

Queensland



CRIMINAL JUSTICE ACT 1989

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Information about this reprint

This Act is reprinted as at 8 August 1996. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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CRIMINAL JUSTICE ACT 1989

[as amended by all amendments that commenced on or before 8 August 1996]

An Act to provide for the establishment and operation of a Criminal Justice Commission and of a parliamentary committee to be called the Criminal Justice Committee and for related purposes

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Criminal Justice Act 1989*.

Objects of Act

2. The objects of this Act are—

- (a) to provide for the establishment and maintenance of a permanent body—
 - (i) to advise on the administration of the criminal justice system in Queensland with a view to ensuring its efficiency and impartiality;
 - (ii) to continue investigations commenced by the commission of inquiry;
 - (iii) to investigate the incidence of organised or major crime;
 - (iv) to take measures to combat organised or major crime for an interim period;
 - (v) to investigate complaints of official misconduct referred to the body and to secure the taking of appropriate action in respect of official misconduct;

- (vi) to hear and determine disciplinary charges of official misconduct in prescribed circumstances;
 - (vii) to discharge such functions and responsibilities as are incidental to or in aid of discharge of the activities mentioned in subparagraphs (i) to (vi); and
- (b) to provide for the establishment and maintenance of a Parliamentary body to inform the Legislative Assembly on the activities referred to in paragraph (a) and on matters related to the activities.

Definitions

3. In this Act—

“chairperson” means the chairperson of the commission.

“chief officer” of the complaints section means the person who is appointed under section 36(2).

“commission” means the Criminal Justice Commission constituted by this Act and includes every organisational unit within the structure of the commission.

“commissioner” means any member of the commission including the chairperson.

“commission of inquiry” means the commission within the meaning of the *Commissions of Inquiry Act 1950* constituted by orders in council of 26 May 1987 published in the gazette of that date at pages 758A and 758B amended by orders in council of 24 June 1987, 25 August 1988 and 29 June 1989.

“investigate” includes examine and consider.

“legal practitioner” means a barrister or solicitor of the Supreme Court.

“parliamentary committee” means the Criminal Justice Committee of the Legislative Assembly.

“premises” includes the whole or any part of any land, structure, vehicle, vessel, aircraft or place.

“principal officer” does not include—

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- (a) a judge of, or other person holding judicial office in, the Supreme Court; or
- (b) a judge of District Courts; or
- (c) a person holding judicial office in any other court, in the person's role of a judicial officer.

“record” means any material or collection of data in whatever form it is held, including in books, documents, papers, writings or visual representation or on film, disc, tape, perforated roll or other device in which visual representations or sounds are embodied so as to be capable of reproduction from it, with or without the aid of another process or instrument.

“report of the commission of inquiry” means the report bearing date 3 July 1989 of the commission of inquiry.

“unit of public administration” means—

- (a) the Legislative Assembly, and the parliamentary service; or
- (b) the Executive Council; or
- (c) a department; or
- (d) the police service; or
- (e) Queensland Rail; or
- (f) every corporate entity that is constituted by an Act, or that is of a description of entity provided for by an Act, which in either case collects revenues or raises funds under the authority of an Act; or
- (g) every noncorporate entity established or maintained pursuant to an Act, which is funded to any extent with moneys of the Crown, or is assisted in a financial respect by the Crown; or
- (h) the courts of the State of whatever jurisdiction, and the registries and other administrative offices of them.

Holding of appointment in unit of public administration

4. For the purposes of this Act, 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.

Independence of holders of judicial office

5. In the discharge of any of the functions and responsibilities with which the commission is charged by or pursuant to this Act, and in exercise of any of the powers and authorities conferred on the commission by this Act, in relation to the procedures and operations of the courts of the State or in relation to the conduct of any judge of, or other person holding judicial office in, a court of the State, the commission shall be aware of, and shall proceed with due respect for, the necessity to preserve the independence of judges of, and other persons holding judicial office in, the courts of the State.

PART 2—CRIMINAL JUSTICE COMMISSION*Division 1—Establishment and membership of commission***Constitution of commission**

6. There is hereby constituted a corporation called the ‘Criminal Justice Commission’, having perpetual succession and an official seal.

Commission’s official seal

7. 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.

Membership of commission

8.(1) The commission consists of—

- (a) the chairperson; and
- (b) 4 other members.

(2) The members of the commission are to be appointed by the Governor in Council by gazette notice.

(3) Appointment of the chairperson shall be on a full-time basis.

(4) Appointment of the other members of the commission shall be on a part-time basis.

(5) Nothing in this Act, any other Act or any rule of law prevents a commissioner of the Criminal Justice Commission also being the chairperson to the commission, or a deputy to the commission, within the meaning of the *Commission of Inquiry Continuation Act 1989*.

Qualifications for appointment to commission

9.(1) The chairperson of the commission shall be a person who has served as, or is qualified for appointment as, a judge of—

- (a) the Supreme Court of Queensland; or
- (b) the Supreme Court of any other State or of a Territory; or
- (c) the High Court; or
- (d) the Federal Court.

(2) Of the other members of the commission—

- (a) 1 shall be a person in actual practice as a legal practitioner (selected as prescribed) who has demonstrated an interest and ability in civil liberties;
- (b) 3 shall be persons who have demonstrated an interest and ability in community affairs, of whom at least 1 has proven senior managerial experience in a large organisation.

Disqualifications for appointment to commission

10.(1) A person is disqualified for appointment as a member of the commission if the person—

- (a) holds any judicial appointment; or
- (b) is a member of the Legislative Assembly or the Executive Council; or
- (c) holds the appointment, director of public prosecutions; or
- (d) is a member of the police service, or has been such a member

within the 5 years preceding the time at which the person's qualification for such appointment arises; or

- (e) holds an appointment in a unit of public administration or on the staff of a Minister; or
- (f) is a member, appointed by the Governor in Council, of a statutory body (other than a person entitled to such membership *ex officio*), or a servant of a statutory body.

(2) A reference to a unit of public administration in subsection (1)(e) and a reference to a statutory body in subsection (1)(f), do not include reference to an educational institution.

(3) A commissioner is not eligible for appointment as a member mentioned in subsection (1)(f) and any such purported appointment is invalid.

Selection for appointment of chairperson

11.(1) With a view to the selection of a person for appointment as chairperson, the Minister shall cause notification of the Minister's intention to make such selection to be advertised nationally, calling for applications from suitably qualified persons to be considered for selection.

(2) Subsection (1) does not apply to the reappointment of a person as the chairperson.

(3) Before proceeding to a selection of any person for appointment as chairperson, the Minister shall consult with the parliamentary committee, or, if at the material time there be no such committee, with the Leader of the Opposition in the Legislative Assembly and the Leader in the Assembly of any other political party represented in the Assembly by at least 5 members.

(4) Where consultation is had under subsection (3) with the parliamentary committee, a person shall not be appointed as chairperson unless the person's appointment is supported by the members of the committee, unanimously or by a majority of the members, other than a majority consisting wholly of members of the political party or parties in Government in the Assembly.

Appointment of members

12.(1) Appointment of the chairperson shall be made independently of the appointment of other members of the commission.

(2) With a view to appointment of other members of the commission, the Minister shall consult with the chairperson.

(3) After consulting with the chairperson, the Minister shall comply with section 11(3).

(4) Section 11(3) and (4) apply to the appointment of other members of the commission as they apply to the appointment of chairperson.

(5) For the purpose of selecting a person of the description specified in section 9(2)(a) to be appointed to the commission, the Minister shall request each of them—

- (a) the Bar Association of Queensland; and
- (b) the Queensland Law Society;

to nominate 2 persons having appropriate qualifications.

(6) Subject to subsections (3) and (4), the person to be appointed as the member of the commission of the description specified in section 9(2)(a), shall be selected from the panel so nominated.

(7) If at any time when appointment is to be made of a member of the commission of the description specified in section 9(2)(a) a panel, or a panel of sufficient numbers, has not been nominated for the purpose of that appointment within a reasonable time allowed by the Minister, selection of a person of such description to be appointed may be made as prescribed by subsections (2) to (4) without further reference to the prescribed association or society.

(8) The person so selected shall be deemed to have been duly nominated and, if the person is qualified as prescribed, the person's appointment shall be taken to be in accordance with this section.

Acting commissioners

13.(1) The Governor in Council may appoint a person to act as the chairperson—

- (a) during a vacancy in the office; or

- (b) during any period, or all periods, when the chairperson is absent from duty or absent from the State or is, for any reason, unable to perform the duties of the office.

(2) The Governor in Council may appoint a person to act as another commissioner—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the commissioner is acting as chairperson or is, for any reason, unable to perform the duties of office.

(3) Sections 11(1) and 12(1), (5), (6) and (7) do not apply to an appointment under this section.

(4) Sections 11(3) and (4) and 12(2) to (4) apply to an appointment under this section to the extent that it is reasonably practicable to comply with those provisions.

Tenure of office

14.(1) A commissioner shall be appointed for a term not less than 2 years and not more than 5 years.

(2) If the appointment of a commissioner does not specify a term of appointment—

- (a) the appointment is valid; and
- (b) the commissioner is, subject to subsections (3) and (5), taken to have been appointed for a term of 5 years.

(3) If the appointment of a commissioner does not specify a term of appointment, nothing in this Act (other than subsections (1) and (4)), any other Act or any rule of law prevents the Governor in Council from fixing a term of appointment by a later gazette notice.

(4) The chairperson of the commission may be reappointed for a term of not more than 3 years if the chairperson remains qualified for appointment and the requirements of this division are met.

(5) However, the chairperson is not eligible to be reappointed if the total of his or her terms as chairperson would be more than 5 years.

(6) A commissioner, other than the chairperson, may be reappointed for

a term of not more than 5 years if the commissioner remains qualified as prescribed and the requirements of this division are met.

- (7) The office of a commissioner becomes vacant if the commissioner—
- (a) dies;
 - (b) resigns the office by signed notice given to the Minister;
 - (c) becomes a patient within the meaning of the *Mental Health Act 1974*;
 - (d) becomes disqualified for appointment as a member of the commission as prescribed by section 10;
 - (e) is convicted in the State of an indictable offence (whether on indictment or summarily) or is convicted elsewhere of an offence that, had it been committed in the State, would be an indictable offence or of an offence defined in section 132;
 - (f) is absent, without prior leave of absence granted by the commission, from 3 consecutive meetings of the commission of which due notice has been given to the commissioner;
 - (g) is removed from office by the Governor upon the address of the Legislative Assembly approved by the Assembly consequent upon a recommendation of the parliamentary committee supported by all or a majority of that committee, being a majority other than one consisting wholly of members of the same political party in the Assembly.

Casual vacancy in membership

15.(1) Where a vacancy occurs in the office of a commissioner during the commissioner's term of office, the Governor in Council may appoint, by gazette notice, a person to that vacancy for the balance of the term of appointment of his or her predecessor to that office.

- (2) A person appointed to a vacancy under subsection (1)—
- (a) if the person's appointment is to be as chairperson—shall have a qualification prescribed for the chairperson;
 - (b) if the person's appointment is to be as any other member of the commission—shall, as far as possible, have a similar

qualification for appointment as his or her predecessor.

(3) Section 11(1) does not apply in relation to an appointment to a vacancy under subsection (1) in the office of chairperson.

Meetings and other proceedings of commission

16.(1) The chairperson is the chief executive officer of the commission.

(2) Meetings of the commission shall be held at regular intervals as prescribed, or, if not prescribed, as the commission resolves, and may be held at such other times as the chairperson determines.

(3) The chairperson is to preside at all meetings at which the chairperson is present.

(4) If the chairperson is not present at a meeting, the commissioners present are to appoint 1 of them to preside.

(5) Business may be conducted at a meeting of the commission at which a quorum is present, and shall be decided by majority vote of the members present and voting.

(6) The person presiding at a meeting of the commission is entitled to a deliberative vote and, in the event of an equality of votes, is entitled to a casting vote.

(7) A quorum of the commission consists of 3 members except when a report of the commission is presented to a meeting for adoption, when a quorum consists of 4 members.

(8) Conduct of meetings of the commission shall be as prescribed by regulation or, in so far as not so prescribed, as the commission resolves from time to time.

Judicial notice of chairperson's signature

17. 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.

Remuneration of commissioners

18.(1) The chairperson shall be paid a salary at such rate as is approved for the time being by the Governor in Council.

(2) Each other member of the commission is entitled to—

- (a) such remuneration as is approved for the time being by the Minister for performance of the ordinary duties of a part-time member of the commission; and
- (b) such remuneration as is approved by the Governor in Council in each case for services of the member in addition to the ordinary duties of a part-time member.

(3) Each member of the commission is entitled to such allowances for reasonable travelling expenses as are approved for the time being by the Minister.

*Division 2—Organisational structure of commission***Divisions of commission**

19.(1) Within the commission there shall be established, in the first instance, and maintained as organisational units the following divisions and tribunals—

- (a) official misconduct division;
- (b) misconduct tribunals;
- (c) witness protection division;
- (d) research and coordination division;
- (e) intelligence division.

(2) The commission may from time to time—

- (a) establish and maintain as part of the commission any other organisational unit or units, if the commission considers the maintenance by the commission of such unit or units to be necessary or desirable; or
- (b) terminate any organisational unit maintained as part of the

commission, whether the unit is one prescribed by subsection (1) or is one established by the commission under this subsection, if the commission considers the maintenance by the commission of such unit to be unnecessary or undesirable.

(3) An organisational unit established by the commission under subsection (2)—

- (a) may be established as a division or other entity within the commission;
- (b) shall have such functions and responsibilities as are allotted to it by the commission and, where its functions or responsibilities are prescribed by this Act, as are prescribed.

(4) Each division of the commission shall be under the control and direction of a director who shall be directly responsible to the chairperson.

Functions, jurisdiction etc.

20.(1) Each division of the commission has and shall discharge the functions and responsibilities, and may exercise the powers prescribed for it by this Act.

(2) Every misconduct tribunal has and may exercise the jurisdiction conferred on it by this Act.

Division 3—Functions and responsibilities of commission

Functions

21.(1) The commission shall—

- (a) continually monitor, review, coordinate and, if the commission considers it necessary, initiate reform of the administration of criminal justice;
- (b) discharge such functions in the administration of criminal justice as, in the commission's opinion, are not appropriate to be discharged, or cannot be effectively discharged, by the police service or other agencies of the State.

