection (2)(e).

(5) In this section—

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

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203 Protection of members, legal representatives and witnesses

(1) The presiding officer of a commission hearing has, in the performance of the presiding officer's duties for the hearing, the same protection and immunity as a Supreme Court judge.

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

(3) A person required to attend or appearing at a commission hearing as a witness has the same protection as a witness in a proceeding in the Supreme Court.

(4) No criminal or civil liability, other than liability under this Act, attaches to a person for compliance, or purported compliance in good faith, with a requirement made under this Act.

(5) In particular, if a person produces a document or thing under a notice to discover or a notice to produce, no civil liability attaches to the person for producing the document or thing, whether the liability would arise under a contract or otherwise.

204 Allowances for witness

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

(2) The allowances and expenses are payable by the commission.

205 Legal assistance

(1) This section applies to a person who—

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(a) has been given a notice to attend a commission hearing; or

(b) wishes to appeal, or has appealed, to the Supreme Court under section 195 against a decision of the presiding officer at a commission hearing.

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

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

(a) a person may suffer substantial hardship if help is not given; or

(b) in the particular circumstances, help should be given.

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

(5) The cost of the financial help must be met by the commission.

(6) The Attorney-General may delegate a function under subsection (3) or (4) to the chief executive (justice).

(7) The chief executive (justice) may subdelegate the delegated function to an appropriately qualified employee of the department administered by the chief executive (justice).

(8) In this section—

chief executive (justice) means the chief executive of the department in which the Criminal Code is administered.

function includes power.

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Chapter 5 Offences and disciplinary proceedings relating to corruption etc.

Part 1 Offences

206 Application of Criminal Code

(1) The Criminal Code, sections 120, 123, 123A, 124, 125, 126, 127, 128, 129 and 130 (***identified provisions***) apply, with necessary changes, to commission hearings under this Act.

(2) Without limiting subsection (1), for applying the identified provisions to a commission hearing—

(a) the hearing is a judicial proceeding; and

(b) the presiding officer conducting the hearing is the holder of a judicial office; and

(c) a reference to judicial capacity is a reference to capacity as a presiding officer conducting a hearing; and

(d) a reference to the giving or withholding of testimony is a reference to the giving or withholding of information; and

(e) a reference to a witness is a reference to a person from whom the presiding officer conducting the hearing may obtain information; and

(f) a reference to being required or used in evidence is a reference to being required or used for the obtaining of information; and

(g) a reference to being summoned to attend as a witness is a reference to being asked or required to attend to give information; and

(h) a reference to a tribunal is a reference to the presiding officer conducting the hearing.

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207 Pretending to be a commission officer

A person must not pretend to be a commission officer.

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

208 Abuse of office in commission

(1) A commission officer who corruptly asks for, receives or obtains, or agrees or attempts to receive or obtain, a benefit of any kind with a view to the officer neglecting the officer's duty, or being influenced in the discharge of the officer's duty commits a crime.

Maximum penalty—595 penalty units or 7 years imprisonment.

(2) A commission officer who uses or takes advantage of the office to improperly gain benefit for the officer or another person or to facilitate the commission of an offence commits a crime.

Maximum penalty—595 penalty units or 7 years imprisonment.

(3) A person contravening subsection (1) or (2) can not be arrested without warrant.

209 Bribery of commission officer

(1) A person who corruptly gives to, confers on, or procures for, a commission officer a benefit of any kind, or promises to do so, with a view to—

(a) the officer neglecting the officer's duty; or

(b) influencing the officer in the discharge of the officer's duty; or

(c) the officer using or taking advantage of the office to facilitate the commission of an offence;

commits a crime.

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Maximum penalty—595 penalty units or 7 years imprisonment.

(2) A person contravening subsection (1) can not be arrested without warrant.

210 Obstruction or delay of commission procedures

A person who, with intent to obstruct or delay the performance of a function by the commission or the exercise of a power by a commission officer—

(a) fabricates any relevant record or thing; or

(b) destroys or alters any relevant record or thing; or

(c) sends any relevant record or thing out of the State;

commits a misdemeanour.

Maximum penalty—255 penalty units or 3 years imprisonment.

211 Injury or detriment to witness

A person who injures or threatens to injure, or causes or threatens to cause detriment of any kind, to another person because—

(a) the person, or someone else, appeared as a witness before the commission; or

(b) the person, or someone else, gave, or is to give, evidence before the commission; or

(c) the person, or someone else, complied with, or is about to comply with, a notice under section 75;

commits a misdemeanour.

Maximum penalty—255 penalty units or 3 years imprisonment.

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212 Offence of victimisation

A person must not—

(a) prejudice, or threaten to prejudice, the safety or career of any person; or

(b) intimidate or harass, or threaten to intimidate or harass, any person; or

(c) do an act that is, or is likely to be, to the detriment of any person;

because the person mentioned in paragraph (a), (b) or (c), or someone else, gave evidence to, or helped, the commission in the performance of its functions.

Maximum penalty—85 penalty units.

213 Secrecy

(1) This section applies to a person who is or was—

(a) a relevant official; or

(b) a member of the reference committee; or

(c) a person to whom information is given either by the commission or by a person mentioned in paragraph (a) or (b) on the understanding, express or implied, that the information is confidential.

(2) A person must not make a record of, or wilfully disclose, information that has come to the person's knowledge because the person is or was a person to whom this section applies.

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

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

(a) in the case of a record—

(i) the record is made for the purposes of the commission, this Act, the parliamentary committee, the parliamentary commissioner or an

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investigation of an alleged contravention of this section; or

(ii) the making of the record was lawful under a repealed Act; or

(b) in the case of a disclosure—

(i) the disclosure is made—

(A) for the purposes of the commission, this Act, the parliamentary committee, the parliamentary commissioner or an investigation of an alleged contravention of this section; or

(B) at the direction of the parliamentary commissioner under chapter 6, part 4; or

(ii) the disclosure was lawful under a repealed Act; or

(c) in the case of a record or a disclosure—the information was publicly available.

(4) A person may not be required to produce in any court a document that has come into the person's possession, or to disclose to any court a matter or thing that has come to the person's notice, because the person is or was a person to whom this section applies, unless—

(a) the commission, or a commissioner in the commissioner's official capacity, or the chief executive officer in the chief executive officer's official capacity, is a party to the relevant proceeding; or

(b) it is necessary to produce the document or disclose the matter or thing—

(i) to give effect to this Act; or

(ii) for a prosecution started as a result of an investigation conducted by the commission.

(5) In this section—

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commission officer includes a person who was an assistant commissioner or part-time commissioner under this Act as in force before the commencement of this definition.

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

produce includes permit access to.

relevant official means a person who is or was one of the following—

(a) a commission officer;

(b) a member of the parliamentary committee;

(c) the parliamentary commissioner;

(d) an officer of the parliamentary service;

(e) a person appointed, engaged or assigned to help the parliamentary committee or the parliamentary commissioner;

(f) the public interest monitor;

(g) a person mentioned in section 132 of the repealed *Criminal Justice Act 1989*;

(h) a person to whom section 126 of the repealed *Crime Commission Act 1997* applied.

repealed Act means—

(a) repealed *Criminal Justice Act 1989*;

(b) repealed *Crime Commission Act 1997*.

214 Unauthorised publication of commission reports and other restricted information

(1) A person must not publish or give a commission report to which section 69 applies to anyone unless—

(a) the report has been published by order of the Legislative Assembly or is taken to have been so published; or

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(b) its publication is otherwise authorised under this Act.

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

(2) A person who is given restricted information by the commission under chapter 2, part 6, division 4A must not disclose the information to anyone else unless the person has a reasonable excuse.

Example of a reasonable excuse—

giving restricted information to the person's lawyer for the purpose of obtaining legal advice

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

(3) In this section—

commission report includes an extract from a commission report.

disclose includes publish and give access to.

information includes a document.

public statement includes part of a public statement.

restricted information means—

(a) a copy of a commission report, or a public statement, in draft form; or

(b) any evidence and other information or material relating to a report or statement mentioned in paragraph (a).

Example for paragraph (b)—

related evidence under section 69A

215 Resisting exercise of powers

A person must not wilfully obstruct a commission officer in the exercise of a power conferred on the officer by this Act.

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

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216 Frivolous complaint

(1) The commission may give notice to a person that a complaint about, or information or matter (also a ***complaint***) involving, corruption made by the person to the commission will not be investigated or further investigated by the commission because it appears to concern frivolous matter.

(2) The notice must advise the person that if the person again makes the same or substantially the same complaint to the commission the person commits an offence punishable by a fine of 85 penalty units or 1 year's imprisonment or both.

(3) A person who, after receiving the notice mentioned in subsection (2), again makes the same or substantially the same complaint to the commission commits an offence.

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

(4) It is a defence to prove that the complaint did not concern frivolous matter.

(5) In this section—

make, a complaint to the commission, means—

(a) make a complaint to the commission under section 36; or

(b) make a complaint to another entity that is under an obligation to refer the complaint to the commission; or

(c) cause a complaint to be referred to the commission.

216A Other improper complaints

(1) A person commits an offence if the person—

(a) makes a complaint to the commission—

(i) vexatiously; or

(ii) not in good faith; or

(iii) primarily for a mischievous purpose; or

(iv) recklessly or maliciously; or

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(b) counsels or procures another person to make a complaint to the commission as mentioned in paragraph (a).

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

(2) In this section—

make, a complaint to the commission, means—

(a) make a complaint, or give information or matter, to the commission under section 36; or

(b) make a complaint, or give information or matter, to another entity that is under an obligation to refer the complaint, information or matter to the commission; or

(c) cause a complaint, or information or matter, to be referred to the commission.

217 False or misleading statements

(1) A person must not state anything to the commission the person knows is false or misleading in a material particular.

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

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was 'false or misleading' to the person's knowledge, without specifying which.

(3) A court may order that a person who contravenes subsection (1) must pay an amount of compensation to the commission, whether or not the court also imposes a penalty for the contravention.

(4) The amount of the compensation must be a reasonable amount for the cost of any investigation made or other action taken by the commission because of the false statement.

(5) Without limiting the ways a person may state a thing to the commission, a person states a thing to the commission if the

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person states the thing to an entity that is under an obligation to advise the commission of the thing, whether or not the person intended that the commission be advised of the statement.

218 False or misleading documents

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

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

(2) Subsection (1) does not apply to a person if the person, when giving the document—

(a) tells the commission, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

(3) It is enough for a complaint for an offence against subsection (1) to state the document was 'false or misleading' to the person's knowledge, without specifying which.

(4) A court may order that a person who contravenes subsection (1) must pay an amount of compensation to the commission, whether or not the court also imposes a penalty for the contravention.

(5) The amount of the compensation must be a reasonable amount for the cost of any investigation made or other action taken by the commission because of the false document.

(6) Without limiting the ways a person may give a document to the commission, a person gives a document to the commission if the person gives the document to an entity that is under an obligation to give the document to the commission, whether or not the person intended that the document be given to the commission.

(7) In this section—

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give, a document to the commission, includes cause the document to be given to the commission.

219 Proceedings for an offence

(1) Subject to subsection (2), a proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886* within the later of the following—

(a) 1 year after the offence is committed;

(b) 6 months after the commission of the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

(2) A proceeding for an indictable offence may, at the election of the prosecution, be taken—

(a) by way of summary proceedings under subsection (1); or

(b) on indictment.

(3) A proceeding against a person for an indictable offence must be before a magistrate if it is a proceeding—

(a) for the summary conviction of the person; or

(b) for an examination of witnesses in relation to the charge.

(4) If a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(5) If—

(a) a person charged with an indictable offence asks at the start of a summary proceeding for the offence that the charge be prosecuted on indictment; or

(b) the magistrate hearing a charge of an indictable offence considers the charge should be prosecuted on indictment;

the magistrate—

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(c) must not decide the charge as a summary offence; and

(d) must proceed by way of a committal proceeding.

(6) If a magistrate acts under subsection (5)—

(a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and

(b) any evidence brought in the proceeding before the magistrate decided to act under subsection (5) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and

(c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).

(7) The maximum penalty that may be imposed on a summary conviction of an indictable offence is 85 penalty units or 1 year's imprisonment.

Part 2 Disciplinary proceedings relating to corruption etc.—particular prescribed persons

Division 1 Preliminary

219A Purposes of disciplinary proceedings

The purposes of providing for disciplinary proceedings are—

(a) to protect the public; and

(b) to uphold ethical standards within units of public administration and the police service; and

(c) to promote and maintain public confidence in the public sector.

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219B Definitions for pt 2

In this part—

disciplinary proceeding means—

(a) a proceeding under section 219F for corrupt conduct alleged to have been committed by a prescribed person; or

(b) a proceeding under section 219FA or 219G for a reviewable decision.

former officer see the *Police Service Administration Act 1990*, section 7A.1(1)(b).

industrial matter means an industrial matter within the meaning of the *Industrial Relations Act 2016*.

officer means a police officer within the meaning of the *Police Service Administration Act 1990* and includes a police recruit within the meaning of that Act.

reviewable decision see section 219BA.

219BA Meaning of *reviewable decision*

(1) A ***reviewable decision*** means—

(a) a decision made in relation to an allegation of corruption against a prescribed person, other than a decision—

(i) made by a court or QCAT; or

(ii) made by a prescribed officer under the *Police Service Administration Act 1990*, part 7; or

(b) a decision under the *Police Service Administration Act 1990*, part 7A to make a disciplinary finding or disciplinary declaration against a former officer; or

(c) a decision under the *Police Service Administration Act 1990*, part 7A to do neither of the following in relation to a former officer—

(i) give the former officer a written notice under section 7A.3(1)(a) of that Act;

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(ii) hold a disciplinary hearing under section 7A.3(1)(b) of that Act.

(2) In this section—

decision, made in relation to a disciplinary allegation of corruption, if a disciplinary declaration is made, includes the disciplinary declaration.

Note—

A reviewable decision may also involve a failure to make a disciplinary declaration.

disciplinary declaration means a disciplinary declaration made under—

(a) the *Public Sector Act 2022*, section 95; or

(b) the *Police Service Administration Act 1990*, section 7A.2(2).

prescribed person, in relation to a prescribed person mentioned in section 50(3), definition *prescribed person*, paragraphs (a)(ii) and (b)(ii), means—

(a) a prescribed person against whom a disciplinary declaration has been made; or

(b) in relation to a proceeding for a reviewable decision started by the commission under section 219G—

(i) a prescribed person mentioned in paragraph (a); or

(ii) a prescribed person against whom a disciplinary declaration has not been made if a ground of review states that a disciplinary declaration should have been made.

Division 2 QCAT's jurisdiction

219C Jurisdiction

QCAT has jurisdiction to conduct disciplinary proceedings.

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219D Jurisdiction relating to allegations of corrupt conduct against prescribed persons is exclusive

(1) An allegation of corrupt conduct against a prescribed person may only be heard and decided by QCAT.

(2) Subsection (1) applies to the exclusion of authority given by law to any other person or tribunal to hear and decide, at first instance, an allegation of corrupt conduct made against a prescribed person.

219DA QCAT hearing in relation to prescribed person whose employment or appointment has ended

To remove any doubt, it is declared that QCAT may hear and decide, or continue to hear and decide, an allegation of corrupt conduct brought against a prescribed person defined in section 50(3), definition *prescribed person*, paragraph (a)(ii) or (b)(ii), despite the person's employment or appointment having ended—

(a) before or during the QCAT hearing; or

(b) after the hearing and before QCAT makes its decision.

219E Relationship with Industrial Relations Act 2016

The industrial court and the industrial relations commission do not have jurisdiction in relation to a matter that QCAT may decide for this Act even though it may be, or be about, or arise out of, an industrial matter.

Division 3 Proceedings

219F Proceedings relating to corrupt conduct

The commission or the chief executive officer of a unit of public administration (including the commissioner of the police service) may apply, as provided under the QCAT Act, to QCAT to hear and decide an allegation of corrupt conduct against a prescribed person.

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219FA Proceedings relating to particular reviewable decisions about former officers

(1) This section applies in relation to a reviewable decision mentioned in section 219BA(1)(c).

(2) The commission may apply to QCAT, as provided under subsection (3), for a review of the reviewable decision.

(3) The application must be made—

(a) within 28 days after the commission becomes aware of the decision; and

(b) as otherwise provided under the QCAT Act.

(4) The commission must, within the period mentioned in the QCAT Act, section 37(2), give the former officer a copy of the application.

(5) Subsection (4) does not limit the QCAT Act, section 37(2).

(6) The parties to the proceeding are—

(a) the commission; and

(b) the person who made the reviewable decision; and

(c) if the former officer to whom the reviewable decision relates elects to become a party to the proceeding—the former officer.

(7) Notice of an election under subsection (6)(c) must be given—

(a) to QCAT, the commission and the person who made the reviewable decision; and

(b) within 14 days after the former officer is given notice of the application for review under subsection (4).

219G Proceedings relating to other reviewable decisions

(1A) This section applies in relation to a reviewable decision mentioned in section 219BA(1)(a) or (b).

(1) The commission or a prescribed person against whom the reviewable decision has been made may apply, within the period mentioned in subsection (2) and otherwise as provided

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under the QCAT Act, to QCAT for a review of the reviewable decision.

(2) The application must be made—

(a) if the reviewable decision relates to a decision mentioned in section 219BA(1)(b)—within 28 days after the day on which notice of the decision or finding was given; or

(b) otherwise—within 28 days after the day on which the reviewable decision was announced.

(3) The parties to a proceeding are—

(a) the prescribed person; and

(b) the person who made the reviewable decision; and

(c) if the application is made by the commission—the commission.

219H Conduct of proceedings relating to reviewable decisions

(1) A review of a reviewable decision is by way of rehearing on the evidence (***original evidence***) given in the proceeding before the original decision-maker (***original proceeding***).

(2) However, QCAT may give leave to adduce fresh, additional or substituted evidence (***new evidence***) if satisfied—

(a) the person seeking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence at the original proceeding; or

(b) in the special circumstances of the case, it would be unfair not to allow the person to adduce the new evidence.

(3) If QCAT gives leave under subsection (2), the review is—

(a) by way of rehearing on the original evidence; and

(b) on the new evidence adduced.

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Division 4 QCAT's powers

219I Powers for corrupt conduct

(1) This section applies to a prescribed person defined in section 50(3), definition *prescribed person*, paragraph (a)(i) or (b)(i).

(2) Subsection (3) applies if—

(a) the prescribed person is a person mentioned in section 50(3), definition *prescribed person*, paragraph (a)(i); and

(b) QCAT finds that corrupt conduct is proved against the person.

(3) QCAT may make any order the commissioner of police could make under the *Police Service Administration Act 1990*, part 7, division 5, other than section 7.41, if a ground for disciplinary action had been proved against the prescribed person under part 7, division 4 of that Act.

(4) QCAT may, on a finding of corrupt conduct being proved against a prescribed person mentioned in section 50(3), definition *prescribed person*, paragraph (b)(i), order that the prescribed person—

(a) be dismissed; or

(b) be reduced in rank or salary level; or

(c) forfeit, or have deferred, a salary increment or increase to which the prescribed person would ordinarily be entitled; or

(d) be fined a stated amount that is to be deducted from—

(i) the person's periodic salary payment in an amount not more than an amount equal to the value of 2 penalty units per payment; or

(ii) the person's monetary entitlements, other than superannuation entitlements, on termination of the person's service.

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(5) In deciding the amount for subsection (4)(d)(ii), QCAT may have regard to the value of any gain to the prescribed person from the person's corrupt conduct.

219IA QCAT powers for prescribed persons whose employment or appointment ends

(1) This section applies to a prescribed person defined in section 50(3), definition *prescribed person*, paragraph (a)(ii) or (b)(ii).

(2) QCAT may, on a finding of corrupt conduct being proved against a prescribed person, make a disciplinary declaration and may not take any other disciplinary action.

(3) QCAT may only make a disciplinary declaration if the order QCAT would have made under section 219I(4) if the prescribed person's employment or appointment had not ended would have been—

(a) if the prescribed person is a former officer, that the prescribed person—

(i) be dismissed; or

(ii) be suspended from duty without pay for at least 3 months; or

(iii) be placed on probation; or

(iv) be demoted, whether permanently or for a particular period; or

(b) otherwise, that the prescribed person—

(i) be dismissed; or

(ii) be reduced in rank.

(4) A disciplinary declaration made under this section does not affect the way in which the prescribed person's employment or appointment ended or the benefits, rights and liabilities arising because the employment ended.

(5) In this section—

disciplinary declaration means a declaration of—

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(a) the disciplinary finding against the prescribed person; and

(b) the order QCAT would have made under section 219I(1) if the prescribed person's employment or appointment had not ended.

219J Additional power for particular reviewable decisions

(1) This section applies if, after reviewing a reviewable decision mentioned in section 219BA(1)(a) or (b), QCAT—

(a) finds that the following has been proved against the prescribed person—

(i) if the prescribed person is a former officer—a ground for disciplinary action under the *Police Service Administration Act 1990*;

(ii) otherwise—corruption; and

(b) sets aside the decision and substitutes another decision.

(2) QCAT may impose on the person any discipline provided for on a finding mentioned in subsection (1)(a), even though the original decision-maker's power to impose the discipline may have been restricted.

(3) Subject to subsection (4), if the reviewable decision involved the making of, or failure to make, a disciplinary declaration, the discipline that QCAT may impose under subsection (2) includes making a disciplinary declaration.

(4) No action may be taken to enforce a penalty or fine mentioned in a disciplinary declaration made under subsection (2).

(5) A disciplinary declaration may only be made under subsection (2) if the order QCAT would have made under subsection (2), if the prescribed person's employment or appointment had not ended, would have been that the prescribed person—

(a) if the prescribed person is a former officer—

(i) be dismissed; or

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(ii) be suspended from duty without pay for at least 3 months; or

(iii) be placed on probation; or

(iv) be demoted, whether permanently or for a particular period; or

(b) otherwise—

(i) be dismissed; or

(ii) be reduced in rank.

(6) A disciplinary declaration made under subsection (2) does not affect the way in which the prescribed person's employment or appointment ended or the benefits, rights and liabilities arising because the employment ended.

(7) In this section—

disciplinary declaration means—

(a) for a reviewable decision, a disciplinary declaration as defined under section 219BA(2); or

(b) for a decision substituted by QCAT on review, a declaration of—

(i) the disciplinary finding against the prescribed person; and

(ii) the discipline that would have been imposed by QCAT under subsection (2) if the prescribed person's employment or appointment had not ended.

219JA Requirement to return particular matters to commissioner of police

(1) This section applies in relation to a reviewable decision mentioned in section 219BA(1)(c) if, after reviewing the decision, QCAT sets aside the decision.

(2) QCAT must return the matter to the commissioner of police with—

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(a) a direction to give the former officer a written notice under the *Police Service Administration Act 1990*, section 7A.3(1)(a) or to hold a disciplinary hearing under section 7A.3(1)(b) of that Act; and

(b) any other direction QCAT considers appropriate.

(3) If QCAT makes an order under subsection (2), the commissioner of police must ensure a written notice under the *Police Service Administration Act 1990*, section 7A.3(1)(a), or a notice mentioned in section 7A.3(1)(b) of that Act, is given to the former officer within 6 months of the making of the order by QCAT.

(4) Subsection (3) applies despite section 7A.1(4) of that Act.

219K QCAT may refer matter for investigation

(1) QCAT may, by order, refer a matter before it for investigation, or further investigation, with a view to the taking of a criminal proceeding or for another purpose.

(2) The matter may be referred to—

(a) the commission; or

(b) the public official for the unit of public administration in which the prescribed person is employed.

(3) QCAT may adjourn its proceeding until the investigations are completed.

219L QCAT's power to suspend orders

(1) This section applies if—

(a) QCAT makes an order under section 219I; or

(b) QCAT, by order under section 219J, imposes a discipline mentioned in section 219J(2); or

(c) discipline is imposed on a prescribed person by a decision-maker of a reviewable decision and an application is made to QCAT for a review of the reviewable decision.

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(2) QCAT may suspend the order or discipline if it considers it is appropriate to do so in the circumstances.

(3) QCAT must state an operational period for the period of suspension and the suspension may be given on conditions.

(4) If the person who is subject to the order or discipline is found to have committed an act of corruption or to have contravened a condition during the operational period—

(a) for a person mentioned in section 50(3), definition *prescribed person*, paragraph (a)(i)—QCAT may, on an application by the commission or the commissioner of police and after hearing any submission made by the prescribed person—

(i) revoke the suspension and give effect to the order or discipline; or

(ii) continue the suspension and vary or cancel any conditions to which it is subject; or

(b) for another prescribed person—on the finding—

(i) the suspension is revoked; and

(ii) the order or discipline has immediate effect.

(5) If the person is not found to have committed an act of corruption or to have contravened a condition during the operational period, the order or discipline is taken to have been discharged or satisfied.

(6) Subsection (4) does not limit the person's liability to the making of a further order for the further act of corruption.

(7) This section does not apply to a disciplinary declaration.

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Division 5 Appeals

219M Appeal from QCAT exercising original jurisdiction

(1) The following persons may appeal under the QCAT Act, chapter 2, part 8 against a decision of QCAT exercising original jurisdiction under this part—

(a) the prescribed person in relation to whom the decision was made;

(b) the public official for the unit of public administration in which the prescribed person is employed;

(c) the commission, whether or not the commission was a party to the proceeding before QCAT.

(2) Subsections (3) to (7) apply for the QCAT Act, chapter 2, part 8.

(3) A reference to a party to a proceeding includes a reference to a person who may appeal under subsection (1).

(4) A reference to a decision, if the decision involves the making of a disciplinary declaration, includes the disciplinary declaration.

Note—

The decision may also involve a failure to make a disciplinary decision.

(5) If a decision set aside involved the making of, or a failure to make, a disciplinary declaration, the power to substitute another decision involving disciplinary action is limited to the making of, or the making of another, disciplinary declaration and does not include the taking of any other disciplinary action.

(6) A disciplinary declaration may only be made if the order the appeal tribunal or the Court of Appeal would have made under the QCAT Act, chapter 2, part 8, if the prescribed person's employment or appointment had not ended would have been that the prescribed person—

(a) be dismissed; or

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(b) be reduced in rank.

(7) A disciplinary declaration made under subsection (5) does not affect the way in which the prescribed person's employment or appointment ended or the benefits, rights and liabilities arising because the employment ended.

Part 3 Review of particular police disciplinary decisions

219N Definitions for part

In this part—

aggrieved person, for a reviewable decision, means a person stated in schedule 1, column 2 opposite the decision.

disciplinary sanction see the *Police Service Administration Act 1990*, section 7.34.

ground for disciplinary action see the *Police Service Administration Act 1990*, section 7.3.

reviewable decision see section 219O.

subject officer, in relation to a reviewable decision, means the subject officer under the *Police Service Administration Act 1990*, part 7 to whom the decision relates.

219O Reviewable decisions

(1) A ***reviewable decision*** is a decision made under the *Police Service Administration Act 1990* that is mentioned in schedule 1, column 1.

(2) However, a decision under part 7, division 4 of that Act that a disciplinary charge, or another ground for disciplinary action, has been proved in relation to an officer is a ***reviewable decision*** only if the officer is entitled to be given a QCAT information notice for the decision under section 7.27(4) or 7.31(1) of that Act.

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(3) In this section—

disciplinary charge see the *Police Service Administration Act 1990*, section 7.25(a).

219P Applications for review

(1) An aggrieved person for a reviewable decision may apply to QCAT, as provided under subsection (2), for a review of the reviewable decision.

(2) The application must be made—

(a) within the following period—

(i) for a decision not to start a disciplinary proceeding under the *Police Service Administration Act 1990*, part 7 against an officer in relation to whom a complaint mentioned in section 7.2 of that Act has been made—28 days after the aggrieved person becomes aware of the decision;

(ii) otherwise—28 days after the aggrieved person is given a QCAT information notice for the decision; and

(b) as otherwise provided under the QCAT Act.

Note—

The QCAT Act, section 22(3) enables QCAT to stay the operation of a reviewable decision, either on application by a person or on its own initiative.

(3) If the subject officer is the applicant, the subject officer must, within the period mentioned in the QCAT Act, section 37(2), give the commission a copy of the application.

(4) Subsection (3) does not limit the QCAT Act, section 37(2).

(5) In this section—

officer see the *Police Service Administration Act 1990*, section 7.3.

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219Q QCAT to decide review on evidence before decision maker

(1) A review of a reviewable decision is by way of rehearing on the evidence (***original evidence***) given in the proceeding before the original decision-maker (***original proceeding***).

