

Queensland



CRIMINAL JUSTICE ACT 1989

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(includes amendments up to Act No. 45 of 2001)

Warning—see last endnote for uncommenced amendments

Reprint No. 5D

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This Act is reprinted as at 26 October 2001. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

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**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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CRIMINAL JUSTICE ACT 1989

[as amended by all amendments that commenced on or before 26 October 2001]

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

1 Short title

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

2 Objects of Act

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 that relate to official misconduct or alleged or suspected misconduct by members of the police service;
 - (v) to investigate complaints of official misconduct referred to the body and to secure the taking of appropriate action in respect of official misconduct;
 - (vii) to discharge such functions and responsibilities as are incidental to or in aid of discharge of the activities mentioned in subparagraphs (i) to (v); and
- (b) to provide for the establishment of—

- (i) a parliamentary committee to oversight the conduct and activities of the commission and monitor and review compliance by the commission with its requirements of accountability to the Legislative Assembly for its conduct and activities; and
- (ii) a mechanism for dealing with complaints about conduct or activities of the commission; and
- (iii) a parliamentary commissioner to exercise certain powers at the request of the parliamentary committee.

3 Definitions

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.

“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.

“monitor” means the public interest monitor or a deputy public interest monitor.

“parliamentary commissioner” means the Parliamentary Criminal Justice Commissioner.

“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”, for a particular unit of public administration, means—

- (a) for a department—its chief executive; or
- (b) for another unit of public administration—its chief executive officer (however described) or the person who performs the functions of the chief executive officer; or
- (c) if, for this definition, a regulation prescribes an office or position—the person holding or performing the duties of the office or position prescribed;

but does not include—

- (d) a judge of, or other person holding judicial office in, the Supreme Court; or
- (e) a judge of District Courts; or
- (f) 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” see section 3A.

3A Meaning of “unit of public administration”

(1) **“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.

(2) However, neither the parliamentary commissioner, nor the entity consisting of the commissioner, officers and employees of the parliamentary service assigned to assist the commissioner and persons engaged to provide the parliamentary commissioner with services, information or advice, is a unit of public administration.

4 Holding of appointment in unit of public administration

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.

5 Independence of holders of judicial office

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

6 Constitution of commission

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

(2) The commission is declared to be an excluded matter for the Corporations Act, section 5F,¹ in relation to the following provisions of the Corporations Act—

- (a) parts 2D.1 and 2D.6;
- (b) chapters 2K and 2L;
- (c) parts 5.7, 5.7B, 5.9 and 5B.2.²

7 Commission’s official seal

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.

8 Membership of commission

(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.

1 Corporations Act, section 5F (Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter)

2 Corporations Act, part 2D.1 (Duties and powers), part 2D.6 (Disqualification from managing corporations), chapter 2K (Charges), chapter 2L (Debentures), part 5.7 (Winding up bodies other than companies), part 5.7B (Recovering property or compensation for the benefit of creditors of insolvent company), part 5.9 (Miscellaneous) and part 5B.2 (Registrable bodies)

(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*.

9 Qualifications for appointment to commission

(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.

10 Disqualifications for appointment to commission

(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; or
- (g) is the parliamentary commissioner.

(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.

11 Selection for appointment of chairperson

(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.

12 Appointment of members

(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 must—

- (a) for selection of a member under section 9(2)(b)—cause notification of the Minister’s intention to make a selection to be advertised statewide, calling for applications from suitably qualified persons to be considered for selection; and
- (b) in all cases—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.

13 Acting commissioners

(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.

14 Tenure of office

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

(1A) The term of appointment of a commissioner must be specified with a view to ensuring that, at any time, the offices of all commissioners will not be vacant.

(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;³
- (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 party or parties in government in the Legislative Assembly.

15 Casual vacancy in membership

(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;

3 Section 132 (Confidentiality to be maintained)

- (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 for a term of 12 months or less to a vacancy under subsection (1) in the office of chairperson.

(4) For an appointment to a vacancy under subsection (1) for a term of 12 months or less—

- (a) of a person mentioned in section 9(2)(a)—section 12(5) does not apply to the appointment; and
- (b) of a person mentioned in section 9(2)(b)—section 12(2)(a) does not apply to the appointment.

16 Meetings and other proceedings of commission

(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.

16A Participation in meetings by telephone etc.

(1) The commission may permit commissioners to participate in a particular meeting, or all meetings, by telephone, closed circuit television or another way permitting contemporaneous communication with other commissioners.

(2) Within 7 days of participating in a meeting of the commission under a permission under subsection (1), a commissioner must confirm in writing to the chairperson the way the commissioner voted on business conducted at the meeting.

(3) A commissioner who participates in a meeting of the commission under a permission under subsection (1) and complies with subsection (2) for the meeting is taken to have been present at the meeting for section 16(5).