(2) In discharging its functions the commission shall—

- (a) wherever practicable, consult with persons or bodies of persons known to it to have special competence or knowledge in the area of the administration of criminal justice concerned, and seek submissions from the public; and
- (b) in its report present a fair view of all submissions and recommendations made to it on the matter in relation to which it is discharging its functions, whether such submissions and recommendations are supportive of, or contrary to, the commission's recommendations on the matter.

(3) Subject to section 26, the commission shall report to the parliamentary committee—

- (a) on a regular basis, in relation to the commission's activities;
- (b) when instructed by the parliamentary committee to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice;
- (c) when the commission thinks it appropriate to do so with respect to that matter, in relation to any matter that concerns the administration of criminal justice.

(4) The commission shall monitor, review, coordinate and initiate implementation of the recommendations relating to the administration of criminal justice contained in the report of the commission of inquiry, and to that end, having regard to that report, shall prepare a program of priorities.

Commission to act independently etc.

22. The commission must at all times act independently, impartially, fairly and in the public interest.

Responsibilities

23. The responsibilities of the commission include—

- (a) the acquisition and maintenance of the resources, skills, training and leadership necessary for the efficient administration of criminal justice;

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- (b) monitoring and reporting on the use and effectiveness of investigative powers in relation to the administration of criminal justice generally;
- (c) monitoring and reporting on the suitability, sufficiency and use of law enforcement resources and the sufficiency of funding for law enforcement and criminal justice agencies including the office of the director of public prosecutions and the Legal Aid Commission (so far as its functions relate to prescribed criminal proceedings within the meaning of the *Legal Aid Act 1978*);
- (d) overseeing criminal intelligence matters and managing criminal intelligence with specific significance to major crime, organised crime and official misconduct;
- (e) researching, generating and reporting on proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice, including assessment of relevant initiatives and systems outside the State;
- (f) in discharge of such functions in the administration of criminal justice as, in the commission's opinion, are not appropriate to be discharged, or cannot be effectively discharged, by the police service or other agencies of the State, undertaking—
 - (i) research and coordination of the processes of criminal law reform;
 - (ii) matters of witness protection;
 - (iii) investigation of official misconduct in units of public administration;
 - (iv) investigation of organised or major crime;
- (g) monitoring the performance of the police service with a view to ensuring that the most appropriate policing methods are being used, consistently with trends in the nature and incidence of crime, and to ensuring the ability of the police service to respond to those trends;
- (h) providing the commissioner of the police service with policy directives based on the commission's research, investigation and analysis, including with respect to law enforcement priorities, education and training of police, revised methods of police

- operation, and the optimum use of law enforcement resources;
- (i) overseeing reform of the police service;
 - (j) reporting regularly on the effectiveness of the administration of criminal justice, with particular reference to the incidence and prevention of crime (in particular, organised crime) and the efficiency of law enforcement by the police service;
 - (k) reporting, with a view to advising the Legislative Assembly, on the implementation of the recommendations in the report of the commission of inquiry relating to the administration of criminal justice, and to the police service;
 - (l) taking such action as the commission considers to be necessary or desirable in respect of such matters as, in the commission's opinion, are pertinent to the administration of criminal justice.

Role of commission members

24.(1) Each member of the commission shall, to the utmost extent that is practicable, play an active role within the field of the member's competence in advising and assisting the chairperson and staff of the commission in relation to the proper discharge of the commission's functions and responsibilities.

(2) Subject to section 25(2), in discharging any of its functions or responsibilities or exercising any of its powers the commission may be constituted by—

- (a) the chairperson alone, or, if the chairperson so elects, with 1 or more of the other commissioners; or
- (b) 1 or more of the other commissioners, if the chairperson so approves.

Commission hearings

25.(1) The commission is authorised to conduct a hearing in relation to any matter relevant to the discharge of its functions or responsibilities and may receive evidence orally or in writing, on oath or affirmation, or by way of statutory declaration.

(2) When the commission (other than a misconduct tribunal) is conducting a hearing for the purpose of discharging its functions or responsibilities allotted to the official misconduct division, it shall be constituted by—

- (a) the chairperson, alone or, if the chairperson so elects, with 1 or more of the other commissioners; or
- (b) the director of the official misconduct division; or
- (c) a commissioner who is a legal practitioner; or
- (d) a legal practitioner, authorised by the chairperson for the purpose in a particular case.

Commission's reports

26.(1) Subject to section 27, a report of the commission, signed by its chairperson, shall be furnished—

- (a) to the chairperson of the parliamentary committee; and
- (b) to the Speaker of the Legislative Assembly; and
- (c) to the Minister.

(2) The commission may furnish a copy of its report to the principal officer in a unit of public administration who, in its opinion, is concerned with the subject matter of the report.

(3) If a report is received by the speaker when the Legislative Assembly is not sitting, the speaker shall deliver the report and any accompanying document to the Clerk of the Parliament and order that it be printed.

(4) A report printed in accordance with subsection (3) shall be deemed for all purposes to have been tabled in and printed by order of the Legislative Assembly and shall be granted all the immunities and privileges of a report so tabled and printed.

(5) A report received by the speaker, including one printed in accordance with subsection (3), shall be tabled in the Legislative Assembly on the next sitting day of the Assembly after it is received by the speaker and be ordered by the Legislative Assembly to be printed.

(6) No person shall publish, furnish or deliver a report of the commission, otherwise than is prescribed by this section, unless the report

has been printed by order of the Legislative Assembly or is deemed to have been so printed.

(7) This section does not apply to an annual report of the commission.

(8) Notwithstanding subsection (6) the commission, prior to furnishing a report in accordance with subsection (1), may—

- (a) publish, furnish or deliver a copy of a report of the commission to the government printer; and
- (b) make arrangements for the preprinting by the government printer of copies of such report for the purposes of this section.

Commission's report on court procedures and confidential matter

27.(1) A report of the commission relating to—

- (a) procedures and operations of any court of the State;
- (b) procedures and practices of the registry or administrative offices of any court of the State;

shall not be furnished as prescribed by section 26 but shall be furnished—

- (c) to the chief justice of the State, if the report deals with matters pertinent to the Supreme Court; or
- (d) to the chief judge of District Courts, if the report deals with matters pertinent to District Courts; or
- (e) to the president of the Childrens Court, if the report deals with matters pertinent to the Childrens Court; or
- (f) to the judicial officer, or the principal such officer if there be more than 1, in the court, or the system of courts, to which the matters dealt with in the report are pertinent.

(2) Notwithstanding any other provision of this Act, if the commission is of the opinion that information in its possession is such that confidentiality should be strictly maintained in relation to it—

- (a) the commission need not make a report on the matter to which the information is relevant; or
- (b) if the commission makes a report on that matter it need not disclose that information or refer to it in the report.

Commission's report insufficient for judge's removal from Supreme Court

28.(1) A report of the commission is not sufficient ground for an address of the Legislative Assembly for removal from office of a judge of the Supreme Court.

(2) If the Assembly resolves that further action in respect of such a judge should be taken having regard to a report of the commission, it shall—

- (a)** appoint a tribunal of serving or retired judges of any 1 or more of the State or Federal superior courts of Australia to inquire into the matter dealt with in the commission's report in relation to the judge; and
- (b)** defer any other further action until the findings and recommendations of such tribunal are known.

(3) When such tribunal is appointed the commission shall furnish to it such number of copies of its report as the tribunal requires and all material in the commission's possession relevant to the subject of the tribunal's inquiry.

Division 4—Official misconduct division

Role and functions

29.(1) The official misconduct division is the investigative unit within the commission.

(2) It will operate of its own initiative, as well as in response to complaint or information received concerning misconduct.

(3) It is the function of the division—

- (a)** to investigate the incidence of official misconduct generally in the State; and
- (b)** to further the investigative work carried out on behalf of the commission of inquiry continued in being by the *Commission of Inquiry Continuation Act 1989*; and
- (c)** to investigate the financial affairs and business transactions of any person holding an appointment in a unit of public administration

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if the director of the division has reason to suspect the person of official misconduct; and

- (d) to investigate cases of—
 - (i) alleged or suspected misconduct by members of the police service; or
 - (ii) alleged or suspected official misconduct by persons holding appointments in other units of public administration; that come to its notice from any source, including by complaint or information from an anonymous source; and
- (e) to offer and render advice or assistance, by way of education or liaison, to law enforcement agencies, units of public administration, companies and institutions, auditors and other persons concerning the detection and prevention of official misconduct; and
- (f) to give effect to the recommendations of the report of the commission of inquiry—
 - (i) to the extent to which they—
 - (A) relate to the operation of the official misconduct division; and
 - (B) are not inconsistent with this Act; and
 - (ii) so far as it is practicable; and
- (g) to report as prescribed in relation to its investigations; and
- (h) to perform such duties on behalf of the commission as the chairperson directs.

(4) To the extent that an investigation by the division is, or would be, in relation to the conduct of a judge of, or other person holding judicial office in, a court of the State, the authority of the division to conduct the investigation—

- (a) is limited to investigating misconduct such as, if established, would warrant his or her removal from office;
- (b) shall be exercised by the commission constituted by the chairperson;

- (c) shall be exercised in accordance with appropriate conditions and procedures settled in continuing consultations between the chairperson and the chief justice of the State.

Qualification of director

30. The director of the official misconduct division shall be a legal practitioner.

Official misconduct

31.(1) For the purposes of this Act, official misconduct is—

- (a) conduct that is in the general nature of official misconduct prescribed by section 32;
- (b) a conspiracy or attempt to engage in conduct referred to in paragraph (a).

(2) Conduct may be official misconduct for the purposes of this Act notwithstanding that—

- (a) it occurred before the commencement of this Act; or
- (b) some or all of the effects or ingredients necessary to constitute official misconduct occurred before the commencement of this Act; or
- (c) a person involved in the conduct is no longer the holder of an appointment in a unit of public administration.

(3) Conduct engaged in by, or in relation to, a person at a time when the person is not the holder of an appointment in a unit of public administration may be official misconduct, if the person becomes the holder of such an appointment.

(4) Conduct may be official misconduct for the purposes of this Act regardless of—

- (a) where the conduct is engaged in;
- (b) whether the law relevant to the conduct is a law of Queensland or of another jurisdiction.

General nature of official misconduct

32.(1) Official misconduct is—

- (a) conduct of a person, whether or not the person holds an appointment in a unit of public administration, that adversely affects, or could adversely affect, directly or indirectly, the honest and impartial discharge of functions or exercise of powers or authority of a unit of public administration or of any person holding an appointment in a unit of public administration; or
- (b) conduct of a person while the person holds or held an appointment in a unit of public administration—
 - (i) that constitutes or involves the discharge of the person's functions or exercise of his or her powers or authority, as the holder of the appointment, in a manner that is not honest or is not impartial; or
 - (ii) that constitutes or involves a breach of the trust placed in the person by reason of his or her holding the appointment in a unit of public administration; or
- (c) conduct that involves the misuse by any person of information or material that the person has acquired in or in connection with the discharge of his or her functions or exercise of his or her powers or authority as the holder of an appointment in a unit of public administration, whether the misuse is for the benefit of the person or another person;

and in any such case, constitutes or could constitute—

- (d) in the case of conduct of a person who is the holder of an appointment in the unit of public administration—a criminal offence, or a disciplinary breach that provides reasonable grounds for termination of the person's services in the unit of public administration; or
- (e) in the case of any other person—a criminal offence.

(2) It is irrelevant that proceedings or action in respect of an offence to which the conduct is relevant can no longer be brought or continued or that action for termination of services on account of the conduct can no longer be taken.

(3) A conspiracy or an attempt to engage in conduct, such as is referred to in subsection (1) is not excluded by that subsection from being official misconduct if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in subsection (1).

Reports of division

33.(1) The director of the official misconduct division shall report on—

- (a) every investigation carried out by the division (other than by or on behalf of the complaints section);
- (b) every matter of complaint, or information, submitted to the director by the complaints section of the division.

(2) A report shall be made to the chairperson with a view to such action by the commission as the chairperson considers desirable and, with the authority of the chairperson, to such 1 or more of the following as the chairperson considers appropriate—

- (a) the director of public prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as the director of public prosecutions or other authority considers warranted;
- (b) the executive director of the commission with a view to a misconduct tribunal exercising jurisdiction in respect of the matter to which the report relates;
- (c) the chief justice of the State, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;
- (d) the chief judge of District Courts, if the report relates to conduct of a judge of District Courts;
- (e) the president of the Childrens Court, if the report relates to a person holding judicial office in the Childrens Court;
- (f) the chief stipendiary magistrate, if the report relates to conduct of a person holding judicial office in the system of Magistrates Courts;

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- (g) in a case to which paragraphs (c), (d), (e) and (f) do not apply—the appropriate principal officer in a unit of public administration, with a view to disciplinary action being taken in respect of the matter to which the report relates.

(3) A report made to the director of public prosecutions or the executive director of the commission must contain, or be accompanied by, all relevant information known to the official misconduct division, whether the information—

- (a) supports a charge that may be brought against any person in consequence of the report; or
- (b) supports a defence that may be available to any person liable to be charged in consequence of the report.

(4) If a person makes a complaint of misconduct or official misconduct to the complaints section, the director must give to the person a response stating—

- (a) if no action is taken on the complaint—the reason for the inaction; or
- (b) if action is taken on the complaint—
- (i) the action taken; and
- (ii) the reason the director 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.

(5) However, the director is not required to give a response to the person if—

- (a) the person has not given his or her name and address to the commission; or
- (b) the complaints section, acting under section 38(2), does not investigate the complaint.

(6) The director must not disclose, in a response under subsection (4), information the director considers should remain confidential.

Judicial review of division's activities

34. A person who claims—

- (a) that an investigation by the official misconduct division is being conducted unfairly; or
- (b) that the complaint or information on which an investigation by the official misconduct division is being, or is about to be, conducted does not warrant an investigation;

may make application to a judge of the Supreme Court for an order in the nature of a mandatory or restrictive injunction addressed to the director of the official misconduct division.

Effect of further factors on order

35.(1) An order made on an application under section 34 shall not operate so as to 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) Where there have emerged further factors that put in question the propriety of an order made on an application under section 34 a judge of the Supreme Court may, on application made by the commission for revocation of the order, revoke the order, or vary its terms as the judge thinks fit.