(2) However, QCAT may give leave to adduce fresh, additional or substituted evidence (***new evidence***) if satisfied—

(a) the person seeking to adduce the new evidence did not know, or could not reasonably be expected to have known, of its existence at the original proceeding; or

(b) in the special circumstances of the case, it would be unfair not to allow the person to adduce the new evidence.

(3) If QCAT gives leave under subsection (2), the review is—

(a) by way of rehearing on the original evidence; and

(b) on the new evidence adduced.

219R Parties to review

(1) The parties to a review are—

(a) the applicant for the review; and

(b) the person who made the reviewable decision; and

(c) if the commission is the applicant for the review—the subject officer to whom the decision relates.

(2) If the applicant for the review is the subject officer, the commission may elect to become a party to the review.

(3) Notice of an election under subsection (2) must be given—

(a) to QCAT, the subject officer and the person who made the reviewable decision; and

(b) within the later of the following periods to end—

(i) the period mentioned in section 219P(2)(a);

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(ii) 14 days after the commission is given notice of the application for review under section 219P(3).

219S Additional power for substituted decisions

(1) This section applies if, after reviewing the reviewable decision, QCAT—

(a) finds a ground for disciplinary action has been proved against the subject officer; and

(b) sets aside the decision and substitutes another decision.

(2) QCAT—

(a) has the same powers as the commissioner of police under the *Police Service Administration Act 1990*, part 7, division 5; and

(b) may impose any disciplinary sanction on the subject officer under that part, even if the person who made the reviewable decision would not be authorised under that part to impose the disciplinary sanction.

219T Requirement to return particular matters to commissioner of police

(1) This section applies if—

(a) the reviewable decision is a decision not to start a disciplinary proceeding under the *Police Service Administration Act 1990*, part 7 against an officer in relation to whom a complaint mentioned in section 7.2 of that Act has been made; and

(b) after reviewing the decision, QCAT sets aside the decision.

(2) QCAT must return the matter to the commissioner of police with—

(a) a direction to start a disciplinary proceeding against the subject officer under part 7 of that Act; and

(b) any other direction QCAT considers appropriate.

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(3) If QCAT makes an order under subsection (2), the commissioner of police must ensure a disciplinary proceeding is started against the officer within 6 months of the making of the order by QCAT.

(4) Subsection (3) applies despite section 7.12 of that Act.

219U QCAT may refer matter for investigation

(1) QCAT may, by order, refer the matter before it for investigation, or further investigation, with a view to the taking of a criminal proceeding or for another purpose.

(2) The matter may be referred to—

(a) the commission; or

(b) the commissioner of police.

(3) QCAT may adjourn the proceeding until the investigations are completed.

Chapter 6 Administration

Part 1 Crime and Corruption Commission

Division 1 Establishment of Crime and Corruption Commission

220 Establishment

The bodies corporate known as the Criminal Justice Commission (established under the repealed *Criminal Justice Act 1989*) and the Queensland Crime Commission (established under the repealed *Crime Commission Act 1997*)

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are merged into a single body corporate and continued in existence under this Act under the name 'Crime and Corruption Commission'.

221 Commission has common seal etc.

(1) The Crime and Corruption Commission, as established under this Act—

(a) has a common seal; and

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

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

221A Commission is a statutory body

The commission is a statutory body under the *Financial Accountability Act 2009*.

221B Commission not public sector entity

The commission is prescribed not to be a public sector entity for the *Public Sector Act 2022*, section 8(2)(s).

221C Commission to comply with obligations relating to equity, diversity, respect and inclusion

The commission is prescribed for the *Public Sector Act 2022*, section 25, definition *prescribed entity*, paragraph (c).

221D Application of provisions of Public Sector Act 2022

(1) A regulation may—

(a) apply particular provisions of the *Public Sector Act 2022*, including, for example, particular directives made

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under the *Public Sector Act 2022*, to the commission and commission officers; and

(b) provide for the way in which the provisions mentioned in paragraph (a) are to apply, including, for example, that they apply with or without change.

(2) Before recommending to the Governor in Council the making of a regulation under subsection (1), the Minister must consult with the chief executive officer about the proposed regulation.

(3) If a regulation is made under subsection (1)—

(a) the *Public Sector Act 2022* applies to the commission and commission officers only to the extent provided for under the regulation; and

(b) the *Public Sector Act 2022* applies in the way mentioned in paragraph (a) with necessary changes.

(4) Also, a regulation may prescribe anything necessary or convenient to be prescribed—

(a) to enable a regulation under subsection (1) to be made; or

(b) to carry out or give effect to a regulation made under subsection (1); or

(c) because of the making of a regulation under subsection (1), including, for example, the portability of employment rights and entitlements.

222 Excluded matter for Corporations Act

The commission is declared to be an excluded matter for the Corporations Act, section 5F, in relation to the following provisions of the Corporations Act—

(a) parts 2D.1 and 2D.6;

(b) chapters 2K and 2L;

(c) parts 5.7, 5.7B, 5.9 and 5B.2.

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Division 2 Commissioners and chief executive officer

Subdivision 1AA Preliminary

222A Meaning of *officer* for div 2

In this division—

officer means a commissioner or the chief executive officer.

Subdivision 1 Membership and appointment

223 Membership of the commission

The commission is to consist of the following commissioners—

(a) a full-time commissioner who is the chairperson;

(b) a part-time commissioner who is the deputy chairperson;

(c) 3 part-time commissioners who are ordinary commissioners.

223A Chief executive officer

The commission must have a chief executive officer.

224 Qualifications for appointment—chairperson and deputy chairperson

A person is qualified for appointment as the chairperson or deputy chairperson if the person has served as, or is qualified for appointment as, a judge of—

(a) the Supreme Court of Queensland; or

(b) the Supreme Court of another State; or

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(c) the High Court of Australia; or

(d) the Federal Court of Australia.

225 Qualifications for appointment—chief executive officer and ordinary commissioners

(1) A person is qualified for appointment as the chief executive officer if the person has qualifications, experience or standing appropriate to perform the functions of the chief executive officer.

(2) A person is qualified for appointment as an ordinary commissioner if the person has qualifications, experience or standing appropriate to assist the commission to perform its functions.

226 Disqualification as commissioner or chief executive officer

(1) An ineligible person or the chief executive officer can not be appointed as, or continue as, a commissioner.

(2) An ineligible person can not be appointed as, or continue as, the chief executive officer.

227 Advertising for appointment

(1) The Minister must advertise nationally for applications from suitably qualified persons to be considered for selection as the chairperson.

(2) The Minister must advertise throughout the State for applications from suitably qualified persons to be considered for selection as the deputy chairperson, the chief executive officer or an ordinary commissioner.

(3) Subsections (1) and (2) do not apply to the reappointment of a person as a commissioner or the chief executive officer.

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228 Prior consultation and bipartisan support for appointments

The Minister may nominate a person for appointment to the office of chairperson, deputy chairperson, ordinary commissioner or the chief executive officer only if—

(a) the Minister has consulted with—

(i) the parliamentary committee; and

(ii) except for an appointment as chairperson—the chairperson; and

(b) the nomination is made with the bipartisan support of the parliamentary committee.

229 Appointment of officers

(1) Officers are to be appointed by the Governor in Council.

(2) Officers are appointed under this Act and not the *Public Sector Act 2022*.

Subdivision 2 Other provisions about appointment

231 Duration of appointment

(1) An officer holds office for the term, not longer than 5 years, stated in the instrument of the officer's appointment.

(2) A person holding office as a commissioner or the chief executive officer may be re-appointed to the office for a further term or terms as long as—

(a) no term of appointment is longer than 5 years; and

(b) the person does not hold that office for more than 10 years in total.

(3) Subsection (2)(b) has effect despite the *Acts Interpretation Act 1954*, section 25(1)(c).

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(4) Section 228 applies to the appointment of an officer for a further term under this section.

232 Terms of appointment

(1) An officer is to be paid the remuneration and allowances decided by the Governor in Council.

(2) To the extent that an officer's terms and conditions are not provided for by this Act, the officer holds office on the terms and conditions decided by the Governor in Council.

Note—

See subdivision 3 for the chairperson's pension entitlements.

233 Preservation of rights

(1) This section applies if—

(a) a person is appointed as the chairperson or chief executive officer; and

(b) the person resigns the person's role as a public service officer in order to accept the appointment.

(2) The person retains and is entitled to all rights that have accrued to the person because of the person's employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as the chairperson or chief executive officer were a continuation of service as a public service officer.

(3) At the end of the person's term of office or on resignation—

(a) the person is entitled to be appointed to an office in the public service at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as the chairperson or chief executive officer; and

(b) the person's service as the chairperson or chief executive officer is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

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234 Leave of absence

(1) The commission may grant leave to an officer in accordance with entitlements available to the officer under the officer's conditions of office.

(2) However, only the Minister may grant extended leave to an officer.

(3) In this section—

extended leave means—

(a) for the chairperson or chief executive officer—leave of more than 10 business days; or

(b) for the deputy chairperson or an ordinary commissioner—leave of more than 20 business days.

235 Resignation

An officer may resign by signed notice given to the Minister.

236 Termination of appointment

(1) The Governor in Council may terminate an officer's appointment if the officer becomes incapable of satisfactorily performing the duties of office.

(2) The Governor in Council may terminate a commissioner's appointment if the commissioner is absent from 3 consecutive meetings of the commission without the commission's prior leave and without reasonable excuse.

(3) The Governor in Council must terminate the chairperson's or chief executive officer's appointment if the chairperson or chief executive officer engages in paid employment outside the chairperson's or chief executive officer's duties of office without the Minister's approval.

(4) The Governor may terminate an officer's appointment if—

(a) a recommendation to the Legislative Assembly to terminate the appointment is made with the bipartisan support of the parliamentary committee; and

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(b) the Legislative Assembly, by resolution, approves the termination of the appointment.

(5) The office of a commissioner is vacated if the commissioner becomes an ineligible person or the chief executive officer.

(6) The office of the chief executive officer is vacated if the chief executive officer becomes an ineligible person.

237 Acting appointments

(1) The Governor in Council may appoint a qualified person to act in the office of chairperson, deputy chairperson, ordinary commissioner or the chief executive officer for all or part of a period in which—

(a) the office is vacant; or

(b) the person holding the office is absent from duty or from the State or, for another reason, can not perform the duties of the office.

(2) A person may not be appointed to act in the office for—

(a) a continuous period of more than 3 months; or

(b) a period that, with the periods of other appointments of the person to act in the office, form a continuous period of more than 3 months.

(3) However, subsection (2) does not apply if the Minister recommends the person for the appointment with the bipartisan support of the parliamentary committee.

(4) The Minister must consult with the chairperson before recommending the person for the appointment.

(5) Sections 227 and 228 do not apply to the appointment.

(6) In this section—

qualified, in relation to an appointment to act in an office, means qualified for appointment to the office.

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238 Disclosure of interests

(1) The commission must keep a register of each officer's pecuniary interests and personal or political associations.

(2) Each officer must give to the commission and the Minister—

(a) as soon as practicable after the officer's appointment—a written summary of the officer's pecuniary interests and personal or political associations at the time of the officer's appointment; and

(b) within 30 days after any substantial change in the officer's pecuniary interests or personal or political associations—notice of the change and an updated written summary of the officer's pecuniary interests and personal or political associations.

(3) The register kept under subsection (1) must be updated at least once during each 12 month period of an officer's term of office.

(4) In this section—

personal or political association, of an officer, means a personal or political association that might influence the officer in the discharge of the officer's duties.

Subdivision 3 Chairperson's pension entitlements

238A Definitions for sdiv 3

In this subdivision—

former chairperson means a person who has held office as the chairperson.

judge means a Supreme Court judge or District Court judge.

Judges Pensions Act means the *Judges (Pensions and Long Leave) Act 1957*.

prescribed salary means the total of the following payable to a Supreme Court judge, other than the Chief Justice or

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President of the Court of Appeal, under the *Judicial Remuneration Act 2007*—

(a) the annual rate of salary;

(b) the annual rate of the jurisprudential allowance and expense-of-office allowance.

238B Judges pension scheme applies to chairperson

The Judges Pensions Act, other than sections 15 and 15A, applies to a former chairperson as if a reference to a judge in that Act included a reference to a former chairperson, but with—

(a) the changes set out in this subdivision; and

(b) other changes necessary to enable that Act to apply to a former chairperson.

238C Period for which person holds office as chairperson

For applying the Judges Pensions Act to a former chairperson under this subdivision, the following are to be counted as a period for which a person held office as the chairperson—

(a) any period, before the person's appointment as the chairperson, that would be counted as service as a judge for the purposes of the Judges Pensions Act;

(b) any period, before the person's appointment as the chairperson, for which the person acted as the chairperson.

238D Pension at end of appointment generally

(1) The Judges Pensions Act, sections 3 and 4 apply to a former chairperson—

(a) if the former chairperson held office as the chairperson for at least 5 years; and

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(b) regardless of the former chairperson's age when the former chairperson ceased to hold the office.

Note—

See, however, section 238F for when a pension becomes payable.

(2) However, the annual pension to which the former chairperson is entitled is an annual pension—

(a) at a rate equal to 6% of the prescribed salary for each year for which the former chairperson held office as the chairperson; but

(b) up to a maximum of 60% of the prescribed salary.

238E Pension if appointment ends because of ill health

(1) The Judges Pensions Act, section 5 applies to a former chairperson if—

(a) the former chairperson resigned the office as the chairperson and both of the following apply—

(i) a specialist health practitioner certifies to the Minister that the former chairperson's resignation is because of permanent disability or infirmity;

(ii) the Minister is satisfied the former chairperson's resignation is because of permanent disability or infirmity; or

(b) the former chairperson's appointment as chairperson was terminated under section 236(1) because of a proved incapacity to perform the duties of office.

(2) However, the annual pension to which the former chairperson is entitled is an annual pension—

(a) at a rate equal to 6% of the prescribed salary for each year of the period consisting of—

(i) the period for which the former chairperson held office as the chairperson; and

(ii) the period for which the former chairperson could have held office as the chairperson under the

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former chairperson's terms and conditions of appointment (including under an option to renew the appointment for a further term) if the former chairperson had not resigned, or had the appointment as chairperson terminated, as mentioned in subsection (1); but

Example for paragraph (a)—

A person is appointed as the chairperson for a term of 3 years with an option to renew the appointment for a further term of 2 years. The person resigns from the office after $2^1/_2$ years because of a permanent disability or infirmity. The annual pension under paragraph (a) is 30% of the prescribed salary, which is worked out by applying a rate of 6% of the prescribed salary for each year of the 5-year period (being the total of the $2^1/_2$ years the person held office as the chairperson and the $2^1/_2$ years the person could have held the office as the chairperson if the person had not resigned because of a permanent disability or infirmity).

(b) up to a maximum of 60% of the prescribed salary.

(3) Also, a former chairperson is entitled to an annual pension as set out in this section only if the period mentioned in subsection (2)(a) is at least 5 years.

(4) In this section—

specialist health practitioner see the Health Practitioner Regulation National Law (Queensland), section 5.

238F When chairperson's pension becomes payable

(1) This section applies if a former chairperson is entitled to a pension under the Judges Pensions Act, as applying under this subdivision.

(2) The pension does not become payable until the former chairperson reaches 65 years of age.

238G Pension of spouse and children on death of chairperson

(1) The Judges Pensions Act, sections 7 to 8A apply to a former chairperson if the former chairperson is entitled to a pension

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under the Judges Pensions Act, as applying under this subdivision.

(2) The Judges Pensions Act, sections 7 and 8A apply to a spouse or child of a former chairperson who dies before the former chairperson reaches 65 years of age in the way the sections apply to a spouse or child of a judge who dies before retirement.

(3) However, if the spouse or child is entitled to a pension under the Judges Pensions Act, section 7 or 8A, the pension is not payable to the spouse or child until the time when the former chairperson would have reached 65 years of age.

(4) The Judges Pensions Act, sections 8 and 8A apply to a spouse or child of a former chairperson who dies after the former chairperson reached 65 years of age in the way the sections apply to a spouse or child of a retired judge.

(5) In this section—

child includes adopted child.

238H What happens if former chairperson is removed from office as a judge

The Judges Pensions Act, section 16 applies to a person who is a former chairperson if the person was a judge removed from office as mentioned in the section after the person held office as chairperson.

238I What happens if former chairperson's appointment is terminated under s 236(3)

This subdivision does not apply to a former chairperson if the former chairperson's appointment is terminated under section 236(4) unless the Governor in Council decides otherwise.

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238J Former chairperson entitled to other pension

A pension is not payable, or stops being payable, under the Judges Pensions Act in relation to a former chairperson in the capacity of a former chairperson if a pension is payable under that Act in relation to the former chairperson in the capacity of—

(a) a judge; or

(b) a member of the Land Court, the industrial court, or the industrial commission.

Note—

See the Judges Pensions Act, sections 2AB and 2BA for the pension entitlements of persons who have been appointed as the chairperson.

238K Provision about agreements and court orders under Family Law Act 1975 (Cwlth)

(1) The Judges Pensions Act, part 2, division 2 applies to a former chairperson as follows—

(a) the reference to a retired judge in section 9 of that Act, definition *entitled former spouse* is taken to be a reference to a former chairperson;

(b) information allowed to be given under section 10 of that Act includes information about a benefit for a person who holds office as the chairperson;

(c) section 11 and section 12 of that Act apply whether the person is the chairperson or a former chairperson at the operative time mentioned in the section;

(d) section 13 of that Act applies in relation to a person who is the chairperson at the operative time mentioned in the section and dies while holding office as the chairperson.

(2) However, if a person who is the chairperson at the operative time mentioned in the Judges Pensions Act, section 13 dies before reaching 65 years of age, the pension payable to the person's entitled former spouse under the section does not become payable until the time when the person would have reached 65 years of age.

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Division 2A Sessional commissioners

239 Appointment of sessional commissioners

The chairperson may appoint as many sessional commissioners as are required to help the chairperson to perform the commission's functions or exercise the commission's powers by—

(a) conducting a hearing for a crime investigation, corruption investigation or the intelligence function; or

(b) examining 1 or more witnesses, and reporting on the examination to the chairperson, for a crime investigation, corruption investigation or the intelligence function; or

(c) conducting a specific investigation relevant to the commission's functions.

240 Qualification for appointment as a sessional commissioner

A person is qualified for appointment as a sessional commissioner only if the person has served as, or is qualified for appointment as, a judge of—

(a) the Supreme Court of Queensland; or

(b) the Supreme Court of another State; or

(c) the High Court of Australia; or

(d) the Federal Court of Australia.

241 Disqualification as a sessional commissioner

An ineligible person or the chief executive officer can not be appointed as, or continue as, a sessional commissioner.

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242 Terms of appointment

A sessional commissioner is appointed on a sessional basis and holds office for the period, and on the terms and conditions, stated in the commissioner's instrument of appointment.

243 Resignation

A sessional commissioner may resign by signed notice given to the chairperson.

Division 3 Senior officers

Subdivision 1 Appointment

245 Senior officers

(1) The commission may employ the senior officers necessary to enable the commission to perform its functions.

(2) Senior officers are to be employed under this Act and not under the *Public Sector Act 2022*.

(3) The commission must employ—

(a) a senior officer who is responsible to the chairperson for the proper performance of the commission's crime functions (the ***senior executive officer (crime)***); and

(b) a senior officer who is responsible to the chairperson for the proper performance of the commission's corruption functions (the ***senior executive officer (corruption)***).

(4) In the performance of the commission's functions or exercise of the commission's powers, senior officers are subject to the direction and control of the chairperson.

(5) In this section—

senior officer means a person who, in the chief executive officer's opinion, is performing duties that would, if the

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person were a public service officer, be duties of a senior executive.

246 Disqualification as a senior officer

An ineligible person can not be appointed as, or continue as, a senior officer.

Subdivision 2 Other provisions about appointment

247 Duration of appointment

(1) A senior officer holds office for the term, not longer than 5 years, stated in the person's contract of employment.

(2) A person appointed as a senior officer may be appointed for a further term if the commission considers that—

(a) the person's performance as a senior officer has been of the highest standard; and

(b) the person is likely to continue to contribute at a high standard to the commission's performance.

(3) However, subject to subsection (3A), a senior officer must not hold office in the commission as a senior officer for more than 10 years in total.

Example—

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

(3A) A senior officer who has held office in the commission as a senior officer for 10 years in total may be reappointed for a further term if the reappointment—

(a) is necessary for the efficient operation of the commission; and

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(b) does not result in the person holding office in the commission as a senior officer for more than 15 years in total.

Example—

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

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

(3C) For subsections (3) to (3B), any time a person held office in the commission as an assistant commissioner under this Act before the commencement of this subsection is taken to be time held by the person in office in the commission as a senior officer.

(4) Subsections (3) to (3C) have effect despite the *Acts Interpretation Act 1954*, section 25(1)(c).

(5) In this section—

senior officer means a senior officer whose principal duties relate directly to the performance of the commission's prevention, crime, corruption, research or intelligence functions or the giving of legal advice to the commission, but does not include a senior officer whose duties support the commission's functions.

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

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

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247A Notice to parliamentary committee

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

(2) The notice must state the following—

(a) the name of the person appointed for the further term;

(b) the position the person holds in the commission;

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

(d) the period of the further term.

248 Basis of employment for senior officers

(1) Each person appointed as a senior officer must enter into a written contract of employment with the commission.

(2) The conditions of the person's contract must be approved by the Minister.

(3) The person's conditions of employment are governed by this Act and the contract.

(4) The contract of employment must state—

(a) subject to section 247, the term, not longer than 5 years, of the person's employment; and

(b) the person's duties; and

(c) that the person must meet any performance standards set by the chief executive officer; and

(d) the remuneration to which the person is entitled; and

(e) that the person may resign by signed notice of resignation given to the chief executive officer at least 1 month before the notice is to take effect; and

(f) that the person's appointment and contract of employment may be terminated by the chief executive officer by notice signed by the chief executive officer

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and given to the person at least 1 month before it is to take effect.

249 Preservation of rights

(1) This section applies if—

(a) a person is appointed as a senior officer; and

(b) the person resigns the person's role as a public service officer in order to accept the appointment.

(2) The person retains and is entitled to all rights that have accrued to the person because of the person's employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as a senior officer were a continuation of service as a public service officer.

(3) At the end of the person's term of office or on resignation—

(a) the person is entitled to be appointed to an office in the public service at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as a senior officer; and

(b) the person's service as a senior officer is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

Division 4 Roles of commission, chairperson and chief executive officer

251 Role of commission

(1) The commission is responsible for providing strategic leadership and direction for the performance of the commission's functions, and the exercise of the commission's powers, by the chairperson, chief executive officer and commission staff.

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(2) The commission is also responsible for—

(a) the preparation of the commission's strategic and business plans; and

(b) the establishment of internal management committees and their charters; and

(c) the preparation of the internal audit charter prepared for the *Financial Accountability Act 2009*.

(3) If asked by the chairperson, the commission may help the chairperson in the performance of the commission's functions or exercise of the commission's powers delegated to the chairperson under section 269.

252 Role of chairperson

(1) The chairperson—

(a) is the chair of the commission; and

(b) is responsible for the proper performance of the commission's functions delegated to the chairperson under section 269.

(2) The chairperson is to—

(a) perform the functions, and exercise the powers, of the commission delegated to the chairperson under section 269; and

(b) perform the other functions, and exercise the other powers, conferred on the chairperson under this Act or another Act.

(3) The chairperson is to report to the commission on the performance of the commission's functions, but is not subject to the direction of the commission in the performance of a function or exercise of a power in an investigation, hearing, operation or other proceeding under this Act or another Act.

(4) Anything done in the commission's name by the chairperson or the chairperson's delegate is taken to have been done by the commission.

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253 Role of chief executive officer

(1) The chief executive officer is responsible to the commission for the administration of the commission.

(2) The chief executive officer is to—

(a) perform the functions, and exercise the powers, of the commission delegated to the chief executive officer under section 269; and

(b) perform the functions and exercise the powers delegated to the chief executive officer by the chairperson; and

(c) perform the other functions, and exercise the other powers, conferred on the chief executive officer under this Act.

(3) In performing a function or exercising a power under this Act, the chief executive officer is subject to the direction of—

(a) for a function or power delegated to the chief executive officer by the chairperson—the chairperson; or

(b) otherwise—the commission.

(4) The chief executive is to report to the commission on—

(a) all matters relating to the administration of the commission; and

(b) the performance of the functions and exercise of the powers mentioned in subsection (2)(a) and (c).

(5) Anything done in the commission's name by the chief executive officer or chief executive officer's delegate is taken to have been done by the commission.

Division 5 Commission staff and agents

254 Commission staff

(1) The commission may employ the staff necessary to enable the commission to perform its functions.

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(2) The staff are to be employed under this Act and not under the *Public Sector Act 2022*.

(3) The staff are to be paid the remuneration and allowances decided by the Minister.

(4) Staff employed at or above a level decided by the commission must be employed under a written contract of employment with the commission.

(5) Staff employed under a written contract of employment are not subject to any industrial instrument under the *Industrial Relations Act 2016* or any determination or rule of an industrial tribunal.

(6) The staff are subject to the direction and control of the chief executive officer.

255 Secondment of officers

(1) The chief executive officer may arrange with the chief executive of a department, or with another unit of public administration, for the services of officers or employees of the department or other unit to be made available (***seconded***) to the commission.

(2) The arrangement is not effective unless it has been approved by—

(a) for a secondment of an officer or employee of the parliamentary service—the Speaker; or

(b) for a secondment of a member of the police service—the Minister and the Minister administering the *Police Service Administration Act 1990*; or

(c) for a secondment of another officer or employee—

(i) if the secondment is to a position at a level equivalent to or above the level of a senior officer under the *Public Sector Act 2022*—the Minister and the Minister responsible for the unit of public administration from which the person is to be seconded; or

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(ii) if the secondment is to a position at another level—the chief executive of the unit of public administration from which the person is to be seconded.

(3) An officer or employee seconded to the commission under this section is subject to the direction and control of the chief executive officer.

(4) However, if police officers are seconded to the commission, their efficient deployment is to be the joint responsibility of the chief executive officer and the most senior police officer seconded to the commission.

(5) Without limiting section 174(2), a police officer seconded to the commission under this section continues to be a police officer for all purposes and to have the functions and powers of a police officer without being limited to the performance of the commission's functions.

Example for subsection (5)—

A police officer seconded to the commission may exercise the powers of a police officer under the *Police Powers and Responsibilities Act 2000* for an investigation of alleged corruption involving a relevant offence as defined in section 323 of that Act.

(6) This section does not apply to the establishment of a police task force or to police officers who are part of a police task force.

256 Engagement of agents

(1) The commission may engage suitably qualified persons to provide it with services, information or advice.

(2) A person engaged under subsection (1) is engaged on the terms and conditions decided by the commission and not under the *Public Sector Act 2022*.

257 Commission officers

(1) This section applies to commission officers who are—

(a) employed under section 254; or

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(b) seconded under section 255; or

(c) engaged under section 256.

(2) The commission may issue directions for the performance of duties by the commission officers.

(3) A person who is a member of a relevant office and who is seconded to the commission under section 255 remains a member of the office from which the person was seconded.

(4) Subsection (3) is subject to subsection (2) and section 255(4).

(5) A person mentioned in subsection (3)—

(a) is entitled to the person's existing and accruing rights as if employment as an officer of the commission were a continuation of employment in the relevant office; and

(b) continues to be required to contribute to any superannuation scheme to which the person is required to contribute as a member of the office.

258 Superannuation schemes

(1) The commission may—

(a) establish or amend superannuation schemes; or

(b) join in establishing or amending superannuation schemes; or

(c) take part in superannuation schemes.

(2) Subsection (1) does not apply to commission officers seconded under section 255 or engaged under section 256.

(3) The auditor-general must audit the schemes.

(4) Subsection (3) is subject to the *Auditor-General Act 2009*.

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Division 6 Performance accountability

259 Budget and performance

(1) For each financial year, the commission must adopt and submit to the Minister a budget not later than the day the Minister directs.

(2) The chief executive officer is responsible for developing the budget for the commission.

(3) A budget has no effect until approved by the Minister.

(4) During a financial year the commission may develop, adopt and submit to the Minister amendments to its budget.

Note—

See division 6A in relation to increasing the commission's budget in a financial year.

(5) An amendment has no effect until approved by the Minister.

(6) The commission must comply with its budget.

260 Performance

(1) The Minister has a responsibility to ensure that the commission operates to best practice standards.

(2) To help the Minister discharge that responsibility, the commission must report to the Minister, when and in the way required by the Minister, on the efficiency, effectiveness, economy and timeliness of the commission and its systems and processes, including operational processes.

(3) The report must be accompanied by any financial or other reports the Minister requires to enable the Minister to assess the efficiency, effectiveness, economy or timeliness of the commission, including, in particular, the timeliness with which the commission deals with complaints.