16B Resolutions without meetings

(1) If at least a majority of commissioners sign a document containing a statement that they are in favour of a resolution stated in the document, a resolution in those terms is taken to have been passed at a meeting of the commission held on—

- (a) the day the document is signed; or
- (b) if the commissioners do not sign the document on the same day—the day the last of the commissioners constituting the majority signs the document.

(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the commission, each commissioner must immediately be advised of the matter and given a copy of the terms of the resolution.

(3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more commissioners, are taken to be a single document.

17 Judicial notice of chairperson's signature

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.

18 Remuneration of commissioners

(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**19 Divisions of commission**

(1) Within the commission, there is established the official misconduct division and there may be established any other organisational units the commission considers necessary.

Example—

The commission may establish units for the following if the commission considers it necessary—

- (a) intelligence;
- (b) research.

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

Division 3—Functions and responsibilities of commission**21 Functions**

(1) The commission shall—

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- (a) continually monitor, review and, if the commission considers it necessary, initiate reform of the administration of criminal justice;
- (b) discharge other functions appropriate to the objects of this Act.

(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 26,⁴ the commission shall report to the parliamentary committee—

- (a) on a regular basis, in relation to the commission's activities;
- (b) in relation to a matter specified by the parliamentary committee concerning a function of the commission or 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.

22 Commission to act independently etc.

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

⁴ Section 26 (Commission's reports)

23 Responsibilities

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;
- (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*⁵);
- (d) undertaking intelligence activities to support its responsibilities in relation to official misconduct or alleged or suspected misconduct by members of the police service;
- (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 can not 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;
- (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

5 Now see *Legal Aid Queensland Act 1997*, section 101.

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 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.

25 Commission hearings

(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) A hearing by the commission may, as authorised by the commission, be conducted by any of the following persons—

- (a) the chairperson;
- (b) the chairperson and another commissioner;
- (c) the director of the official misconduct division;
- (d) a commissioner who is a legal practitioner;
- (e) an employee of the commission who is a legal practitioner;
- (f) a legal practitioner, other than a person mentioned in paragraphs (a) to (e).

(3) A legal practitioner can not conduct a hearing under subsection (2)(f) unless the authorisation of the legal practitioner is supported by the members of the parliamentary 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 Legislative Assembly.

(4) A person authorised to conduct a hearing under subsection (2) is taken, for the purposes of the hearing, to be the commission.

26 Commission's reports

(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.

(9) In this section—

“report of the commission” means—

- (a) a report on a hearing conducted by the commission under section 25, other than a report under section 33;⁶ or
- (b) a research or other report prepared by the commission that the parliamentary committee directs the commission to give to the Speaker of the Legislative Assembly.

27 Commission’s report on court procedures and confidential matter

(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 (**“confidential information”**)—

6 Section 33 (Reports of division)

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- (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.

(3) If the commission decides under subsection (2)(a) not to make a report to which confidential information is relevant or, in a report, the commission, under subsection (2)(b), does not disclose or refer to confidential information, the commission—

- (a) may disclose the confidential information in a separate document to—
 - (i) the Speaker of the Legislative Assembly; and
 - (ii) the Minister; and
- (b) must disclose the confidential information in a separate document to the parliamentary committee.

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

(5) Despite subsection (3)(b), the commission may refuse to disclose information to the parliamentary committee if—

- (a) a majority of the commissioners considers confidentiality should continue to be strictly maintained in relation to the information; and
- (b) the commission gives the committee as detailed reasons as possible for the decision.

(6) The commission must maintain a register of information withheld under subsection (5) and advise the parliamentary committee immediately after the need for strict maintenance of confidentiality ceases in relation to the information.

(7) The parliamentary committee or a person appointed, engaged or assigned to help the committee and who is authorised for the purpose by the committee may, at any time, inspect in the register information the commission has advised the committee is no longer required to be strictly maintained as confidential.

(8) Information, reasons or advice mentioned in subsections (3), (5) and (6)—

- (a) may be given in writing or orally; and
- (b) is not a report or part of a report for section 26.

(9) The parliamentary commissioner may at any time inspect information on the register, whether or not the commission has advised the parliamentary committee the information is no longer required to be strictly maintained as confidential.

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

28 Commission's report insufficient for removal of Supreme Court or District Court judge

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

(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.

28A Giving other information to parliamentary committee

(1) The commission may, with the parliamentary committee's consent, give the parliamentary committee information, orally or in writing,

whether or not at the request of the committee, that is not included in a report under section 26.

(2) Section 26 does not apply to the giving of the information.