Division 5—Complaints section**Establishment of section**

36.(1) Within the official misconduct division there shall be established and maintained a complaints section.

(2) An officer of the commission is to be appointed by the chairperson as the chief officer of the complaints section.

(3) The chairperson may appoint a person to act as chief officer of the complaints section—

- (a) during a vacancy in the office; or

- (b) during any period, or all periods, when the chief officer is absent from duty or is, for another reason, unable to perform the functions of the office.

(4) The complaints section is to be under the control and direction of the chief officer, who is to be directly responsible to the director of the official misconduct division.

(5) All complaints or information concerning misconduct to be brought to the notice of the commission are to be communicated to the complaints section.

Referral of matter to section

37.(1) Any person may furnish to the complaints section a complaint or information concerning conduct that is perceived as, or may be, official misconduct.

(2) It is the duty of each of the following persons to refer to the complaints section all matters that the person suspects involve, or may involve, official misconduct—

- (a) the parliamentary commissioner for administrative investigations;
- (b) the principal officer (other than the commissioner of the police service) in a unit of public administration;
- (c) a person who constitutes a corporate entity that is a unit of public administration.

(3) It is the duty of the commissioner of the police service to refer to the complaints section all complaints of, or matters involving, suspected misconduct by members of the police service, whether such complaints and matters arise within or from outside the police service.

(4) A person shall discharge the duty prescribed for the person by subsection (2) or (3) notwithstanding—

- (a) the provisions of any other Act; or
- (b) any obligation to which the person may be subject to maintain confidentiality with respect to the matters or complaints concerned.

(5) The commission may issue guidelines to regulate or modify the

duties prescribed by subsection (2) or (3).

(6) A person referred to in subsection (2) or (3) shall comply with the directions in writing of the chairperson relating to any complaint of, or matter involving, suspected misconduct, including the transference to the commission of responsibility for investigation of any such complaint or matter or of any suspicion arising from any such complaint or matter.

Handling of complaints etc. by complaints section

38.(1) The complaints section may decide not to investigate a complaint, information or other matter communicated to it.

(2) The complaints section must not investigate a complaint or information if, in the opinion of the chief officer of the section—

- (a) the complaint or information is frivolous or vexatious; or
- (b) in the case of a complaint or information from an anonymous source—the complaint or information lacks substance or credibility.

(3) The complaints section may discontinue the investigation of a complaint, information or matter.

(4) The complaints section may refer to the principal officer of a unit of public administration any complaint, information or matter that, in the opinion of the chief officer of the section, involves, or may involve, cause for taking disciplinary action (other than for official misconduct) by the principal officer against a person holding an appointment in the unit of public administration.

(5) The complaints section must submit a complaint, information or matter to the director of the official misconduct division if, in the opinion of the chief officer of the section, the available evidence shows a prima facie case to support a charge of a disciplinary nature of official misconduct or a charge for a criminal offence.

(6) The director of the official misconduct division may give directions with respect to the investigation by or on behalf of the complaints section of complaints, information and matters, including decisions to investigate or not to investigate.

(7) The commission may issue guidelines with respect to the

investigation by or on behalf of the complaints section of complaints, information and matters, including decisions to investigate or not to investigate.

(8) This section, and any directions given under subsection (6), have effect subject to any guidelines issued by the commission under subsection (7).

Principal officer's duty upon director's report of official misconduct

39.(1) Where the director of the official misconduct division reports to a principal officer of a unit of public administration that—

- (a) any complaint, matter or information involves, or may involve, official misconduct by a prescribed person in that unit; and
- (b) the available evidence shows a prima facie case to support a charge of a disciplinary nature of official misconduct against the prescribed person;

it is the duty of the principal officer and of persons acting under the principal officer to charge the prescribed person with the relevant official misconduct, by way of a disciplinary charge, and to have the person dealt with by a misconduct tribunal as prescribed by this Act.

(2) In subsection (1)—

“prescribed person” means—

- (a) a member of the police service;
- (b) a person who holds an appointment in a unit of public administration (other than the police service), which appointment or unit is declared by regulation to be subject to the jurisdiction of a misconduct tribunal.

(3) A regulation may not declare a court of the State of whatever jurisdiction or an appointment as a judge of, or holder of a judicial office in, any such court to be subject to the jurisdiction of a misconduct tribunal.

Division 6—Misconduct tribunals**Meaning of “prescribed person”**

40. In this division—

“prescribed person” has the same meaning as in section 39.

Tribunals constituted as required

41. There shall be constituted from time to time, as part of the official misconduct division, 1 or more tribunals to be called misconduct tribunals having the jurisdiction prescribed by this division of this Act.

Panel of tribunal members

42.(1) For the purpose of constituting misconduct tribunals the executive director of the commission shall establish and maintain a panel of 3 persons, at the least, who—

- (a) have served, or are qualified for appointment, as a judge of—
 - (i) the Supreme Court of Queensland; or
 - (ii) the Supreme Court of any other State or a Territory; or
 - (iii) the High Court; or
 - (iv) the Federal Court; and
- (b) hold no other office in any unit of public administration (other than an office held *ex officio*) or in the commission.

(2) A reference to a unit of public administration in subsection (1)(b) does not include reference to an educational institution.

(3) Persons eligible to be appointed to the panel shall be nominated to the Minister by the commission and shall be appointed as members of the panel by the Governor in Council, by gazette notice.

(4) Appointment to the panel is on a part-time basis.

Term of appointment to panel

43.(1) A person shall be appointed to the panel for a term specified in the person's appointment, not exceeding in any case 3 years.

(2) A member of the panel is eligible for reappointment except where the aggregate of the member's service as a member would exceed 6 years.

Remuneration for constituting tribunal

44. A member of the panel who constitutes a misconduct tribunal at any time, and any person who acts as adviser to a misconduct tribunal at any time, is entitled to such remuneration, by way of fees and allowances for reasonable travelling expenses, as is approved for the time being by the Minister.

Constitution of tribunals

45.(1) A misconduct tribunal—

- (a) shall be constituted by 1 member of the panel nominated by the chairperson for the purpose of hearing and determining a particular matter, or a group of matters, assigned to that tribunal by the chairperson;
- (b) may be constituted at any place in the State.

(2) If in any case the person who is to constitute a misconduct tribunal seeks the assistance of 1 or more persons possessing expertise or qualification relevant to that case, the person may sit as that tribunal with such person or persons (not exceeding 2), whose role shall be that of adviser or advisers to the tribunal.

Jurisdiction

46.(1) Original jurisdiction is hereby conferred on every misconduct tribunal from time to time constituted—

- (a) to investigate and determine every charge, of a disciplinary nature, of official misconduct made against a prescribed person after the commencement of this section; and

- (b) if it finds such a charge established—to order that the prescribed person suffer such disciplinary punishment as it is authorised by this Act to impose and as it considers to be just.

(2) Appellate jurisdiction is hereby conferred on every misconduct tribunal from time to time constituted to review a decision (other than a decision of a court or misconduct tribunal) made in respect of a disciplinary charge of misconduct made against a prescribed person after the commencement of this section.

Tribunal's original jurisdiction exclusive

47.(1) A disciplinary charge of official misconduct made against a prescribed person after the commencement of section 46 shall be heard and determined by a misconduct tribunal to the exclusion of authority conferred by law on any other person or tribunal to hear and determine at first instance disciplinary charges made against the prescribed person.

(2) Subject to any appeal instituted against the decision of a misconduct tribunal exercising original jurisdiction, a decision of a misconduct tribunal is binding on and shall be given effect by all persons concerned.

Appeal from tribunal in original jurisdiction

48.(1) A person aggrieved by a decision of a misconduct tribunal exercising original jurisdiction may appeal against the decision to the Supreme Court.

(2) The appeal may be made—

- (a) on 1 or more of the following grounds—

- (i) denial of natural justice;
- (ii) error of law;
- (iii) manifest excessiveness of penalty;

- (b) with the leave of a judge, on 1 or both of the following grounds—

- (i) error of fact;
- (ii) that the decision cannot be supported having regard to—

- (A) the evidence and the proceedings before the misconduct

tribunal; and

(B) any evidence that may be adduced in the appeal.

(3) The appeal must be instituted within 28 days after the decision of the misconduct tribunal is announced.

(4) If leave is granted under subsection (2)(b), the judge may order that the matter be heard afresh, in whole or part, in the appeal.

(5) Subject to any order under subsection (4), the appeal must be determined on the evidence and proceedings before the misconduct tribunal.

(6) At any time after the appeal is instituted, the court may, on application by a party or its own initiative, remit the appeal to a District Court.

(7) If an order is made under subsection (6)—

(a) the appeal must be continued and disposed of in the District Court; and

(b) a District Court judge may exercise any of the powers under this section that would have been exercisable by a Supreme Court judge if the order had not been made.

(8) An appeal may be instituted in accordance with the rules of court or, in so far as those rules do not provide, as directed by a judge of the Supreme Court.

(9) If an appeal is allowed otherwise than on the ground of manifest excessiveness of penalty, the court may—

(a) set aside the decision appealed from and—

(i) substitute its own decision; or

(ii) remit the matter to a misconduct tribunal with any directions for the disposal of the matter that it considers desirable; or

(b) vary the decision.

(10) If an appeal on the ground specified in subsection (2)(a)(iii) is allowed, the judge may quash the penalty order and may substitute such penalty as the misconduct tribunal is authorised to order and as the judge considers should have been ordered by the misconduct tribunal.

Review of decisions on disciplinary charges

49.(1) A person aggrieved by a decision in respect of a disciplinary charge of misconduct made against a prescribed person after the commencement of section 46 (other than a decision of a court or a misconduct tribunal) may seek a review of the decision by a misconduct tribunal.

(2) Upon a review a misconduct tribunal shall inform itself of the facts and determine the issue afresh.

(3) A decision of a misconduct tribunal upon a review is final and conclusive, is binding on, and shall be given effect by all persons concerned.

Division 7—Procedures and powers of misconduct tribunals**Meaning of “prescribed person”**

50. In this division—

“prescribed person” has the same meaning as in section 39.

Proceedings in original jurisdiction

51. A person may initiate a matter in the original jurisdiction of a misconduct tribunal by—

- (a) reducing the charge of official misconduct to writing and lodging the writing with the director of the official misconduct division; and
- (b) serving a copy of the writing on the prescribed person against whom the charge is made.

Proceedings in appellate jurisdiction

52. A person may initiate a matter in the appellate jurisdiction of a misconduct tribunal by—

- (a) lodging with the director of the official misconduct division, within 14 days from the date on which the decision to be

reviewed was announced, notice of appeal that identifies the decision to which the appeal relates; and

- (b) serving a copy of the notice on the person whose decision is the subject of the appeal.

Director's duty following initiation of proceedings

53.(1) Upon initiation of proceedings in the jurisdiction of a misconduct tribunal and, in the case of proceedings in original jurisdiction, upon receipt by the director of a notification that the prescribed person concerned has been served as prescribed, the director—

- (a) shall take all such steps as are necessary to secure the constitution of a misconduct tribunal to hear and determine the matter as soon as is practicable; and
- (b) in the case of proceedings in appellate jurisdiction—shall take such steps as are necessary to obtain possession of all documents and exhibits (if any) relating to the decision, to which the appeal relates, and to the relevant charge.

(2) The person having custody of such documents and exhibits (if any) shall comply with the director's requirements in respect of them.

Conduct of proceedings

54.(1) A misconduct tribunal is not bound by rules or the practice of any court or tribunal as to evidence or procedure in the exercise of its jurisdiction, but may inform itself on any matter and conduct its proceedings as it thinks proper.

(2) A misconduct tribunal is authorised to conduct hearings for the purpose of exercising its jurisdiction and to receive evidence on oath or affirmation, or by way of statutory declaration.

(3) The person constituting the tribunal, a person nominated by the person constituting the tribunal, or any justice may administer any oath or affirmation, or take any statutory declaration required by the tribunal.

(4) A hearing of a misconduct tribunal shall be open to the public.

(5) A misconduct tribunal may conduct proceedings in exercise of its

jurisdiction in the absence of the prescribed person concerned if—

- (a) in the case of proceedings in original jurisdiction—it is satisfied that the prescribed person has been served with a copy of the charge, has been notified of the date, time and place of the proceedings, and has been given the opportunity to be present or to be represented at the proceedings;
- (b) in the case of proceedings in appellate jurisdiction—it is satisfied that the prescribed person has been notified of the date, time and place of the proceedings and has been given the opportunity to be present or to be represented at the proceedings.

(6) To the extent that this division does not sufficiently provide, proceedings before a misconduct tribunal shall be conducted as directed by the tribunal.

Powers of tribunals

55.(1) In exercise of its original jurisdiction a misconduct tribunal may order 1 or more of the following sanctions—

- (a) dismissal of the prescribed person;
- (b) reduction in rank or in level of salary of the prescribed person;
- (c) forfeiture or deferment of a salary increment or increase to which the prescribed person would ordinarily be entitled;
- (d) deduction from the prescribed person's periodic salary payment of an amount not exceeding \$100 per payment to an aggregate sum determined by the tribunal;
- (e) deduction from the prescribed person's monetary entitlements upon termination of the person's service (other than entitlements by way of superannuation) of a sum determined by the tribunal.

(2) In determining a sum for the purposes of subsection (1)(e), a tribunal may have regard to the value of gain (if any) to the prescribed person from the person's official misconduct.

(3) In exercise of its appellate jurisdiction, a misconduct tribunal may, by its order—

- (a) affirm the decision reviewed; or

- (b) quash the decision reviewed; or
- (c) vary the decision reviewed in such manner as the tribunal considers just; or
- (d) quash the decision reviewed and substitute such decision as the tribunal considers should have been made at first instance;

and for the purpose of exercising its jurisdiction as prescribed by paragraph (c) or (d), a misconduct tribunal has and may exercise the powers had according to law by the person whose decision is under review.

(4) In proceedings initiated in either of its jurisdictions, a misconduct tribunal may, by its order, remit any matter to the director of the official misconduct division for the making of investigations, or further investigations, with a view to the taking of criminal proceedings, or for any other purpose, and may adjourn its proceedings until those investigations are completed.

Division 8—Research and coordination division

Role and functions

56.(1) The research and coordination division is the unit within the commission that will—

- (a) conduct research into the problems that from time to time beset, or could beset, the administration of criminal justice in the State;
- (b) work towards coordinating the activities of the commission and the activities of all other agencies in the State concerned with the administration of criminal justice in the State;
- (c) make known its findings on matters relating to the system of criminal justice in the State to the chairperson and, with the chairperson's approval, all other agencies in the State concerned with the administration of criminal justice in the State.