(4) The commission must comply with a Ministerial request under this section.

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(5) This section does not require the commission to give the Minister any details that, if given—

(a) would prejudice a current sensitive operation of, or investigation by, the commission; or

(b) may threaten—

(i) the security of a protected person; or

(ii) the integrity of the witness protection program or other witness protection activities of the commission.

Division 6A Funding proposals

260A Definitions for division

In this division—

additional funding, for a financial year, means funding from the State for the commission in addition to the allocated amount for the financial year.

allocated amount, for a financial year, means the amount of funding from the State allocated to the commission for the financial year.

funding proposal means a written request for additional funding for a financial year or 2 or more financial years.

260B Application of division

This division applies if the chief executive officer decides additional funding is needed for a financial year or 2 or more financial years.

260C Requirement for, and approval of, funding proposal

(1) The chief executive officer must—

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(a) prepare a funding proposal for the additional funding; and

(b) give the funding proposal to the relevant portfolio committee and a copy of the proposal to the Minister.

(2) Within the period stated in subsection (3), the relevant portfolio committee must review the chief executive officer's funding proposal and give the Minister a report approving 1 of the following—

(a) the chief executive officer's funding proposal;

(b) a funding proposal for a different amount or a different purpose, or both;

(c) a proposal that provides for no additional funding for the commission.

(3) For subsection (2), the period is—

(a) 20 business days after the relevant portfolio committee receives the chief executive officer's funding proposal; or

(b) if, in the circumstances, the Treasurer decides the approval of a proposal under subsection (2) is required within a shorter period and has notified the relevant portfolio committee of the shorter period and the reasons for the shorter period—the shorter period.

Example for paragraph (b)—

The Treasurer may decide the approval of a proposal under subsection (2) is required within a shorter period so the Minister's response to the proposal can be considered in the preparation of the State budget.

(4) The relevant portfolio committee must prepare the report under subsection (2) in consultation with the appropriate officers of Queensland Treasury.

(5) If the relevant portfolio committee does not give the Minister a report under subsection (2) within the period stated in subsection (3), the committee is taken to have approved the chief executive officer's funding proposal.

(6) In this section—

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Queensland Treasury means the department in which the *Financial Accountability Act 2009* is administered.

260D Tabling requirement

(1) The Minister must table the following documents in the Legislative Assembly for each proposal approved, or taken to be approved, by the relevant portfolio committee under this division—

(a) the committee's report about the proposal under section 260C(2), if any;

(b) a report setting out the Minister's response to the proposal.

(2) The documents must not be tabled in the Legislative Assembly before the Minister's response to the proposal has been implemented.

(3) The relevant portfolio committee's report about the proposal under section 260C(2) must not be tabled in the Legislative Assembly other than as provided under subsections (1) and (2).

(4) In this section—

proposal means—

(a) a funding proposal mentioned in section 260C(2)(a) or (b); or

(b) a proposal mentioned in section 260C(2)(c).

260E Relevant portfolio committee may obtain advice or information

For preparing a report under section 260C(2), the relevant portfolio committee may obtain advice or other information from any of the following persons—

(a) the Treasurer;

(b) the Minister;

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(c) the chief executive officer;

(d) an officer of the department.

260F Confidential information not required to be given

Nothing in this division requires the chief executive officer to include in a funding proposal, or the chief executive officer or any other person to give the relevant portfolio committee, any details that would, if given—

(a) prejudice a current investigation by the commission; or

(b) disclose information that is privileged or subject to a duty to maintain confidentiality under an Act or other law.

Division 7 Meetings and other business of commission

261 Conduct of business

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

262 Chief executive officer or senior executive officer may attend meetings

The chief executive officer or a senior executive officer may attend commission meetings but is not entitled to vote at a meeting.

263 Times and places of meetings

(1) Commission meetings are to be held at the times and places the chairperson decides.

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(2) However, the chairperson must call a meeting if asked, in writing, to do so by the Minister or at least the number of commissioners forming a quorum for the commission.

264 Quorum

(1) A quorum for a commission meeting is any 3 commissioners.

(2) However, if a report is to be presented to the commission for adoption, the quorum for the meeting is any 4 commissioners.

265 Presiding at meetings

(1) The chairperson is to preside at all commission meetings at which the chairperson is present.

(2) If the chairperson is absent from a commission meeting, the deputy chairperson is to preside at the meeting.

(3) If both the chairperson and deputy chairperson are absent from a commission meeting, the commissioner chosen by the commissioners present is to preside at the meeting.

266 Conduct of meetings

(1) A question at a commission meeting is decided by a majority of the votes of the commissioners present.

(2) Each commissioner present at the meeting has a vote on each question to be decided and, if the votes are equal, the person presiding also has a casting vote.

(3) A commissioner present at the meeting who abstains from voting is taken to have voted for the negative.

(4) The commission may hold meetings, or allow commissioners or officers mentioned in section 262 to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between persons taking part in the meeting.

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Example of technology allowing reasonably contemporaneous and continuous communication—

teleconferencing

(5) A person who takes part in a commission meeting under subsection (4) is taken to be present at the meeting.

(6) A resolution is validly made by the commission, even if it is not passed at a commission meeting, if—

(a) a majority of the commissioners gives written agreement to the resolution; and

(b) notice of the resolution is given under procedures approved by the commission.

267 Disclosure of interests

(1) This section applies to a commissioner (the ***interested person***) if—

(a) the interested person has a material personal interest in an issue being considered, or about to be considered, by the commission; and

(b) the interest could conflict with the proper performance of the person's duties about the consideration of the issue.

(2) As soon as practicable after the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a commission meeting.

(3) Unless the commission otherwise directs, the interested person must not—

(a) be present when the commission considers the issue; or

(b) take part in a decision of the commission about the issue.

(4) The interested person must not be present when the commission is considering whether to give a direction under subsection (3).

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(5) If there is another person who must, under subsection (2), also disclose a material personal interest in the issue, the other person must not—

(a) be present when the commission is considering whether to give a direction under subsection (3) about the interested person; or

(b) take part in making the decision about giving the direction.

(6) If—

(a) because of this section, a commissioner is not present at a commission meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and

(b) there would be a quorum if the member were present;

the remaining persons present are a quorum of the commission for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.

(7) A disclosure under subsection (2) must be recorded in the commission's minutes.

(8) A failure to disclose a material personal interest does not, of itself, invalidate a commission decision.

(9) In this section—

material personal interest means—

(a) a direct or indirect interest relating to the personal affairs of the commissioner that may have, or be seen to have, a significant influence on the conduct of the commissioner at the meeting; or

(b) a personal or political association that might influence the commissioner in the discharge of the commissioner's duties.

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268 Minutes

(1) The commission must keep—

(a) minutes of its meetings; and

(b) a record of any resolutions made under section 266(6).

(2) Subsection (3) applies if a resolution is passed at a commission meeting by a majority of the commissioners present.

(3) If asked by a commissioner who voted against the passing of the resolution, the commission must record in the minutes of the meeting that the commissioner voted against the resolution.

Division 8 Delegations and authorised commission officers

269 Delegation—commission

(1) The commission's functions and powers under this Act or another Act, other than the commission's functions under sections 234, 251(1) and (2) and 259, are delegated to—

(a) for a function or power under sections 40, 245, 254, 256, 258, 260 and 346B, the commission's financial accountability functions and the commission's public record powers—the chief executive officer; or

(b) otherwise—the chairperson.

(2) However, in issuing a direction under section 40, the chief executive officer is subject to the direction and control of the chairperson.

(3) The chief executive officer may sub-delegate a function or power of the commission delegated to the chief executive officer under subsection (1) to an appropriately qualified commission officer.

(4) However—

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(a) the commission's powers under section 254 in relation to the appointment of a person at a level equivalent to or above the level of a senior officer can not be sub-delegated by the chief executive officer; and

(b) the commission's functions and powers under section 346B, and the commission's public record powers, may only be sub-delegated to a senior executive officer.

(5) The chairperson may sub-delegate a function or power of the commission delegated to the chairperson under subsection (1) to an appropriately qualified commission officer.

(6) However, the commission's powers under the provisions mentioned in column 1 of the following table may only be sub-delegated to the commission officer or officers mentioned in column 2 of the table—

Provision	Commission officer
section 50 (Commission may apply to QCAT about corrupt conduct)	senior executive officer
section 257(2) (Commission officers)	chief executive officer

(7) In this section—

commission's financial accountability functions means the commission's functions under the *Financial Accountability Act 2009*.

commission's public record powers means the commission's powers under the *Public Records Act 2023* as the responsible public authority for a public record.

270 Delegation—chairperson

(1) The chairperson may delegate the chairperson's powers under this or another Act, other than under the *Police Powers and Responsibilities Act 2000*, section 674, to an appropriately qualified commission officer.

(2) However—

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(a) the chairperson's powers under section 82(6) may only be delegated to the senior executive officer (crime); and

(b) the chairperson's powers under section 272 may only be delegated to a senior executive officer.

271 Delegation—chief executive officer and senior executive officer

The chief executive officer or a senior executive officer may delegate the officer's powers under this Act to an appropriately qualified commission officer.

272 Authorised commission officer

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

(2) The chairperson may authorise a police officer who is a member of a police task force established under section 32 that is undertaking an investigation in cooperation with the commission to perform the functions of, exercise the powers of, or for any purpose to be, an authorised commission officer under a provision of this Act or another Act.

(3) An authorisation may be given on conditions and may impose limitations on the exercise of powers.

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

273 Commission officer's identity card

(1) The chief executive officer must give each commission officer an identity card.

(2) The identity card must—

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(a) contain a recent photo of the officer; and

(b) contain a copy of the commission officer's signature; and

(c) identify the person as a commission officer under this Act; and

(d) state an expiry date for the card.

(3) A person who stops being a commission officer must return the person's identity card to the chief executive officer as soon as possible (but within 21 days) after the person stops being a commission officer, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this Act and other purposes.

(5) In this section—

commission officer does not include—

(a) a police officer who is a member of a police task force established under section 32; or

(b) a person engaged under section 256.

Division 9 Disciplinary action for senior officers and commission staff and agents etc.

Subdivision 1 Preliminary

273A Definitions for div 9

In this division—

disciplinary action see section 273C(1).

disciplinary finding means a finding that a disciplinary ground exists.

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disciplinary ground means a ground for disciplining a relevant commission officer or former relevant commission officer under section 273B.

employment, in relation to a person, includes secondment and engagement.

former relevant commission officer see section 273D(1)(a).

relevant commission officer means—

(a) a senior officer; or

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

(c) a person engaged under section 256.

relevant employee means a public sector employee.

273AA References to relevant employees

(1) This section provides for the meaning of particular terms used in this division relating to a person who is or was a relevant employee.

(2) A reference to the person's current or previous chief executive is a reference to the chief executive of the department or other public sector entity in which the person is or was employed as a public sector employee.

(3) A reference to a relevant disciplinary law for the person is a reference to the *Public Sector Act 2022*, chapter 3, part 8, division 3.

(4) In subdivision 3—

(a) a reference to a relevant disciplinary ground for the person is a reference to a disciplinary ground under a relevant disciplinary law for the person; and

(b) a reference to a disciplinary finding in relation to a relevant disciplinary ground for the person is a reference to a finding that a relevant disciplinary ground for the person exists.

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Subdivision 2 Grounds and disciplinary action generally

273B Grounds for discipline

(1) The chief executive officer may discipline a relevant commission officer if the chief executive officer is reasonably satisfied the officer has—

(a) performed the officer's duties carelessly, incompetently or inefficiently; or

(b) been guilty of misconduct; or

(c) been absent from duty without approved leave and without reasonable excuse; or

(d) contravened, without reasonable excuse, a direction given to the officer by a responsible person; or

(e) used, without reasonable excuse, a substance to an extent that has adversely affected the competent performance of the officer's duties; or

(f) contravened, without reasonable excuse, a requirement of the chief executive officer under section 273G(1) in relation to the officer's employment by, in response to the requirement—

(i) failing to disclose a serious disciplinary action; or

(ii) giving false or misleading information; or

(g) contravened, without reasonable excuse—

(i) a provision of this Act; or

(ii) a standard of conduct applying to the officer under an approved code of conduct under the *Public Sector Ethics Act 1994*; or

(iii) a standard of conduct, if any, applying to the officer under an approved standard of practice under the *Public Sector Ethics Act 1994*.

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(2) Also, the chief executive officer may discipline a former relevant commission officer under section 273D on the same grounds mentioned in subsection (1).

(3) A disciplinary ground arises when the act or omission constituting the ground is done or made.

(4) In this section—

misconduct means—

(a) inappropriate or improper conduct in an official capacity; or

(b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the commission.

Example of misconduct—

victimising another commission officer in the course of the other officer's employment or engagement with the commission

responsible person, for a direction, means a person with authority to give the direction, whether the authority derives from this Act or otherwise.

273C Disciplinary action that may be taken against a relevant commission officer generally

(1) In disciplining a relevant commission officer, the chief executive officer may take the action, or order the action be taken, (***disciplinary action***) that the chief executive officer considers reasonable in the circumstances.

Examples of disciplinary action—

- termination of employment
- reduction of classification level and a consequential change of duties
- transfer or redeployment to another unit of the commission
- forfeiture or deferment of a remuneration increment or increase
- reduction of remuneration
- imposition of a monetary penalty
- if a penalty is imposed, a direction that the amount of the penalty be deducted from the officer's periodic remuneration payments

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- a reprimand
- counselling

(2) A monetary penalty can not be more than the total of 2 of the relevant commission officer's periodic remuneration payments.

(3) Also, an amount directed to be deducted from any particular periodic remuneration payment of the relevant commission officer—

(a) must not be more than half of the amount payable to or for the officer in relation to the payment; and

(b) must not reduce the amount of salary payable to the officer in relation to the period to less than—

(i) if the officer has a dependant—the guaranteed minimum wage for each week of the period; or

(ii) otherwise—two-thirds of the guaranteed minimum wage for each week of the period.

(4) An order under subsection (1) is binding on anyone affected by it.

Subdivision 3 Disciplinary action against a relevant commission officer who was a relevant employee

273CA Application of subdivision

(1) This subdivision applies if—

(a) a person is a relevant employee and a relevant disciplinary ground arises in relation to the person; and

(b) after the relevant disciplinary ground arises, the person stops being employed as a relevant employee and starts employment as a relevant commission officer.

(2) However, this subdivision does not apply if the person's previous chief executive has taken, is taking, or intends to take, disciplinary action against the person, under a relevant

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disciplinary law, in relation to the relevant disciplinary ground.

273CB Action previous chief executive may take

(1) The person's previous chief executive may make a disciplinary finding about the relevant disciplinary ground for this subdivision.

(2) The previous chief executive may take disciplinary action about the relevant disciplinary ground as provided under section 273CC(2).

(3) Despite subsection (1) and without limiting or being limited by any other power of delegation under any Act, the previous chief executive may delegate to the chief executive officer the authority under subsection (1) to make a disciplinary finding about the person.

(4) The previous chief executive may give to the chief executive officer any information about a person or a relevant disciplinary ground relating to the person to help the chief executive officer to perform a function under section 273CC(2) or (4) in relation to the person.

273CC Action chief executive officer may take

(1) Subsection (2) applies if—

(a) the previous chief executive makes a disciplinary finding about the relevant disciplinary ground; and

(b) the previous chief executive and the chief executive officer agree that disciplinary action against the person is reasonable in the circumstances.

(2) The chief executive officer may take disciplinary action against the person under section 273C as if a disciplinary ground under section 273B exists.

(3) Subsection (4) applies if—

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(a) the previous chief executive delegates to the chief executive officer the authority under section 273CB(1) to make a disciplinary finding about the person; and

(b) the chief executive officer makes a disciplinary finding about the person.

(4) The chief executive officer may take disciplinary action against the person under section 273C without the agreement of the previous chief executive.

Subdivision 4 Disciplinary action against a former relevant commission officer

273D Disciplinary action that may be taken against a former relevant commission officer

(1) This section applies if—

(a) a disciplinary ground arises in relation to a relevant commission officer (the ***former relevant commission officer***); and

(b) after the disciplinary ground arises, the officer's employment as a relevant commission officer ends for any reason.

(2) However, this section does not apply in relation to a person who is a former relevant commission officer if the chief executive officer is aware—

(a) the person is a relevant employee; and

(b) the person's current or previous chief executive has taken, is taking, or intends to take disciplinary action against the person, under a relevant disciplinary law, in relation to the disciplinary ground.

(3) The chief executive officer may make a disciplinary finding, or take disciplinary action under this section, against the former relevant commission officer in relation to the disciplinary ground.

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(4) The disciplinary finding or disciplinary action must be made or taken within a period of 2 years after the end of the relevant commission officer's employment.

(5) For subsections (3) and (4), the chief executive officer takes disciplinary action against a former relevant commission officer by making a disciplinary declaration against the officer.

(6) The chief executive officer may only make a disciplinary declaration if the disciplinary action that would have been taken against the former relevant commission officer if the officer's employment had not ended would have been—

(a) dismissal; or

(b) reduction of classification level.

(7) The making of the disciplinary declaration does not affect the way in which the relevant commission officer's employment ended, or any benefits, rights or liabilities arising because the employment ended.

(8) In this section—

disciplinary declaration means a declaration of—

(a) the disciplinary finding against the former relevant commission officer; and

(b) the disciplinary action that would have been taken against the relevant commission officer if the officer's employment had not ended.

Subdivision 5 Information about disciplinary action

273DA Information about disciplinary action to be given by chief executive officer

(1) This section applies if—

(a) a relevant official asks the chief executive officer for disciplinary information that the chief executive officer

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has about a person who is or was a relevant commission officer; and

(b) the information is reasonably necessary for the relevant official to make a decision about—

(i) an appointment or continued appointment, or employment or continued employment, of the person by the official; or

(ii) a disciplinary finding, disciplinary action or disciplinary declaration the official is considering in relation to the person under a relevant disciplinary law.

(2) The chief executive officer must give the disciplinary information to the relevant official unless the chief executive officer is reasonably satisfied that giving the information may prejudice the investigation of a suspected contravention of the law in a particular case.

(3) In this section—

disciplinary information, about a person, means information about the following made or taken against the person under this Act by the chief executive officer—

(a) a current investigation into whether the person should be disciplined;

(b) a finding that the person should be disciplined;

(c) possible disciplinary action under consideration;

(d) disciplinary action, including a disciplinary declaration.

relevant official means—

(a) the chief executive of a public sector entity; or

(b) the commissioner of police.

273DB Information about disciplinary action to be given to chief executive officer

(1) This section applies if—

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(a) the chief executive officer asks a relevant official for disciplinary information that the official has about a person who is or was a relevant employee; and

(b) the information is reasonably necessary for the chief executive officer to make a decision about—

(i) the employment or continued employment of the person as a relevant commission officer; or

(ii) a disciplinary finding, disciplinary action or disciplinary declaration the chief executive officer is considering in relation to the person under this Act.

(2) The relevant official must give the disciplinary information to the chief executive officer unless the official is reasonably satisfied that giving the information may prejudice the investigation of a suspected contravention of the law in a particular case.

(3) In this section—

disciplinary information, about a person, means information about the following made or taken against the person under a public sector disciplinary law by a relevant official or another entity—

(a) a current investigation into whether the person should be disciplined;

(b) a finding that the person should be disciplined;

(c) possible disciplinary action under consideration;

(d) disciplinary action, including a disciplinary declaration.

public sector disciplinary law see the *Public Sector Act 2022*, schedule 2.

relevant employee includes a police officer.

relevant official means—

(a) the chief executive of a public sector entity; or

(b) the commissioner of police.

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Subdivision 6 Other provisions about disciplinary action

273E Suspension of relevant commission officer liable to disciplinary action

(1) The chief executive officer may suspend a relevant commission officer from duty if the chief executive officer reasonably believes the officer is liable to disciplinary action under this Act.

(2) However, before suspending the relevant commission officer, the chief executive officer must consider all alternative duties that may be available for the officer to perform.

(3) During the period of the suspension the relevant commission officer is entitled to normal remuneration, less any amount earned by the officer from alternative employment that the officer engages in during the period.

(4) For subsection (3), alternative employment does not include employment of the relevant commission officer if—

(a) the officer was engaged in the employment at the time of the suspension; and

(b) the officer's engaging in the employment was not in contravention of this Act or an obligation imposed on the officer under a code of conduct approved under the *Public Sector Ethics Act 1994*.

(5) The deduction under subsection (3) must not be more than the amount of the relevant commission officer's normal remuneration during the period of the suspension.

(6) The continuity of the relevant commission officer's service as a relevant commission officer is taken not to have been broken only because of the suspension.

(7) The chief executive officer may cancel the suspension at any time.

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273F Procedure for disciplinary action

(1) In disciplining a relevant commission officer or former relevant commission officer or suspending a relevant commission officer, the chief executive officer must comply with this Act and the principles of natural justice.

(2) However, natural justice is not required if the suspension is on normal remuneration.

(3) If the chief executive officer decides to suspend or terminate the employment of a relevant commission officer, the chief executive officer must give the officer notice of the suspension or termination.

(4) The notice must state—

(a) for a suspension—

(i) when the suspension starts and ends; and

(ii) the remuneration to which the relevant commission officer is entitled for the period of the suspension under section 273E; and

(b) for a termination—the day when it takes effect.

Division 10 Other provisions about senior officers and commission staff and agents

273G Requirement to disclose previous history of serious disciplinary action

(1) If the chief executive officer proposes to employ a person as a relevant commission officer, the chief executive officer may require the person to disclose to the chief executive officer particulars of any serious disciplinary action taken against the person.

(2) The person must comply with the requirement before the employment takes effect and within the time and in the way stated by the chief executive officer.

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(3) The chief executive officer may have regard to information disclosed by the person under this section in deciding whether to employ a person as a relevant commission officer.

(4) The chief executive officer is not required to further consider the person for employment as a relevant commission officer if the person—

(a) fails to comply with the requirement; or

(b) gives false or misleading information in response to the requirement.

(5) In this section—

disciplinary action, for a person, means any action of a disciplinary nature taken against the person under this Act or a public sector disciplinary law.

disciplinary declaration means a disciplinary declaration within the meaning of the *Public Sector Act 2022*, schedule 2, definition *disciplinary declaration*, paragraph (a).

employ, in relation to a person, includes second and engage.

public sector disciplinary law see the *Public Sector Act 2022*, schedule 2.

relevant commission officer means—

(a) a senior officer; or

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

(c) a person engaged under section 256.

serious disciplinary action, in relation to a person, means—

(a) disciplinary action taken against the person, involving—

(i) termination of employment; or

(ii) reduction of classification level or rank; or

(iii) transfer or redeployment to other employment; or

(iv) reduction of remuneration level; or

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(b) a disciplinary declaration that states a disciplinary action mentioned in paragraph (a)(i) or (ii) as the disciplinary action that would have been taken against the person if the person's employment had not ended.

273H Relevant prosecuting authority to notify chief executive officer of prosecution proceeding

(1) This section applies if—

(a) the commissioner of police or the director of public prosecutions (a ***relevant prosecuting authority***) is aware a person charged with a relevant offence is a relevant commission officer; and

(b) a relevant event happens in relation to the person.

(2) The relevant prosecuting authority must, within the relevant period for the relevant event, give the chief executive officer a notice stating each of the following matters—

(a) the person's name;

(b) the date the relevant event happened;

(c) particulars of the relevant offence to which the relevant event relates;

(d) if the relevant event is that the person is committed by a court for trial for a relevant offence—

(i) the court that committed the person for trial; and

(ii) the court to which the person was committed;

(e) if the relevant event is that the person is convicted by a court of a relevant offence—

(i) the court that convicted the person; and

(ii) the sentence imposed by the court;

(f) if the relevant event is that an appeal against a conviction of the person for a relevant offence has been decided—

(i) the court in which the appeal was decided; and

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(ii) the particulars of the decision;

(g) if the relevant event is that the prosecution of the person for a relevant offence has ended in a court, without the person being convicted of the offence—the court in which the prosecution of the person ended.

(3) In this section—

relevant event, for a person charged with a relevant offence, means—

(a) the person is committed by a court for trial for a relevant offence; or

(b) the person is convicted by a court of a relevant offence; or

(c) if the person is convicted as mentioned in paragraph (b) and the person appealed against the conviction—the appeal is finally decided or has otherwise ended; or

(d) the prosecution of the person for the relevant offence ends without the person being convicted of a relevant offence because—

(i) a nolle prosequi is entered on the indictment presented against the person for the offence; or

(ii) the person is acquitted of the offence; or

(iii) the prosecution of the person otherwise ends.

relevant offence means—

(a) an indictable offence; or

(b) a disqualifying offence within the meaning of the *Working with Children (Risk Management and Screening) Act 2000*, section 16 that is not an indictable offence.

relevant period, for a relevant event, means—

(a) generally—7 days after the event happens; or

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(b) if the relevant event is the conviction of a person for a relevant offence—7 days after the court imposes a sentence for the offence.

Part 2 Crime Reference Committee

Division 1 Establishment of Crime Reference Committee

274 Establishment

The Crime Reference Committee is established.

Division 2 Functions and support

275 Functions of reference committee

The reference committee has the following functions—

(a) to refer, as provided under chapter 2, part 2, division 2, major crime to the commission for investigation;

(b) to authorise the commission, as provided under chapter 2, part 4, division 2A, to undertake specific intelligence operations;

(c) to review general referrals under section 30A;

(d) to coordinate, to the extent the committee considers appropriate, investigations into major crime conducted by the commission in cooperation with a police task force or another entity.

276 Commission to give committee administrative support

The commission must give the reference committee reasonable administrative services and support to enable the committee to perform its functions.

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Division 3 Oversighting role

277 Reference committee may obtain information from commission

(1) The senior executive officer (crime) must—

(a) keep the reference committee informed of the general conduct of the senior executive officer's operations in the performance of the commission's functions in relation to—

(i) major crime; or

(ii) an authorisation under section 55A to undertake specific intelligence operations, including any hearing held under the authorisation; and

(b) notify the reference committee when the commission commences a particular crime investigation under a general referral to the commission by the reference committee under section 27(1)(b).

(2) The notification mentioned in subsection (1)(b) must be given as soon as practicable after the particular crime investigation commences.

(2A) The senior executive officer (corruption) must keep the reference committee informed of the general conduct of the senior executive officer's operations in the performance of the commission's function in relation to authorisations under section 55A to undertake specific intelligence operations if the operation involves suspected corruption.

(3) Subsection (4) applies if the reference committee asks the senior executive officer (crime) to give to it information—

(a) concerning a matter relating to the commission's operations in relation to major crime or an authorisation under section 55A to undertake specific intelligence operations; or

(b) in relation to a particular crime investigation conducted, or being conducted, under a general referral to the

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commission by the reference committee under section 27(1)(b).

(4) The senior executive officer (crime) must comply with the request and give the help the reference committee needs to consider the information.

(4A) Subsection (4B) applies if the reference committee asks the senior executive officer (corruption) to give it information concerning a specific intelligence operation authorised under section 55A if the operation involves suspected corruption.

(4B) The senior executive officer (corruption) must comply with the request and give the help the reference committee needs to consider the information.

(5) Information provided to the reference committee is confidential.

Division 4 Provisions about membership

278 Membership of reference committee

(1) The reference committee consists of the following members—

(a) the chairperson of the commission, who is the chairperson of the reference committee;

(b) the senior executive officer (crime);

(c) the commissioner of police;

(d) the principal commissioner under the *Family and Child Commission Act 2014*;

(e) subject to subsection (1A), the chief executive officer of the Australian Crime Commission;

(ea) subject to subsection (1B), the senior executive officer (corruption);

(f) 2 persons appointed by the Governor in Council as community representatives (each of whom is an

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appointed member), of whom 1 at least must have a demonstrated interest in civil liberties and 1 at least must be a female.

(1A) The chief executive officer of the Australian Crime Commission is a member of the reference committee only when the committee is performing a function that relates to a function that may be conferred under an Act of the State on the chief executive officer under the *Australian Crime Commission Act 2002* (Cwlth) or another Commonwealth Act or regulation.

(1B) The senior executive officer (corruption) is a member of the reference committee only when the committee is performing a function that relates to an authorisation under section 55A for a matter involving suspected corruption.

(2) The Minister must advertise throughout the State for applications from suitably qualified persons to be considered for selection as community representatives.

(3) Subsection (2) does not apply to the reappointment of a person as a community representative.

(5) An ineligible person or a commission officer can not be appointed, or continue, as a community representative.

(6) Any thing done by or in relation to the reference committee is not invalid only because of a defect or irregularity in the appointment of a member or because the reference committee was not properly constituted.