Division 4—Official misconduct division

29 Role and functions

(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, subject to directions or orders of, and guidelines issued by, the commission—

- (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* if the investigative work relates to official misconduct or alleged or suspected misconduct by members of the police service; and
- (c) to investigate the financial affairs and business transactions of any person holding an appointment in a unit of public administration 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 commission 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.

30 Qualification of director

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

31 Official misconduct

(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.

32 General nature of official misconduct

(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

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- (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).

33 Reports of division

(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 commission or, at the commission's direction, the chairperson.

(2A) With the authority of the commission, the report must also be made to 1 or more of the following—

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- (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;
- (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;
- (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 under subsection (2) 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 if disclosure would be contrary to the public interest.

(7) If the director of public prosecutions requires the commission to make further investigation or supply further information relevant to a prosecution, whether started or not, to which the content of a report made to the director under subsection (2)(a) relates, the director of the official misconduct division must take all reasonable steps to further investigate the matter or provide the further information.

(8) The commission may give directions to the director of the official misconduct division about the exercise of the director's powers under subsection (4), (5) or (6), including a direction that certain types of matter are to be responded to by the commission.

34 Judicial review of division's activities

(1) 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 commission.

(2) If an application (the “**costs application**”) is made to the court by a person (the “**costs applicant**”) who has made an application under subsection (1), the court may make an order that—

- (a) the commission indemnify the costs applicant in relation to the costs properly incurred in the injunction proceeding, on a party and party basis, from the time the costs application was made; or

(b) a party to the injunction proceeding is to bear only that party's own costs of that proceeding, regardless of the outcome.

(3) In considering the costs application, the court must have regard to—

(a) the financial resources of—

(i) the costs applicant; or

(ii) any person associated with the costs applicant who has an interest in the outcome of the injunction proceeding; and

(b) whether the injunction proceeding involves an issue that affects, or may affect, the public interest, in addition to any personal right or interest of the costs applicant; and

(c) whether the injunction proceeding discloses a reasonable basis for the application under subsection (1).

(4) The court may, at any time, on its own initiative or on the application of the costs applicant or the commission, revoke or vary, or suspend the operation of, an order made by it under this section after having regard to—

(a) any conduct of the costs applicant, including a failure to diligently prosecute the injunction proceeding; or

(b) any significant change affecting the matters mentioned in subsection (3).

(5) Subject to this section, the rules of court applying to the awarding of costs apply to the awarding of costs for the injunction proceeding.

(6) An appeal may be brought from an order under subsection (2) or (4) only with the leave of the Court of Appeal.

(7) In this section—

“injunction proceeding” means an application under subsection (1) and a proceeding on the application.

35 Effect of further factors on order

(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

36 Establishment of section

(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 commission as the chief officer of the complaints section.

(3) The commission 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.

37 Referral of matter to section

(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.

38 Handling of complaints etc. by complaints section

(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).

(9) The official misconduct division and the complaints section must comply with any orders or directions given by the commission about matters to which this section applies or investigation of the matters.

(10) An order or direction mentioned in subsection (9) prevails over—

- (a) an inconsistent direction given by the director of the official misconduct division to the extent of the inconsistency; and
- (b) an inconsistent guideline issued by the commission to the extent of the inconsistency.

39 Commission's duty on director's report of official misconduct

(1) If 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

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- (b) the available evidence shows a prima facie case to support a charge of a disciplinary nature of official misconduct against the prescribed person;

the commission must charge the prescribed person with the relevant official misconduct by way of a disciplinary charge.

(2) The charge may be dealt with only by a misconduct tribunal under the *Misconduct Tribunals Act 1997*.

(3) 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.

(4) 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—Research division***56 Role and functions**

(1) The research division is the unit within the commission that, in accordance with any directions of the commission, will—

- (a) conduct research into the problems that from time to time beset, or could beset, 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 commission and, with the commission’s approval, all other agencies in the State concerned with the administration of criminal justice in the State.

(3) It is the function of the division, in accordance with any directions by the commission—

- (b) to research 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;

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- (c) to research available resources with the objective of fostering 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;
- (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 commission on the discharge of the division's functions with a view to alerting the commission and aiding the commission's determinations.

57 Liaison with other agencies

(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 7—Intelligence division**58 Role and functions**

(1) The intelligence division is the unit within the commission responsible for providing an effective intelligence service for the commission.

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

- (a) to build up a database of intelligence information concerning official misconduct and persons concerned in official misconduct or alleged or suspected misconduct by members of the police service, 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 retain possession and control of all data and records of the commission of inquiry continued in being by the *Commission of Inquiry Continuation Act 1989* that relate, wholly or partly, to official misconduct;
- (c) to secure such database 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.

59 Relinquishment of data of commission of inquiry

(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.

60 Duty to inform of criminal intelligence

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 8—Witness protection division

61 Witness protection division

- (1) A witness protection division is established.
- (2) The division has the functions conferred on it by this or another Act.