(2) It will operate of its own initiative as well as in response to requests of other divisions of the commission.

(3) It is the function of the division—

- (a) to coordinate and to develop systems and procedures for

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- coordinating the activities of the commission;
- (b) to define trends in criminal activity, in particular any trend to organised crime, to identify competing needs, and to establish priorities for allocation of resources for enforcement of the criminal law;
 - (c) to develop compatible systems for, and to foster cooperation between, agencies for—
 - (i) law enforcement; and
 - (ii) prosecution of offenders; and
 - (iii) judicial administration; and
 - (iv) corrective services;with a view to securing optimum use of available resources;
 - (d) to research and make recommendations on—
 - (i) law reform pertinent to criminal justice; and
 - (ii) reform of processes of enforcement of the criminal law;
 - (e) to inform the parliamentary committee, the judiciary, and agencies for enforcement of the criminal law or prosecution of offenders in relation to matters affecting criminal justice;
 - (f) to review on a continuing basis the effectiveness of programs and methods of the police department, in particular in relation to—
 - (i) compliance by the department with the commission's recommendations or policy instructions;
 - (ii) community policing;
 - (iii) prevention of crime;
 - (iv) matters affecting the selection, recruitment, training and career progression of members of the police service and their supporting staff;
 - (g) to review the use and treatment by the police service of intelligence information concerning criminal activity, in particular when required by the intelligence division to do so;
 - (h) to prepare for the commission reports, and suggested directions

to the commissioner of the police service, relating to its findings in the course of discharging its functions and to its recommendations as to remedial action or appropriate response;

- (i) to report to the chairperson, as the director of the division thinks appropriate, or as required by the chairperson, on the discharge of the division's functions with a view to alerting the commission and aiding the commission's determinations.

Liaison with other agencies

57.(1) In discharge of its functions, the division shall liaise with, and coordinate its activities with those of, departments that are concerned with the administration of criminal justice.

(2) The division shall have regard to the activities, findings and recommendations of agencies outside the State that are concerned with administration of criminal justice (or any part of the administration of criminal justice) in other jurisdictions with a view to—

- (a) relating and adapting those activities, findings and recommendations to the needs of the State;
- (b) avoiding needless duplication of the work of those agencies for the purpose of discharging the division's functions.

Division 9—Intelligence division

Role and functions

58.(1) The intelligence division is the unit within the commission to function as a professional and specialist criminal intelligence unit providing an effective criminal intelligence service as the hub about which an integrated approach to major crime, in particular—

- (a) organised crime; and
- (b) criminal activity transcending the normal boundaries of criminal activity that is the subject of local police action;

may be structured.

(2) It is the function of the intelligence division—

- (a) to build up a data base of intelligence information concerning criminal activities and persons concerned in criminal activities, using for the purpose information acquired by it from—
 - (i) its own operations;
 - (ii) the official misconduct division of the commission;
 - (iii) the police service;
 - (iv) sources of the Commonwealth or any State or Territory, which supplies such information to it;
 - (v) any other source available to it;and to disseminate such information to such persons, authorities and agencies, and in such manner, as the commission considers appropriate to the discharge of its functions and responsibilities;
- (b) to assume possession and control of all data and records of the commission of inquiry continued in being by the *Commission of Inquiry Continuation Act 1989*;
- (c) to secure such data base and records in its possession and control so that only persons who satisfy the director of the intelligence division or the chairperson that they have a legitimate need of access to the same are able to have access to them;
- (d) subject to the direction of the commission, to assume or, as the case may be, oversee—
 - (i) the performance of the role of the bureau of criminal intelligence of the police service; and
 - (ii) the police service's liaison with law enforcement agencies of the Commonwealth or any State or Territory and with the national crime authority;
- (e) subject to the commission's approval, to report to the Minister and the Minister responsible for the police service on matters of criminal intelligence pertinent to the deliberations, policies and projects of the Government.

Relinquishment of data of commission of inquiry

59.(1) A person in possession or control of data and records of the commission of inquiry continued in being by the *Commission of Inquiry Continuation Act 1989* shall, upon the person receiving a request in writing of the chairperson, deliver possession and control of that data and those records to the director of the intelligence division.

(2) The acknowledgment of receipt by the director of data and records so delivered shall be a sufficient discharge to the person making delivery from all responsibility in respect of such data and records.

(3) In respect of data and records of which the director of the intelligence division has assumed possession and control from the commission of inquiry continued in being by the *Commission of Inquiry Continuation Act 1989* the provisions of the *Special Prosecutor Act 1988*, sections 20 and 21 apply (subject to all necessary adaptation) as if—

- (a) the commission of inquiry referred to in that Act were the commission constituted by this Act; and
- (b) the chairperson referred to in that Act were the chairperson under this Act.

Duty to inform of criminal intelligence

60. It is the duty of—

- (a) the director of the official misconduct division of the commission; and
- (b) the commissioner of the police service;

to cause such information in the nature of criminal intelligence that comes to the knowledge of officers of such division or, as the case may be, of members of the police service as is requested by the chairperson to be conveyed immediately to the director of the intelligence division of the commission.

Division 10—Witness protection division**Meaning of “witness protection”**

61. In this division—

“**witness protection**” means protection of the personal safety of a person who—

- (a) whether or not the person has been summoned or called as a witness before the commission, has assisted the commission in the discharge of its functions and responsibilities; or
- (b) whether or not the person has been summoned or called as a witness before a court, has assisted any law enforcement agency of the State in the discharge of its functions and responsibilities.

Role and functions

62.(1) The witness protection division is the unit within the commission directly responsible for providing witness protection to persons who, in the opinion of the chairperson, following consultation with the director of the division, are in need of it.

(2) It is the function of the division—

- (a) to provide witness protection through officers of the division to persons who are considered, as prescribed by subsection (1), to be in need of it by reason that they have assisted the commission or a law enforcement agency of the State in the discharge of its functions and responsibilities;
- (b) to provide, to persons receiving witness protection, facilities and means by which they may assume new identities and may be relocated and re-established in employment or business, if in the opinion of the chairperson, such facilities or means are necessary;
- (c) to devise methods by which witness protection may be provided adequately to persons generally or in particular cases;
- (d) to devise programs for training, and to train personnel, whether officers of the division or not, for the duties involved in providing witness protection;

- (e) to accurately maintain a register of the factual particulars and the assumed particulars of persons who have assumed new identities for the purpose of witness protection provided to them;
- (f) to advise the Minister and the commission in relation to arrangements with authorities of the Commonwealth and the other States and the Territories, with a view to the establishment and operation of a national witness protection program.

(3) Witness protection provided to any person shall be terminated, if that person so requests.

Access to register

63. The only persons who may have access to the register of particulars referred to in section 62(2)(e) are—

- (a) the chairperson; and
- (b) the executive director of the commission; and
- (c) the director of the witness protection division.

Division 11—Staff of commission

Employment by commission

64.(1) The commission may employ an executive director and such directors and other staff as are necessary for the effective and efficient discharge of the functions and responsibilities, and exercise of the powers, of the commission and of each of its organisational units.

(2) The commission may, with the Minister's approval, settle the salaries, wages, allowances and conditions of employment of members of its staff.

(3) Employment in an office under the commission, or in an office of a class of office under the commission, approved by the chairperson to be a contractual office or class shall be governed by a contract of employment between the commission and the appointee to the office, and shall not be subject to any industrial award or industrial agreement or any determination or rule of an industrial tribunal.

(4) The *Public Service Management and Employment Act 1988* does not apply to the appointment of persons employed by the commission and persons appointed to employment by the commission do not by the appointment become officers of the public service or otherwise become subject to that Act.

Use of officers

65.(1) The commission may, with the Minister's approval and the consent of the Minister responsible for the unit of public administration concerned, or in the case of the parliamentary service, the consent of the speaker, arrange for use (by secondment or otherwise) by it of the services of staff or facilities of any unit of public administration, or of any office administered within such a unit.

(2) In subsection (1)—

“**staff**” includes members of the police service.

Engagement of services

66. The commission may engage suitably qualified persons to provide the commission with services, information or advice.

Officers of commission

67.(1) While a person is employed by the commission under section 64 or a person's services are utilised by the commission under section 65 that person is, for the purposes of this Act, an officer of the commission.

(2) In discharge of his or her duties an officer of the commission—

- (a) being the executive director—is subject to the direction and control of the chairperson;
- (b) being a director—is subject to the direction and control of the chairperson;
- (c) being any other officer—is subject to the direction and control of the executive director, the director of the organisational unit in which the officer is employed, and any other officer of the commission to whom the officer is for the time being made

subject by such last mentioned director;

and not to any other person or authority that, but for this provision, might be taken to have had control and direction of the officer.

(3) A person who is a member of the police service or of a unit of public administration, or of an office administered within such a unit, whose services are for the time being utilised by the commission under section 65 remains a member of the police service or the staff of that unit or office, subject to subsection (2), and retains all powers and authorities had by the person as such a member.

(4) A person recognised by subsection (3) as remaining a member of the police service or staff of a unit of public administration or office—

- (a) retains and is entitled to all rights that had accrued to the person by reason of employment as such a member, or that would accrue in the future to the person by reason of employment as such a member, if the person's services were not being utilised by the commission; and
- (b) continues to be required to contribute to any superannuation scheme to which the person is required to contribute by reason of employment as such a member, regardless of utilisation of the person's services by the commission; and
- (c) shall be taken to have continuous service as such a member, regardless of utilisation of the person's services by the commission.

Superannuation schemes

68.(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 officers of the commission whose services are being used under section 65.

(3) The auditor-general must audit the schemes.

(4) Subsection (3) is subject to the *Financial Administration and Audit Act 1977*, part 6.¹

PART 3—INVESTIGATIONS

Division 1—Powers to assist the collection or presentation of information

Notice to discover information

69.(1) If the chairperson is satisfied that there are reasonable grounds to suspect that any person has information, or custody of any record or thing, that is relevant to the subject matter of an investigation, or proposed investigation, by the commission, in discharge of the functions and responsibilities of the commission or of the functions of an organisational unit of the commission, the chairperson may, by signed notice served on the person, require the person—

- (a) to furnish to an officer of the commission specified in the notice, a statement of such information; or
- (b) to produce to an officer of the commission specified in the notice, the record or thing referred to in the notice.

(2) A notice under subsection (1)—

- (a) shall specify a time within which it is to be complied with;
- (b) in the case referred to in subsection (1)(a)—shall briefly indicate the general nature of the information that the person is suspected of having, by reference to a particular matter or to the type of information sought;
- (c) in the case referred to in subsection (1)(b)—shall identify the record or thing sought sufficiently to enable the person to know what is being sought.

¹ Part 6 (Audit of public accounts and public sector entities)

- (3) A notice under subsection (1)—
- (a) may provide that its requirement may be met by some person acting on behalf of the person to whom it is directed; and
 - (b) may specify the person or class of person who may so act.
- (4) The authority conferred by subsection (1)—
- (a) does not extend to authorise the service of a notice on a prescribed person referred to in section 46 subject to a disciplinary charge of official misconduct (or any of the person's witnesses or prospective witnesses) in relation to information, records or things relevant to the charge; and
 - (b) is subject to this division in its exercise.

Entry of public premises

70.(1) An officer of the commission authorised in writing by the chairperson is authorised—

- (a) to enter and search premises occupied or used by, or for the official purposes of, a unit of public administration;
- (b) to inspect any record or thing that is, or might be, relevant to the subject matter of an investigation, or proposed investigation, by the commission found in or on the premises;
- (c) to seize and remove from the premises any record or thing that is relevant to the subject matter of an investigation, or proposed investigation, by the commission found in or on the premises;
- (d) to make copies of or extracts from any such record found in or on the premises and take away such copies and extracts.

(2) Premises referred to in subsection (1) do not include any part of premises that is occupied or used by or for the purposes of any court of the State.

(3) The officer of the commission who enters premises for the purposes of subsection (1) shall, upon request of the occupier of the premises, or of a person acting on behalf of the occupier, so to do, produce for inspection by the occupier or person the authority of the chairperson under which the officer purports to act.

(4) All persons holding appointments in a unit of public administration shall make available to an officer of the commission such facilities as are necessary to enable the powers conferred by subsection (1) to be exercised.

(5) The authority conferred by subsection (1)(b) to (d) are subject to section 77.

Warrant to enter, search and seize

71.(1) The chairperson may, for the purposes of an investigation, or proposed investigation, by the commission in discharge of its functions and responsibilities, make application to a judge of the Supreme Court for an order that a warrant be issued, addressed to all officers of the commission, or any of them, authorising the officers or officer—

- (a) to enter on and search premises specified in the warrant;
- (b) to search, if necessary, any person or persons found in the premises;
- (c) to seize any record or thing (of a description specified in the warrant) found in the premises and to bring it before the chairperson or to make a copy of or extract from any such record.

(2) If the judge to whom application under subsection (1) is made is satisfied that there are reasonable grounds to suspect that in premises to which the application relates there is any record or thing relevant to the subject matter of an investigation, or proposed investigation, by the commission in discharge of its functions and responsibilities and that—

- (a) an offence has been committed, or is suspected on reasonable grounds to have been committed, with respect to the record or thing; or
- (b) there are reasonable grounds for believing that the record or thing would (of itself or upon examination) afford evidence of the commission of an offence; or
- (c) there are reasonable grounds for suspecting that the record or thing is to be used for committing an offence;

the judge may order that a warrant, such as is referred to in subsection (1), be issued.

(3) Any justice may issue a warrant so ordered to be issued.

(4) The authority conferred by the warrant and referred to in subsection (1)(c) is subject to section 77.

Provisions re execution of warrant

72.(1) A person authorised to execute a warrant under section 71—

- (a) may use such reasonable force as is necessary for the exercise of authority conferred by the warrant;
- (b) may break open any door, window, lock or receptacle, if it appears necessary to do so;
- (c) shall produce the warrant for inspection by the occupier of the premises in question, if requested by the occupier to do so;
- (d) may use the assistance the person reasonably considers necessary for the exercise of the authority conferred by the warrant.

(2) A warrant under subsection (1) must be executed by day, unless it expressly authorises execution by night, in which case it may be executed at any time.