279 Deputy committee member

(1) The chairperson of the commission may appoint as the chairperson's deputy for a reference committee meeting another commissioner or the senior executive officer (corruption) (***deputy committee member***).

(2) The commissioner of police may appoint as the commissioner's deputy for a reference committee meeting an officer holding rank at least equal to assistant commissioner (also a ***deputy committee member***).

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(3) The principal commissioner under the *Family and Child Commission Act 2014* may appoint as the commissioner's deputy for a reference committee meeting an appropriately qualified person nominated by the commissioner (also a ***deputy committee member***).

(4) The chief executive officer of the Australian Crime Commission may appoint as the chief executive officer's deputy for a reference committee meeting an appropriately qualified person nominated by the chief executive officer (also a ***deputy committee member***).

(5) A person appointed as a deputy committee member for a reference committee meeting under this section is, for the purposes of the meeting, taken to be the committee member for whom the person is deputy.

279A Delegation of functions of committee chairperson

(1) The chairperson of the commission may delegate the functions of chairperson of the reference committee to the senior executive officer (crime).

(2) If the chairperson of the commission delegates functions as mentioned in subsection (1), the senior executive officer (crime) is taken to be the chairperson of the reference committee.

(3) This section applies even if the chairperson has appointed a deputy under section 279(1).

(4) In this section—

functions includes powers.

280 Duration of appointment of appointed member

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

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281 Terms of appointment of appointed member

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

(2) To the extent that appointed member's terms and conditions are not provided for by this Act, the appointed member holds office on the terms and conditions decided by the Governor in Council.

282 Resignation of appointed member

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

283 Termination of appointment of appointed member

(1) The Governor in Council may terminate the appointment of a person as an appointed member, if the person—

(a) stops being eligible for appointment as an appointed member; or

(b) becomes incapable of satisfactorily performing the member's duties; or

(c) is guilty of corruption that could warrant dismissal from the public service if the member were a public service officer.

(2) The office of an appointed member is vacated if the person becomes an ineligible person.

Division 5 Meetings and other business

284 Conduct of meetings and other business

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

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285 Times and places of meetings

(1) Reference committee meetings are to be held at the times and places the chairperson of the reference committee decides.

(2) However, the chairperson of the reference committee must call a meeting if asked, in writing, to do so by the Minister or at least the number of members forming a quorum for the reference committee.

286 Quorum

A quorum for a reference committee meeting is any 4 members.

287 Presiding at meetings

(1) The chairperson of the reference committee is to preside at all meetings at which the chairperson is present.

(2) If the chairperson of the reference committee is absent from a meeting, the following person is to preside at the meeting—

(a) if the chairperson of the reference committee is the chairperson of the commission and the senior executive officer (crime) is present at the meeting—the senior executive officer (crime);

(b) if the chairperson of the reference committee is the senior executive officer (crime) and the chairperson of the commission is present at the meeting—the chairperson of the commission;

(c) otherwise—the committee member chosen by the committee members.

288 Conduct of meetings

(1) A question at a reference committee meeting is decided by a majority of the votes of the members present.

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(2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

(3) A member present at the meeting who abstains from voting is taken to have voted for the negative.

(4) The reference committee may hold meetings, or allow members to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

Example of technology allowing reasonably contemporaneous and continuous communication—

teleconferencing

(5) A member who takes part in a reference committee meeting under subsection (4) is taken to be present at the meeting.

(6) A resolution is validly made by the reference committee, even if it is not passed at a reference committee meeting, if—

(a) a majority of the members gives written agreement to the resolution; and

(b) notice of the resolution is given under procedures approved by the reference committee.

289 Disclosure of interests

(1) This section applies to a member of the reference committee (the ***interested person***) if—

(a) the interested person has a material personal interest in an issue being considered, or about to be considered, by the committee; and

(b) the interest could conflict with the proper performance of the person's duties about the consideration of the issue.

(2) As soon as practicable after the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a committee meeting.

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(3) Unless the reference committee otherwise directs, the interested person must not—

(a) be present when the committee considers the issue; or

(b) take part in a decision of the committee about the issue.

(4) The interested person must not be present when the reference committee is considering whether to give a direction under subsection (3).

(5) If there is another person who must, under subsection (2), also disclose a material personal interest in the issue, the other person must not—

(a) be present when the committee is considering whether to give a direction under subsection (3) about the interested person; or

(b) take part in making the decision about giving the direction.

(6) If—

(a) because of this section, a committee member is not present at a reference committee meeting for considering or deciding an issue, or for considering or deciding whether to give a direction under subsection (3); and

(b) there would be a quorum if the member were present;

the remaining persons present are a quorum of the committee for considering or deciding the issue, or for considering or deciding whether to give the direction, at the meeting.

(7) A disclosure under subsection (2) must be recorded in the committee's minutes.

(8) A failure to disclose a material personal interest does not, of itself, invalidate a committee decision.

(9) In this section—

material personal interest means a direct or indirect interest relating to the personal affairs of the member that may have,

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or be seen to have, a significant influence on the conduct of the member at the meeting.

290 Minutes

(1) The reference committee must keep—

(a) minutes of its meetings; and

(b) a record of any resolutions made under section 288(6).

(2) Subsection (3) applies if a resolution is passed at a committee meeting by a majority of the members present.

(3) If asked by a member who voted against the passing of the resolution, the committee must record in the minutes of the meeting that the member voted against the resolution.

Part 3 Parliamentary Crime and Corruption Committee

Division 1 Establishment of parliamentary committee

291 Establishment of parliamentary committee

A committee of the Legislative Assembly called the Parliamentary Crime and Corruption Committee is established.

Division 2 Functions

292 Functions

The parliamentary committee has the following functions—

(a) to monitor and review the performance of the commission's functions;

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(b) to report to the Legislative Assembly, commenting as it considers appropriate, on either of the following matters the committee considers should be brought to the Assembly's attention—

(i) matters relevant to the commission;

(ii) matters relevant to the performance of the commission's functions or the exercise of the commission's powers;

(c) to examine the commission's annual report and its other reports and report to the Legislative Assembly on any matter appearing in or arising out of the reports;

(d) to report on any matter relevant to the commission's functions that is referred to it by the Legislative Assembly;

(e) to participate in the selection of commissioners and the chief executive officer, and the removal from office of a commissioner or the chief executive officer, as provided under this Act;

(f) to review the activities of the commission by 30 June 2016, and by the end of each 5-year period following that day, and, for each review, to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission;

(g) to periodically review the structure of the commission, including the relationship between the types of commissioners and the roles, functions and powers of the commission, the chairperson and the chief executive officer, and, for each review, to table in the Legislative Assembly a report about the review, including any recommendations about changes to the Act;

(h) to issue guidelines and give directions to the commission as provided under this Act.

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Division 3 Powers

293 Powers

(1) The parliamentary committee has power to call for persons, documents and other things.

Note—

See also the *Parliament of Queensland Act 2001*, chapter 3, part 1 for other powers of the committee to require attendance and production of documents or other things.

(2) Also, the parliamentary committee has the power—

(a) necessary to enable the committee to properly perform its functions, including power to appoint persons having special knowledge or skill to help the committee perform its functions; and

(b) conferred on it by resolution of the Legislative Assembly with a view to the proper performance by the committee of its functions.

(3) Further, the parliamentary committee or a person appointed, engaged or assigned to help the parliamentary committee may—

(a) inspect any non-operational record or thing in the commission's possession; and

(b) make copies or extracts of the record or thing for use in connection with the parliamentary committee's functions to which the record or thing is relevant.

(4) In this section—

non-operational record or thing does not include a record or thing that relates to an investigation by the commission that is not finalised.

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294 Directions by parliamentary committee to undertake investigation

(1) The parliamentary committee may, by notice, direct the commission to investigate a matter falling within the commission's corruption functions stated in the notice.

(2) A direction under subsection (1) is effective only if it is made with the bipartisan support of the parliamentary committee.

(3) The commission must—

(a) investigate the matters stated in the direction diligently and in a way reasonably expected of a law enforcement agency; and

(b) report the results of its investigation to the committee.

295 Referral of concerns by parliamentary committee

(1) This section applies if the parliamentary committee—

(a) receives a complaint, or has other concerns (including concerns arising out of a recommendation made by the parliamentary commissioner), about the conduct or activities of the commission or a commission officer; or

(b) is notified by the chairperson, deputy chairperson or chief executive officer of conduct of a commission officer that the chairperson, deputy chairperson or chief executive officer suspects involves, or may involve, improper conduct.

Note—

See section 329 for the duties to notify the parliamentary committee of conduct of commission officers suspected to involve, or may involve, improper conduct.

(2) If the committee decides to take action on the complaint, concern or notification (the ***matter***), the committee may do 1 or more of the following—

(a) ask the commission to give a report on the matter to the committee;

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(b) ask the commission to investigate and give a report on the matter to the committee;

(c) ask the police service or another law enforcement agency to investigate and give a report on the matter to the committee;

(d) ask the parliamentary commissioner to investigate and give a report on the matter to the committee;

(e) refer the matter to the director of public prosecutions;

(f) take other action the committee considers appropriate.

(3) A decision under subsection (2) is effective only if it is made with the bipartisan support of the parliamentary committee.

(4) The commission, police service, parliamentary commissioner or another investigative agency must investigate and report on matters as asked by the committee.

296 Guidelines on operation of commission

(1) The parliamentary committee may issue guidelines to the commission about the conduct and activities of the commission.

(2) Before issuing a guideline, the committee must consult with the commission on the proposed guideline.

(3) The committee may issue a guideline only with the bipartisan support of the parliamentary committee.

(4) The commission must comply with the guidelines.

297 Guidelines to be tabled

(1) The chairperson of the parliamentary committee must table each guideline issued under section 296 in the Legislative Assembly within 14 sitting days after it is issued to the commission.

(2) If a guideline is not tabled under subsection (1), it stops having effect.

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298 Disallowance of guideline

(1) The Legislative Assembly may pass a resolution disallowing a guideline under section 296 if notice of a disallowance motion is given by a member within 14 sitting days after the guideline is tabled in the Legislative Assembly.

(2) On the day set down for its consideration under the standing rules and orders of the Legislative Assembly, the Speaker must put the question that the Legislative Assembly resolve to disallow the guideline.

(3) If the resolution is passed, the guideline stops having effect.

299 Limited saving of operation of guideline that ceases to have effect

The fact that a guideline stops having effect under section 297(2) or 298(3) does not affect anything done or suffered under the guideline before it stopped having effect.

Division 4 Membership

300 Membership of parliamentary committee

(1) The parliamentary committee must consist of 7 members nominated as follows—

(a) 4 members nominated by the Leader of the House;

(b) 3 members nominated by the Leader of the Opposition.

(2) The chairperson of the parliamentary committee must be the member nominated as chairperson by the Leader of the House.

301 Membership of parliamentary committee continues despite dissolution

(1) Despite section 300, from the dissolution of the Legislative Assembly, the parliamentary committee consists of its members immediately before the dissolution.

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(2) A member under subsection (1) continues to be a member of the parliamentary committee until whichever of the following first happens—

(a) the member resigns by notice given to the clerk of the Parliament;

(b) the member dies;

(c) the returning officer for the electoral district in which the member was nominated as a candidate for the election notifies the electoral commission that a person other than the member has been elected for the electoral district;

(d) fresh members are appointed by the Legislative Assembly.

(3) If a member stops being a member of the parliamentary committee under subsection (2)(c), the person recognised as the leader of the political party that nominated the member to the committee may nominate another person as a member of the committee until fresh members are appointed by the Legislative Assembly.

Division 5 Meetings

302 Quorum and voting at meetings of parliamentary committee

(1) At a meeting of the parliamentary committee—

(a) a quorum consists of 4 members appointed to the committee; and

(b) a question is decided by a majority of the votes of the members of the committee present and voting; and

(c) each member of the committee has a vote on each question to be decided and, if the votes are equal, the chairperson of the committee has a casting vote.

(2) In this section—

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present, in relation to a member at a meeting of the parliamentary committee, means present in person, or by telephone, video or other electronic means.

voting, in relation to a member at a meeting of the parliamentary committee, means voting in person or by telephone, video or other electronic means.

302A Meetings of parliamentary committee generally to be held in public

(1) A meeting of the parliamentary committee must be held in public.

(2) However, the parliamentary committee may decide that a meeting or a part of a meeting be held in private if the committee considers it is necessary to avoid the disclosure of—

(a) confidential information or information the disclosure of which would be contrary to the public interest; or

(b) information about a complaint about corrupt conduct dealt with, or being dealt with, by the commission; or

(c) information about an investigation or operation conducted, or being conducted, by the commission in the performance of its crime function, corruption functions or intelligence function.

Note—

The standing rules and orders of the Legislative Assembly provide for who may attend a public or private meeting of the committee—see standing order 207.

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Part 4 Parliamentary crime and corruption commissioner

Division 1 Establishment of office of parliamentary commissioner

303 Office of parliamentary crime and corruption commissioner

(1) There must be appointed a commissioner to be known as the parliamentary crime and corruption commissioner.

(2) The parliamentary commissioner is an officer of the Parliament.

Division 2 Provisions about appointment

304 Qualification for appointment as parliamentary commissioner

A person is qualified for appointment as the parliamentary commissioner if the person has served as, or is qualified for appointment as, a judge of—

(a) the Supreme Court of Queensland; or

(b) the Supreme Court of another State; or

(c) the High Court of Australia; or

(d) the Federal Court of Australia.

305 Disqualifications as parliamentary commissioner

(1) An ineligible person can not be appointed as the parliamentary commissioner.

(2) An ineligible person, other than a person who is an ineligible person only because the person holds office as the

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parliamentary commissioner, can not continue as the parliamentary commissioner.

(3) In this section—

ineligible person includes a commission officer.

306 Selection for appointment of parliamentary commissioner

(1) The Speaker must advertise nationally for applications from suitably qualified persons to be considered for selection as the parliamentary commissioner.

(2) Subsection (1) does not apply to the reappointment of a person as the parliamentary commissioner.

(3) The Speaker may appoint a person as the parliamentary commissioner only if the appointment is made with the bipartisan support of the parliamentary committee.

307 Appointment of parliamentary commissioner

(1) The parliamentary commissioner must be appointed by the Speaker as an officer of the parliamentary service under the *Parliamentary Service Act 1988*.

(2) However—

(a) the parliamentary commissioner can not be dismissed or suspended without the bipartisan support of the parliamentary committee; and

(b) the *Parliamentary Service Act 1988*, sections 43 and 44 do not apply to the position of parliamentary commissioner.

(3) Within 7 sitting days after the appointment of the parliamentary commissioner, the Speaker must table in the Legislative Assembly notice of the appointment.

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308 Acting parliamentary commissioner

(1) The Speaker may appoint a person qualified to be appointed as the parliamentary commissioner to act as the parliamentary commissioner—

(a) during a vacancy in the office; or

(b) during any period, or all periods, when the parliamentary commissioner is absent from duty or from the State or, for another reason, can not perform the duties of the office.

(2) A person may be appointed to act as the parliamentary commissioner only if the appointment is made with the bipartisan support of the parliamentary committee.

309 Duration of parliamentary commissioner's appointment

(1) The parliamentary commissioner holds office for the term, not less than 2 years and no longer than 5 years, stated in the instrument of the parliamentary commissioner's appointment.

(2) The parliamentary commissioner must not hold office for more than 5 years in total.

(3) Subsection (2) has effect despite the *Acts Interpretation Act 1954*, section 25(1)(c).

310 Terms of parliamentary commissioner's appointment

(1) Appointment as the parliamentary commissioner is on a part-time basis.

(2) The parliamentary commissioner is to be paid the remuneration and allowances decided by the Speaker.

(3) To the extent that the parliamentary commissioner's terms and conditions are not provided for by this Act, the parliamentary commissioner holds office on the terms and conditions decided by the Speaker.

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311 Resignation

The parliamentary commissioner may resign by signed notice given to the Speaker.

312 Termination of appointment

(1) The Governor in Council may terminate the appointment of the parliamentary commissioner if the parliamentary commissioner—

(a) is or becomes incapable of satisfactorily performing the parliamentary commissioner's duties; or

(b) is guilty of conduct that could warrant dismissal from the public service if the parliamentary commissioner were a public service officer.

(2) The Governor in council may terminate the appointment of the parliamentary commissioner if—

(a) a recommendation to the Legislative Assembly to terminate the appointment is made with the bipartisan support of the parliamentary committee; and

(b) the Legislative Assembly, by resolution, approves the termination of the appointment.

(3) The office of the parliamentary commissioner is vacated if the parliamentary commissioner becomes an ineligible person for a reason other than holding office as the parliamentary commissioner.

(4) In this section—

ineligible person includes a commission officer.

313 Oath of parliamentary commissioner

(1) Before entering on the performance of functions as parliamentary commissioner, the commissioner must take an oath that the commissioner—

(a) will faithfully and impartially perform the functions of the office; and

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(b) will not, except as provided under this Act, disclose any information received under this Act.

(2) The oath is to be administered by the Speaker.

Division 3 Functions and support

314 Functions of parliamentary commissioner

(1) The parliamentary commissioner has the functions given to the parliamentary commissioner under this or another Act.

(2) The parliamentary commissioner has the functions, as required by the parliamentary committee, to do the following—

(a) audit records kept by the commission and operational files and accompanying documentary material held by the commission, including current sensitive operations, including for the purpose of deciding the following—

(i) whether the commission has exercised power in an appropriate way;

(ii) whether matters under investigation are appropriate for investigation by the entity investigating or are more appropriately the responsibility of another entity;

(iii) whether registers are up to date and complete and all required documentation is on the file and correctly noted on the registers;

(iv) whether required authorisations for the exercise of power have been obtained;

(v) whether any policy or procedural guidelines set by the commission have been strictly complied with;

(b) investigate, including by accessing operational files of the commission to which the parliamentary committee is denied access, complaints made against, or concerns expressed about, the conduct or activities of—

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(i) the commission; or

(ii) a commission officer;

(c) independently investigate allegations of possible unauthorised disclosure of information or other material that, under this Act, is confidential;

(d) inspect the register of confidential information kept under section 67 to verify the commission's reasons for withholding information from the parliamentary committee;

(e) review reports given by the commission to the parliamentary committee to verify their accuracy and completeness, particularly in relation to an operational matter;

(f) report, and make recommendations, to the parliamentary committee on the results of performing the functions mentioned in paragraphs (a) to (e);

(g) perform other functions the parliamentary committee considers necessary or desirable.

(3) A requirement under subsection (2) is effective only if it is made with the bipartisan support of the parliamentary committee.

(4) The parliamentary commissioner also has the function to investigate on the parliamentary commissioner's own initiative a matter mentioned in subsection (2)(b) or (c), or a matter notified to the parliamentary commissioner under section 329, if—

(a) the matter relates to conduct of a commission officer that involves or may involve corrupt conduct; and

(b) the parliamentary commissioner is satisfied, on reasonable grounds—

(i) the commission has not adequately dealt with the matter; or

(ii) the commission may not adequately deal with the matter; or

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(iii) it is in the public interest.

(5) The parliamentary commissioner may conduct a preliminary assessment of a matter to decide whether subsection (4)(a) and (b) is satisfied for the matter.

(6) The parliamentary commissioner may exercise the powers under section 317, but not the powers under section 318, for a preliminary assessment under subsection (5).

(7) If the parliamentary commissioner decides to investigate a matter under subsection (4) or conduct a preliminary assessment under subsection (5), the parliamentary commissioner must notify the parliamentary committee of the decision.

(8) In this section—

corrupt conduct, of a commission officer, means conduct that would, if the officer were an officer in a unit of public administration, be corrupt conduct.

314A Recommendation or referral arising from investigation conducted on parliamentary commissioner's own initiative

(1) This section applies if the parliamentary commissioner investigates a matter under section 314(4).

(2) If, from information obtained in conducting the investigation, the parliamentary commissioner decides that prosecution proceedings for an offence should be considered, the parliamentary commissioner may refer the matter to the director of public prosecutions, or other appropriate prosecuting authority, for the purposes of any prosecution proceedings the director or other authority considers warranted.

(3) If the matter involved conduct of a commission officer, the parliamentary commissioner may—

(a) for conduct of a commissioner or the chief executive officer—make a recommendation to the Minister or the parliamentary committee that the Minister or

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parliamentary committee consider whether disciplinary action should be taken against the commissioner or chief executive officer; or

(b) for conduct of another commission officer—make a recommendation to the chief executive officer that the chief executive officer consider whether disciplinary action should be taken against the officer.

(4) The parliamentary commissioner must not include in a referral under subsection (2) or a recommendation under subsection (3)—

(a) any statement that a person has engaged, is engaging or is about to engage in conduct that constitutes a criminal offence or disciplinary breach; or

(b) any opinion or recommendation that a person should be prosecuted for a criminal offence or be the subject of disciplinary action or further disciplinary action.

(5) The parliamentary commissioner may give a copy of a referral under subsection (2) or a recommendation under subsection (3), or an extract from the referral or recommendation, to the Speaker for tabling in the Legislative Assembly if, and only if—

(a) the parliamentary commissioner is satisfied of the following—

(i) the referral or recommendation relates to a case of serious corrupt conduct;

(ii) the referral or recommendation has not been adequately dealt with;

(iii) tabling the referral or recommendation, or extract, is in the public interest; and

(b) the person to whom the referral or recommendation relates has been afforded procedural fairness for the disclosure of the referral or recommendation.

(6) The Speaker must table in the Legislative Assembly a copy of, or extract from, a referral or recommendation within 7 days

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after the Speaker receives the copy or extract under subsection (5).

(7) In this section—

disciplinary action, for a commission officer, means any action of a disciplinary nature permitted to be taken against the officer under this Act, another law or the officer's terms of employment or engagement, including, for example, terminating the officer's appointment, employment or engagement under this Act.

Note—

See chapter 6, part 1, division 9 in relation to disciplinary action against senior officers and commission staff and agents.

314B Report on investigation conducted on parliamentary commissioner's own initiative

(1) This section applies if the parliamentary commissioner investigates a matter under section 314(4).

(2) The parliamentary commissioner must—

(a) report to the parliamentary committee on the results of the investigation; and

(b) give a copy of the report to—

(i) if the report relates to the conduct of a commissioner or the chief executive officer—the Minister; or

(ii) otherwise—the chief executive officer.

(3) The parliamentary commissioner must include in the report information about—

(a) a referral made by the parliamentary commissioner under section 314A(2); or

(b) a recommendation made by the parliamentary commissioner under section 314A(3).

(4) The parliamentary committee may take action under this Act in relation to the matter the subject of the report.

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Note—

See, for example, sections 236(4)(a) and 295 for action the parliamentary committee may take under this Act.

(5) The parliamentary committee or the Minister may table the report, or an extract from the report, in the Legislative Assembly if, and only if—

(a) the committee or Minister is satisfied of the following—

(i) the report relates to a case of serious corrupt conduct;

(ii) the matter the subject of the report has not been adequately dealt with under this Act;

(iii) tabling the report or extract is in the public interest; and

(b) if the tabling of the report or extract would disclose information adverse to a person, the person has been afforded procedural fairness for the disclosure.

315 Administrative and support services for parliamentary commissioner

(1) To help the parliamentary commissioner in performing the parliamentary commissioner's functions under this or another Act, by arrangement with the Speaker, officers or employees of the parliamentary service may be assigned and other administrative and support services may be provided to the parliamentary commissioner.

(2) If asked by the parliamentary committee, the Speaker may engage legal practitioners and other suitably qualified persons to provide the parliamentary commissioner with services, information or advice.

(3) Before a person first acts under subsection (1) or (2), the person must take an oath, to be administered by the parliamentary commissioner, that the person will not, except as provided under this Act, disclose any information received under this part while helping the parliamentary commissioner.

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316 Parliamentary commissioner can not be required to disclose particular information

The parliamentary commissioner can not be required by the parliamentary committee to disclose to the committee information lawfully withheld from the committee by the commission under section 66 or otherwise.

Division 4 Powers

317 Powers of the parliamentary commissioner

(1) The parliamentary commissioner has power to do all things necessary or convenient for the performance of the parliamentary commissioner's functions.

(2) For the performance of the parliamentary commissioner's functions, the parliamentary commissioner may, by giving written notice to the chairperson, require a commission officer to do 1 or more of the following—

(a) produce to the parliamentary commissioner, or allow the parliamentary commissioner access to, all records, files and other documents in the commission's possession;

(b) give the parliamentary commissioner all reasonable help in connection with the parliamentary commissioner performing the parliamentary commissioner's functions.

(3) Also, for the performance of the parliamentary commissioner's functions, the parliamentary commissioner may, by giving written notice to a public official, require the public official to do 1 or more of the following—

(a) produce to the parliamentary commissioner, or allow the parliamentary commissioner access to, all records, files and other documents in the possession of the unit of public administration in which the public official holds an appointment;

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(b) give the parliamentary commissioner all reasonable help in connection with the parliamentary commissioner performing the parliamentary commissioner's functions.

(4) If documents are produced to the parliamentary commissioner under this part, the parliamentary commissioner may—

(a) keep the documents for the period the parliamentary commissioner considers necessary for the proper performance of the parliamentary commissioner's functions; or

(b) make copies or extracts of the documents for use in connection with the parliamentary commissioner's functions to which the document is relevant.

(5) While the parliamentary commissioner has possession of a document under subsection (4), the parliamentary commissioner must permit a person who would be entitled to inspect the document if it were in the possession of the commission or unit of public administration to inspect it at all reasonable times.

(6) A person required by a notice under subsection (2) or (3) to do something must comply with the requirement.

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

(7) The parliamentary commissioner may delegate any of the parliamentary commissioner's powers under the *Police Powers and Responsibilities Act 2000*, chapter 11 or 13 as inspection entity under that Act to a legal practitioner engaged by the Speaker under section 315(2).

318 Parliamentary commissioner may conduct hearings in limited circumstances

(1) This section applies if—

(a) the parliamentary commissioner has used all reasonable means to obtain information about a matter without success; and

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(b) the parliamentary commissioner considers it appropriate to hold a hearing to obtain the information.

(2) The parliamentary commissioner may hold a hearing to obtain the information.

(3) If the parliamentary commissioner decides to hold a hearing under this section, the parliamentary commissioner must notify the parliamentary committee of the decision.

(4) The parliamentary commissioner may, by notice, require any named commission officer or person who holds or held an appointment in a unit of public administration (the ***person***) to appear at the hearing to be examined on oath or to produce a document or thing.

(5) The person must comply with the notice.

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

(6) The parliamentary commissioner may administer an oath for the purposes of the hearing.

(7) The person must answer a question put to the person by the parliamentary commissioner at the hearing or produce a document or thing if required to do so by the parliamentary commissioner.

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

(8) The person is not entitled—

(a) to remain silent; or

(b) to refuse to answer a question or to fail to give an answer to the parliamentary commissioner's satisfaction; or

(c) to fail to produce the document or thing;

because compliance with the notice, answering the question or giving an answer to the parliamentary commissioner's satisfaction, or producing the document or thing might tend to incriminate the person.

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(9) However, if the person's answer or the document or thing might tend to incriminate the person, the answer, document or thing is not admissible in evidence against the person in a civil or criminal proceeding, other than—

(a) a proceeding for an offence about the falsity of the answer; or

(b) a disciplinary proceeding started against the person.

(10) A hearing under this section is closed to the public.

319 Notice may be a confidential document

(1) A notice given by the parliamentary commissioner under this division may provide that it is a confidential document.

(2) A person must not disclose the existence of a confidential document to anyone else, unless the person has a reasonable excuse.

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

(3) It is a reasonable excuse for a person to disclose the existence of a confidential document if—

(a) the disclosure is made—

(i) for the purpose of seeking legal advice in relation to the document or an offence against subsection (2); or

(ii) for the purpose of obtaining information in order to comply with the document; or

(iii) for the purpose of making a complaint to the parliamentary committee about the document; or

(iv) in the course of the administration of this Act; and

(b) the person informs the person to whom the disclosure is made that it is an offence to disclose the existence of the document to anyone else unless the person has a reasonable excuse.

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320 Intelligence data review

(1) The parliamentary commissioner must conduct an annual review of intelligence data in the possession of the commission and the police service (each an ***agency***).

(2) The purposes of the review are—

(a) to consider whether intelligence data held by each agency is appropriately held by the agency having regard to the agency's functions; and

(b) to consider whether there is unnecessary duplication of intelligence data held by the agencies; and

(c) to consider whether the agencies are working cooperatively as partners to achieve optimal use of—

(i) available intelligence data; and

(ii) the resources used to collect, collate or record the data; and

(d) to consider whether an agency is placing inappropriate restrictions on access to intelligence data by the other agency.