Division 9—Staff of commission

64 Employment by commission

(1) The commission may employ 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, decide the salaries, wages, allowances and conditions of employment of members of its staff and changes to the salaries, wages, allowances and conditions.

(3) Employment in an office under the commission, or in an office of a class of office under the commission, approved by the commission 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 directors and other staff are to be employed under this Act, and not under the *Public Service Act 1996*.

65 Use of officers

(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.

66 Engagement of services

Subject to section 25,⁷ the commission may engage suitably qualified persons to provide the commission with services, information or advice.

67 Officers of commission

(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) Subject to section 19(4),⁸ the commission may issue directions for the performance of duties by officers of the commission.

(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.

7 Section 25 (Commission hearings)

8 Section 19 (Divisions of commission)

68 Superannuation schemes

(1) The commission may—

- (a) establish or amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

(2) Subsection (1) does not apply to 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 6.⁹

PART 3—INVESTIGATIONS***Division 1—Powers to assist the collection or presentation of information*****68A Delegation of powers by chairperson of commission under pt 3**

(1) The chairperson of the commission may delegate the chairperson's powers under this part only with the approval of the commission.

(2) As soon as practicable after delegation of a power under this part, the chairperson of the commission must give written notice of the delegation to the parliamentary committee.

69 Notice to discover information

(1) If the chairperson or member of the commission who is a lawyer is satisfied that there are reasonable grounds to suspect that any person has information, or possession, custody or control 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

⁹ *Financial Administration and Audit Act 1977*, part 6 (Audit of consolidated fund and public sector entities)

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.

(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 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.

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

70 Entry of public premises

(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 77.¹⁰

71 Warrant to enter, search and seize

(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;

¹⁰ Section 77 (Claim of privilege)

- (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.

72 Provisions re execution of warrant

(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.

73 Authority to seize other records or things

(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.

74 Summons to procure evidence

(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 to then and there give evidence in relation to the subject matter of the commission’s investigation; and
- (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) 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.

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

(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.

76 Obligation of person served with summons

(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.

77 Claim of privilege

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.

78 Procedure upon claim of privilege

(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.

79 Apprehension of witness

(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, 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, 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).

80 Authority of and procedure relevant to warrant under s 79

(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 person in charge of a prison under the *Corrective Services Act 2000*, a person in charge of a police station, and a watch-house manager, within the meaning of the *Police Powers and Responsibilities Act 2000*, schedule 4, 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.

81 Attendance of prisoner or patient before commission

(1) If the attendance of a prisoner before the commission is required, the chairperson may, by signed notice served on the person in charge in whose custody the prisoner is, direct the person in charge 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 person in charge 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 person in charge or, as the case may be, hospital administrator.

(4) The person in charge or hospital administrator shall comply with the direction served on the person in charge or administrator.

(5) In this section—

“**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*.

“**person in charge**” has the meaning given by the *Corrective Services Act 2000*.

“**prisoner**” has the same meaning as in the *Corrective Services Act 2000*.

82 Authority to use listening devices

(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.

(2A) The chairperson must advise the public interest monitor of the application under arrangements decided by the monitor.

(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).

83 Use of information disclosed by listening device

(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.

84 Further powers of officers of commission

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 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 1A—Public interest monitor

84A Public interest monitor

(1) The Governor in Council may appoint a person (the “**public interest monitor**”) to monitor applications under section 82(2)¹¹ to approve the use of listening devices and monitor the use and effectiveness of the approvals.

(2) The Governor in Council may also appoint as many deputy public interest monitors as the Minister considers necessary.

(3) The Governor in Council may, in the appointment, fix the terms and conditions of the appointment.

(4) The *Public Service Act 1996* does not apply to the appointment of a monitor.

(5) A monitor must not be a person who is, or is a member of, or is employed in or by or to assist, any of the following—

- (a) the Commissioner for Children and Young People;
- (b) QCC;
- (c) the CJC;
- (d) the director of public prosecutions;
- (e) the office of the director of public prosecutions;
- (f) the police service.

84B Monitor’s functions

(1) The public interest monitor has the functions mentioned in subsection (2) in relation to applications to approve the use of listening devices and those approvals.

(2) The functions are—

11 Section 82 (Authority to use listening devices)

- (a) to monitor compliance by the commission with this Act in relation to matters concerning applications for approval for the use of listening devices; and
- (b) to appear at any hearing of an application to a Supreme Court judge for approval to use a listening device to test the validity of the application, and for that purpose at the hearing—
 - (i) present questions for the applicant to answer and examine or cross examine any witness;
 - (ii) make submissions on the appropriateness of granting the application; and
- (c) to gather statistical information about the use and effectiveness of approvals for the use of listening devices; and
- (d) whenever the monitor considers it appropriate—to give to the parliamentary committee a report on noncompliance by the commission with this Act.