(3) In subsection (2)—

“**by day**” means between the hours of 6 a.m. and 9 p.m. on any day.

“**by night**” means between the hours of 9 p.m. on any day and 6 a.m. on the following day.

(4) The authority conferred on any person by a warrant under section 71 extends to all persons acting in aid of the person in its execution.

Authority to seize other records or things

73.(1) An officer of the commission executing a warrant to search for and seize records or things who—

- (a) finds a record or thing (other than that for which the warrant was issued) that the officer reasonably suspects to afford admissible evidence of an indictable offence against the law of the Commonwealth or of any State or Territory; and

- (b) reasonably believes that it is necessary to seize the record or thing to prevent its loss, destruction, mutilation or concealment, or its use for committing such an offence as is referred to in paragraph (a);

is authorised to seize the record or thing on behalf of the commission.

- (2) The authority conferred by subsection (1) is subject to section 77.

Summons to procure evidence

74.(1) The chairperson by signed notice—

- (a) may summon a person to attend before the commission on a day and at a time and place specified in the notice and—
 - (i) where the attendance is before a misconduct tribunal—to then and there give evidence in relation to the disciplinary charge of official misconduct before the tribunal; or
 - (ii) where the attendance is before the commission other than a misconduct tribunal—to then and there give evidence in relation to the subject matter of the commission's investigation;
- (b) may require a person to produce to the commission a record or thing in the person's custody or control specified in the notice.

(2) The authority conferred by subsection (1) does not extend to authorise the issue of a notice that would compel a person charged with a disciplinary charge of official misconduct to give or adduce evidence relative to that charge before a misconduct tribunal.

(3) Without limiting subsection (1), a notice under the subsection requires the person concerned to continue to attend before the commission as required by the commission until excused by the commission from further attendance.

Restriction on exercise of authority under ss 69 to 74(1)

75.(1) If it appears to the chairperson that—

- (a) a notice under section 69 would relate to information or a record or thing such that the person on whom the notice would be served

is under a duty or an obligation imposed by Act or law or by oath taken to maintain confidentiality in relation to it; or

- (b) a notice of summons under section 74 would require the attendance of a person who is under a duty or an obligation imposed by Act or law or by oath taken to maintain confidentiality in relation to the information, record or thing that the person would be required by the notice of summons to furnish or produce;

the chairperson shall not issue the notice or notice of summons except with the approval of a judge of the Supreme Court first obtained.

(2) A commissioner or officer of the commission shall not exercise a power or authority conferred under sections 69 to 75 if the information or record sought by the commission is available for inspection, search and copying by the public.

Obligation of person served with summons

76.(1) A person served with a notice of summons duly issued under section 74 shall either—

- (a) comply in all respects with the notice; or
- (b) within the prescribed period, satisfy the chairperson that—
 - (i) the person has a lawful excuse for not complying with the notice; or
 - (ii) the person is not a subject person.

(2) In subsection (1)—

“subject person” means—

- (a) a person served in the State with the notice of summons; or
- (b) a person served outside the State with the notice of summons if the person—
 - (i) was present in the State; or
 - (ii) was ordinarily resident in the State; or
 - (iii) had an asset in the State;

at the time the commission began its investigation for the purposes of which the person is summoned, or at any time afterwards.

“the prescribed period” means the period specified in the notice of summons as the period within which the person is required to satisfy the chairperson as prescribed by subsection (1) or, if no such period is so specified, means the period between the date of service of the notice of summons and the day on which the person is required by the notice to attend before the commission.

(3) It is not a lawful excuse for the purposes of subsection (1) that—

- (a) the provisions of an Act enjoin on the person summoned a duty to maintain confidentiality in relation to the information, record or thing that the person is required by the summons to furnish or produce; or
- (b) the person summoned is subject to an obligation by way of oath, affirmation, statutory declaration, rule or practice to maintain confidentiality with respect to the information, record or thing that the person is required by the summons to furnish or produce; or
- (c) the person summoned was served outside the State with the notice of summons.

Claim of privilege

77. If privilege in respect of any information, record or thing to which a notice under section 69 relates, or which is sought by a notice of summons under section 74, or in respect of which an authority conferred by section 70 or by a warrant under section 71 is about to be exercised, is claimed by a person entitled to claim the privilege on the ground—

- (a) of legal professional privilege; or
- (b) of Crown privilege or other public interest; or
- (c) of parliamentary privilege;

the person has a lawful excuse for not complying with the notice or notice of summons or, as the case may be, the authority to inspect, seize, remove, copy or make an extract shall not be exercised, if it is found by a judge of the Supreme Court that the claim of privilege is valid and, where the claim is made on the ground of Crown privilege or other public interest, that on

balance the public interest is better served by withholding the information, record or thing than by disclosure of it.

Procedure upon claim of privilege

78.(1) If a claim of privilege referred to in section 77 is made in relation to any record in respect of which a person seeks to exercise authority under section 70 or 71 the following procedures shall be followed—

- (a) the claimant, or the claimant's representative, shall place the record in a container under the supervision of the person seeking to exercise such authority and the container shall be sealed;
- (b) a written record shall be made of the contents of the container, indicating the general nature of each record in the container, and that record and the container shall be endorsed by the claimant (or the claimant's representative) and such person to the effect that authority under section 70 or 71 has not been exercised in respect of the container's contents pending determination of a claim of privilege;
- (c) the container and such written record shall be delivered by the claimant (or the claimant's representative) and such person to the registrar of the Supreme Court to be held by the registrar in safe keeping until—
 - (i) application to a judge of the Supreme Court is made for determination of the claim of privilege; or
 - (ii) expiration of 3 working days exclusive of the day on which the registrar receives the container and record, no such application having been made; or
 - (iii) the registrar is informed by both the claimant (or the claimant's representative) and such person that agreement has been reached as to disposal of the container and the contents;
- (d) where application referred to in paragraph (c)(i) is made—the registrar shall deliver the sealed container and the written record accompanying it into the custody of the judge who is to determine the application, to be disposed of as ordered by the judge;

- (e) where 3 working days exclusive of the day on which the registrar receives the container and record have expired and no such application has been made—the registrar shall return the sealed container and the written record accompanying it to the claimant (or the claimant’s representative);
- (f) where the registrar is duly informed that agreement has been reached as to disposal of the container’s contents—the registrar shall return the contents in accordance with the agreement, opening the container for the purpose where necessary.

(2) If in any case a claimant of privilege referred to in section 77 will not participate in the procedures prescribed by subsection (1), or any of them, the person seeking to exercise authority under section 70 or 71 in respect of the record in question may carry out the procedures on the person’s own account and on behalf of the claimant.

(3) It shall be deemed by the registrar of the Supreme Court and all other persons concerned, unless the contrary be shown, that procedures so carried out have been duly carried out as prescribed, and the provisions of subsection (1) shall be given effect accordingly.

Apprehension of witness

79.(1) If a person served with a notice of summons to attend as a witness before the commission fails to comply with section 76(1), the chairperson may, on proof of such service, make application to a judge of the Supreme Court for an order that a warrant be issued, addressed to all officers of the commission, or any of them, and to all police officers, or any of them, for the person’s apprehension and production before the commission.

(2) If the chairperson is satisfied by evidence on oath or affirmation or by statutory declaration that—

- (a) it is probable that a person, whose evidence may be relevant to the subject matter of an investigation by the commission, or to a disciplinary charge of official misconduct before a misconduct tribunal, and is desired by the commission, will not attend before the commission unless compelled to do so; or
- (b) a person whose evidence may be relevant to such subject matter or charge, and is desired by the commission, is making

preparations or is about to leave the State, and the commission may be deprived of the person's evidence if the person leaves the State; or

- (c) for any other reason, a person's evidence is desired by the commission, and it is not desirable that the person be first served with notice to that end;

the chairperson may make application to a judge of the Supreme Court for an order that a warrant be issued, addressed to all officers of the commission, or any of them, and to all police officers, or any of them, for the person's apprehension and production before the commission.

(3) The chairperson, a person nominated by the chairperson or any justice may administer any oath or affirmation or take any statutory declaration required for the purposes of subsection (2).

Authority of and procedure relevant to warrant under s 79

80.(1) A warrant under section 79 authorises—

- (a) the apprehension of the person concerned and the person's detention in custody as prescribed with a view to the person being brought before the commission;
- (b) any officer to whom it is addressed and all persons acting in aid of the officer—
 - (i) to enter and search any premises in which the person concerned is suspected to be;
 - (ii) to use such reasonable force as is necessary (including breaking into such premises) to execute the warrant.

(2) A person taken into custody under the warrant shall immediately be brought before the commission or dealt with in accordance with the *Bail Act 1980*, the provisions of which apply in relation to the person in custody as if the person were in custody charged with commission of an offence.

(3) The warrant is lawful authority for the general manager of a prison under the *Corrective Services Act 1988*, a person in charge of a police station, and the keeper of a watch-house to receive and detain the person in custody under the warrant until that person is brought before the commission, or is released on bail, whichever is the shorter period.

Attendance of prisoner or patient before commission

81.(1) If the attendance of a prisoner before the commission is required, the chairperson may, by signed notice served on the general manager in whose custody the prisoner is, direct the general manager to produce the prisoner named in the direction on the day and at the time and place specified in the direction.

(2) If the attendance of a patient detained in a hospital pursuant to the *Mental Health Act 1974* before the commission is required, the chairperson may, by signed notice served on the appropriate hospital administrator, direct the hospital administrator to produce the patient specified in the direction at the time and place specified in the direction.

(3) A direction referred to in subsection (1) or (2), served as prescribed, is lawful authority to the general manager or, as the case may be, hospital administrator for production of the prisoner or, as the case may be, patient as directed while remaining in the custody of the general manager or, as the case may be, hospital administrator.

(4) The general manager or hospital administrator shall comply with the direction served on the manager or administrator.

(5) In this section—

“**general manager**” has the same meaning as in the *Corrective Services Act 1988*.

“**hospital administrator**” has the same meaning as in the *Mental Health Act 1974*.

“**patient**” has the same meaning as in the *Mental Health Act 1974*.

“**prisoner**” has the same meaning as in the *Corrective Services Act 1988*.

Authority to use listening devices

82.(1) The *Invasion of Privacy Act 1971*, section 43(1) does not apply in relation to use of a listening device within the meaning of that Act by a person authorised in writing to do so by the chairperson in accordance with an approval of a judge of the Supreme Court given in relation to a particular matter specified in the approval.

(2) If the chairperson is satisfied by evidence on oath or affirmation, or

by statutory declaration, that there are reasonable grounds for suspecting that use of a listening device may disclose information relevant to the subject matter of an investigation by the commission, the chairperson may apply to a judge of the Supreme Court for an order approving such use.

(3) The chairperson, a person nominated by the chairperson, or any justice may administer any oath or affirmation, or take any statutory declaration required for the purposes of subsection (2).

Use of information disclosed by listening device

83.(1) A person shall not communicate or publish the text, substance or meaning of a private conversation, to which the person was not a party, that is overheard, recorded, monitored or listened to by means of a listening device used for the purposes of the commission, except to the chairperson or to a person nominated by the chairperson for that purpose.

(2) Information disclosed by use of a listening device used for the purposes of the commission shall not be used for any purpose, including the investigation by the commission in relation to which the judge's approval for use of the device was obtained, without the chairperson's approval or a further approval of a judge of the Supreme Court applied for and granted as prescribed.

(3) A record of information disclosed by use of a listening device shall be preserved intact until, in the chairperson's opinion, it is no longer required for the purposes of the commission's investigation or of any other proceedings brought against a person, to which proceedings the information or any part of the information is relevant.

Further powers of officers of commission

84.(1) Where surveillance of any person is of a nature, or is performed in such circumstances that, but for this subsection, its performance would constitute an offence, the performance of such surveillance—

- (a) does not constitute an offence;
- (b) constitutes a lawful purpose;

if it is performed by an officer of the commission authorised in writing by the chairperson.

(2) Subsection (1) does not authorise or make lawful the doing of any act, other than the conduct of surveillance, that is an unlawful act.

(3) With the approval of a judge of the Supreme Court first obtained, an officer of the commission is authorised—

- (a) to take possession of passports, other travel documents, instruments of title to property, securities and financial documents found in the possession or control of persons concerned in an investigation by the commission;
- (b) to enter, at any time during business hours, on premises in which are to be found records of any bank or other financial institution, insurance company, stock and share broker, person engaged in a business of investing money on behalf of others, or of providing credit facilities, or person suspected of having a relevant association with a person to whom an investigation by the commission relates and to inspect and make copies of, or extracts from, such records so far as they relate to the affairs of such lastmentioned person;
- (c) to require any person to furnish to the officer 1 or more affidavits (on oath or affirmation) or statutory declarations relating to property of, financial transactions, or movements of money or other assets by a person holding an appointment in a unit of public administration or by any person associated with such a holder.

Division 2—Procedures for taking evidence

Application

85. The provisions of this division apply to—

- (a) all proceedings conducted in discharge of any of the functions and responsibilities of the commission;
- (b) all proceedings conducted in discharge of any of the functions of any organisational unit of the commission.

Proceedings unaffected by personnel changes

86. The commission may make findings and report on the basis of all evidence presented to it regardless of—

- (a) any change in the membership of the commission;
- (b) any change in the constitution of the commission or tribunal for the purposes of the proceedings.

Continuing duty to attend

87. A person who attends before the commission or a misconduct tribunal as a witness or proposed witness, shall continue to attend at the proceedings on each day on which the proceedings are to continue, and report at or before the commencement of the proceedings on each such day, unless the person is excused by the commission or the tribunal from further attendance.

Prohibition of publication of evidence etc.

88. The commission may, by order, prohibit the publication of any of the following matters if it considers that publication of the matter would be unfair to a person or contrary to the public interest—

- (a) the fact that a person has given, or may give, evidence before the commission;
- (b) information that may help to identify a person who has given, or may give, evidence before the commission;
- (c) evidence given before the commission;
- (d) the contents of, or a summary of, a record—
 - (i) produced to the commission; or
 - (ii) seized under a warrant issued under this Act; or
 - (iii) produced to a person during a commission hearing;
- (e) a description of a thing—
 - (i) produced to the commission; or

- (ii) seized under a warrant issued under this Act; or
- (iii) produced to a person during a commission hearing.