(3) The parliamentary commissioner—

(a) must prepare written advice on the review containing the parliamentary commissioner's findings and recommendations, including, if appropriate, a recommendation about removing a restriction placed by an agency on access to intelligence data by the other agency; and

(b) must give the advice to the chairperson of the commission, the commissioner of police and the parliamentary committee; and

(c) may authorise the chairperson of the commission or the commissioner of police to disclose the advice or relevant parts of the advice to officers of the agencies for discussion and implementation at officer level.

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(4) The advice must be prepared in general terms in a way that does not disclose intelligence data or other confidential information.

(5) The parliamentary commissioner must, when preparing the advice, have regard to the need for the investigation of corrupt conduct to be undertaken independently of general law enforcement.

(6) A review must be done as soon as practicable after the end of each financial year, and within 4 months after the end of the financial year.

Division 5 General

321 Confidentiality obligations not to apply

(1) An obligation to maintain secrecy in relation to, or that otherwise restricts, the disclosure of information or the production of documents in the possession of the commission, a unit of public administration or a relevant person, whether imposed under this or another Act or by a rule of law, does not apply to the disclosure of information or the production of a document under this part.

(2) In this section—

relevant person means a person—

(a) who is a commission officer; or

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

322 Commission not entitled to privilege

(1) This section applies in relation to—

(a) an investigation under this part; and

(b) the production of documents or the giving of evidence under this part.

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(2) The commission is not entitled to any privilege.

(3) A commission officer is not entitled to any privilege, other than legal professional privilege relating to legal representation for the investigation.

(4) In this section—

privilege means any privilege of a type allowed by law in legal proceedings.

323 Parliamentary commissioner's report subject to Parliamentary privilege

It is declared that a report prepared by the parliamentary commissioner at the request of the parliamentary committee is an act done for the purposes of transacting business of a statutory committee under the *Parliament of Queensland Act 2001*.

323A Use of report on investigation conducted by parliamentary committee or parliamentary commissioner

(1) This section applies if the Minister or chief executive officer receives a report on an investigation into the conduct of a commission officer from the parliamentary committee or the parliamentary commissioner.

Note—

See section 314B in relation to reports given to the Minister or chief executive officer by the parliamentary commissioner.

(2) The report may be used—

(a) by the Minister or chief executive officer for deciding whether to take disciplinary action against the commission officer the subject of the report and what disciplinary action should be taken; and

(b) for any disciplinary proceeding relating to the commission officer.

(3) This section applies despite section 323 or any other law providing for parliamentary privilege in relation to the report.

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(4) In this section—

disciplinary action, for a commission officer, means any action of a disciplinary nature permitted to be taken against the officer under this Act, another law or the officer's terms of employment or engagement, including, for example, terminating the person's appointment, employment or engagement under this Act.

Note—

See chapter 6, part 1, division 9 in relation to disciplinary action against senior officers and commission staff and agents.

disciplinary proceeding, relating to a commission officer, means—

(a) a proceeding for taking disciplinary action against the officer; or

(b) a proceeding for the review of, or appeal against, disciplinary action taken against the officer; or

(c) a proceeding involving a claim for a remedy relating to disciplinary action taken against the officer.

Part 5 Public interest monitor

Division 1 Appointment of public interest monitor

324 Public interest monitor

(1) The Governor in Council may appoint a person (the ***public interest monitor***) to monitor applications for, and the use of, surveillance warrants and covert search warrants.

(2) The Governor in Council may also appoint as many deputy public interest monitors as the Minister considers necessary.

(3) The Governor in Council may, in the appointment, fix the terms and conditions of the appointment.

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(4) A monitor is to be appointed under this Act, and not under the *Public Sector Act 2022*.

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

(a) the principal commissioner under the *Family and Child Commission Act 2014*;

(b) the commission;

(c) the director of public prosecutions;

(d) the office of the director of public prosecutions;

(e) the police service.

325 Acting monitor

(1) The Governor in Council may appoint a person qualified to be appointed as the public interest monitor to act as the public interest monitor—

(a) during a vacancy in the office; or

(b) during any period, or all periods, when the public interest monitor is absent from duty or from the State or, for another reason, can not perform the duties of the office.

(2) The Governor in Council may appoint a person qualified to be appointed as a deputy public interest monitor to act as a deputy public interest monitor—

(a) during a vacancy in the office; or

(b) during any period, or all periods, when a deputy public interest monitor is absent from duty or from the State or, for another reason, can not perform the duties of the office.

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Division 2 Functions

326 Monitor's functions

(1) The public interest monitor has the following functions for surveillance warrants and covert search warrants—

(a) to monitor compliance by the commission with this Act in relation to matters concerning applications for surveillance warrants and covert search warrants;

(b) to appear at any hearing of an application to a Supreme Court judge or a magistrate for a surveillance warrant or covert search warrant to test the validity of the application, and for that purpose at the hearing—

(i) to ask questions of the applicant and to examine or cross-examine any witness; and

(ii) to make submissions on the appropriateness of granting the application; and

(c) to gather statistical information about the use and effectiveness of surveillance warrants and covert search warrants;

(d) whenever the public interest monitor considers it appropriate—to give to the commission and the parliamentary committee a report on noncompliance by the commission with this Act.

(2) Subject to the direction of the public interest monitor, a deputy public interest monitor has the functions mentioned in subsection (1)(a), (b) and (c).

327 Minister's guidelines

The Minister may issue guidelines about how the public interest monitor and deputy public interest monitor are to perform their functions.

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Division 3 General

328 Monitor's annual report

(1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the public interest monitor must prepare and give to the Minister a written report on the use of surveillance warrants and covert search warrants for the previous year.

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

(3) The annual report must not contain information that—

(a) discloses or may lead to the disclosure of the identity of any person who has been, is being, or is to be, investigated; or

(b) indicates a particular investigation has been, is being, or is to be conducted.

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

Chapter 7 General

329 Duty to notify the parliamentary committee and the parliamentary commissioner of improper conduct

(1) The person mentioned in column 1 of the following table (the ***notifier***) must notify the parliamentary committee and the parliamentary commissioner of all conduct of a person mentioned opposite the notifier in column 2 of the table that the notifier suspects involves, or may involve, improper conduct.

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Column 1	Column 2
chairperson	commissioner other than the chairperson
	chief executive officer
deputy chairperson	chairperson
chief executive officer	commission officer other than a commissioner or the chief executive officer

(2) A notification under subsection (1) must be given in the way and within the time required by the parliamentary committee or parliamentary commissioner.

(3) In forming a suspicion for subsection (1) in relation to the conduct of a person, the notifier must disregard the intention of the person in engaging in the conduct.

(4) In this section—

improper conduct, of a person, means—

(a) disgraceful or improper conduct in an official capacity; or

(b) disgraceful or improper conduct in a private capacity that reflects seriously and adversely on the commission; or

(c) conduct that would, if the person were an officer in a unit of public administration, be corrupt conduct; or

(d) disclosure of confidential information without the required authorisation, whether or not the disclosure contravenes an Act; or

(e) failure to ensure—

(i) a register kept by the commission under an Act is up to date and complete; or

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(ii) all required documentation is on a file kept by the commission and correctly noted on a register kept by the commission under an Act; or

(f) exercise of a power without obtaining the required authorisation, whether inadvertently or deliberately; or

(g) noncompliance with a policy or procedural guideline set by the commission, whether inadvertently or deliberately, that is not of a minor or trivial nature; or

(h) exercise of a power conferred on the person under this or another Act in a way that is an abuse of the power.

330 Persons subject to criminal history check

(1) A person can not be appointed as a commission officer, the parliamentary commissioner or a monitor if the person does not consent to a criminal history check.

(2) Also, a person can not be assigned to the parliamentary commissioner if the person does not consent to a criminal history check.

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

331 Effect of pending proceedings

(1) The commission may do any or all of the following, despite any proceeding that may be in or before a court, tribunal, warden, coroner, magistrate, justice or other person—

(a) commence, continue, discontinue or complete an investigation or hearing or any part or aspect of the investigation or hearing;

(b) give a report, under chapter 2, part 3, division 5 or part 6, in relation to the investigation or hearing or any part or aspect of the investigation or hearing;

(c) an act or thing that is necessary or expedient for a purpose mentioned in paragraph (a) or (b).

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(2) If the proceeding is a proceeding for an indictable offence and is conducted by or for the State, the commission must, if failure to do so might prejudice the accused's right to a fair trial, do 1 or more of the following—

(a) conduct any hearing relating to an investigation as a closed hearing during the currency of the proceeding;

(b) give a direction under section 202 to have effect during the currency of the proceeding;

(c) make an order under section 180(3).

(3) This section has effect whether or not the proceeding commenced before or after the commission's investigation started and has effect whether or not the commission or a commission officer is a party to the proceeding.

(4) To remove any doubt, it is declared that—

(a) a proceeding for a criminal offence is in or before a court from the moment the charge is laid for the offence; and

(b) under subsection (1), the commission may, for the investigation or hearing, require a person or witness to answer a question, or produce a document or thing, that is relevant to a proceeding brought against the person or witness for a criminal offence.

Example for paragraph (b)—

The commission may require a person to attend a commission hearing to answer a question about a matter relating to a criminal offence for which the person has been charged.

332 Judicial review of commission's activities in relation to corrupt conduct

(1) A person who claims—

(a) that a commission investigation into corrupt conduct is being conducted unfairly; or

(b) that the complaint or information on which a commission investigation into corrupt conduct is being,

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or is about to be, conducted does not warrant an investigation;

may apply to a Supreme Court judge for an order in the nature of a mandatory or restrictive injunction addressed to the commission.

(2) The judge may, on the commission's application, hear submissions from the commission relating to the investigation in the absence of the person or the person's lawyer.

(3) If an application (the ***costs application***) is made to the court by a person (the ***costs applicant***) who has applied under subsection (1), the court may order that—

(a) the commission indemnify the costs applicant for costs properly incurred in the injunction proceeding, on the standard basis, from the time the costs application was made; or

(b) a party to the injunction proceeding is to bear only that party's own costs of that proceeding, regardless of the outcome.

(4) In considering the costs application, the court must have regard to—

(a) the financial resources of—

(i) the costs applicant; or

(ii) any person associated with the costs applicant who has an interest in the outcome of the injunction proceeding; and

(b) whether the injunction proceeding involves an issue that affects, or may affect, the public interest, in addition to any personal right or interest of the costs applicant; and

(c) whether the injunction proceeding discloses a reasonable basis for the application under subsection (1).

(5) The court may, at any time, on its own initiative or on the application of the costs applicant or the commission, revoke

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or vary, or suspend the operation of, an order made by it under this section after having regard to—

(a) any conduct of the costs applicant, including a failure to diligently prosecute the injunction proceeding; or

(b) any significant change affecting the matters mentioned in subsection (4).

(6) Subject to this section, the rules of court applying to the awarding of costs apply to the awarding of costs for the injunction proceeding.

(7) An appeal may be brought from an order under subsection (3) or (5) to the Court of Appeal, but only with the leave of that court.

(8) An application under this section is to be heard in closed court.

(9) In this section—

commission investigation into corrupt conduct includes an investigation of a matter mentioned in section 33(2).

injunction proceeding means an application under subsection (1) and a proceeding on the application.

333 Effect of further factors on order

(1) An order made on an application under section 332 does not prevent or inhibit the conduct of the investigation in question if there have emerged further factors in light of which the order appears to be unjustified.

(2) If there have emerged further factors that put in question the appropriateness of the order, a Supreme Court judge may, on the commission's application, revoke the order, or vary its terms as the judge considers appropriate.

(3) An application under subsection (2) is to be heard in closed court.

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334 Application under s 332

(1) If the judge who hears an application under section 332 is satisfied as to the matter claimed by the applicant, the judge may, by order—

(a) require the senior executive officer (corruption) to conduct the investigation in question in accordance with guidelines specified in the order; or

(b) direct the senior executive officer (corruption) to stop or not proceed with an investigation on the complaint or information to which the application relates.

(2) In proceedings on an application under section 332, made on the ground that information or a complaint does not warrant an investigation, the applicant is not entitled to be given particulars of the information or complaint or of the source of the information or complaint.

(3) A judge hearing an application under section 332, on the ground that information or a complaint does not warrant an investigation, may take or receive, in closed court, evidence from the commission on the basis for the investigation.

(4) The applicant and any person representing the applicant must not be present while evidence is being taken or received under subsection (3).

(5) Evidence taken or received by a court under subsection (3) must not be published or disclosed outside the court.

335 Protection of officials and others from liability

(1) This section applies to each of the following entities (each a ***protected entity***)—

(a) the commission;

(b) a person who is—

(i) a commission officer; or

(ii) a person acting under the direction of a commission officer;

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(c) a person who was a person of a type mentioned in paragraph (b) at the time the person engaged in conduct in an official capacity.

(2) A protected entity does not incur civil liability for engaging, or for the result of engaging, in conduct in an official capacity.

(3) If subsection (2) prevents liability attaching to a protected entity, the liability attaches instead to the State.

(4) If liability attaches to the State under subsection (3), the State may recover contribution from the protected entity but only if the conduct was engaged in—

(a) other than in good faith; and

(b) with gross negligence.

(5) In a proceeding under subsection (4) to recover contribution, the amount of contribution recoverable is the amount found by the court to be just and equitable in the circumstances.

(6) In a proceeding for defamation, there is a defence of absolute privilege for a publication to or by the commission or a commission officer made for the purpose of performing the commission's functions.

(7) In this section—

civil liability, of a protected entity for engaging, or for the result of engaging, in conduct in an official capacity, means liability of any type for the payment of an amount by the entity because of—

(a) a claim based in tort, contract or another form of action in relation to the conduct or result, including, for example, breach of statutory duty or defamation and, for a fatal injury, includes a claim for the deceased's dependants or estate; or

(b) a complaint made under a law that provides a person may complain about the conduct or result to an entity established under the law, other than a complaint to start criminal proceedings, including, for example, a complaint under the *Justices Act 1886*; or

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(c) an order of a court to pay costs relating to a proceeding for an offence against a law in relation to the conduct or result, unless the proceeding was for an offence by the protected entity.

Examples of types of liability—

- a liability because of an agreement or an order under the *Anti-Discrimination Act 1991* or the *Australian Human Rights Commission Act 1986* (Cwlth) requiring payment of an amount to a complainant (however described) under the Act
- a liability because of an obligation under an agreement to settle a proceeding, or an order of a court or tribunal, to do something that involves paying an amount, including an obligation to rectify damage to a building or to publish an apology in a newspaper

conduct means an act or an omission to perform an act.

engage in conduct in an official capacity means engage in conduct as part of, or otherwise in connection with, an entity's function or role as a protected entity, including, for example, engaging in conduct under or purportedly under this Act.

336 Protection of parliamentary commissioner and officers etc.

(1) A parliamentary commissioner officer is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) No civil or criminal proceedings may be brought against a parliamentary commissioner officer for an act mentioned in subsection (1) without the leave of the Supreme Court.

(3) The Supreme Court may give leave under subsection (2) only if satisfied there is substantial ground for claiming that the person to be proceeded against has not acted honestly or has acted negligently.

(4) If subsection (1) prevents a civil liability attaching to a parliamentary commissioner officer, the liability attaches instead to the State.

(5) A parliamentary commissioner officer may not be called to give evidence or produce any document in any court, or in any

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judicial proceedings, in relation to any matter coming to the officer's knowledge while performing functions under this Act.

(6) In a proceeding for defamation, there is a defence of absolute privilege for a publication to or by the parliamentary commissioner made for the purpose of performing the parliamentary commissioner's functions under this Act.

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

(8) In this section—

parliamentary commissioner officer means a person who is or was—

(a) the parliamentary commissioner; or

(b) an officer or employee of the parliamentary service assigned to the parliamentary commissioner; or

(c) a person engaged to provide the parliamentary commissioner with services, information or advice.

337 Protection from liability

(1) The public interest monitor or a deputy public interest monitor does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to the public interest monitor or a deputy public interest monitor, the liability attaches instead to the State.

338 Protection of witnesses etc.

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

(a) is helping or has helped the commission in the performance of its functions; or

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

(c) proposes to produce or has produced a document or thing to the commission otherwise than at a commission hearing.

(2) The commission may, with the person's consent, provide witness protection for the person under this Act or the *Witness Protection Act 2000*.

339 Record of execution of warrant

A commission officer who executes a warrant must, if reasonably practicable, write the following on the back of the original warrant or form of warrant and sign the document—

(a) the date and time of execution;

(b) the name of the person on whom it was executed;

(c) if known, the name of the occupier of the place;

(d) the commission officer's name, and if the officer is a police officer, the officer's rank and registered number.

340 Evidentiary aids

(1) This section applies to a proceeding before a court or tribunal.

(2) It is not necessary to prove the appointment of an appointed person or the power of an appointed person to do something, unless a party to the proceeding, by reasonable notice of at least 7 days, requires proof.

(3) A certificate purporting to be signed by the chairperson stating any of the following matters is evidence of the matter—

(a) a person's appointment as an appointed person was, or was not, in force on a stated day or during a stated period;

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(b) a matter relevant to an investigation by the commission or the commission's operations;

(c) a stated document is a copy of a document made under this Act;

(d) a thing done by a person purporting to act under authority conferred by this Act;

(e) the purpose for which an act was done, or omission made, by a person purporting to act for the purposes of the commission.

(4) A signature purporting to be the signature of an appointed person is evidence of the person's signature.

(5) Judicial notice must be taken of—

(a) the official signature of a person who is, or has been, chairperson; and

(b) the fact that the person is, or has been, chairperson.

(6) In this section—

appointed person means—

(a) a commissioner; or

(b) a commission officer.

341 Changes in commission's constitution

The commission may perform a function, or exercise a power, under this or another Act on the basis of all evidence presented to it, regardless of any change in the constitution of the commission.

342 Inspection and use of material in commission's possession

(1) A commission officer may inspect and deal with any record or thing in the commission's possession relevant to the discharge of the officer's duties.

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(2) A person authorised in writing by the chairperson may inspect any record or thing in the commission's possession and, for that purpose, may retain it for the time necessary, and may make copies or extracts for use in connection with the commission's investigation to which the record or thing is relevant.

343 Information disclosure and privilege

(1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to a person, whether imposed by any Act or by a rule of law, applies to the disclosure of information to the commission for the performance of the commission's functions.

(2) A person who discloses information under subsection (1) does not, only because of the disclosure—

(a) contravene a provision of an Act requiring the person to maintain confidentiality in relation to the disclosure of information; or

(b) incur any civil liability, including liability for defamation; or

(c) become liable to disciplinary action.

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

344 Injunctions

(1) The commission may apply to the Supreme Court for an injunction on the ground that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

(a) a contravention of section 212; or

(b) attempting to contravene section 212; or

(c) aiding, abetting, counselling or procuring a person to contravene section 212; or

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(d) being in any way, directly or indirectly, knowingly concerned in or a party to the contravention of section 212; or

(e) conspiring with others to contravene section 212.

(2) If the court is satisfied that the ground is made out, the court may grant the injunction in the terms it considers appropriate.

(3) Subsection (2) has effect despite the provisions of the *Industrial Relations Act 2016*.

(4) The court may grant an interim injunction until it decides the application.

(5) Before the court grants an injunction, it must be satisfied on the balance of probabilities that the person who gave evidence to or assisted the commission acted in good faith.

(6) The court may rescind or vary an injunction granted under subsection (2) or (4).

(7) The court may grant an injunction restraining a person from engaging in conduct—

(a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) whether or not the person has previously engaged in conduct of that kind; or

(c) whether or not there is an imminent danger of substantial damage to someone else if the person engages in conduct of that kind.

(8) The court may grant an injunction requiring a person to do an act or thing—

(a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; or

(b) whether or not the person has previously failed to do the act or thing; or

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(c) whether or not there is an imminent danger of substantial damage to someone else if the person fails to do the act or thing.

(9) If the commission applies for an injunction under this section, the court may not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking about damages.

(10) An application under this section is to be heard in closed court.

345 Authority to administer oaths

Any justice is authorised to administer an oath for the purposes of this Act.

346 Commissions of Inquiry Act 1950 prevails over this Act

(1) The *Commissions of Inquiry Act 1950* prevails over this Act.

(2) Without limiting subsection (1), the commission or a person who is, or was, a commission officer must comply with any summons or requirement of an inquiry chairperson under the *Commissions of Inquiry Act 1950*, section 5.

(3) For the *Commissions of Inquiry Act 1950*, section 5, 10(4) or 14(1)(b), it is not a reasonable excuse for the commission or anyone else to fail to comply with the summons or requirement—

(a) that compliance would disclose anything that is required not to be disclosed under this Act or would otherwise contravene this Act; or

(b) that compliance would disclose anything that should not be disclosed because of its particular nature, content or subject matter.

(4) This section—

(a) applies only for the purpose of a commission within the meaning of the *Commissions of Inquiry Act 1950*, section 3; and

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(b) applies despite another provision of this or another Act.

(5) In this section—

inquiry chairperson means the chairperson of a commission within the meaning of the *Commissions of Inquiry Act 1950*, section 3.

346A Protection of particular documents

(1) This section applies to a person who, from any source, has gained, gains, or has access to, a disclosed document.

(2) The person must not—

(a) copy the document; or

(b) use the document for any purpose; or

(c) disclose the document to anyone; or

(d) give access to the document to anyone.

Maximum penalty—500 penalty units or 1 year's imprisonment.

(3) Subsection (2) does not apply if the copying, use, disclosure or giving access is—

(a) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or

(b) as permitted or required by this Act, the *Commissions of Inquiry Act 1950* or the *Parliament of Queensland Act 2001*; or

(c) to perform a function under the *Public Records Act 2023*; or

(d) by a person for returning to the commission or the archivist, or for making enquiries of the commission or archivist about the return of, the document in the person's possession; or

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(e) by a person for making enquiries of the commission or the archivist about whether there is a restricted access period for the document; or

(f) by a commission officer or the archivist for providing advice or help to a person mentioned in paragraph (d) or (e).

(3A) Subsection (2) ceases to apply to the person in relation to the disclosed document if the restricted access period for the document ends.

(4) In this section—

archivist means the archivist, and the staff of the archives, under the *Public Records Act 2023*.

disclosed document means—

(a) a document relating to the inquiry accessed from the archivist between 1 February 2012 and 5 March 2013; or

(b) a document, to the extent it relates to the inquiry—

(i) created by the archivist or the commission for the purpose of helping a person access a document mentioned in paragraph (a); and

(ii) accessed between 1 February 2012 and 5 March 2013.

document includes information.

inquiry means the commission issued to Gerald Edward Fitzgerald by the Governor by orders in council dated 26 May 1987, 24 June 1987, 25 August 1988 and 29 June 1989.

restricted access period, for a disclosed document, means the restricted access period for the disclosed document worked out under section 346B and the *Public Records Act 2023*.

Note—

Under section 346B(4), a restricted access period is applied to particular public records (including disclosed documents) and the new restricted access period as applied by that subsection may be changed under section 346B(5) or the *Public Records Act 2023*, section 32.

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346B Declarations etc. relating to inquiry public records

(1) The main purposes of this section are—

(a) to make declarations about the lawfulness and validity of actions taken before 9 November 2013 under or purportedly under this Act and the repealed *Public Records Act 2002* in relation to inquiry public records and the application of restricted access periods to those records (including changes to the periods); and

(b) to apply a new restricted access period to all inquiry public records given to the archives before 9 November 2013; and

(c) to provide for changes to be made under this section to the restricted access period for an inquiry public record mentioned in paragraph (b) in a way that does not limit the application of the *Public Records Act 2023*.

(2) It is declared that an inquiry public record given to the archives before 9 November 2013 by the commission or purportedly by the commission—

(a) was and continues to be a public record lawfully given to the archives despite anything to the contrary in this Act, including, for example, section 375; and

(b) was and continues to be validly given to the archives by the commission as the responsible public authority for that public record under the repealed *Public Records Act 2002* or the *Public Records Act 2023*.

(3) It is also declared that a restricted access period for an inquiry public record that applied, or purportedly applied, under the repealed *Public Records Act 2002* before 9 November 2013, because of an action by the commission or purportedly by the commission, was validly applied under that Act as the restricted access period for the inquiry public record.

(4) Despite subsection (3), for each inquiry public record mentioned in subsection (2) a new restricted access period of 65 years after the day of the last action on the record, by this subsection, applies to the public record.

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(5) The commission may, by written notice given to the archivist, change the restricted access period for an inquiry public record as applied under subsection (4) or as changed by a notice previously given under this subsection.

(6) For the *Public Records Act 2023*, part 3—

(a) the restricted access period for an inquiry public record as applied under subsection (4) is taken to be the restricted access period under that Act for the record; and

(b) a notice given under subsection (5) for an inquiry public record is taken to be a restricted access notice given under section 32 of that Act for that record.

(7) Except as otherwise provided, this section does not limit the application of the *Public Records Act 2023* in relation to an inquiry public record or the restricted access period for an inquiry public record, including, for example, the application of any provision in part 3 of that Act.

Note for subsection (7)—

Nothing in this section prevents a notice being given under the *Public Records Act 2023*, section 32, to change the restricted access period applied under subsection (4), or changed under subsection (5), for an inquiry public record.

(8) This section applies despite —

(a) anything to the contrary in this Act, the repealed *Public Records Act 2002* or the *Public Records Act 2023*; or

(b) anything done or omitted to be done before 9 November 2013 under, or purportedly done under, this Act or the repealed *Public Records Act 2002* in relation to an inquiry public record.

(9) In this section—

archives means the archives under the repealed *Public Records Act 2002*, schedule 2, continued under the *Public Records Act 2023*, section 42(2).

archivist see section 346A(4).

disclosed document see section 346A(4).

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given to, in relation to an inquiry public record, includes made available for inspection by.

inquiry section 346A(4).

inquiry public record means either of the following whether or not it is also a disclosed document—

(a) a document relating to the inquiry;

(b) a document, to the extent it relates to the inquiry, created by the archivist or the commission for the purpose of helping a person access a document mentioned in paragraph (a).

public record means a public record under the repealed *Public Records Act 2002* or the *Public Records Act 2023*.

responsible public authority, for a public record, means a responsible public authority for a public record under the repealed *Public Records Act 2002* or the *Public Records Act 2023*.

restricted access period, for an inquiry public record, means—

(a) in relation to the period before 9 November 2013—the restricted access period for the inquiry public record under or purportedly under the repealed *Public Records Act 2002*, that is declared under subsection (3) to have validly been applied to the record, including a period as changed under that Act; or

(b) otherwise—the new restricted access period for the inquiry public record applied under subsection (4) or that period as changed under—

(i) subsection (5); or

(ii) the repealed *Public Records Act 2002*, section 19; or

(iii) the *Public Records Act 2023*, section 32.

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346C Possession of and dealing with data and records of CJC inquiry

(1) This section applies to the data and records of the CJC inquiry vested in the parliamentary commissioner.

(2) The parliamentary commissioner may request the archivist to—

(a) keep, store and preserve the data and records; and

(b) give persons access to the data and records in accordance with subsection (5).

(3) If the parliamentary commissioner makes a request under subsection (2)—

(a) the archivist must comply with the request; and

(b) the archivist has the functions mentioned in subsection (2)(a) and (b) on behalf of the parliamentary commissioner.

(4) A person may apply to the archivist for access to the data and records.

Note—

See also section 469 for particular applications to the parliamentary commissioner for access to the data and records.

(5) The archivist must give the person access to the data and records if the parliamentary commissioner informs the archivist in writing that the commissioner is satisfied the person has a legitimate need to access them.

(6) The archivist may give a person access to the data and records only under subsection (5).

(7) The parliamentary commissioner must review, in consultation with the archivist—

(a) the appropriateness of the requirement in subsection (5) for the commissioner to be satisfied of a person's legitimate need to access the data and records before giving access to them; and

(b) whether the data and records should become public records under the *Public Records Act 2023*.

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(8) The parliamentary commissioner must carry out the review within 15 years after the commencement and subsequently at least every 5 years.

(9) The parliamentary commissioner must inform the archivist in writing of the outcome of each review.

(10) Also, the parliamentary commissioner must inform the Minister in writing if the commissioner is satisfied that the requirement in subsection (5) is no longer appropriate and the data and records should become public records.

(11) In this section—

archivist means the archivist under the *Public Records Act 2023*.

CJC inquiry means the commission within the meaning of the *Commissions of Inquiry Act 1950* constituted by order in council of 7 October 1996 published in the gazette of that date at pages 475 and 476.

347 Review of Act and commission's operational and financial performance

(1) The Minister must review this Act and the commission's operational and financial performance.

(2) The review must start no sooner than 2 years after the commencement of this section.