(3) Subject to the direction of the public interest monitor, a deputy public interest monitor has the functions mentioned in subsection (2)(a), (b) and (c).

84C Monitor's annual report

(1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the public interest monitor must prepare and give to the Minister a written report on the use of approvals for the use of listening devices.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

(3) The annual report must not contain information that—

- (a) discloses or may lead to the disclosure of the identity of any person who has been, is, or is to be, investigated; or
- (b) indicates a particular investigation has been, is, or is to be conducted.

(4) The monitor's report may form part of another annual report the monitor is required to prepare under another Act.

84D Secrecy

(1) A person who is or was a monitor must not record, use or disclose information obtained under this Act and that came to the person's knowledge because of the person's involvement in the administration of this Act.

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

(2) Subsection (1) does not apply to a person's recording, use or disclosure of information in the performance of his or her functions under this Act.

(3) A person who is or was a monitor is not in any proceeding compellable to disclose information obtained under this Act and that came to the person's knowledge because of the person's involvement in the administration of this Act.

Division 2—Procedures for taking evidence**85 Application**

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.

86 Proceedings unaffected by personnel changes

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 for the purposes of the proceedings.

87 Continuing duty to attend

A person who attends before the commission 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 from further attendance.

88 Prohibition of publication of evidence etc.

(1) 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.

(2) The order does not prohibit a person summoned to attend before the commission making a submission to the parliamentary committee about the conduct of the commission's investigation.

(2A) Also, the order does not prohibit the publication of matters mentioned in subsection (1)(a) or (b) if—

- (a) the publication is made by the person mentioned in subsection (1)(a) or (b) or with the person's implied or express consent; or
- (b) the matter mentioned in subsection (1)(a) or (b) has been made generally known by the person mentioned in subsection (1)(a) or (b) or by the commission.

(3) Subsection (4) applies if a person (the “**accused person**”) is charged or is to be charged with an offence as a result of an investigation by the commission.

(4) Unless a court before which the charge is or may be brought, on application by the commission, otherwise orders, an order made under subsection (1) does not prohibit the giving of information relevant to the charge to—

- (a) the director of public prosecutions; and
- (b) if the information is not adduced at committal proceedings for the charge—the accused person.

89 Administering oath or affirmation

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.

90 Hearings closed to the public unless commission otherwise orders

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

(2) The commission may order that the hearing be open to the public only if the commission considers—

- (a) the hearing is of an administrative nature; or
- (b) a closed hearing would be unfair to a person or contrary to the public interest.

(3) In considering whether a closed hearing would be unfair to a person or contrary to the public interest, the commission must have regard to—

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

(4) For a hearing closed to the public, the commission 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.

91 Legal practitioner may be appointed or engaged to assist commission

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.

92 Commission not bound by rules or practice

(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 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.

93 Commission's reports

(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).

94 Obligation to adduce evidence

(1) Subject to section 77,¹² 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 of an offence.

(2A) Subsection (2) does not apply if the person has been charged with the offence and the charge has not been finally dealt with by a court or otherwise disposed of.

(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.

12 Section 77 (Claim of privilege)

(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.

95 Examination before commission

(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.

96 Use of incriminating evidence against witness

(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***

97 Custody of material seized or produced

(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).

98 Inspection of material in commission's custody

(1) 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.

(2) Despite subsection (1), a member of the parliamentary committee or a person appointed, engaged or assigned to help the parliamentary committee may inspect any non-operational record or thing in the commission's custody and may make copies or extracts for use in connection with the parliamentary committee's functions to which the record or thing is relevant.

(3) Despite subsection (1), the parliamentary commissioner or another parliamentary commissioner officer authorised by the parliamentary commissioner may inspect any record or thing in the commission's custody and may make copies or extracts for use in connection with the parliamentary commissioner's functions to which the record or thing is relevant.

(4) In this section—

“non-operational record or thing” does not include a record or thing that relates to an investigation by the commission that is not finalised.

“parliamentary commissioner officer” means—

- (a) the parliamentary commissioner; or

- (b) an officer or employee of the parliamentary service assigned to the parliamentary commissioner; or
- (c) a person engaged to provide the parliamentary commissioner with services, information or advice.

99 Restricted access to commission's material

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

100 Immunities in conduct of proceedings

(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 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.

101 Protection from liability

(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.

102 Disclosure to commission not breach of confidence

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, or to an organisational unit within the structure of the commission, for the purpose of the discharge of the functions or responsibilities of the commission.

103 Personal protection for witnesses etc.

(1) 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.

(2) Protection under this section may be given independently of any protection given under the *Witness Protection Act 2000*.