Administering oath or affirmation

89. An oath or affirmation that is required for a hearing by the commission may be administered or taken by—

- (a) a person constituting the commission for the purposes of the hearing; or
- (b) a person nominated by that person.

Hearings open to public unless commission otherwise orders

90.(1) A hearing of the commission is open to the public unless the commission orders, whether before or during the hearing, that it be closed to the public.

(2) The commission may order that the hearing be closed to the public only if the commission considers an open hearing would be unfair to a person or contrary to the public interest, having regard to—

- (a) the subject matter of the hearing; or
- (b) the nature of the evidence expected to be given.

(3) The commission may order that the hearing be closed to the public while it considers whether to make an order under subsection (2).

(4) If the commission orders that a hearing be closed to the public, it may give a direction about who may be present at the hearing.

(5) A person must not knowingly contravene a direction under subsection (4).

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

(6) In this section—

“**hearing**” includes part of a hearing.

Legal practitioner may be appointed or engaged to assist commission

91. The commission may—

- (a) appoint an officer of the commission who is a legal practitioner;
or
- (b) engage the services of a legal practitioner;

to assist the commission in the conduct of a hearing.

Commission not bound by rules or practice

92.(1) In discharging its functions and responsibilities, or exercising its powers—

- (a) the commission is not bound by the rules or practice of any court or tribunal about matters of procedure and may conduct its proceedings as it considers proper; and
- (b) the commission is not bound by rules or practice about evidence, and may inform itself on any matter in the way it considers appropriate.

(2) Without limiting the operation of subsection (1), the commission, other than a misconduct tribunal exercising its jurisdiction, may refer any matter on which it seeks expert evidence to a person of relevant competence, and may admit as evidence before it and act upon that person's report.

Commission's reports

93.(1) The commission must include in each of its reports—

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

(2) The commission may also include in a report any comments it may have on the matters mentioned in subsection (1)(b).

Obligation to adduce evidence

94.(1) Subject to section 77, a person is not entitled to be excused from furnishing information, or producing any record or thing, to the commission upon a claim of privilege on any ground.

(2) A person in attendance before the commission is not entitled—

- (a) to remain silent with respect to any matter that in the commission's opinion is relevant to the commission's investigation, if the commission requires the person to give evidence with respect to that matter;
- (b) to fail to answer a question relating to any such matter that the commission requires the person to answer;
- (c) to fail to produce any record or thing that, in the commission's opinion, is relevant to the commission's investigation, if the commission requires the person to produce it;

on the ground that to comply with the requirement would tend to incriminate the person.

(3) A person served with a notice of summons duly issued under section 74 to attend before the commission to furnish information or to produce a record or thing is not entitled to fail—

- (a) to furnish the information, if it is within the person's knowledge and, in the commission's opinion, is relevant to the commission's investigation;
- (b) to produce the record or thing, if it is in the person's custody or control and, in the commission's opinion, is relevant to the commission's investigation.

(4) Subsections (2) and (3) apply subject to subsection (5).

(5) A person is not compellable to disclose a secret process of manufacture applied by the person solely for a lawful purpose.

(6) This section is not authority under which to compel a person charged with a disciplinary charge of official misconduct to adduce evidence relevant to the charge to a misconduct tribunal.

Examination before commission

95.(1) In any proceedings of the commission a person concerned in the proceedings may appear in person or by counsel or solicitor, or by an agent approved by the commission.

(2) A legal practitioner appointed to assist the commission in any proceedings, any counsel, solicitor or other agent authorised by the commission to represent a person concerned in any proceedings of the commission and any person authorised by the commission to appear in any proceedings of the commission may examine and cross-examine any witness on any matter relevant (in the commission's opinion) to the subject matter of the commission's proceedings, subject always to the direction of the person conducting the proceedings.

(3) A requirement made of a witness by any person examining or cross-examining the witness shall be deemed to be a requirement of the commission, unless it is overruled by the person conducting the proceedings.

Use of incriminating evidence against witness

96.(1) A statement of information furnished by a person to the commission, or a disclosure made by a witness before the commission, after the person or witness has objected to furnishing the statement or making the disclosure on the ground that it would tend to incriminate the person or witness, is not admissible in evidence against the person or witness in civil or criminal proceedings in a court or in disciplinary proceedings, except as prescribed by subsection (2).

(2) Subsection (1) does not apply in relation to proceedings in respect of—

- (a) a contempt of the commission;
- (b) an offence of perjury.

(3) Subject to subsection (1), any information, record or thing that has come into the commission's possession pursuant to the exercise of an authority conferred, or by reason of an obligation prescribed, by this Act is admissible in evidence in any civil or criminal proceedings in a court or in disciplinary proceedings brought against the person from whom such

information, record or thing was obtained and in relation to which such information, record or thing is relevant.

***Division 3—Custody, disposal and inspection of material in
commission’s possession***

Custody of material seized or produced

97.(1) A record or thing seized by an officer of the commission under the authority of a warrant or this Act shall be brought immediately before the chairperson.

(2) A record or thing seized by an officer of the commission or produced to the commission shall be kept in such custody as the chairperson directs, taking appropriate care for the preservation of the record or thing as the circumstances may require.

(3) The commission is entitled to custody of the record or thing until it is dealt with in accordance with this section.

(4) If a record or thing seized or produced is relevant to an investigation by the commission, custody of it by the commission may continue—

- (a)** until the commission has completed its investigation and its report in the investigation, and for a reasonable time afterwards for the purpose of establishing whether paragraph (b) is relevant to the case;
- (b)** if a person is charged with an offence in respect of which the record or thing would, in the chairperson’s opinion, be relevant evidence—until the record or thing is transferred to the custody of the director of public prosecutions or other appropriate prosecuting authority.

(5) If a record or thing is seized under the authority of section 73 the commission’s custody of it may continue until, by direction of the chairperson, it is delivered to the Minister or the director of public prosecutions, with the commission’s recommendation as to the appropriate further action to be taken in respect of it.

(6) If the record or thing—

- (a)** is one to which subsection (4) applies but subsection (4)(b) is not

relevant; or

- (b) is one to which subsection (5) applies and, in the chairperson's opinion, no further action is required in respect of it;

and is one that in the chairperson's opinion is not relevant to an investigation by the commission, the record or thing shall be delivered to the person who appears to the chairperson to be entitled to it or, if that course of action is impracticable, shall be disposed of in such manner as the chairperson directs.

(7) No liability is incurred by the chairperson or any other person because of the disposal of a record or thing as authorised by subsection (6).

Inspection of material in commission's custody

98. A commissioner, or any person authorised in writing by the chairperson, may inspect any record or thing in the commission's custody and, for that purpose, may retain it for such time as is necessary, and may make copies or extracts for use in connection with the commission's investigation to which the record or thing is relevant.

Restricted access to commission's material

99. Subject to section 98, any information, record or thing in the possession of the commission may be utilised and dealt with in discharge of the functions and responsibilities of the commission or of the functions of any organisational unit of the commission, but otherwise shall not be made available for inspection by any person without the express authority in writing of the chairperson.

Division 4—Protection and reimbursement of persons associated with commission

Immunities in conduct of proceedings

100.(1) A person has the same protection and immunity as a judge of the Supreme Court while the person is—

- (a) discharging the person's duties as a commissioner; or

- (b) constituting a misconduct tribunal and exercising the tribunal's jurisdiction; or
- (c) constituting the commission to conduct a hearing under section 25 (Commission hearings).

(2) A person before the commission as a witness has the same protection and immunity as a witness in an action in the Supreme Court.

Protection from liability

101.(1) An act done or omission made—

- (a) by the commission, any commissioner or an officer of the commission;
- (b) a legal practitioner appointed or engaged to assist in the conduct of proceedings of the commission;
- (c) a legal practitioner or other person authorised by the commission to appear at proceedings;
- (d) a person who acts or purports to act in response to a notice, or a notice of summons, issued under this Act;

does not render the commission or any person liable to any claim, demand or action, if the act is done, or the omission is made, in good faith and without negligence for the purpose of the discharge of the functions and responsibilities of the commission or of any of the functions of an organisational unit of the commission.

(2) In proceedings for defamation there is a defence of absolute privilege in respect of a publication to or by the commission or an officer of the commission made for the purpose of the discharge of the functions and responsibilities of the commission or of any of the functions of an organisational unit of the commission.

Disclosure to commission not breach of confidence

102. A person—

- (a) on whom a provision of an Act enjoins a duty to maintain confidentiality with respect to any matter; or

- (b) who is subject to an obligation by way of oath, affirmation, statutory declaration, rule or practice to maintain confidentiality with respect to any matter;

shall be taken not to have—

- (c) committed an offence against that Act; or
- (d) breached the oath, affirmation, declaration, rule or practice or a provision of any law relating to the oath, affirmation, declaration, rule or practice; or
- (e) rendered himself or herself liable to disciplinary action;

by reason that the person has furnished information concerning that matter, or produced a record or thing, to the commission for the purpose of the discharge of the functions or responsibilities of the commission.

Personal protection for witnesses etc.

103. If it appears to the commission that, because a person has given evidence to the commission, or has assisted the commission by furnishing information, or producing any record or thing, or otherwise—

- (a) the safety of that person or of any other person may be prejudiced; or
- (b) that person or any other person may be subject to intimidation or harassment; or
- (c) that person or any other person may be prejudiced in his or her career;

the commission may make such arrangements, and take such steps, as are necessary and are open to the commission, to avoid such prejudice, intimidation or harassment.

Injunctions

104.(1) Where on the application of the commission to the Supreme Court the court is satisfied that a person has engaged or is proposing to engage in conduct that constitutes or would constitute—

- (i) a contravention of section 131; or

- (ii) attempting to contravene section 131; or
- (iii) aiding, abetting, counselling or procuring a person to contravene section 131; or
- (iv) being in any way, directly or indirectly, knowingly concerned in or a party to the contravention of section 131; or
- (v) conspiring with others to contravene section 131;

the court may grant an injunction in such terms as the court determines to be appropriate, notwithstanding the provisions of the *Industrial Relations Act 1990*.

(2) Where in the opinion of the court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).

(3) Before the Supreme Court grants an injunction in accordance with subsection (1), it must be satisfied on the balance of probabilities that the person who gave evidence to or assisted the commission acted in good faith.

(4) The court may rescind or vary an injunction granted under subsection (1) or (2).

(5) The power of the court to grant an injunction restraining a person from engaging in conduct may be exercised—

- (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 any person if the first mentioned person engages in conduct of that kind.

(6) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—

- (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do that act or thing; or
- (b) whether or not the person has previously failed to do that act or thing; or

- (c) whether or not there is an imminent danger of substantial damage to any person if the first mentioned person fails to do that act or thing.

(7) Where the commission makes an application to the court for the grant of an injunction under this section, the court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

Reimbursement

105.(1) The commission must pay an amount to a person for expenses incurred by the person for the purpose of attending before the commission as required by the commission.

(2) The commission may pay an amount to a person for expenses incurred by the person for the purpose of assisting the commission, in relation to an investigation or proposed investigation—

- (a) by giving information; or
- (b) by producing a record or other thing; or
- (c) in any other way.

(3) The amount paid to a person under subsection (1) or (2) must be the amount prescribed by regulation or, if there is no relevant amount prescribed by regulation, a reasonable amount decided by the commission.

Division 5—Contempt of commission

Conduct constituting contempt

106. A person who—

- (a) having been served with a notice of summons, duly issued in accordance with division 1, to attend before the commission, fails to attend in obedience to the notice unless the person is excused by or under this Act from attending; or
- (b) having been served with a notice of summons, duly issued in accordance with division 1, to produce to the commission a

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record or thing in the person's custody or control, fails to produce the record or thing in obedience to the notice, unless the person is excused by or under this Act from doing so; or

- (c) being called or examined as a witness before the commission—
 - (i) refuses to be sworn, or to make an affirmation or a statutory declaration unless the person has lawful excuse for the refusal; or
 - (ii) fails to answer a question, relevant to the subject matter of the hearing, that the person is required by the commission to answer unless the person has lawful excuse for the failure; or
 - (iii) fails to produce a record or thing in the person's possession or control that the person is required by the commission to produce unless the person has lawful excuse for the failure; or
- (d) having attended at proceedings of the commission in response to a notice of summons, fails to continue to attend before the commission as required by the commission until excused by the commission from further attendance; or
- (e) by writing or speech, uses words that are false and defamatory of the commission, any commissioner, a person constituting a misconduct tribunal or any person conducting proceedings of the commission; or
- (f) wilfully threatens or insults—
 - (i) a commissioner or an officer of the commission;
 - (ii) a person constituting a misconduct tribunal;
 - (iii) a legal practitioner appointed or engaged to assist the commission, or authorised by the commission to appear at proceedings of the commission, or any other person authorised by the commission to appear at proceedings of the commission;
 - (iv) a witness or a person summoned to attend before the commission; or

- (g) misbehaves at, or interferes with, proceedings of the commission; or
- (h) wilfully obstructs or attempts to obstruct a commissioner, an officer of the commission, or a person acting under the authority of the commission in the lawful discharge or exercise of a function, power or authority relating to the affairs of the commission; or
- (i) publishes or causes or permits to be published evidence given at a hearing of the commission, or the contents or a summary, of a record produced at a hearing of the commission, which the commission has ordered not to be published; or
- (j) does any other thing that, if the commission were a court of law with authority to commit for contempt, would be a contempt of that court;

is guilty of a contempt of the commission.

Punishment of contempt

107.(1) A contempt of the commission may be punished in accordance with this section.

(2) The chairperson may certify the contempt in writing to the Supreme Court.

(3) Where the chairperson certifies the contempt of a person to the Supreme Court—

- (a) the Supreme Court shall inquire into the alleged contempt; and
- (b) after hearing any witnesses who may be produced against or on behalf of the person charged with the contempt and after hearing any statement that may be offered in defence, the Supreme Court (if satisfied that the person is guilty of the contempt) may punish or take steps for the punishment of the person in like manner and to the like extent as if the person had committed the contempt in or in relation to proceedings in the Supreme Court; and
- (c) the rules of court in force for the time being shall, with any necessary adaptations, apply and extend accordingly.

(4) The chairperson's certificate of contempt is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the certificate.

(5) Neither liability to punishment nor punishment under this section for contempt of the commission excuses the offender from attending before the commission in obedience to any summons, and the offender's attendance may be enforced by warrant in accordance with this Act.