347A Corporations legislation displacement

(1) A regulation may declare a provision of this Act that applies in relation to a prescribed corporation to be a Corporations legislation displacement provision for the purposes of the Corporations Act, section 5G.

(2) A regulation under subsection (1) may be declared to apply in relation to—

(a) the whole of the Corporations legislation or a particular provision of the Corporations legislation; or

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(b) all prescribed corporations or a particular prescribed corporation.

(3) In this section—

prescribed corporation means a corporation, within the meaning of the Corporations Act, that is prescribed under section 20 to be a unit of public administration.

348 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may provide for—

(a) procedures to be followed in proceedings before the commission; or

(b) procedures to be observed by commission officers and other persons in performing the commission's functions or exercising the commission's powers.

Chapter 8 Repeals and transitional, declaratory, validation and savings provisions

Part 1 Repeal provisions

349 Repeals

The following Acts are repealed—

- Criminal Justice Act 1989 No. 111
- Crime Commission Act 1997 No. 68.

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Part 2 Crime and Misconduct Act 2001

350 Definitions for pt 2

In this part—

commencement means the commencement of this section.

contract employee means a person who, immediately before the commencement, was employed by the criminal justice commission or the Queensland crime commission under a written contract, whether or not for a fixed term.

repealed Act means the repealed *Criminal Justice Act 1989* or the repealed *Crime Commission Act 1997*.

351 References to repealed Acts and former titles

(1) In an Act or document, a reference to a repealed Act may, if the context permits, be taken as a reference to this Act.

(2) In an Act or document, a reference in column 1 of the following table may, if the context permits, be taken as the corresponding reference in column 2 of the table.

Column 1	Column 2
criminal justice commission	commission
CJC	commission
chairperson of the criminal justice commission	chairperson of the commission
director, official misconduct division	assistant commissioner, misconduct
official misconduct division	commission
Queensland crime commission	commission
QCC	commission
crime commissioner	assistant commissioner, crime

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Column 1	Column 2
management committee	reference committee
parliamentary criminal justice commissioner	parliamentary crime and misconduct commissioner
parliamentary criminal justice committee	parliamentary crime and misconduct committee

352 Assets, rights and liabilities

To remove any doubt, it is declared that an asset, right or liability of the criminal justice commission or the Queensland crime commission is an asset, right or liability of the commission.

353 Proceedings

(1) To remove any doubt, it is declared that a proceeding that could have been started or continued by, or against, the criminal justice commission or the Queensland crime commission may be started or continued by, or against, the commission.

(2) Without limiting subsection (1), a disciplinary charge under section 39 of the repealed *Criminal Justice Act 1989* that could have been started or continued by the Criminal Justice Commission if that Act had not been repealed may be started or continued by the commission under section 50.

354 Continuation of complaints

(1) This section applies if a complaint made to the criminal justice commission under the repealed *Criminal Justice Act 1989* before the commencement had not been finally dealt with under that Act on the commencement.

(2) The complaint must be dealt with as if it had been made under this Act.

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355 Continuation of references

(1) Each referral to the crime commission by the management committee under the repealed *Crime Commission Act 1997* is taken to be a referral of major crime to the commission by the reference committee under this Act subject to any limitations imposed by the management committee under the repealed *Crime Commission Act 1997*.

(2) However, the standing reference to investigate criminal paedophilia mentioned in section 46(7) of the repealed *Crime Commission Act 1997* ended on that Act's repeal.

356 Offences

(1) Proceedings for an offence against the repealed Act may be continued, or started despite the repeal of the repealed Act.

(2) For subsection (1), the *Acts Interpretation Act 1954*, section 20 applies, but does not limit the subsection.

(3) For subsection (1), in relation to an offence against the repealed *Criminal Justice Act 1989*, section 138(2) of that Act applies, despite its repeal as if—

(a) the word 'commission' included *commission* as defined in this Act; and

(b) the word 'chairperson' included *chairperson* or ***chairman*** as defined in this Act.

357 Chairperson of the criminal justice commission

(1) The chairperson of the criminal justice commission under the repealed *Criminal Justice Act 1989* goes out of office as the chairperson of the criminal justice commission and as a member of the criminal justice commission on the commencement.

(2) Subsection (3) applies if the chairperson of the Criminal Justice Commission under the repealed *Criminal Justice Act 1989*—

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(a) is offered appointment as the chairperson under this Act and accepts the appointment; or

(b) is offered appointment as an assistant commissioner under this Act and accepts the appointment.

(3) The chairperson is not entitled to an amount that might otherwise be payable to the chairperson because the chairperson goes out of office under subsection (1).

(4) This section has no effect on superannuation or leave entitlements.

358 Commissioners of the criminal justice commission

A member, other than the chairperson, of the criminal justice commission under the repealed *Criminal Justice Act 1989* continues as a part-time commissioner under this Act.

359 Crime commissioner

(1) The crime commissioner under the repealed *Crime Commission Act 1997* goes out of office as the crime commissioner and as a member of the crime commission on the commencement.

(2) Subsection (3) applies if the crime commissioner under the repealed *Crime Commission Act 1997*—

(a) is offered appointment as the chairperson under this Act and accepts the appointment; or

(b) is offered appointment as an assistant commissioner under this Act and accepts the appointment.

(3) The crime commissioner is not entitled to an amount that might otherwise be payable to the crime commissioner because the crime commissioner goes out of office under subsection (1).

(4) This section has no effect on superannuation or leave entitlements.

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360 Management committee

(1) An appointed member of the management committee under the repealed *Crime Commission Act 1997* is taken to be an appointed member of the reference committee under this Act in accordance with the member's original conditions of appointment.

(2) In this section—

member's original conditions of appointment means the terms and conditions governing the member's appointment under the repealed *Crime Commission Act 1997* at the commencement.

361 Parliamentary committee

The members of the criminal justice committee established under the repealed *Criminal Justice Act 1989* holding office at the commencement are taken to be the members of the parliamentary committee under this Act.

362 Parliamentary commissioner

The person holding office as the parliamentary commissioner or acting parliamentary commissioner under the repealed *Criminal Justice Act 1989* at the commencement is taken to be the parliamentary commissioner or acting parliamentary commissioner under this Act.

363 Employees

(1) To remove any doubt, it is declared that on the commencement a person who, immediately before the commencement, was an employee of the criminal justice commission or the Queensland crime commission—

(a) becomes an employee of the commission; and

(b) has a right to a salary or wage rate not lower than the person's salary or wage rate immediately before the commencement.

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(2) To remove any doubt, it is declared that for subsection (1)(a)—

(a) a person who, immediately before the commencement was a permanent employee of the criminal justice commission or the Queensland crime commission is taken to be a permanent employee of the commission; and

(b) a person who, immediately before the commencement was a temporary employee of the criminal justice commission or the Queensland crime commission is taken to be a temporary employee of the commission; and

(c) a person who, immediately before the commencement was a casual employee of the criminal justice commission or the Queensland crime commission is taken to be a temporary employee of the commission on a casual basis.

(3) This section does not apply to a contract employee.

364 Right of return to public service

(1) This section applies to a person who, immediately before the commencement was an employee of the crime commission in a permanent or full-time capacity and an officer of the public service.

(2) The person is entitled to re-become an officer of the public service if the person elects to re-become an officer of the public service within 1 year after the commencement or any further period that the Minister allows.

(3) If the person re-becomes an officer of the public service under subsection (2)—

(a) the person's initial terms of employment must not be less favourable than the terms of employment that applied to the person before the person became employed by the crime commission; and

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(b) for the purpose of calculating and providing the person's superannuation and leave entitlements, the person is to be treated as—

(i) not having left the public service when the person became employed by the Crime and Misconduct Commission; and

(ii) having been an officer of the public service while the person was employed by the Crime and Misconduct Commission.

365 Contract employees

(1) To remove any doubt, it is declared that on the commencement a contract employee of the criminal justice commission or the Queensland crime commission becomes a contract employee of the commission.

(2) To remove any doubt, it is declared that the person's contract with the criminal justice commission or the Queensland crime commission is a contract with the commission.

366 Accrued entitlements

A person who becomes an employee of the commission under this part keeps all entitlements to recreation, sick, long service and other leave, superannuation and other benefits accrued by the person, immediately before the commencement, as an employee of the criminal justice commission or the Queensland crime commission.

367 Public interest monitor

The public interest monitor appointed under the repealed *Criminal Justice Act 1989* or the repealed *Crime Commission Act 1997* is, at the commencement, taken to be the public interest monitor appointed under this Act.

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368 Special provisions for transitional office holders

For section 247(3), a person holding office as a senior officer on the commencement is taken to have started holding office in the commission on the commencement.

369 Provision for selection processes started before the commencement

(1) This section applies if, before the commencement—

(a) the criminal justice commission under the repealed *Criminal Justice Act 1989* or the crime commission under the repealed *Crime Commission Act 1997* advertised for applications from suitably qualified persons to be considered for selection to the role being advertised; and

(b) the selection process had not been finalised.

(2) The commission may continue with the selection process and appoint a person to a role as a commission officer that is similar to the role advertised.

370 Provision for selection processes for roles of chairperson and assistant commissioners

(1) Section 228 does not apply to the first appointment of a person as the chairperson.

(2) Also, an appointment of a person as chairperson or assistant commissioner after the enactment of this Act is not to be taken to be invalid only because action was taken in relation to the filling of the role of chairperson or assistant commissioner before the enactment.

371 Warrants

(1) A warrant issued under the repealed *Criminal Justice Act 1989* or the repealed *Crime Commission Act 1997* and in force immediately before the commencement is taken to be a warrant validly issued under this Act and continues in force,

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subject to any condition or limitation on its issue and with necessary changes.

(2) The commission must ensure any recording made or photograph taken under a warrant issued under the repealed *Criminal Justice Act 1989* or the repealed *Crime Commission Act 1997* or a transcript or copy made from information obtained under the warrant is destroyed as soon as practicable after it is no longer required.

(3) Subsection (2) does not prevent information or other matter being preserved for any period or indefinitely if, in the chairperson's opinion, it is relevant to—

(a) any offence of which someone has been convicted if there is a possibility that an issue about the conviction may arise; or

(b) an ongoing investigation.

(4) The *Public Records Act 2002* does not apply to records mentioned in this section.

372 Notices

A notice issued under the repealed *Criminal Justice Act 1989* or the repealed *Crime Commission Act 1997* and in force immediately before the commencement is taken to be a notice validly issued under this Act and continues in force, with necessary changes.

373 Action taken by parliamentary commissioner

(1) An action started by the parliamentary commissioner before the commencement but not finished at the commencement may be continued as if the action had been started under this Act and this Act applies accordingly.

(2) In this section—

action means—

(a) an investigation; or

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(b) an inquiry; or

(c) a review.

375 Data and records of commission of inquiry

(1) This section applies to the commission of inquiry data and records of which the director of the intelligence division under the repealed *Criminal Justice Act 1989* assumed possession and control under that repealed Act.

(2) The commission must continue possession and control of the data and records and the provisions of the repealed *Special Prosecutor Act 1988*, sections 20 and 21 apply, with necessary changes, as if—

(a) the commission of inquiry referred to in that Act were the commission; and

(b) the chairperson referred to in that Act were the chairperson under this Act.

(3) In this section—

commission of inquiry data and records means the commission of inquiry data and records mentioned in the repealed *Criminal Justice Act 1989*, section 59.

375A Orders made by criminal justice commission or Queensland crime commission

It is declared that an order made by the criminal justice commission or a presiding member of a QCC hearing as defined under the repealed *Crime Commission Act 1997* before the commencement and in force immediately before the commencement—

(a) continues to have effect after the commencement according to its terms; and

(b) may be varied, revoked or otherwise dealt with, and enforced, as if the order had been made by the commission under this Act.

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375B Confidential material under the Crime Commission Act

(1) This section applies if, under section 111 of the repealed *Crime Commission Act 1997*, a person could not publish an answer, document, thing or information mentioned in that section without the written consent of the Queensland Crime Commission.

(2) To remove any doubt, it is declared that the commission may give written consent to the publication.

Part 3 Cross-Border Law Enforcement Legislation Amendment Act 2005

376 Definitions for pt 3

In this part—

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

applied provisions means the *Police Powers and Responsibilities Act 2000*, chapter 11, part 2, as applied by new section 138.

commencement day means the day on which section 69 of the amendment Act commences.

existing approving officer means an approving officer mentioned in former section 262(2)(b) of the *Police Powers and Responsibilities Act 2000*.

Editor's note—

As previously enacted, this was a reference to the *Police Powers and Responsibilities Act 2000*, section 173(2)(b) (Application for approval). The reference was changed by 2006 Act No. 26, sections 84 and 86.

existing controlled operation approval means an approval given by an existing approving officer under former section 266 of the *Police Powers and Responsibilities Act*

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2000 for a controlled operation in relation to a suspected misconduct offence.

Editor's note—

As previously enacted, this was a reference to the *Police Powers and Responsibilities Act 2000*, section 177 (Consideration and approval of application). The reference was changed by 2006 Act No. 26, sections 84 and 86.

existing controlled operation urgent approval means an approval for a controlled operation in relation to a suspected misconduct offence given by—

(a) the chairperson under former section 264 of the *Police Powers and Responsibilities Act 2000*; or

(b) an existing approving officer under former section 265 of the *Police Powers and Responsibilities Act 2000*.

Editor's note—

As previously enacted, paragraph (a) referred to the *Police Powers and Responsibilities Act 2000*, section 175 (Certain CMC controlled operations). Paragraph (b) referred to the *Police Powers and Responsibilities Act 2000*, section 176 (Procedure in urgent circumstances other than if s 175 applies). The references were changed by 2006 Act No. 26, sections 84 and 86.

existing covert operative means a commission officer or another person who is named in an existing controlled operation approval as a covert operative for the controlled operation to which the approval relates.

former, of a provision of the *Police Powers and Responsibilities Act 2000* mentioned in this part, means the provision to which the reference relates is a provision of the pre-amended Act.

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

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

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pre-amended Act means the *Police Powers and Responsibilities Act 2000* as in force immediately before the commencement of section 12 of the amendment Act.

377 Transitional provisions for pre-commencement day referrals to committee

(1) A referred application that was not considered by the committee under former chapter 10, part 2, division 2 of the *Police Powers and Responsibilities Act 2000* may continue to be considered by the committee under the applied provisions.

(2) In this section—

referred application means an application for either of the following that was referred to the committee by an approving officer under former chapter 10, part 2, division 2 of the Police Powers and Responsibilities Act 2000—

(a) approval to conduct a controlled operation in relation to a suspected misconduct offence;

(b) variation of an approval to conduct a controlled operation in relation to a suspected misconduct offence.

Editor's note—

As previously enacted, this was a reference to the *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled operations and controlled activities), part 2 (Controlled operations), division 2 (Committee's functions and business). The reference was changed by 2006 Act No. 26, sections 84 and 86.

378 Transitional provisions for controlled operations

(1) An existing controlled operation approval that was in force immediately before the commencement day and relates to a suspected misconduct offence continues in force from that day in accordance with its terms as if it were an approval given under new section 143.

(2) An existing controlled operation urgent approval that was in force immediately before the commencement day and relates to a suspected misconduct offence continues in force from

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that day in accordance with its terms as if it were an urgent approval given under new section 143.

379 Transitional provision for pre-commencement day recommendations

A recommendation made by the committee under former chapter 10, part 2, division 2 of the *Police Powers and Responsibilities Act 2000* and not acted upon before the commencement day is taken, for this Act, to be a recommendation made by the committee under the applied provisions.

Editor's note—

As previously enacted, this was a reference to the *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled operations and controlled activities), part 2 (Controlled operations), division 2 (Committee's functions and business). The reference was changed by 2006 Act No. 26, sections 84 and 86.

380 Transitional provision for covert operatives

A person named as a covert operative in an existing controlled operation approval continued in force under section 378 is taken, for this Act, to be a covert operative named in an approval given under this Act.

381 Transitional provisions for authorities for birth certificates

(1) This section applies to an authority given under former section 275 of the *Police Powers and Responsibilities Act 2000* to create a birth certificate to help conceal the identity of a covert operative for a controlled operation relating to a suspected misconduct offence.

Editor's note—

As previously enacted, this was a reference to the *Police Powers and Responsibilities Act 2000*, section 186 (Request for issue of document to conceal identity—general). The reference was changed by 2006 Act No. 26, sections 84 and 86.

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(2) The authority continues in force as a birth certificate approval.

(3) A birth certificate created in accordance with an authority continued in force under subsection (2)—

(a) is taken to have been created under new section 146Z; and

(b) may continue to be used for the purpose for which it was created.

(4) Also, new section 146ZG applies in relation to the creation of the birth certificate as if the birth certificate had been created under new section 146Z.

382 Identity documents other than birth certificates

(1) This section applies to a document created in accordance with former section 279 of the *Police Powers and Responsibilities Act 2000* in relation to a controlled operation relating to a suspected misconduct offence.

Editor's note—

As previously enacted, this was a reference to the *Police Powers and Responsibilities Act 2000*, section 189 (Special provisions about concealing identities of covert operatives). The reference was changed by 2006 Act No. 26, sections 84 and 86.

(2) New sections 146ZF, 146ZH and 146ZI apply to the document as if it had been produced under a request under section 146ZB.

Part 4 Crime and Misconduct and Other Legislation Amendment Act 2006

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

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

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

(3) In this section—

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

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

Part 5 Justice Legislation Amendment Act 2008

384 Declaration about local governments and joint local governments

(1) This section applies for the period of the administration of this Act until the commencement of the *Justice Legislation Amendment Act 2008*, section 53.

(2) To remove any doubt and to remove the necessity for proof of the funding of local governments and joint local governments, it is declared that every local government and joint local government has always been and, despite the *Local Government Act 1993*, sections 34(3) and 49(4), continued to be a unit of public administration for this Act.

Part 6 Criminal Code and Jury and Another Act Amendment Act 2008

385 Declaration

(1) It is declared that, from the commencement, a witness at a misconduct hearing was not entitled to refuse to answer a

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question on the ground of the self-incrimination privilege or on the ground of confidentiality.

(2) Without limiting subsection (1), it is declared that from the commencement—

(a) it has always been and continues to be lawful for the presiding officer at a misconduct hearing to require an individual to answer a question after that individual has made a claim on the ground of the self-incrimination privilege in relation to an answer; and

(b) it has always been and continues to be lawful for the presiding officer at a misconduct hearing, in response to a claim on the ground of the self-incrimination privilege made by an individual in relation to an answer, to make an order that all answers or a class of answer given by the individual are to be regarded as having been given or produced on objection on the ground of the self-incrimination privilege; and

(c) it has always been and continues to be lawful for the presiding officer at a misconduct hearing to require an individual to answer all questions or a class of question after the presiding officer has made an order that all answers or a class of answer given by the individual are to be regarded as having been given or produced on objection on the ground of the self-incrimination privilege; and

(d) any answer given by an individual giving evidence at a misconduct hearing who has been directed to answer a question after a claim been made on the ground of the self-incrimination privilege in relation to that answer, has always been and continues to be admissible in any proceeding about—

(i) the falsity or misleading nature of an answer, document, thing or statement given or produced by the individual; or

(ii) an offence against this Act; or

(iii) a contempt of a person conducting the hearing.

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(3) In this section—

commencement means the commencement of section 192 on 1 January 2002.

misconduct hearing means a commission hearing in the context of a misconduct investigation.

Part 7 Crime and Misconduct Amendment Act 2009

386 Validation of referrals

Until the commencement of this part—

(a) a referral or purported referral to the crime commission by the management committee under the repealed *Crime Commission Act 1997* is taken to be, and to have always been, a validly made referral; and

(b) section 355(1) is taken to be, and to have always been, effective to declare each referral or purported referral mentioned in paragraph (a) to be a validly made referral of major crime to the commission by the reference committee under this Act; and

(c) a referral or purported referral of major crime to the commission by the reference committee under this Act is taken to be, and to have always been, a validly made referral.

387 Declaration

On the commencement of this part, a referral or purported referral to which section 386 applies is taken to be—

(a) to the extent the referral identified a particular incident of major crime to be investigated by the commission—a specific referral by the reference committee to the commission under section 27; or

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(b) to the extent the referral otherwise identified major crime to be investigated by the commission—a general referral by the reference committee to the commission under section 27.

388 Preservation of limitations and amendments

A referral or purported referral to which section 386 or 387 applies is subject to—

(a) for a referral or purported referral to the crime commission by the management committee under the repealed *Crime Commission Act 1997*—any limitations imposed by the management committee under the repealed *Crime Commission Act 1997*; and

(b) for a referral or purported referral declared under section 355(1) to be a referral of major crime to the commission by the reference committee under this Act—any amendment, or purported amendment, under section 30 or otherwise, of the terms of the referral by the reference committee; and

(c) for a referral or purported referral of major crime to the commission by the reference committee under this Act—any amendment, or purported amendment, under section 30 or otherwise, of the terms of the referral by the reference committee.

389 Validation of crime investigations

(1) A crime investigation conducted, or being conducted, under a referral or purported referral to which section 386 or 387 applies is taken to be, and to have always been, as valid as if it were a crime investigation conducted, or being conducted, under a referral by the reference committee to the commission under section 27.

(2) Subsection (1) does not limit the effect of a validation under section 386 or 387.

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390 Validation of use of information or evidence obtained by crime investigations conducted under referrals

(1) The use of information or evidence obtained by a crime investigation conducted, or being conducted, under a referral or purported referral to which section 386 or 387 applies, for a purpose mentioned in subsection (2), is taken to be, and to have always have been, as valid as if the information or evidence were obtained by a crime investigation conducted, or being conducted, under a referral by the reference committee to the commission under section 27.

(2) The purposes are—

(a) the performance of a function of the crime commission under the repealed *Crime Commission Act 1997*; or

(b) the performance of a function of the commission under this Act; or

(c) the performance of a function of any law enforcement agency or prosecuting authority to which the information or evidence—

(i) has been directly or indirectly provided by the crime commission mentioned in paragraph (a) under the repealed *Crime Commission Act 1997*; or

(ii) has been or is provided directly or indirectly by the commission under this Act.

(3) Subsection (1) does not limit the effect of a validation under section 386 or 387.

391 Review and lapsing of general referrals

(1) This section applies to a referral that, under section 387(b), is taken to be a general referral on the commencement of this part.

(2) The reference committee is to review the referral within a period of 2 years from the commencement.

(3) Section 30A(2) to (5) applies to the review.

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(4) If the reference committee has not acted under section 30A(5) on the review before the end of the period of 2 years mentioned in subsection (2), the referral lapses.

(5) If the reference committee confirms the referral, section 30A applies to the referral for the purpose of its future review and lapsing as if it were made on the day it was confirmed.

Part 8 Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009

392 Transitional provision for prescribed person

For section 50(5), definition *prescribed person*, paragraph (a)(ii) or (b)(ii) of the definition only applies to a person whose employment or appointment ends after the commencement of this section.

Part 9 Directors' Liability Reform Amendment Act 2013

393 Provision relating to s 346A

It is declared that section 346A(2) as in force before the commencement of this section did not, and does not, apply to the copying, use, disclosure or giving access by a person as mentioned in section 346A(3)(d), (e) or (f).

394 Provision relating to s 375

(1) It is declared that section 375 did not, and does not, limit the operation of, or anything done under, the *Public Records Act 2002* in relation to inquiry public records.

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(2) For subsection (1), section 375 is subject to an authorisation mentioned in section 62(1) relating to inquiry public records.

(3) In this section—

inquiry public records see section 346B.

Part 10 Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013

395 Use of privileged answers, documents, things or statements in proceedings under Confiscation Act

(1) Section 197(3)(c) as in force on and from 17 October 2013—

(a) applies, and is taken to have always applied, only to an answer, document, thing or statement given or produced on or after that day; and

(b) authorises the use of an answer, document, thing or statement only in a proceeding under the Confiscation Act started on or after that day; and

(c) applies, and is taken to have always applied, as if the provision as amended by the amending Act, and section 265 of the Confiscation Act as inserted by the amending Act, were in force from the beginning of that day.

Note—

17 October 2013 is the day section 197(3)(c) was inserted into this Act by the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013*, section 27.

(2) For subsection (1), section 265 of the Confiscation Act as inserted by the amending Act applies, and is taken to have always applied, in relation to an answer, document, thing or statement mentioned in subsection (1)(a) and a proceeding mentioned in subsection (1)(b).

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(3) In this section—

amending Act means the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*.

Part 11 Crime and Misconduct and Other Legislation Amendment Act 2014

Division 1 Preliminary

396 Definitions for pt 11

In this part—

amendment Act means the *Crime and Misconduct and Other Legislation Amendment Act 2014*.

commencement day means the day divisions 3 to 7 of this part, as inserted by the amendment Act, commence.

Division 2 Continuing particular appointments until the commencement day

397 Acting chairperson

(1) This section applies to a person who holds an appointment to act as the chairperson of the commission on the day this section commences.

(2) The person's appointment to act as the chairperson of the commission continues until, and only until, the commencement day on the same terms and conditions (other than the duration of the appointment).

(3) Subsection (2) stops applying if the person's appointment is terminated or otherwise ends under this Act or the terms and

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conditions applying to the person's appointment under the subsection.

(4) This section applies despite the *Acts Interpretation Act 1954*, section 24B(5).

398 Part-time commissioners and acting part-time commissioners

(1) This section applies to a person who holds a part-time commissioner appointment on the day this section commences.

(2) The person's part-time commissioner appointment continues until, and only until, the commencement day on the same terms and conditions (other than the duration of the appointment).

(3) Subsection (2) stops applying if the person's appointment is terminated or otherwise ends under this Act or the terms and conditions applying to the person's appointment under the subsection.

(4) In this section—

part-time commissioner appointment means an appointment—

(a) as a part-time commissioner; or

(b) to act as a part-time commissioner.

399 Declaration for continued appointments

(1) This section applies if the amendment Act is assented to after the day that a person's appointment to act as the chairperson, as a part-time commissioner, or to act as a part-time commissioner, would have ended but for section 397 or 398.

(2) For this Act, the person's appointment is declared to always have been validly extended for the relevant period.

(3) Anything done or omitted to be done by the person during the relevant period that would have been valid and lawful under

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this Act had the person's appointment been validly extended for the relevant period is declared to always have been valid and lawful.

(4) Subsection (3) applies for all purposes, including a proceeding decided before, or started before or after, the relevant period ends.

(5) In this section—

proceeding means—

(a) an investigation or hearing under this Act; or

(b) a civil or criminal proceeding.

relevant period, for a person appointed to act as the chairperson, as a part-time commissioner or to act as a part-time commissioner, means the period between—

(a) when the person's appointment would have ended but for section 397 or 398; and

(b) the day the amendment Act is assented to.

Division 3 General

400 References to Crime and Misconduct Act 2001 and particular terms

In an instrument, if the context permits—

(a) a reference to the *Crime and Misconduct Act 2001* may be taken to be a reference to the *Crime and Corruption Act 2001*; and

(b) a reference to misconduct within the meaning given by the *Crime and Misconduct Act 2001* may be taken to be a reference to corruption within the meaning given by the *Crime and Corruption Act 2001*; and

(c) a reference to official misconduct within the meaning given by the *Crime and Misconduct Act 2001* may be taken to be a reference to corrupt conduct within the meaning given by the *Crime and Corruption Act 2001*.

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401 References to former titles

(1) In an instrument, a reference in column 1 of the following table may, if the context permits, be taken to be the corresponding reference in column 2 of the table.

Provision	Commission officer
crime and misconduct commission	crime and corruption commission
chairperson of the crime and misconduct commission	chairman of the crime and corruption commission
assistant commissioner, crime	senior executive officer (crime)
assistant commissioner, misconduct	senior executive officer (corruption)
parliamentary crime and misconduct commissioner	parliamentary crime and corruption commissioner
parliamentary crime and misconduct committee	parliamentary crime and corruption committee

(2) Subsection (3) applies if a reference in column 2 of the table in section 351(2) is also a reference in column 1 of the table in subsection (1) of this section.

(3) From the commencement day, if the context permits, section 351(2) applies as if the reference in column 2 of the table in section 351(2) were the corresponding reference in column 2 of the table in subsection (1) of this section.

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Division 4 Commissioners from commencement day

Subdivision 1 Existing appointments

402 Acting chairperson

(1) This section applies to a person who, immediately before the commencement day, holds an appointment to act as the chairperson of the commission.

Note—

See section 397 in relation to the continuation of the person's appointment to act as the chairperson until the commencement day.

(2) The person is appointed to act as the chairman of the commission—

(a) from the start of the commencement day; and

(b) until the earlier of the following—

(i) 31 October 2014;

(ii) the day a person's appointment as chairman under section 229 takes effect.