(3) In this section—

“**commission**” includes an organisational unit within the structure of the commission.

104 Injunctions

(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;¹³ 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 1999*.

(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).

13 Section 131 (Offence of victimisation)

(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.

105 Reimbursement

(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

106 Conduct constituting contempt

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 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 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 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;
 - (iii) 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.

107 Punishment of contempt

(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.

108 General provisions re contempt

(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 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.

109 Conduct that is contempt and offence

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.

110 Meaning of "offender"

In this division—

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

PART 4—PARLIAMENTARY COMMITTEE

115 Establishment of parliamentary committee

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

116 Membership of parliamentary committee

(1) The parliamentary committee must consist of 7 members nominated as follows—

- (a) 4 members nominated by the member who is recognised in the Legislative Assembly as the Leader of the House;
- (b) 3 members nominated by 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 who is recognised in the Legislative Assembly as the Leader of the House.

116A Membership of parliamentary committee continues despite dissolution

(1) Despite section 116, from the dissolution of the Legislative Assembly, the parliamentary committee consists of its members immediately before the dissolution.

(2) A member under subsection (1) continues to be a member of the parliamentary committee until the earlier of—

- (a) the member’s resignation by notice given to the clerk of the Parliament; or
- (b) the member’s death; or
- (c) fresh members are appointed by the Legislative Assembly.

117 Quorum and voting at meetings of parliamentary committee

At a meeting of the parliamentary committee—

- (a) a quorum consists of 4 members appointed to the committee; and
- (b) a question is decided by a majority of the votes of the members of the committee present and voting; and
- (c) each member of the committee has a vote on each question to be decided and, if the votes are equal, the chairperson of the committee has a casting vote.

118 Functions and powers

(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 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;
- (g) to issue guidelines and give directions to the commission as provided under this Act.

(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.

118A Guidelines on operation of commission

(1) The parliamentary committee may issue guidelines to the commission in relation to the conduct and activities of the commission.

(2) Before issuing a guideline, the committee must consult with the commission on the proposed guideline.

(3) The committee must not issue a guideline unless it is supported by the members of the parliamentary 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 Legislative Assembly.

(4) The commission must comply with the guidelines.

118B Guidelines to be tabled

(1) The chairperson of the parliamentary committee must table each guideline issued under section 118A in the Legislative Assembly within 14 sitting days after it is issued to the commission.

(2) If a guideline is not tabled under subsection (1), it ceases to have effect.

118C Disallowance of guideline

(1) The Legislative Assembly may pass a resolution disallowing a guideline under section 118A if notice of a disallowance motion is given by a member within 14 sitting days after the guideline is tabled in the Legislative Assembly.

(2) On the day set down for its consideration under the standing rules and orders of the Legislative Assembly, the Speaker must put the question that the Legislative Assembly resolve to disallow the guideline.

(3) If the resolution is passed, the guideline ceases to have effect.

118D Limited saving of operation of guideline that ceases to have effect

The cessation of the effect of a guideline under section 118B(2) or 118C(3) does not affect anything done or suffered under the guideline before the cessation.

118E Directions by parliamentary committee to undertake investigation

(1) The parliamentary committee may in writing direct the commission to investigate the matters stated in the direction.

(2) The committee must not give a direction unless it is supported by the members of the parliamentary 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 Legislative Assembly.

(3) The commission must—

- (a) investigate the matters stated in the direction diligently and in a way reasonably expected of a law enforcement agency; and
- (b) report the results of its investigation to the committee.

118F Referral of concerns by parliamentary committee

(1) This section applies if the parliamentary committee receives a complaint, or has other concerns, about the conduct or activities of—

- (a) the commission; or
- (b) a commissioner; or
- (c) an officer of the commission; or

(d) a person engaged by the commission under section 66.¹⁴

(2) If the committee decides to take action on the complaint or concern (the “**matter**”), the committee may do 1 or more of the following—

- (a) ask the commission to give a report on the matter to the committee;
- (b) ask the commission to investigate and give a report on the matter to the committee;
- (c) ask the Queensland Police Service or another law enforcement agency to investigate and give a report on the matter to the committee;
- (d) ask the parliamentary commissioner to investigate and give a report on the matter to the committee;
- (e) take other action the committee considers appropriate.

(3) A decision of the committee under subsection (2) must be made 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 Legislative Assembly.

(4) The commission, Queensland Police Service, parliamentary commissioner or another investigative agency must investigate and report on matters as asked by the committee.

PART 4A—PARLIAMENTARY CRIMINAL JUSTICE COMMISSIONER

Division 1—Parliamentary criminal justice commissioner

118G Office of Parliamentary criminal justice commissioner

(1) There must be appointed, as an officer of Parliament, a commissioner to be known as the Parliamentary Criminal Justice Commissioner.