General provisions re contempt

108.(1) In the case of an alleged contempt of the commission, the chairperson may summon the offender to appear before the commission at a time and place named in the summons to show cause why the offender should not be dealt with for the contempt.

(2) If the offender fails to attend before the commission in obedience to the summons and no reasonable excuse that satisfies the chairperson is offered for the failure, the chairperson may, on proof of service of the summons, issue a warrant to arrest the offender and bring the offender before the commission to show cause why the offender should not be dealt with for the contempt.

(3) If a contempt of the commission is committed in the face or hearing of the commission, no summons need be issued against the offender, but the offender may be taken into custody then and there by an officer of the commission and called upon to show cause why the offender should not be dealt with for contempt.

(4) The person constituting the commission at the time the contempt is committed may issue a warrant to arrest the offender while the offender is before the commission, whether or not the offender is already in custody under this section, and to bring the offender immediately before the Supreme Court.

(5) A warrant issued under subsection (4)—

- (a) must be accompanied by either the instrument by which the chairperson certifies the offender's contempt to the Supreme Court or a written statement setting out the particulars of the alleged contempt; and
- (b) is lawful authority for detention of the offender in prison or

elsewhere pending the offender being brought before the Supreme Court; and

- (c) may be revoked by the chairperson at any time before the offender is brought before the Supreme Court under the warrant.

(6) When the offender is brought before the Supreme Court, the court may, pending determination of the matter, direct that the offender be kept in such custody as the court determines or that the offender be released, either conditioned to secure the offender's appearance before the court as the court may order, or unconditionally.

(7) In the case of a contempt of the commission under section 106(f) or (g) the offender may be excluded from the place where the commission or misconduct tribunal is sitting (with the use of such reasonable force as is necessary for the purpose) upon the order of the person then and there constituting the commission or, as the case may be, tribunal.

Conduct that is contempt and offence

109. Where conduct of an offender constitutes both contempt of the commission 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.

Meaning of “offender”

110. In this division—

“**offender**” means a person guilty, or alleged to be guilty of contempt of the commission.

PART 4—PARLIAMENTARY COMMITTEE

Establishment of parliamentary committee

115. A committee of the Legislative Assembly called the Criminal Justice Committee is established.

Membership of parliamentary committee

116.(1) The parliamentary committee must consist of an equal number of members nominated by—

- (a) the member who is recognised in the Legislative Assembly as the Leader of the House; and
- (b) the member who is recognised in the Legislative Assembly as the Leader of the Opposition.

(2) The chairperson of the parliamentary committee must be the member nominated as chairperson by the member mentioned in subsection (1)(a).

Quorum and voting at meetings of parliamentary committee

117. At a meeting of the parliamentary committee—

- (a) a quorum consists of half the number of members appointed to the committee plus 1; 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.

Example of paragraph (a)—

If 6 members are appointed to the parliamentary committee, the quorum is 4 (half the number of members (3) plus 1).

Functions and powers

118.(1) The functions of the parliamentary committee are—

- (a) to monitor and review the discharge of the functions of the commission as a whole and of the official misconduct division in particular;
- (b) to report to the Legislative Assembly, with such comments as it thinks fit, on any matters pertinent to the commission, the discharge of the commission's functions or the exercise of the powers of the commission, a commissioner, or of officers of the

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commission, to which the attention of the Assembly should, in the committee's opinion, be directed;

- (c) to examine the annual report and other reports of the commission and report to the Legislative Assembly on any matter appearing in or arising out of any such report;
- (d) to report on any matter pertinent to its functions that is referred to it by the Legislative Assembly;
- (e) to participate in the constitution of the commission and the removal from office of a commissioner as prescribed;
- (f) at a time appropriate to allow tabling of its report under this paragraph in the Legislative Assembly by which it was appointed, being a time near to the expiry of 3 years from its appointment—
 - (i) to review the activities of the commission during such 3 years; and
 - (ii) to report to the Legislative Assembly and to the Minister as to further action that should be taken in relation to this Act or the functions, powers and operations of the commission.

(2) The parliamentary committee has such powers as—

- (a) are necessary to enable or assist the committee in the proper discharge of its functions prescribed by subsection (1);
- (b) are conferred on it by the Legislative Assembly with a view to the proper discharge by the committee of its functions prescribed by subsection (1).

(3) Without limiting subsection (2)(a), the parliamentary committee has power to—

- (a) call for persons, documents and other things; and
- (b) administer oaths to witnesses; and
- (c) examine witnesses on oath.

PART 5—SUPREME COURT APPLICATIONS

Applications under pts 2 and 3 generally

119.(1) An application to the Supreme Court required or authorised by provisions of part 2 or 3 to be made for—

- (a) an order of a judge of the Supreme Court in the nature of an injunction, or revocation of such an order; or
- (b) approval of a judge of the Supreme Court of the exercise of a power or authority; or
- (c) determination of a judge of the Supreme Court of a claim of privilege; or
- (d) an order of a judge of the Supreme Court for issue of a warrant; or
- (e) an order of a judge of the Supreme Court to continue detention of, or release on bail of, an apprehended person;

shall be made in accordance with the rules of court or, in so far as those rules do not provide, as directed by a judge of the Supreme Court, and shall be heard in chambers.

(2) An application for revocation of an order referred to in subsection (1)(a) or for an order referred to in subsection (1)(d) shall be heard *ex parte*.

(3) An approval or order granted upon an application referred to in subsection (1) may be subject to such conditions, limitations and restrictions as the judge hearing the matter of the application thinks fit to impose and specifies in the approval or order.

(4) An application that is to be heard, or may be heard, *ex parte* must be supported by evidence on oath or affirmation.

Application pursuant to s 34

120.(1) If the judge who hears the matter of an application under section 34 is satisfied as to the matter claimed by the applicant, the judge may, by order—

- (a) require the director of the official misconduct division to conduct, and cause to be conducted, the investigation in question in accordance with guidelines specified in the order; or
- (b) direct the director of the official misconduct division to cease, or, as the case may be, to not proceed with, an investigation on the complaint or information to which the application relates.

(2) In proceedings on an application under section 34, made on the ground that any information or complaint does not warrant an investigation, the applicant is not entitled to be provided by, or on behalf of, the commission with particulars of the information or complaint or of the source of the information or complaint.

Application pursuant to s 75

121.(1) An application made pursuant to section 75 shall be made by the chairperson and be heard *ex parte*, unless the judge directs that any person with an interest in the matter be given notice of the application.

(2) Upon the application the judge shall have regard to—

- (a) the gravity of the subject matter of the investigation, or proposed investigation, by the commission;
- (b) the extent to which the privacy of any person is likely to be affected by disclosure of the information, or production of the record or thing, in question;
- (c) the extent to which the investigation by the commission is likely to be assisted by such disclosure or production.

Application pursuant to s 77

122.(1) Where a claim of privilege referred to in section 77 is made, application may be made to a judge of the Supreme Court by the chairperson, or the person claiming the privilege, for determination of the claim.

(2) The burden of proof upon an application shall be on the person who seeks to withhold the information, record or thing or, as the case may be, to prevent the exercise of authority under section 70 or a warrant under section 71.

(3) Costs of an application made in relation to a claim of privilege claimed on a ground prescribed by section 77 shall be borne by the commission, unless otherwise ordered by the judge on the ground that the claim is frivolous or vexatious.

Application pursuant to s 82

123.(1) An application made pursuant to section 82 shall be heard *ex parte*.

(2) No notice or report relating to the application shall be published and no record of the application or of any order made in the proceeding shall be available for search by any person, except by direction of a judge of the Supreme Court.

(3) Upon the application, the judge shall have regard to—

- (a) the gravity of the subject matter of the investigation by the commission;
- (b) the extent to which the privacy of any person is likely to be affected by use of a listening device in the particular case;
- (c) the extent to which the commission's investigation is likely to be assisted by disclosure of information expected to be disclosed by use of a listening device.

(4) The applicant shall make full disclosure of all factors, of which the applicant is aware, both favourable and adverse to the making of the order sought by the applicant so that the judge may properly determine whether the order should be made.

(5) An order made on such application may confer on all officers of the commission, or any of them, such powers and authority as the judge considers appropriate in the public interest and specifies in the order in relation to the approved use of a listening device, including authority to enter upon any premises by such means, and using such reasonable force, as are necessary.

Application pursuant to s 84

124.(1) An application made pursuant to section 84 shall be made by the chairperson, and be heard *ex parte*, unless the judge directs that any person

having an interest in the matter be given notice of the application.

(2) No notice or report relating to the application shall be published and no record of the application or of any order made in the proceeding shall be available for search by any person, except by direction of a judge of the Supreme Court.

(3) Upon the application, the judge shall have regard to—

- (a) the gravity of the subject matter of the investigation by the commission or the disciplinary charge in question;
- (b) the extent to which the privacy of any person is likely to be affected by the exercise of the authority proposed to be exercised;
- (c) the significance to the commission's purposes of the objects of the proposed exercise of authority;
- (d) the extent to which the commission's investigation, or the hearing of the disciplinary charge in question, is likely to be assisted by the exercise of authority proposed to be exercised.

(4) The applicant shall make full disclosure of all factors, of which the applicant is aware, both favourable and adverse to the making of the order sought by the applicant so that the judge may properly determine whether the order should be made.

PART 6—OFFENCES

Application of Criminal Code

125. It is declared—

- (a) that an officer of the commission is the holder of a public office and the provisions of the Criminal Code, chapter 13 have application in relation to such an officer accordingly;
- (b) that—
 - (i) a proceeding of the commission or before a misconduct tribunal is a judicial proceeding referred to in the Criminal Code, chapter 16;

- (ii) the office of a commissioner and the office of a person constituting a misconduct tribunal is each a judicial office referred to in the Criminal Code, chapter 16;
- (iii) the commission and a misconduct tribunal is each a tribunal referred to in the Criminal Code, chapter 16;

and the provisions of that chapter have application accordingly.

Impersonating officer of commission

126.(1) A person shall not, directly or indirectly, falsely represent himself or herself to be a commissioner or an officer of the commission.

Maximum penalty—50 penalty units or 12 months imprisonment.

(2) A person makes a representation for the purposes of subsection (1) if the person does or says anything or causes, permits or suffers anything to be done or said by which it is represented, or a belief may be reasonably induced, that a state of affairs is a fact.

Abuse of office in commission

127.(1) Any commissioner or officer of the commission who corruptly asks for, receives, obtains, or agrees or attempts to receive or obtain property or a benefit of any kind with a view to the commissioner or officer neglecting his or her duty, or to influencing the commissioner or officer in the discharge of his or her duty is guilty of a crime.

(2) Any commissioner or officer of the commission who uses or takes advantage of his or her office to improperly gain benefit or advantage for himself or herself or another, or to facilitate the commission of an offence is guilty of a crime.

(3) A person convicted of a crime defined in subsection (1) or (2) is liable upon conviction on indictment to imprisonment for 7 years and to be fined.

(4) The offender cannot be arrested without warrant.

Bribery of holder of office in commission

128.(1) A person who corruptly gives to, confers on, or procures for any commissioner or officer of the commission property or a benefit of any kind, or promises so to do, with a view to—

- (a) the commissioner or officer neglecting his or her duty; or
- (b) influencing the commissioner or officer in the discharge of his or her duty; or
- (c) the commissioner or officer using or taking advantage of his or her office to facilitate the commission of an offence;

is guilty of a crime and is liable upon conviction on indictment to imprisonment for 7 years and to be fined.

(2) The offender cannot be arrested without warrant.

Obstruction or delay of commission procedures

129. A person who, with intent to obstruct or delay the discharge of a function by the commission or the exercise of a power or authority by any commissioner or officer of the commission—

- (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;

is guilty of a misdemeanour and is liable upon conviction on indictment to imprisonment for 3 years.

Injury or detriment to witness

130. A person who does or threatens to do injury, or causes or threatens to cause detriment of any kind to another person on account of—

- (a) that, or any other, person having appeared as a witness before the commission; or
- (b) any evidence given, or to be given, by that, or any other, person before the commission; or
- (c) that, or any other, person having complied with, or being about to

comply with, a notice under section 69;

is guilty of a misdemeanour and is liable upon conviction on indictment to imprisonment for 3 years.

Offence of victimisation

131. A person who—

- (a) prejudices, or threatens to prejudice, the safety or career of any other person;
- (b) intimidates or harasses, or threatens to intimidate or harass, any person;
- (c) does any act that is, or is likely to be, to the detriment of any person;

because the person referred to in paragraph (a), (b) or (c) or any other person, has given evidence to or assisted the commission in the discharge of its objects, functions and responsibilities in any manner referred to in section 103 commits an offence against this Act.

Maximum penalty—85 penalty units.

Confidentiality to be maintained

132.(1) Subsection (2) applies to—

- (a) a commissioner; or
- (b) an officer of the commission; or
- (c) a person engaged by the commission under section 66 (Engagement of services).

(2) A person must not wilfully disclose information that has come to the person's knowledge because the person is or was a person to whom this subsection applies unless the information is disclosed for the purposes of the commission or of this Act.

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

(3) A person must not wilfully disclose information that has come to the person's knowledge from the commission because the person is or was a

member of the parliamentary committee unless—

- (a) the disclosure is in the discharge of a function of the committee under this Act; or
- (b) the information is contained in a report of the commission that has been ordered by the Legislative Assembly to be printed.

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

Resisting exercise of powers

133. A person who wilfully obstructs or hinders any commissioner or officer of the commission in the exercise of a power or authority conferred on the commissioner or officer by this Act, or attempts so to do, commits an offence against this Act.

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

Commission notices to be obeyed

134. A person to whom a notice under section 69 is addressed who—

- (a) fails to comply with the notice;
- (b) furnishes to the commission information of a description sought by the notice that to the person’s knowledge is false in a material particular;
- (c) produces to the commission a record of a description sought by the notice that the person has rendered, or caused to be rendered, or to the person’s knowledge has been rendered, false in a material particular;

commits an offence against this Act, unless in the case of a failure to comply, the person has a lawful excuse for the failure.

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

Offence to disregard commission summons

135. A person served with a notice of summons duly issued under section 74 who fails to satisfy the requirements of section 76 in relation to

the notice commits an offence against this Act.