(3) The person's appointment and employment to act as the chairman of the commission is subject to the same terms and conditions applying to the person's appointment and employment to act as the chairperson before the commencement day (other than the duration of that appointment).

(4) Until the person's appointment to act as the chairman of the commission ends under subsection (2)(b)—

(a) a reference in a provision of this part to the chairman is taken to be a reference to the person; and

(b) for that purpose, the provision applies with necessary changes.

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(5) Subsection (6) applies if the person is appointed as a commissioner from the day the person's appointment under subsection (2) ends.

(6) The period for which the person was appointed to act as the chairperson immediately before the commencement day, and the period of the person's appointment under subsection (2), is to be counted as a period for which the person holds office in the commission as a commissioner for the purposes of section 231(3).

403 Part-time commissioners

(1) This section applies if a person who was a part-time commissioner immediately before the commencement day—

(a) is appointed as a commissioner from the commencement day; or

(b) is appointed to act as a commissioner from the commencement day and is appointed as a commissioner from when that acting appointment ends.

Note—

See section 398 in relation to the continuation of the person's appointment as a part-time commissioner until the commencement day.

(2) The period for which the person was a part-time commissioner immediately before the commencement day is to be counted as a period for which the person holds office in the commission as a commissioner for the purposes of section 231(3).

(3) Also, if subsection (1)(b) applies, the period for which the person was appointed to act as a commissioner from the commencement day is to be counted as a period for which the person holds office in the commission as a commissioner for the purposes of section 231(3).

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404 Acting part-time commissioners

(1) This section applies if a person who held an appointment to act as a part-time commissioner immediately before the commencement day—

(a) is appointed as a commissioner from the commencement day; or

(b) is appointed to act as a commissioner from the commencement day and is appointed as a commissioner from when that acting appointment ends.

Note—

See section 398 in relation to the continuation of the person's appointment to act as a part-time commissioner until the commencement day.

(2) The period for which the person was appointed to act as a part-time commissioner immediately before the commencement day is to be counted as a period for which the person holds office in the commission as a commissioner for the purposes of section 231(3).

(3) Also, if subsection (1)(b) applies, the period for which the person was appointed to act as a commissioner from the commencement day is to be counted as a period for which the person holds office in the commission as a commissioner for the purposes of section 231(3).

Subdivision 2 New appointments

405 Provision for selection processes for roles of commissioners

An appointment of a person as a commissioner after the enactment of the amendment Act is not to be taken to be invalid only because action was taken in relation to the filling of the role of the commissioner before the enactment.

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Subdivision 3 Other provisions about former commissioners

406 Hearing, investigation or operation being conducted by former commissioner

(1) This section applies to a commission hearing, commission investigation or specific intelligence operation that, immediately before the commencement day, was being conducted by a former commissioner.

(2) From the start of the commencement day, the commission hearing, commission investigation or specific intelligence operation may be continued and be conducted by the following person (the ***presiding officer***)—

(a) for a commission hearing that is a public hearing—

(i) the chairman; or

(ii) if the chairman considers it necessary for the efficient operation of the commission—a sessional commissioner or senior executive officer as decided by the chairman;

(b) for a commission hearing that is a closed hearing, any of the following as decided by the chairman—

(i) the chairman;

(ii) a sessional commissioner;

(iii) a senior executive officer;

(iv) another person qualified for appointment as the chairman;

(c) for a commission investigation or specific intelligence operation—an appropriately qualified commission officer decided by the chairman.

(3) For subsection (2), anything done by the former commissioner in relation to the commission hearing, commission investigation or specific intelligence operation is taken to have been done by the presiding officer.

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(4) In this section—

conducted includes undertaken.

former commissioner means a person who was any of the following under this Act as in force before the commencement day—

(a) the acting chairperson;

(b) a part-time commissioner;

(c) an acting part-time commissioner.

407 Things done by or in relation to former commissioner

(1) This section applies to anything done by or in relation to a former commissioner under an Act (the ***empowering Act***)—

(a) whose effect had not ended immediately before the commencement day; and

(b) that, on and from the commencement day, is something that can be done by or in relation to a commissioner under the empowering Act; and

(c) that is not otherwise dealt with by a provision of this division.

(2) The thing done by or in relation to the former commissioner—

(a) continues to have effect; and

(b) from the start of the commencement day, is taken to have been done by or in relation to—

(i) if the thing is something that may be done by or in relation to the chairman under the empowering Act—the chairman; or

(ii) if subparagraph (i) does not apply and the thing is something that may be done by or in relation to the deputy chairman under the empowering Act—the deputy chairman; or

(iii) if subparagraph (i) does not apply and the thing is something that may be done by or in relation to the

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chief executive officer under the empowering Act—the chief executive officer; or

(iv) otherwise—a commissioner.

(3) In this section—

former commissioner means a person who was any of the following under this Act as in force before the commencement day—

(a) the chairperson;

(b) the acting chairperson;

(c) a part-time commissioner;

(d) an acting part-time commissioner.

Division 5 Assistant commissioners

408 Assistant commissioners continue as senior executive officers

(1) This section applies to a person who, immediately before the commencement day, holds an appointment as an assistant commissioner.

(2) At the start of the commencement day, the appointment and employment of the person as an assistant commissioner ends.

(3) From the start of the commencement day, the person is appointed as—

(a) for the assistant commissioner (crime)—the senior executive officer (crime); or

(b) for the assistant commissioner (misconduct)—the senior executive officer (corruption).

(4) The person is taken to be employed as the senior executive officer (crime) or senior executive officer (corruption) under the contract under which the person was employed as an assistant commissioner before the commencement day.

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(5) Without limiting subsection (4), the person's appointment and employment as the senior executive officer (crime) or senior executive officer (corruption) continues on the same terms, conditions and entitlements as those applying to the person's appointment and employment as an assistant commissioner.

(6) Also, the following applies for the person—

(a) the person retains and is entitled to all rights, benefits and entitlements that have accrued to the person because of the person's previous employment as an assistant commissioner, including because of the operation of section 249(2) as in force before the commencement day;

(b) the person's accruing rights, including to superannuation or recreation, sick, long service or other leave, are not affected;

(c) continuity of service is not interrupted, except that the person is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service;

(d) the employment does not constitute a termination of employment or a retrenchment or redundancy;

(e) the person is not entitled to a payment or other benefit because the person is no longer an assistant commissioner;

(f) section 249(3) as in force before the commencement day does not apply to the person in relation to the person ceasing to be an assistant commissioner.

Note—

See also section 247(3C) in relation to counting time spent by a person as assistant commissioner as time spent by the person as a senior officer.

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409 Acting assistant commissioners

(1) This section applies to a person who, immediately before the commencement day, holds an appointment to act as an assistant commissioner.

(2) At the start of the commencement day, the person's appointment and employment to act as the assistant commissioner ends.

(3) If the person is appointed as a senior officer, the period for which the person was appointed to act as an assistant commissioner immediately before the commencement day is to be counted as a period for which the person holds office as the senior officer for the purposes of section 247.

410 Hearing, investigation or operation being conducted by assistant commissioner

(1) This section applies to a commission hearing, commission investigation or specific intelligence operation that, immediately before the commencement day, was being conducted by an assistant commissioner.

(2) From the start of the commencement day, the commission hearing, commission investigation or specific intelligence operation may be continued and be conducted by—

(a) if the hearing, investigation or operation was being conducted by the assistant commissioner (crime)—the senior executive officer (crime); or

(b) if the hearing, investigation or operation was being conducted by the assistant commissioner (misconduct)—the senior executive officer (corruption).

(3) For subsection (2), anything done by the assistant commissioner in relation to the commission hearing, commission investigation or specific intelligence operation is taken to have been done by—

(a) if the hearing, investigation or operation was being conducted by the assistant commissioner (crime)—the senior executive officer (crime); or

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(b) if the hearing, investigation or operation was being conducted by the assistant commissioner (misconduct)—the senior executive officer (corruption).

(4) In this section—

conducted includes undertaken.

411 Things done by or in relation to assistant commissioner (crime)

(1) This section applies to anything done by or in relation to the assistant commissioner (crime) under an Act (the ***empowering Act***)—

(a) whose effect had not ended immediately before the commencement day; and

(b) that, on and from the commencement day, is something that may be done by or in relation to the senior executive officer (crime) under the empowering Act; and

(c) that is not otherwise dealt with by a provision of this division.

(2) The thing done by or in relation to the assistant commissioner (crime)—

(a) continues to have effect; and

(b) from the start of the commencement day, is taken to have been done by or in relation to the senior executive officer (crime).

412 Things done by or in relation to assistant commissioner (misconduct)

(1) This section applies to anything done by or in relation to the assistant commissioner (misconduct) under an Act (the ***empowering Act***)—

(a) whose effect had not ended immediately before the commencement day; and

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(b) that, on and from the commencement day, is something that may be done by or in relation to the senior executive officer (corruption) under the empowering Act; and

(c) that is not otherwise dealt with by a provision of this division.

(2) The thing done by or in relation to the assistant commissioner (misconduct)—

(a) continues to have effect; and

(b) from the start of the commencement day, is taken to have been done by or in relation to the senior executive officer (corruption).

Division 6 Functions of parliamentary commissioner

413 Investigations on parliamentary commissioner's own initiative

Section 314(4) applies only in relation to conduct, of a commission officer, engaged in on or after the commencement day.

414 Hearings conducted by parliamentary commissioner

(1) Section 318 as in force on the commencement day applies only in relation to a matter that comes to the parliamentary commissioner's knowledge on or after the commencement day.

(2) Section 318 as in force before the commencement day continues to apply in relation to a matter that comes to the parliamentary commissioner's knowledge before the commencement day, as if the amendment Act had not been enacted.

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415 Use of report of investigation conducted by parliamentary commissioner

Section 323A applies only in relation to a report of an investigation started on or after the commencement day.

Division 7 Other provisions

416 Existing complaints

(1) The commission or a public official must deal with an existing complaint under this Act as in force on the commencement day.

(2) However, section 36(3) does not apply in relation to an existing complaint.

(3) Also, section 216 as in force before the commencement day continues to apply in relation to an existing complaint.

(4) Section 216A does not apply in relation to an existing complaint, even if the person who made the complaint takes further action in relation to the complaint on or after the commencement day.

(5) If an existing complaint relates to conduct that was official misconduct within the meaning of this Act as in force before the commencement day but is not corrupt conduct within the meaning of this Act as in force on the commencement day—

(a) anything done by the commission or public official in relation to the complaint before the commencement day is not invalidated by the amendment of this Act by the amendment Act; but

(b) the commission or public official must take no action or discontinue action under this Act in relation to the complaint.

(6) Subsection (5)(b) does not affect a public official's functions or powers about dealing with the complaint other than under this Act.

(7) In this section—

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existing complaint means either of the following made or referred to the commission, but not finally dealt with, immediately before the commencement day—

(a) a complaint under section 36;

(b) a complaint made to another entity that is under an obligation to refer the complaint to the commission.

417 Initial research plan

The commission must prepare a research plan under section 52 for the period comprising—

(a) the period starting from the start of the commencement day and ending at the end of the financial year in which commencement happens; and

(b) the following 2 financial years.

418 Investigation of holders of judicial officers

Section 58(3) applies only in relation to conduct of a judicial officer engaged in on or after the commencement day.

419 Notifying parliamentary committee of improper conduct

(1) Subsection (2) applies if—

(a) before the commencement day, the chairperson of the commission suspected conduct of a commission officer involved, or may have involved, improper conduct within the meaning of former section 329; and

(b) immediately before the commencement day, the chairperson had not notified the parliamentary committee of the conduct under former section 329.

(2) Former section 329 applies in relation to the conduct as if the reference to the chairperson were a reference to the chairman.

(3) New section 329 applies in relation to the conduct of a commission officer engaged in before the commencement day

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only if the chairperson was not aware of the conduct before the commencement day.

(4) In this section—

former section 329 means section 329 as in force before the commencement day.

new section 329 means section 329 as in force at the commencement day.

420 Disciplinary action

(1) Chapter 6, part 1, division 9 applies in relation to a relevant commission officer—

(a) regardless of whether the officer's employment with the commission started before, on or after the commencement day; and

(b) despite the terms and conditions applying to the officer's employment immediately before the commencement day.

(2) However, the chief executive officer may take disciplinary action against a relevant commission officer under chapter 6, part 1, division 9 only in relation to a disciplinary ground arising on or after the commencement day.

(3) In this section—

disciplinary ground see section 273A.

employment see section 273A.

relevant commission officer see section 273A.

421 Declaration about s 385

(1) From the start of the commencement day, section 385 applies to a corruption hearing as if a reference in the section to a misconduct hearing were a reference to a corruption hearing.

(2) In this section—

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corruption hearing means a commission hearing in the context of a corruption investigation.

422 Application of Public Interest Disclosure Act 2010

(1) This section applies if, before the commencement day, a person made a disclosure under the *Public Interest Disclosure Act 2010*, section 17 about conduct of another person that—

(a) could, if proved, be official misconduct within the meaning of this Act as in force before the commencement day; but

(b) would not, if proved, be corrupt conduct within the meaning of this Act as in force on the commencement day.

(2) The *Public Interest Disclosure Act 2010* continues to apply in relation to the disclosure as if the amendment Act had not been enacted.

Part 12 Electoral and Other Legislation Amendment Act 2015

423 Chairman's pension entitlements

(1) Chapter 6, part 1, division 2, subdivision 3, applies to a person appointed as the chairman after 27 March 2015.

(2) Section 238C(b) applies to a period for which a person acted as the chairman only if the appointment to act started after 27 March 2015.

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Part 13 Crime and Corruption Amendment Act 2016

424 Chief executive officer

(1) This section applies in relation to a person who, immediately before the commencement, held office as a commissioner and the chief executive officer under an appointment by the Governor in Council.

(2) On the commencement, the appointment as a commissioner ends.

(3) The appointment, to the extent it relates to the office of chief executive officer, continues under section 229 until it ends under this Act.

425 Acting appointments

Section 237(2) does not apply to an appointment made under section 237 before the commencement that is still in effect on the commencement.

426 References to chair titles

(1) A reference in an Act or document to the chairman of the crime and corruption commission may, if the context permits, be taken to be a reference to the chairperson.

(2) A reference in an Act or document to a person who was the chairman of the crime and corruption commission may, if the context permits, be taken to include a person who was the chairman of the crime and corruption commission.

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Part 14 Serious and Organised Crime Legislation Amendment Act 2016

Division 1 General

427 Authorisation by chairperson of immediate response function

(1) This section applies if—

(a) before the commencement, the chairperson authorised, under section 55F, a crime investigation or the holding of an intelligence hearing (or both) in response to, or to prevent, a threat to public safety; and

(b) on the commencement, the investigation or hearing was not finalised.

(2) The investigation or hearing is taken to have been authorised by the reference committee under section 55D.

428 Refusal to comply with notice to produce for fear of reprisal

(1) This section applies if—

(a) before the commencement, a person was given a notice to produce under section 74; and

(b) immediately before the commencement, the person had not complied with the notice to produce and had not been convicted of an offence against section 74(5).

(2) Section 74, as amended by the *Serious and Organised Crime Legislation Amendment Act 2016*, applies in relation to the notice to produce.

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429 Refusal to comply with attendance notice for fear of reprisal

(1) This section applies if—

(a) before the commencement, a person was given an attendance notice under section 82; and

(b) immediately before the commencement, the person had not complied with the attendance notice and had not been convicted of an offence against section 82(5).

(2) Section 82, as amended by the *Serious and Organised Crime Legislation Amendment Act 2016*, applies in relation to the attendance notice.

430 Refusal to comply with requirement to produce stated document or thing for fear of reprisal

(1) This section applies if—

(a) before the commencement, a person was required to produce a stated document or thing at a commission hearing under an attendance notice or a section 75B requirement; and

(b) immediately before the commencement, the person had not complied with the requirement and had not been convicted of an offence against section 185(1).

(2) Section 185, as amended by the *Serious and Organised Crime Legislation Amendment Act 2016*, applies in relation to the requirement.

431 Refusal to answer question for fear of reprisal

(1) This section applies if—

(a) before the commencement, a witness at a commission hearing was required to answer a question put to the person at the hearing by the presiding officer; and

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(b) immediately before the commencement, the person had not answered the question and had not been convicted of an offence against section 190(1).

(2) Section 190, as amended by the *Serious and Organised Crime Legislation Amendment Act 2016*, applies in relation to the requirement.

432 Punishment for contempt

(1) To remove any doubt, it is declared that for section 199(8B), as amended by the *Serious and Organised Crime Legislation Amendment Act 2016*—

(a) a first contempt means a first contempt committed after the commencement of the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013*; and

(b) a second contempt means a second contempt committed after the commencement of the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013*; and

(c) a third or subsequent contempt means a third or subsequent contempt committed after the commencement of the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013*.

(2) Also, section 199, as amended by the *Serious and Organised Crime Legislation Amendment Act 2016*, applies to a proceeding for a contempt that has not been finalised before the commencement, whether the contempt was committed before or after the commencement.

433 Commission must give evidence to defence

Section 201, as amended by the *Serious and Organised Crime Legislation Amendment Act 2016*, applies to anything stated at, or a document or thing produced at, a commission hearing, whether the commission hearing started before or after the commencement.

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Division 2 Proceedings for offences and contempts relating to fear of reprisal

434 Definitions for division

In this division—

fear of reprisal, of a person, means fear, genuinely held, of—

(a) personal physical harm or damage to the person's property; or

(b) physical harm to someone else, or damage to the property of someone else, with whom the person has a connection or bond.

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

requirement the subject of the contempt means—

(a) for a contempt constituted by a failure by a person, under section 183, to take an oath when required by the presiding officer—the requirement to take the oath; or

(b) for a contempt constituted by a failure by a person, under section 185 or 188, to produce a stated document or thing at a commission hearing under an attendance notice or a section 75B requirement without reasonable excuse—the requirement to produce the stated document or thing; or

(c) for a contempt constituted by a failure by a person, under section 190 or 192, to answer a question put to the person at the hearing by the presiding officer without reasonable excuse or lawful excuse—the requirement to answer the question.

requirement the subject of the offence means—

(a) for an offence against section 74(5) of the pre-amended Act—the requirement to comply with the notice to produce under section 74(2) of the pre-amended Act; or

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(b) for an offence against section 82(5) of the pre-amended Act—the requirement to comply with the attendance notice under section 82(1) of the pre-amended Act; or

(c) for an offence against section 185(1) of the pre-amended Act—the requirement to produce a stated document or thing at the commission hearing under the attendance notice or section 75B requirement given under the pre-amended Act; or

(d) for an offence against section 190(1) of the pre-amended Act—the requirement to answer a question put to the person at the commission hearing under the pre-amended Act by the presiding officer.

435 Application of division

(1) This division applies if—

(a) a person has been convicted of an offence against the pre-amended Act, section 74(5), 82(5), 185(1) or 190(1); and

(b) at the time of failing to comply with the requirement the subject of the offence, the person may have had a reasonable excuse for failing to comply with the requirement based on the person's fear of reprisal.

(2) This division also applies if—

(a) a person has been found guilty under section 199(8) by the Supreme Court of a contempt of the presiding officer constituted by—

(i) a failure by the person, under section 183, to take an oath when required by the presiding officer; or

(ii) a failure by the person, under section 185 or 188, to produce a stated document or thing at a commission hearing under an attendance notice or a section 75B requirement without reasonable excuse; or

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(iii) a failure by the person, under section 190 or 192, to answer a question put to the person at the hearing by the presiding officer without reasonable excuse or lawful excuse; and

(b) at the time of failing to comply with the requirement the subject of the contempt, the person may have had a reasonable excuse for failing to comply with the requirement based on the person's fear of reprisal.

(3) For subsection (1)(b) and (2)(b), it does not matter if the reasonable excuse based on the fear of reprisal is raised by the person for the first time in an application under this division.

436 Application to Supreme Court

(1) The person may apply to the Supreme Court—

(a) for an offence mentioned in section 435(1)(a)—to set aside the conviction for the offence on the grounds the person, at the time of failing to comply with the requirement the subject of the offence, had a reasonable excuse, based on the person's fear of reprisal, for failing to comply with the requirement; or

(b) for a contempt mentioned in section 435(2)(a)—to set aside the finding of guilt and any punishment for the contempt imposed by the court under section 199(8) on the grounds the person, at the time of failing to comply with the requirement the subject of the contempt, had a reasonable excuse, based on the person's fear of reprisal, for failing to comply with the requirement.

(2) The application must be made within 3 months after the commencement.

(3) The court may, at any time, extend the period mentioned in subsection (2).

(4) The court must give a copy of the application to the commission.

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(5) Within 10 business days after the making of the application, the court must give directions to enable the application to be heard.

(6) Subject to any directions given by the court, the application must be heard within 20 business days after the day on which the application is made.

437 Hearing—offence

(1) On the hearing of an application under section 436(1)(a) to set aside a conviction for the offence, the Supreme Court may—

(a) set aside the conviction; or

(b) confirm the conviction.

(2) The court may have regard to any material relevant to the application.

438 Hearing—contempt

(1) On the hearing of an application under section 436(1)(b) to set aside the finding of guilt and any punishment for the contempt imposed by the court under section 199(8), the Supreme Court may—

(a) set aside the finding of guilt and the punishment; or

(b) confirm the finding of guilt and the punishment.

(2) The court may have regard to any material relevant to the application.

439 Appeals

A person making an application under section 436, or the Attorney-General, may appeal to the Court of Appeal against a decision of the Supreme Court under section 437 or 438 on any ground which involves a question of law alone.

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440 No cause of action

No cause of action may be started or continued against the State in relation to any period of imprisonment the person may have actually served in relation to a conviction for an offence, or a finding of guilt and imposition of punishment for contempt, set aside under this division.

Part 15 Crime and Corruption and Other Legislation Amendment Act 2018

Division 1 Amendments commencing on assent

441 Corruption functions

(1) The commission may perform its corruption functions under section 33(2) in relation to conduct that happened, or that is suspected to have happened, before the commencement.

(2) This Act as in force from the commencement applies to a corruption investigation—

(a) started but not finished before the commencement; or

(b) started after the commencement in relation to conduct that happened, or that is suspected to have happened, before the commencement.

442 Reports to prosecuting authorities

(1) This section applies if, before the commencement, the commission reported on an investigation of a complaint about, or information or matter involving, corruption to the director of public prosecutions under section 49(2)(a) as in force before the commencement.

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(2) Section 49(5) as in force immediately before the commencement continues to apply in relation to the matters the subject of the report.

443 QCAT orders about corrupt conduct

QCAT may make an order under section 219I against a prescribed person, as defined under section 50(3), in relation to corrupt conduct whether or not the person was a prescribed person under section 50 as in force when the conduct happened.

444 Period for starting proceedings relating to reviewable decisions

(1) Section 219G(2) as in force before the commencement continues to apply to a reviewable decision made before the commencement.

(2) Section 219G(2) as in force from the commencement applies in relation to a reviewable decision made after the commencement even if the decision relates to conduct that happened before the commencement.

445 Disciplinary action against a relevant commission officer who was a relevant employee

(1) This section applies to a person who is a relevant commission officer and was a relevant employee.

(2) The person may be disciplined under chapter 6, part 1, division 9, subdivision 3 only in relation to a relevant disciplinary ground arising on or after 3 February 2017.

Note—

Particular provisions of the *Public Service Act 2008* about disciplinary action have applied to the commission, as a public service office under that Act, since 3 February 2017.

(3) However, if the relevant disciplinary ground arising on or after 3 February 2017 relates to conduct that is a part of a course of conduct that also includes conduct giving rise to a relevant

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disciplinary ground arising before 3 February 2017, the person may be disciplined under chapter 6, part 1, division 9, subdivision 3 in relation to all of the grounds as if they all arose on or after 3 February 2017.

(4) Subsection (3) does not apply in relation to a relevant disciplinary ground arising before 3 February 2017 if disciplinary action has been, or is being, taken in relation to the ground under this Act or a relevant disciplinary law for the person within the meaning of section 273AA(3).

(5) If, at the commencement, the chairperson is taking disciplinary action under the *Public Service Act 2008*, section 187A or 188AB in relation to a person to whom this section applies—

(a) the chairperson must stop taking the disciplinary action under the *Public Service Act 2008*; and

(b) the disciplinary action may be continued under chapter 6, part 1, division 9, subdivision 3; and

(c) anything done under the *Public Service Act 2008* in relation to the disciplinary action by the chairperson is taken to have been done under chapter 6, part 1, division 9, subdivision 3 by the chief executive officer.

(6) In this section—

relevant commission officer see section 273A.

relevant employee see section 273A.

446 Sharing disciplinary information

(1) Sections 273DA and 273DB apply only in relation to a request for information made after the commencement.

(2) However, a request mentioned in column 1 made but not complied with before the commencement is taken to be a request mentioned in column 2 made after the commencement—

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Column 1	Column 2
request under the *Public Service Act 2008*, section 188B to the chairperson in relation to a person who is or was a relevant commission officer	request under section 273DA to the chief executive officer
request under the *Public Service Act 2008*, section 188B by the chairperson in relation to a person who is or was a relevant employee	request under section 273DB by the chief executive officer

447 Notification of prosecution proceedings by relevant prosecuting authorities

(1) Section 273H applies only in relation to a person charged with a relevant offence on or after 3 February 2017.

Note—

The *Public Service Act 2008*, section 170 has applied to the commission, as a public service office under that Act, in relation to all of the commission's employees since 3 February 2017.

(2) A written notice given to the chairperson under the *Public Service Act 2008*, section 170—

(a) is, from the commencement, taken to have been given to the chief executive officer under section 273H; and

(b) may be dealt with by the chief executive officer under this Act.

448 Liability of officials and others

(1) Current section 335 does not apply to conduct, or the result of conduct, engaged in by a protected entity before the commencement.

(2) Previous section 335 continues to apply to an act done, or omission made, by an official before the commencement.

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(3) Also, the *Public Service Act 2008*, section 26C continues to apply to conduct engaged in by a commission officer before the commencement.

(4) However, if a protected entity engages in conduct to which current section 335 applies after the commencement and the conduct is a part of a course of conduct that also includes conduct engaged in before the commencement, current section 335 applies to all of the conduct as if it was all engaged in after the commencement.

(5) A term used in this section in relation to current section 335 or previous section 335 has the meaning it has under that section.

(6) In this section—

current section 335 means section 335 as in force from the commencement.

previous section 335 means section 335 as in force before the commencement.

Division 2 Amendments commencing by proclamation

449 Existing complaints about corrupt conduct

(1) This section applies to the following—

(a) a complaint about corrupt conduct made or referred to the commission, but not finally dealt with, before the commencement;

(b) a complaint that a public official reasonably suspects involves, or may involve, corrupt conduct that was made or referred to the public official, but not notified, before the commencement.

(2) The complaint must be dealt with and, for a complaint mentioned in subsection (1)(b), notified in the context of corrupt conduct within the meaning of section 15 as in force on the commencement.

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(3) In this section—

complaint, about corrupt conduct, includes information or a matter involving corrupt conduct.

dealt with means dealt with under this Act.

notified means notified to the commission under chapter 2, part 3, division 3.

450 Existing disciplinary proceedings about corrupt conduct

(1) This section applies to a disciplinary proceeding about corrupt conduct started, but not finished, before the commencement.

(2) QCAT must hear and decide the disciplinary proceeding under this Act in the context of corrupt conduct within the meaning of section 15 as in force before the commencement.

(3) In this section—

disciplinary proceeding means disciplinary proceeding within the meaning of section 219B as in force before the commencement.

Part 16 Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019

451 Definition for part

In this part—

previous, in relation to a provision of this Act or the *Police Service Administration Act 1990*, means as in force from time to time before the commencement.

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452 Saving of previous ch 5, pt 2

(1) This section applies in relation to a previous ch 5, pt 2 decision if—

(a) a disciplinary proceeding under previous section 219G for the decision was started, but not finally dealt with, before the commencement; or

(b) the period for applying for a review of the decision under previous section 219G had not ended immediately before the commencement.

(2) Also, this section applies in relation to a finding mentioned in the *Police Service Administration Act 1990*, previous section 7.4(2A)(b) or 7A.5(1)(b), as applied by part 11, division 10 of that Act, about an allegation of corruption, except if section 11.21 applies in relation to the finding.

(3) Previous chapter 5, part 2 applies for the review of the decision or finding as if the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019* had not commenced.

(4) In this section—

previous ch 5, pt 2 decision means—

(a) a decision made before the commencement in relation to an allegation of corruption against a prescribed person who was an officer within the meaning of previous section 219B; or

(b) a finding mentioned in the *Police Service Administration Act 1990*, previous section 7.4(2A)(b) made before the commencement.