14 Section 66 (Engagement of services)

(2) Appointment as the parliamentary commissioner may be on a part-time basis.

118H Qualification for appointment as parliamentary commissioner

The parliamentary commissioner must 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 another State.

118I Disqualifications as parliamentary commissioner

(1) A person is disqualified for appointment as parliamentary commissioner if the person—

- (a) holds a judicial appointment; or
- (b) is a member of the Legislative Assembly or the Executive Council; or
- (c) is a commissioner or officer of the commission or has been a commissioner or officer of the commission within the 5 years before the time at which the person's qualification for appointment arises; or
- (d) holds the appointment, director of public prosecutions; or
- (e) is a member of the police service, or has been a member within the 5 years before the time at which the person's qualification for appointment arises; or
- (f) holds an appointment in a unit of public administration or on the staff of a Minister; or
- (g) is a member, appointed by the Governor in Council, of a statutory body (other than a person who is automatically a member because the person is the holder of another office), or an employee of a statutory body.

(2) An educational institution is not a unit of public administration for subsection (1)(f) or a statutory body for subsection (1)(g).

(3) The parliamentary commissioner is not eligible for appointment as a member mentioned in subsection (1)(g) and a purported appointment is invalid.

118J Selection for appointment of parliamentary commissioner

(1) With a view to the selection of a person for appointment as parliamentary commissioner, the Speaker of the Legislative Assembly must cause notification of the parliamentary committee's intention to make a 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 parliamentary commissioner.

(3) A person must not be appointed as the parliamentary commissioner unless the person's appointment is supported by the members of the parliamentary 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 Legislative Assembly.

118K Appointment of parliamentary commissioner

(1) The parliamentary commissioner must be appointed by the Speaker of the Legislative Assembly as an officer of the parliamentary service under the *Parliamentary Service Act 1988*.

(2) However—

- (a) the parliamentary commissioner can not be dismissed or suspended without the approval of the parliamentary committee; and
- (b) the *Parliamentary Service Act 1988*, sections 43 and 44¹⁵ do not apply to the position of parliamentary commissioner.

(3) An approval under subsection (2)(a) must not be given unless the approval is supported by the members of the parliamentary 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 Legislative Assembly.

(4) Within 7 sitting days of the appointment of the parliamentary commissioner, the Speaker must table in the Legislative Assembly notice of the appointment.

15 *Parliamentary Service Act 1988*, sections 43 (Appeals against promotional appointments and disciplinary action) and 44 (Reinstatement following dismissal)

118L Acting parliamentary commissioner

(1) The Speaker of the Legislative Assembly may appoint a person qualified to be the parliamentary commissioner to act as the parliamentary commissioner.

(2) A person must not be appointed to act as the parliamentary commissioner unless the person's appointment is supported by the members of the parliamentary 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 Legislative Assembly.

(3) The Speaker must appoint a person to act as the acting parliamentary commissioner if—

- (a) the parliamentary commissioner is absent on leave or because of illness; or
- (b) the position of parliamentary commissioner is vacant.

118M Duration of appointment

(1) The parliamentary commissioner may be appointed for a term not less than 2 years and no longer than 5 years.

(2) If a term of appointment is not stated in the appointment—

- (a) the appointment is valid; and
- (b) the appointment is, subject to subsections (3) and (4), taken to be for a term of 5 years.

(3) If the appointment does not state a term of appointment, the Speaker of the Legislative Assembly may at a later time decide the term of appointment.

(4) The parliamentary commissioner may be appointed for a further term if qualified for appointment and the requirements of this part are met but must not serve as the parliamentary commissioner for more than a total of 5 years.

118N Vacation of office

The office of the parliamentary commissioner becomes vacant if the commissioner—

- (a) completes the parliamentary commissioner's term of appointment without reappointment or dies; or
- (b) resigns by signed notice of resignation given to the chairperson of the parliamentary committee; or
- (c) becomes a patient within the meaning of the *Mental Health Act 1974*; or
- (d) becomes an undischarged bankrupt or takes advantage of the laws in force relating to bankrupt debtors; or
- (e) becomes disqualified for appointment as parliamentary commissioner as prescribed in section 118I; or
- (f) is convicted of an indictable offence (whether on indictment or summarily) or of an offence defined in section 132;¹⁶ or
- (g) is removed from office by the Speaker on a recommendation of the parliamentary committee supported by all or a majority of the committee, being a majority other than one consisting wholly of members of the political party or parties in government in the Legislative Assembly.

118O Remuneration of parliamentary commissioner

The parliamentary commissioner—

- (a) is to be paid a salary at the rate approved by the Speaker of the Legislative Assembly; and
- (b) is entitled to the allowances for reasonable travelling and other expenses approved by the Speaker.