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

Frivolous or vexatious complaint

136.(1) A person who has been notified in writing by, or on behalf of, the commission that information given by the person to the commission, or a complaint made by the person to the commission—

- (a) appears to concern frivolous matter; or
- (b) appears to have been given or made vexatiously;

and who again gives, or causes to be given, to the commission the same or substantially the same information, or again makes, or causes to be made, to the commission, the same or substantially the same complaint, commits an offence against this Act.

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

(2) It is a defence to an offence mentioned in subsection (1)(a) to prove that the information or complaint did not concern frivolous matter.

(3) It is a defence to an offence mentioned in subsection (1)(b) to prove that the information or complaint was not given or made vexatiously.

False complaints or information

137.(1) A person must not wilfully—

- (a) make a false complaint to the commission; or
- (b) otherwise give false information to the commission.

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

(2) 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.

(3) 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 complaint or information.

General offence provisions

138.(1) A person who contravenes or fails to comply with a provision of this Act, which contravention or failure is not otherwise prescribed to be an offence, commits an offence against this Act.

(2) A person who commits an offence against this Act, that is not an indictable offence, may be prosecuted in a summary way under the *Justices Act 1886* on the complaint of an officer of the commission authorised generally or in a particular case by the chairperson.

(3) The identity of a complainant and the complainant's authority to lay the complaint, as stated in the complaint, shall be presumed in the absence of evidence to the contrary.

(4) A person convicted of an offence against this Act is liable, where no other penalty is expressly prescribed, to a penalty of 85 penalty units, or to imprisonment for 1 year.

PART 7—MISCELLANEOUS PROVISIONS**Act binds Crown**

139. This Act binds the Crown.

Delegation by chairperson

140.(1) The chairperson may delegate the chairperson's powers under this Act to a director of the commission.

(2) The chairperson may delegate the chairperson's powers under section 97(6) to an officer of the commission.

Appointment to act as director

141.(1) The commission may appoint a person to act as a director of the commission—

- (a) during a vacancy in the office; or

- (b) during any period, or all periods, when the director is absent from duty or is, for another reason, unable to perform the functions of the office.

(2) A person may be appointed to act as the director of the official misconduct division only if the person is a legal practitioner.

Register of interests

142.(1) The commission shall maintain—

- (a) a register of the pecuniary interests of each commissioner had by the commissioner at the time of appointment as a commissioner or acquired by the commissioner during his or her term of office as a commissioner;
- (b) a record of personal or political associations had by each commissioner that might influence the commissioner in the conduct of an investigation by the commission.

(2) Each commissioner shall furnish to the commission, the Minister and the chairperson of the parliamentary committee—

- (a) a summary in writing of pecuniary interests had by the commissioner at the time of appointment as a commissioner;
- (b) advice in writing of such associations had by the commissioner at the time of appointment as a commissioner;
- (c) within 30 days following any substantial change in such pecuniary interests, or a change in such personal or political associations, information in writing of the change.

(3) The register and record maintained under subsection (1) shall be updated at least once in every period of 1 year of a commissioner's term of office.

Proof of commission actions

143. Where in proceedings before any court or tribunal it is relevant to prove—

- (a) a matter relevant to an investigation by the commission or the commission's operations;

- (b) the taking of a step by a person purporting to act in so doing under authority conferred by this Act;
- (c) the purpose for which an act was done, or omission made, by a person purporting to act in so doing for the purposes of the commission;

a certificate purporting to be that of the chairperson relating to such proof shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the certificate.

Service of documents

144.(1) This section does not apply to a summons to a person to answer a charge of an offence against this Act.

(2) If service of a document on a person for the purposes of this Act might be a fact that must be proved in proceedings against the person for an offence against this Act service of the document may be effected—

- (a) on an individual—by delivering it to the person personally;
- (b) on a corporate entity—by leaving it with a person at the head office or registered office of the entity.

(3) Service of a document (other than one referred to in subsection (2)) on a person for the purposes of this Act may be effected—

- (a) on an individual—in accordance with subsection (2), or by leaving the document at, or sending it by prepaid post to the residential or business address of the individual last known to the commission;
- (b) on a corporate entity—in accordance with subsection (2), or by leaving the document at, or sending it by prepaid post to, the head office or registered office of the entity.

(4) Subsection (3) shall not be construed to prejudice any other mode of service whereby a document may be effectively brought to the notice of any person, including any means of substituted service, if it is approved in a particular case by the chairperson.

Proof of service

145. Service of a document for the purposes of this Act shall be sufficiently proved, to the commission and in any proceedings in which service of the document must be proved, by means provided by the *Justices Act 1886* in relation to service of a summons.

Authority to administer oaths etc.

146. Any justice is authorised to administer any oath or affirmation or to take any statutory declaration for the purposes of this Act.

Commission's budget

147.(1) For each financial year the commission, by or within such time as the Minister directs, shall frame and adopt a budget that is consistent with funds appropriated by the Parliament to the purposes of the commission.

(2) Every budget is subject to the Minister's approval and, until so approved, is of no force or effect.

(3) From time to time in a financial year the commission may frame and adopt amendments to its budget approved by the Minister for that year, consistent with funds available for the purposes of the commission.

(4) Every amendment is subject to the Minister's approval and, until so approved, is of no force or effect.

(5) The commission shall observe its budget as approved for the time being.

(6) Every budget must show—

- (a)** estimates of the receipts (if any) and disbursements of the commission for the year to which the budget relates;
- (b)** the purposes for which disbursements will be made by the commission in the year to which the budget relates;
- (c)** estimates of receipts (if any) and disbursements adopted by the commission in respect of the previous year and the actual receipts (if any) and disbursements for that year.

Application of Financial Administration and Audit Act 1977

147A. For the purposes of the *Financial Administration and Audit Act 1977*, the commission is taken to be a statutory body within the meaning of that Act.

Regulation making power

148.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may make provision for—

- (a) procedures to be followed in proceedings before the commission;
or
- (b) procedures to be observed by commissioners, officers of the commission and other persons in discharging the commission's functions and responsibilities or exercising the commission's powers.

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 8 August 1996. Future amendments of the Criminal Justice Act 1989 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes an arabic letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 75 of 1993	28 January 1994
2	to Act No. 53 of 1994	13 December 1994
3	to Act No. 58 of 1995	21 December 1995

5 Tables in earlier reprints

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6 List of legislation

Criminal Justice Act 1989 No. 111

date of assent 31 October 1989

ss 1–2 commenced on date of assent

ss 3–5, 6–35, 56–68, 111–118, 125–9, 132–3, 138, 139–43 and 145–8
commenced 4 November 1989 (proc pubd gaz 2 November 1989 p 1661)

remaining provisions commenced 22 April 1990 (proc pubd gaz 19 April 1990
p 2053A)

as amended by—

Members (E.A.R.C. and C.J.C.) Act 1990 No. 1 pt 3

date of assent 21 March 1990

commenced on date of assent

Whistleblowers (Interim Protection) and Miscellaneous Amendments Act 1990 No. 79 pt 3

date of assent 2 November 1990

commenced on date of assent

Appointments (Clarification of Validity) Act 1991 No. 44 pts 1–2

date of assent 28 August 1991

ss 1–2 commenced on date of assent

ss 3–4, 7 commenced 31 October 1989 (see s 2(2))

s 5 commenced 21 March 1990 (see s 2(3))

remaining provisions commenced on date of assent (see s 2(1))

Criminal Justice Amendment Act 1992 No. 16

date of assent 13 May 1992

commenced on date of assent

Criminal Justice Amendment Act (No. 2) 1992 No. 18

date of assent 22 May 1992

commenced on date of assent

Criminal Justice Amendment Act 1993 No. 75

date of assent 10 December 1993

commenced on date of assent

Justice and Attorney-General (Miscellaneous Provisions) Act 1994 No. 24 ss 1–3(1) sch

date of assent 10 May 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 30 May 1994 (1994 SL No. 168)

Criminal Justice Amendment Act 1994 No. 53

date of assent 4 November 1994

commenced on date of assent

**Statutory Authorities Superannuation Legislation Amendment Act 1995 No. 36
ss 1–2, 9 sch 2**

date of assent 16 June 1995
commenced on date of assent

Parliamentary Committees Act 1995 No. 38 pt 1, s 35 sch 1

date of assent 15 September 1995
commenced on date of assent

Statute Law Revision Act 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995
commenced on date of assent

Parliamentary Committees Legislation Amendment Act 1996 No. 2 pts 1, 3

date of assent 24 April 1996
commenced on date of assent

7 List of annotations

Objects of Act

s 2 prev s 2 om 1995 No. 58 s 4 sch 1
pres s 2 (prev s 3) amd 1993 No. 75 s 2 sch
renum 1995 No. 58 s 4 sch 1

Definitions

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s 3 prev s 3 renum as s 2 1995 No. 58 s 4 sch 1
pres s 3 (prev s 4(1)) amd 1993 No. 75 s 2 sch
renum 1995 No. 58 s 4 sch 1
def “**Chairman**” om 1993 No. 75 s 2 sch
def “**chairperson**” ins 1993 No. 75 s 2 sch
def “**chief officer**” ins 1993 No. 75 s 3
def “**delegate**” om 1993 No. 75 s 2 sch
def “**Minister**” om 1993 No. 75 s 2 sch
def “**parliamentary committee**” sub 1995 No. 38 s 35 sch 1; 1996 No. 2
s 10
def “**premises**” amd 1993 No. 75 s 2 sch
def “**record**” amd 1993 No. 75 s 2 sch
def “**statutory declaration**” om 1993 No. 75 s 2 sch
def “**unit of public administration**” amd 1993 No. 75 s 2 sch

Holding of appointment in unit of public administration

s 4 (1) renum as s 3 1995 No. 58 s 4 sch 1

Division 1—Establishment and membership of commission

div hdg amd 1993 No. 75 s 4

Constitution of commission

s 6 amd 1993 No. 75 s 5

Commission's official seal

s 7 ins 1993 No. 75 s 6

Membership of commission

s 8 amd 1991 No. 44 s 4; 1993 No. 75 s 2 sch

Disqualifications for appointment to commission

s 10 amd 1990 No. 1 s 5; 1991 No. 44 s 5; 1993 No. 75 s 2 sch

Selection for appointment of chairperson

s 11 amd 1993 No. 75 s 2 sch; 1994 No. 53 s 3

Appointment of members

s 12 amd 1993 No. 75 s 2 sch; 1994 No. 53 s 4

Acting commissioners

s 13 sub 1991 No. 44 s 6
amd 1993 No. 75 s 2 sch; 1994 No. 53 s 5

Tenure of office

s 14 amd 1991 No. 44 s 7; 1993 No. 74 s 2 sch; 1994 No. 53 s 6

Casual vacancy in membership

s 15 amd 1993 No. 75 s 2 sch

Meetings and other proceedings of commission

prov hdg amd 1993 No. 75 s 7

s 16 amd 1991 No. 44 s 8; 1993 No. 75 s 2 sch

Judicial notice of chairperson's signature

s 17 ins 1993 No. 75 s 8

Functions

s 21 amd 1993 No. 75 s 2 sch

Commission to act independently etc.

s 22 ins 1993 No. 75 s 9

Responsibilities

s 23 amd 1992 No. 16 s 2; 1993 No. 75 s 2 sch

Commission hearings

s 25 amd 1993 No. 75 s 10

Commission's reports

s 26 amd 1990 No. 79 s 8; 1993 No. 75 ss 11, 2 sch; 1994 No. 24 s 3(1) sch

Commission's report on court procedures and confidential matter

s 27 amd 1993 No. 75 s 2 sch

Role and functions

s 29 amd 1992 No. 16 s 3; 1993 No. 75 ss 12, 2 sch

General nature of official misconduct

s 32 amd 1993 No. 75 s 2 sch

Reports of division

s 33 amd 1992 No. 16 s 4; 1993 No. 75 ss 13, 2 sch; 1994 No. 24 s 3(1) sch

Establishment of section

s 36 amd 1992 No. 16 s 5

Referral of matter to section

s 37 amd 1993 No. 75 s 2 sch

Handling of complaints etc. by complaints section

s 38 sub 1992 No. 16 s 6

Principal officer's duty upon director's report of official misconduct

s 39 amd 1993 No. 75 s 2 sch

Meaning of "prescribed person"

s 40 ins 1993 No. 75 s 2 sch

Panel of tribunal members

s 42 amd 1990 No. 79 s 9; 1993 No. 75 ss 14, 2 sch

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s 46 amd 1993 No. 75 s 2 sch

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s 48 amd 1992 No. 18 s 3; 1993 No. 75 s 2 sch

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s 57 amd 1993 No. 75 s 2 sch

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s 59 amd 1993 No. 75 s 2 sch

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s 60 amd 1993 No. 75 s 2 sch

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s 62 amd 1993 No. 75 s 2 sch

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s 64 amd 1993 No. 75 s 2 sch

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s 65 amd 1993 No. 75 s 2 sch; 1995 No. 38 s 35 sch 1

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s 67 amd 1993 No. 75 s 2 sch

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s 68 amd 1993 No. 75 s 2 sch
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s 69 amd 1993 No. 75 s 2 sch

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s 70 amd 1993 No. 75 s 2 sch

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Provisions re execution of warrant

s 72 amd 1993 No. 75 s 15

Authority to seize other records or things

s 73 amd 1993 No. 75 s 2 sch

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s 74 amd 1993 No. 75 ss 16, 2 sch

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s 75 amd 1993 No. 75 s 2 sch

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s 77 amd 1993 No. 75 s 2 sch

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s 78 amd 1993 No. 75 s 2 sch

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s 90 ins 1993 No. 75 s 18

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s 96 amd 1993 No. 75 ss 21, 2 sch

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s 3.25 om 1993 No. 75 s 22

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s 97 amd 1993 No. 75 s 2 sch

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s 98 amd 1993 No. 75 s 2 sch

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s 99 amd 1993 No. 75 s 2 sch

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s 100 amd 1993 No. 75 s 23

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s 102 amd 1993 No. 75 s 2 sch

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s 104 ins 1990 No. 79 s 10

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s 106 amd 1993 No. 75 ss 25, 2 sch

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s 127 amd 1993 No. 75 s 2 sch

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s 128 amd 1993 No. 75 s 2 sch

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s 132 sub 1993 No. 75 s 27

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s 133 amd 1993 No. 75 s 2 sch

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s 136 amd 1993 No. 75 s 2 sch

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s 7.9 om 1993 No. 75 s 2 sch

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Application of Financial Administration and Audit Act 1977

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