452A Application of ch 5, pt 2—particular reviewable decisions relating to former officers

(1) This section applies in relation to a decision made after the commencement under the *Police Service Administration Act 1990*, part 7A to do neither of the following in relation to a former officer—

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(a) give the former officer a written notice under section 7A.3(1)(a) of that Act;

(b) hold a disciplinary hearing under section 7A.3(1)(b) of that Act.

(2) Chapter 5, part 2, as amended by the *Police Service Administration (Discipline Reform) and Other Legislation Amendment Act 2019*, applies to the reviewable decision even if it relates to a disciplinary ground that arose before the commencement.

Note—

See also the *Police Service Administration Act 1990*, section 11.26.

(3) In this section—

disciplinary ground has the meaning given under the *Police Service Administration Act 1990*, previous section 1.4.

453 Ending of particular suspensions under previous s 219L

(1) This section applies if—

(a) under previous section 219L, QCAT suspended or suspends an order made under previous section 219I or discipline mentioned in previous section 219J(2); and

(b) the prescribed person is a person mentioned in section 50(3), definition *prescribed person*, paragraph (a)(i); and

(c) during the operational period, the prescribed person is found to have committed an act of corruption or to have contravened a condition of the suspension.

(2) Section 219L(4), as in force on the commencement, applies in relation to the revocation of the suspension.

(3) Subsection (2) applies despite section 452(3).

(4) In this section—

previous section 219L includes previous section 219L as applied by section 452.

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Part 17 Police Powers and Responsibilities and Other Legislation Amendment Act 2020

454 Definitions for part

In this part—

amending Act means the *Police Powers and Responsibilities and Other Legislation Amendment Act 2020*.

former, in relation to a provision, means as in force from time to time before the provision was amended by part 3 of the amending Act.

455 Particular applications or orders made before commencement

(1) This section applies in relation to—

(a) an application for an order under former section 88A or 88B that was made but not decided before the commencement; or

(b) an order made before the commencement under former section 88A or 88B to the extent a power under the order was not exercised before the commencement.

(2) Each of the following may happen under the former section as if part 3 of the amending Act had not commenced—

(a) a proceeding relating to the application or order may be continued or decided;

(b) a power under the order mentioned in subsection (1)(b) may be exercised.

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456 Declaratory provision about effect of amending Act

(1) This section applies for deciding, after the commencement, a matter to which a provision of former chapter 3, part 2 applies.

(2) The amendment of the former provision by the amending Act is to be disregarded.

Part 18 Integrity and Other Legislation Amendment Act 2024

457 Matters relating to funding

(1) Chapter 6, part 1, division 6A applies in relation to the commission for the next financial year and each subsequent financial year.

(2) In this section—

next financial year means the next financial year to start after this section commences.

Part 19 Emblems of Queensland and Other Legislation Amendment Act 2023

458 Validation of quorum and voting at particular meetings of parliamentary committee

(1) Subsection (2) applies if, in a meeting of the parliamentary committee held during the validation period, the committee reached quorum only by counting 1 or more members of the committee who were not present in person.

(2) The parliamentary committee is declared to be, and always to have been, as validly quorate as it would have been if the 1 or more members were present in person.

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(3) Subsection (4) applies if, in a meeting of the parliamentary committee held during the validation period, the committee decided a question by counting a vote of 1 or more members of the committee who were not present in person.

(4) The question is declared to be, and always to have been, as validly decided as it would have been if the 1 or more members were present in person.

(5) In this section—

parliamentary committee includes the Criminal Justice Committee of the Legislative Assembly established under the repealed *Criminal Justice Act 1989*, section 115.

validation period means the period—

(a) starting on 23 April 1998; and

(b) ending on the commencement.

Part 20 Crime and Corruption and Other Legislation Amendment Act 2024

462 Attendance at commission hearings under s 182A

Section 182A applies to the attendance of a person at a commission hearing under an attendance notice whether the attendance notice was issued before or after the commencement.

468 Application of s 257 to particular commission officers

Section 257, as amended by the *Crime and Corruption and Other Legislation Amendment Act 2024*, applies to a commission officer engaged by the commission under section 256 only if—

(a) the officer was engaged after the commencement; or

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(b) if the officer was engaged before the commencement (an ***existing engagement***)—the officer is further engaged after the commencement and the further engagement is a replacement or renewal of the existing engagement.

469 Application of former s 374 to particular applications for access to data and records of CJC inquiry

(1) Until the parliamentary commissioner makes a request of the archivist under section 346C(2) in relation to the data and records of the CJC inquiry, a person may apply for access to the data and records under former section 374(2).

(2) Subsection (3) applies if an application under former section 374(2)—

(a) was made before the commencement and on the commencement is not decided; or

(b) is made after the commencement.

(3) If the parliamentary commissioner is satisfied the person has a legitimate need to access the data and records, the commissioner must give the person access to them.

(4) If an application mentioned in subsection (2) is not decided at the time the parliamentary commissioner makes a request of the archivist under section 346C(2), section 346C(5) applies to the application.

(5) In this section—

archivist see section 346C(11).

CJC inquiry see section 346C(11).

former section 374(2) means the provision of that number as in force immediately before the commencement.

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Part 21 Crime and Corruption (Restoring Reporting Powers) and Other Legislation Amendment Act 2025

470 Definitions for part

In this part—

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

new, for a provision of this Act, means the provision as in force from the commencement.

471 Validation of past reports

(1) This section applies to a report on a particular complaint about, or information or matter involving, corruption or a particular corruption investigation that was—

(a) before 13 September 2023, purportedly prepared or made under former section 64; and

(b) before the introduction day—

(i) tabled in the Legislative Assembly; or

(ii) purportedly published under former section 69.

(2) The report and any accompanying document, and any action taken or decision made by the commission in relation to the report, including publication of the report to another person, is taken to be, and to have always been, as valid and lawful as it would be or would have been if—

(a) the report were prepared or made under new section 64A; and

(b) the commission had complied with this Act and any other law applying in relation to the preparation and making of the report; and

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(c) the report were signed by the chairperson under new section 69; and

(d) the report and accompanying document were given, and tabled or published, under new section 69.

(3) For subsection (2)(a), new section 64A(2) is taken not to have applied to the report or the commission's decisions in relation to the report.

(4) In this section—

action includes a failure to take action.

decision includes a failure to make a decision.

introduction day means the day the Bill for the *Crime and Corruption (Restoring Reporting Powers) and Other Legislation Amendment Act 2025* was introduced into the Legislative Assembly.

report includes a copy of a report and a report in draft form.

472 Validation of past public statements

(1) This section applies to a statement prepared and made to the public, before 13 September 2023, by the commission about—

(a) a particular complaint about, or information or matter involving, corruption; or

(b) a particular corruption investigation.

(2) The statement, and any action taken by the commission in relation to the statement, is taken to be, and to have always been, as valid and lawful as it would be or would have been if the statement were prepared and made under new section 65A.

(3) For subsection (2), new section 65A(3) and (4) is taken not to have applied to the statement or the commission's decisions in relation to the statement.

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473 Application of new provisions in relation to complaints and investigations

Subject to sections 471 and 472, the new provisions of this Act apply to a complaint about, or information or matter (also a ***complaint***) involving, corruption or a corruption investigation—

(a) whether the complaint was made or notified to the commission before, or is made or notified to the commission after, the commencement; and

(b) whether the investigation was completed before, or is started before and completed after, the commencement; and

(c) whether the complaint or investigation relates to conduct that happened, or is suspected to have happened, before the commencement.

474 Validation of particular agreements for giving notices by email

(1) This section applies if, before the commencement, the chairperson purportedly entered into an agreement with a person for the giving of notices of a particular type to the person by email under former section 85AA.

(2) The agreement is taken to be, and to have always been, as valid as it would be or would have been if the agreement were entered into under new section 85AB(2).

(3) The giving of a notice by the commission to the person under the agreement before the commencement is taken to be, and to have always been, as valid and lawful as it would be or would have been if the agreement were entered into under new section 85AB(2).

(4) Anything done by the person in compliance with a notice given by the commission under the agreement before the commencement is taken to be, and to have always been, as valid and lawful as it would be or would have been if the agreement were entered into under new section 85AB(2).

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475 Existing agreements for giving notices by email

(1) This section applies if—

(a) before the commencement, the chairperson purportedly entered into an agreement with a person for the giving of notices of a particular type to the person by email under former section 85AA; and

(b) the chairperson and the person could have entered into the agreement under new section 85AB(2) if that section had been in force; and

(c) immediately before the commencement, the agreement was in effect.

(2) From the commencement, the agreement is taken to be an agreement entered into by the chairperson and the person under new section 85AB(2).

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Schedule 1 Reviewable decisions—ch 5, pt 3

section 219N, definitions *aggrieved person* and *reviewable decision*

Reviewable decision	Aggrieved persons
a decision under the *Police Service Administration Act 1990* (the ***PSAA***), part 7, division 4 that a disciplinary charge, or any other ground for disciplinary action, has not been proved in relation to an officer	the commission
subject to section 219O(2), a decision under part 7, division 4 of the PSAA that a disciplinary charge, or any other ground for disciplinary action, has been proved in relation to an officer	the officer the commission
a decision under part 7, division 4 of the PSAA to impose a disciplinary sanction or professional development strategy on an officer	the officer the commission
a decision under part 7, division 4 of the PSAA not to impose a disciplinary sanction or professional development strategy on an officer	the officer the commission
a decision under section 7.36 of the PSAA to dismiss, or not to dismiss, an officer	the officer the commission

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Reviewable decision	Aggrieved persons
a decision under section 7.41 of the PSAA to give effect to a disciplinary sanction or to continue the suspension of the disciplinary sanction	the officer the commission
a decision not to start a disciplinary proceeding against an officer in relation to whom a complaint mentioned in section 7.2 of the PSAA has been made	the commission

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Schedule 2 Dictionary

section 12

access information, for chapter 3, part 2, see section 85A.

acquire, for chapter 3, part 6B, div 1, see section 146Q.

action, for chapter 2, part 6, see section 63A.

additional funding, for a financial year, for chapter 6, part 1, division 6A, see section 260A.

adverse comment, about a person, for chapter 2, part 6, division 4A, see section 69A.

agency, for chapter 3, part 6B, div 1, see section 146Q.

aggrieved person, for chapter 5, part 3, see section 219N.

allocated amount, for a financial year, for chapter 6, part 1, division 6A, see section 260A.

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

appropriately qualified, for a delegation of power or committee membership under section 279, means having the qualifications, experience or standing appropriate to exercise the power or to be appointed.

Example of standing—

the level at which a person is employed in the commission

approving officer see section 139(2).

arrest warrant see section 167(1).

at, a place, includes in or on the place.

attendance notice see section 82.

Australian Crime Commission means the Australian Crime Commission established under the *Australian Crime Commission Act 2002* (Cwlth), section 7.

authorised civilian, for chapter 3, part 6B, div 1, see section 146Q.

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authorised commission officer see section 272.

authorised identity officer, for chapter 3, part 6B, div 1, see section 146Q.

authorised person, for chapter 3, part 6B, div 1, see section 146Q.

authority, for chapter 3, part 6B, div 1, see section 146Q.

benefit includes property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute.

bipartisan support, of the parliamentary committee, means—

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

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

birth certificate approval, for chapter 3, part 6B, div 1, see section 146Q.

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

chairperson means the person appointed as the chairperson of the commission under this Act.

chief executive officer means the person appointed as the chief executive officer of the commission under this Act.

civil confiscation function means the function of investigating confiscation related activities for the enforcement of the Confiscation Act.

commission means the Crime and Corruption Commission.

commissioner means a person appointed as a commissioner of the commission under this Act.

commissioner of police means the commissioner of the police service.

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commission hearing means a hearing conducted by the commission under this Act.

commission officer—

(a) means, generally—

(i) a commissioner; or

(ii) a sessional commissioner; or

(iii) the chief executive officer; or

(iv) a senior officer; or

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

(vi) a person engaged under section 256; or

(vii) a police officer authorised by the chairman under section 272(2); and

(b) in sections 295, 305(3), 314(2)(b)(ii), 318(4), 321(2), 322(3), 329 and 331(3), includes—

(i) a former commission officer; and

(ii) a person who was a commissioner or an officer of the commission under the *Criminal Justice Act 1989*; and

(iii) a person who was engaged by the commission under the *Criminal Justice Act 1989*, section 66; and

(iv) a person who was a commission member, or an officer or employee of the Queensland crime commission, under the *Crime Commission Act 1997*; and

(c) in chapter 3, part 6A—includes an officer or employee of a declared agency.

Note—

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

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commission report means a report prepared by the commission under chapter 2, part 6 and includes the report's foreword and appendixes.

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

conduct, for chapter 3, part 6B, div 1, see section 146Q.

confidentiality, in relation to the ground of confidentiality, means a ground recognised at law that giving an answer or disclosing a communication or document, would be a breach of an oath taken or statutory or commercial obligation or restriction to maintain secrecy.

Confiscation Act means the *Criminal Proceeds Confiscation Act 2002*.

confiscation order means—

(a) any of the following orders under the Confiscation Act, chapter 2—

(i) a restraining order;

(ii) a forfeiture order;

(iii) a proceeds assessment order;

(iv) an unexplained wealth order; or

(b) any of the following orders under the Confiscation Act, chapter 2A—

(i) a restraining order;

(ii) a serious drug offender confiscation order.

confiscation related activity means an activity in relation to which a confiscation order may be sought under the Confiscation Act, chapter 2.

confiscation related evidence—

1 *Confiscation related evidence* means a thing or evidence of an activity that may be or provide evidence of something for which a proceeding for a confiscation order may be started under the Confiscation Act, chapter 2 and includes each of the following—

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(a) a thing in which a person has an interest that is serious crime derived property;

(b) a thing in which a person has an interest that is illegally acquired property of a person reasonably suspected of having engaged in a serious crime related activity;

(c) evidence of a serious crime related activity;

(d) evidence of illegal activity of a person reasonably suspected of having engaged in a serious crime related activity;

(e) property that is restrained under a restraining order under the Confiscation Act.

2 The following are also *confiscation related evidence*—

(a) a thing that may be or provide evidence of a suspected qualifying offence for which a proceeding for a confiscation order may be started under the Confiscation Act, chapter 2A;

(b) evidence of property that may be subject to restraint or forfeiture under a confiscation order for which a proceeding may be started under the Confiscation Act, chapter 2A.

confiscation related investigation means an investigation the commission is conducting for the Confiscation Act, chapter 2 or 2A.

controlled activity see section 146I(1)(b).

controlled operation see section 139(1).

convicted, of an offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

corrupt conduct see section 15.

corruption means corrupt conduct or police misconduct.

corruption functions see section 33.

corruption investigation means an investigation conducted by the commission in the performance of a corruption function.

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corruption matter, for chapter 2, part 6, see section 63A.

corruption offence means alleged or suspected criminal conduct that may be—

(a) corrupt conduct; or

(b) misconduct under the *Police Service Administration Act 1990*.

court day means a day on which the court registry is open for business.

covert operative means a commission officer or another person named in an approval under section 144 as a covert operative.

covert search warrant see section 148.

Crime and Corruption Commission means the Crime and Corruption Commission established under section 220.

crime function see section 25.

crime investigation means an investigation conducted by the commission in the performance of its crime function.

criminal history, of a person, means—

(a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act; and

(b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.

criminal organisation see the *Penalties and Sentences Act 1992*, section 161O.

criminal paedophilia—

1 *Criminal paedophilia* means criminal activity that involves any of the following—

(a) offences of a sexual nature committed in relation to children; or

(b) offences relating to obscene material depicting children.

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2 It is immaterial whether the offence is committed in Queensland or elsewhere if the offender or the child is ordinarily resident in Queensland.

data surveillance device means any instrument, apparatus, equipment, program or other thing capable of being used to record or monitor, other than through visual recording or monitoring, the input of information into, or the output of information from, a computer.

deal with, a complaint about corruption or information or matter involving corruption, includes—

(a) investigate the complaint, information or matter; and

(b) gather evidence for—

(i) prosecutions for offences; or

(ii) disciplinary proceedings; and

(c) refer the complaint, information or matter to an appropriate authority to start a prosecution or disciplinary proceeding; and

(d) start a disciplinary proceeding; and

(e) take other action, including managerial action, to address the complaint in an appropriate way.

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

deputy chairperson means the person appointed as the deputy chairperson of the commission under this Act.

deputy public interest monitor means a person appointed as a deputy public interest monitor under section 324.

detriment, caused to a person, includes detriment caused to a person's property.

device information, from a digital device, for chapter 3, part 2, see section 85A.

digital device, for chapter 3, part 2, see section 85A.

disciplinary action, for chapter 6, part 1, division 9, see section 273C(1).

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disciplinary charge, for schedule 1, see the *Police Service Administration Act 1990*, section 7.25(a).

disciplinary finding, for chapter 6, part 1, division 9 generally, see section 273A.

disciplinary ground, for chapter 6, part 1, division 9, see section 273A.

disciplinary proceeding, for chapter 5, part 2, see section 219B.

disciplinary sanction, for chapter 5, part 3 and schedule 1, see section 219N.

doing a thing, for chapter 3, part 6B, div 1, see section 146Q.

dwelling—

1 A *dwelling* includes a building or other structure, or part of a building or other structure, kept by the owner or occupier (the ***owner***) as a residence for the owner, a member of the owner's family or an employee of the owner.

2 In deciding whether a building or other structure is a dwelling, it is immaterial that the building or other structure is from time to time uninhabited.

3 A building or other structure adjacent to, and occupied with, a dwelling is part of the dwelling if it is connected to the dwelling, whether directly or by a covered and enclosed passage leading from the one to the other, but not otherwise.

4 A *dwelling* also includes a boat (other than an external deck of the boat) used or kept as a residence for the owner, a member of the owner's family or an employee of the owner.

employee, for chapter 3, part 2, see section 85A.

employment, for chapter 6, part 1, division 9, see section 273A.

enter a place, includes re-enter the place.

evidence—

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(a) of the commission of major crime or corruption, includes—

(i) a thing or activity that is or may provide evidence of the commission of the major crime or corruption; and

(ii) a thing that will, itself or by or on scientific examination, provide evidence of the commission of the major crime or corruption; and

(iii) a thing that is intended to be used for the purpose of committing the major crime or corruption; and

(iv) a thing that may be liable to forfeiture; or

(b) of identity, for chapter 3, part 6B, see section 146Q.

forfeiture proceeding means—

(a) a proceeding for a forfeiture order or a restraining order under the Confiscation Act; or

(b) a proceeding for an order forfeiting or restraining the use of property under another Act.

former chairperson, for chapter 6, part 1, division 2, subdivision 3, see section 238A.

former commission officer means a person who was but is no longer a commission officer under this Act, including, for example, a person who was an assistant commissioner under this Act as in force before the commencement of this definition.

former officer, for chapter 5, part 2, see section 219B.

former relevant commission officer, for chapter 6, part 1, division 9, see section 273D(1)(a).

funding proposal, for chapter 6, part 1, division 6A, see section 260A.

general referral, for chapter 2, part 2, division 2, see section 27(4).

government issuing agency, for chapter 3, part 6B, div 1, see section 146Q.

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ground for disciplinary action, for chapter 5, part 3 and schedule 1, see section 219N.

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

illegally acquired property means illegally acquired property under the Confiscation Act.

independent member, of the committee, means the independent member of the controlled operations committee under the *Police Powers and Responsibilities Act 2000*.

industrial matter, for chapter 5, part 2, see section 219B.

ineligible person means any of the following—

(a) a person who has been convicted, including by summary conviction, of an indictable offence;

(b) a person who is an insolvent under administration;

(c) a person holding judicial appointment;

(d) a member of the Legislative Assembly or the Executive Council;

(e) the parliamentary commissioner;

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

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

(g) the director of public prosecutions;

(h) a member of the police service, or, other than in relation to appointment as a senior officer, a person who has been a member of the police service within the 5 years before the time at which the person's qualification for appointment arises;

(i) a public service employee;

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(j) a person who holds an appointment on the staff of a Minister;

(k) a local government councillor;

(l) a local government employee.

install, a surveillance device, includes maintain, replace and remove the device.

intelligence function hearing means a hearing authorised under section 55A or 55D(2).

intelligence functions see section 53.

investigate includes examine and consider.

issuer, for chapter 3, part 2, see section 86(6).

issuing agency, for chapter 3, part 6B, div 1, see section 146Q.

judge, for chapter 6, part 1, division 2, subdivision 3, see section 238A.

Judges Pensions Act, for chapter 6, part 1, division 2, subdivision 3, see section 238A.

Leader of the House means the member who is recognised in the Legislative Assembly as the Leader of the House.

Leader of the Opposition means the member who is recognised in the Legislative Assembly as the Leader of the Opposition.

listening device means any instrument, apparatus, equipment or device capable of being used to overhear, record, monitor or listen to a private conversation when it is taking place.

major crime means—

(a) criminal activity that involves an indictable offence punishable on conviction by a term of imprisonment not less than 14 years; or

(b) criminal paedophilia; or

(c) organised crime; or

(d) terrorism; or

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(e) something that is—

(i) preparatory to the commission of criminal paedophilia, organised crime or terrorism; or

(ii) undertaken to avoid detection of, or prosecution for, criminal paedophilia, organised crime or terrorism.

member, for a commission hearing, means the person conducting the hearing.

monitor means the public interest monitor or a deputy public interest monitor.

monitoring order see section 119C.

non-government issuing agency, for chapter 3, part 6B, div 1, see section 146Q.

notice means written notice.

notice to discover see section 75.

notice to produce—

(a) for a crime investigation, a specific intelligence operation (crime) or the witness protection function—see section 74; or

(b) for a confiscation related investigation—see section 74A.

obscene material, depicting children, includes—

(a) a child abuse computer game under the *Classification of Computer Games and Images Act 1995*; and

(b) a child abuse publication under the *Classification of Publications Act 1991*; and

(c) a child abuse film under the *Classification of Films Act 1991*.

obstruct includes the following—

(a) hinder;

(b) attempt to obstruct.

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ordinary commissioner means a person appointed as an ordinary commissioner of the commission under this Act.

organised crime means criminal activity that involves—

(a) indictable offences punishable on conviction by a term of imprisonment not less than 7 years; and

(b) 2 or more persons; and

(c) substantial planning and organisation or systematic and continuing activity; and

(d) a purpose to obtain profit, gain, power or influence.

otherwise unlawful activity means an unlawful act or omission of a person for which—

(a) because of chapter 3, part 6A it would be unlawful for the person to do or omit; or

(b) because of chapter 3, part 6A it would be lawful for the person to do or omit.

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

parliamentary commissioner means the Parliamentary Crime and Corruption Commissioner appointed under section 303.

parliamentary committee means the Parliamentary Crime and Corruption Committee of the Legislative Assembly.

parliamentary service means the parliamentary service established under the *Parliamentary Service Act 1988*.

participant, in a criminal organisation, see the *Penalties and Sentences Act 1992*, section 161P.

photograph includes photocopy, videotape and record an image.

place includes—

(a) premises; and

(b) vacant land; and

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(c) a vehicle; and

(d) a place in Queensland waters; and

(e) a place held under 2 or more titles or owners.

police misconduct means conduct, other than corrupt conduct, of a police officer that—

(a) is disgraceful, improper or unbecoming a police officer; or

(b) shows unfitness to be or continue as a police officer; or

(c) does not meet the standard of conduct the community reasonably expects of a police officer.

police service means the Queensland Police Service.

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

possession includes the following—

(a) custody;

(b) control.

post-search approval order see section 97.

premises includes—

(a) a building or structure, or part of a building or structure, of any type; and

(b) a group of buildings or structures, or part of a group of buildings or structures, of any type; and

(c) the land or water where a building or structure, or a group of buildings or structures, is situated; and

(d) a vehicle and a caravan; and

(e) a tent or cave; and

(f) premises held under 2 or more titles or owners.

prescribed employee, for chapter 6, part 1, division 9, see section 273A.

prescribed person see section 50(3).

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prescribed salary, for chapter 6, part 1, division 2, subdivision 3, see section 238A.

presiding officer, for a commission hearing, means the person conducting the hearing.

private conversation means any words spoken by one person to another person in circumstances that indicate—

(a) that those persons desire the words to be heard or listened to only by themselves; or

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

but does not include words spoken by one person to another person in circumstances in which either of those persons ought reasonably to expect the words may be overheard, recorded, monitored or listened to by some other person, not being a person who has the consent, express or implied, of either of those persons to do so.

privilege, in relation to an answer, information, communication or document, or thing means—

(a) in the context of a crime investigation or the intelligence or witness protection functions—

  (i) legal professional privilege; or

  (ii) self-incrimination privilege; or

(b) in the context of a corruption investigation—

  (i) legal professional privilege; or

  (ii) public interest immunity; or

  (iii) parliamentary privilege; or

(c) in the context of a confiscation related investigation—

  (i) legal professional privilege; or

  (ii) public interest immunity; or

  (iii) parliamentary privilege; or

  (iv) self-incrimination privilege;

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and, in each context, includes a claim on the ground of confidentiality.

professional development strategy, for schedule 1, see the *Police Service Administration Act 1990*, section 7.3.

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

(a) included in the witness protection program; or

(b) given protection under the *Witness Protection Act 2000*, section 9 or part 2A.

Note—

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

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

public interest monitor means the person appointed as the public interest monitor under section 324.

public official means—

(a) the ombudsman; or

(b) the chief executive officer of a unit of public administration, including the commissioner of police; or

(c) a person who constitutes a corporate entity that is a unit of public administration; or

(d) the inspector of detention services under the *Inspector of Detention Services Act 2022*.

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

public statement see section 65A(1).

qualifying offence see the Confiscation Act, section 93F.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

reference committee means the Crime Reference Committee established under section 274.

referral, for chapter 2, part 2, division 2, see section 26A.

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related evidence, in relation to adverse comment about a person, for chapter 2, part 6, division 4A, see section 69A.

related evidence summary, for chapter 2, part 6, division 4A, see section 69B(2)(b).

relevant commission officer, for chapter 6, part 1, division 9, see section 273A.

relevant employee, for chapter 6, part 1, division 9, see section 273A.

relevant evidence, for chapter 3, part 2, see section 85A.

relevant person—

(a) in relation to an application to a judge for a surveillance warrant—see section 122; and

(b) in relation to an application to a judge for a covert search warrant—see section 149; and

(c) in relation to an application to a judge for an additional powers warrant—see section 159; and

(e) in relation to a commission report, for chapter 2, part 6, division 4A, see section 69A.

relevant place, in relation to an application to a judge for a surveillance warrant, see section 121.

relevant portfolio committee means the portfolio committee under the *Parliament of Queensland Act 2001* whose portfolio area within the meaning of that Act includes the department, or the part of the department, in which this Act is administered.

reviewable decision—

(a) for chapter 5, part 2, see section 219BA; or

(b) for chapter 5, part 3, see section 219N.

search warrant see section 86.

search warrant powers means the powers under section 92.

section 75B requirement means a requirement under section 75B.

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

senior executive officer means the senior executive officer (crime) or the senior executive officer (corruption).

senior executive officer (corruption) see section 245(3)(b).

senior executive officer (crime) see section 245(3)(a).

senior officer means a senior officer employed under section 245.

serious crime derived property see the Confiscation Act, section 23.

serious crime related activity see the Confiscation Act, section 16.

sessional commissioner means a person appointed as a sessional commissioner under section 239.

specific intelligence operation means a specific intelligence operation authorised by the reference committee under section 55A.

specific intelligence operation (corruption) means a specific intelligence operation authorised in relation to a matter mentioned in section 55A(1)(b).

specific intelligence operation (crime) means a specific intelligence operation authorised in relation to a matter mentioned in section 55A(1)(a).

specific referral, for chapter 2, part 2, division 2, see section 27(2).

specified person, in relation to a digital device at, or seized from, a place for which a search warrant is or was issued, for chapter 3, part 2, see section 85A.

subject officer, in relation to a reviewable decision, for chapter 5, part 3, see section 219N.

surveillance device means—

(a) for a crime investigation—

(i) a listening device; and

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(ii) a visual surveillance device; and

(iii) a tracking device; and

(iv) a device containing any combination of the devices mentioned in subparagraphs (i), (ii) and (iii); and

(v) a data surveillance device; and

(b) for a corruption investigation—a listening device.

surveillance warrant see section 121.

suspension order see section 119I.

terrorism means criminal activity that involves a terrorist act.

terrorist act see section 22A.

under this Act, for an act or omission to which section 335, 336 or 337 applies, includes an act done or omission made purportedly under this Act for the purposes of this Act.

unit of public administration see section 20.

use, for chapter 3, part 6B, div 1, see section 146Q.

vehicle includes aircraft and boat.

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

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

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

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