118P Oath of parliamentary commissioner

(1) Before entering on the performance of duties as parliamentary commissioner, the commissioner must take an oath or affirmation that he or she—

- (a) will faithfully and impartially perform the duties of the office; and

16 Section 132 (Confidentiality to be maintained)

(b) will not, except as provided under this Act, disclose any information received under this Act.

(2) The oath or affirmation is to be administered by the Speaker of the Legislative Assembly.

118Q Administrative and support services for parliamentary commissioner

(1) To help the parliamentary commissioner in performing the parliamentary commissioner's functions under this or another Act, by arrangement with the Speaker of the Legislative Assembly, officers or employees of the parliamentary service may be assigned and other administrative and support services may be provided to the parliamentary commissioner.

(2) If asked by the parliamentary committee, the Speaker may engage legal practitioners and other suitably qualified persons to provide the parliamentary commissioner with services, information or advice.

(3) Before a person first acts under subsection (1) or (2), the person must take an oath or affirmation, to be administered by the parliamentary commissioner, that the person will not, except as provided under this Act, disclose any information received under this part while helping the parliamentary commissioner.

Division 2—Functions and powers of parliamentary commissioner

118R Functions of parliamentary commissioner

(1) The parliamentary commissioner has the functions given to him or her under this or another Act.

(2) The parliamentary commissioner has the functions, as required by the parliamentary committee, to do the following—

(a) conduct audits of records kept by the commission and operational files and accompanying documentary material held by the commission, including current sensitive operations, including for the purpose of deciding the following—

(i) whether the way the commission has exercised power is appropriate;

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- (ii) whether matters under investigation are appropriate for investigation by the commission or are more appropriately the responsibility of another law enforcement agency;
 - (iii) whether registers are up to date and complete and all required documentation is on the file and correctly noted on the registers;
 - (iv) whether required authorisations for the exercise of power has been obtained;
 - (v) whether the policy and procedures guidelines set by the commission have been strictly complied with;
- (b) investigate, including by access to operational files of the commission to which the parliamentary committee is denied access, complaints made against, or concerns expressed about, the conduct or activities of—
- (i) the commission; or
 - (ii) a commissioner; or
 - (iii) an officer of the commission; or
 - (iv) a person engaged by the commission under section 66;¹⁷
- (c) independently investigate allegations of possible unauthorised disclosure of information or other material that, under this Act, is to be treated as confidential;
- (d) inspect the register of confidential information kept under section 27(6) to verify the commission's reasons for withholding information from the parliamentary committee;
- (e) review reports given by the commission to the parliamentary committee to verify their accuracy and completeness, particularly in relation to any operational matter;
- (f) report to the parliamentary committee on the results of carrying out the functions mentioned in paragraphs (a) to (e);
- (g) help the parliamentary committee with the preparation of—
- (i) the 3 yearly review of the activities of the commission under section 118(1)(f); and
 - (ii) other reports of the committee;

17 Section 66 (Engagement of services)

- (h) perform other functions the parliamentary committee considers necessary or desirable.

(3) A decision of the committee to make a requirement under subsection (2) must be made 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 Legislative Assembly.

118S Parliamentary commissioner can not be required to disclose particular information

The parliamentary commissioner can not be required by the parliamentary committee to disclose to the committee information lawfully withheld from the committee by the commission under section 27(2) or otherwise.

118T Powers of the parliamentary commissioner

(1) The parliamentary commissioner has power to do all things necessary or convenient for the performance of his or her functions.

(2) For the performance of the parliamentary commissioner's functions, the parliamentary commissioner may, by giving written notice to the chairperson, require the chairperson or another commissioner or officer of the commission to do 1 or more of the following—

- (a) produce to the parliamentary commissioner, or allow the parliamentary commissioner access to, all records, files and documents in the commission's possession, custody or control;
- (b) give to the parliamentary commissioner all reasonable help in connection with the parliamentary commissioner discharging his or her functions;
- (c) appear before the parliamentary commissioner for examination on oath or affirmation.

(3) For subsection (2)(c), the parliamentary commissioner may administer an oath or affirmation.

(4) If documents are produced to the parliamentary commissioner under this part, the parliamentary commissioner may keep the documents for the period the parliamentary commissioner considers necessary for the parliamentary commissioner's functions.

(5) While the parliamentary commissioner has possession of a document under subsection (4), the parliamentary commissioner must permit a person who would be entitled to inspect the document if it were in the possession of the commission, to inspect it at all reasonable times.

(6) A person required by a notice under subsection (2) to do something must comply with the requirement.

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

(7) Subsections (2) to (6) do not limit the powers conferred on the parliamentary commissioner under section 118W or another provision of this or another Act.

118U Parliamentary commissioner to have custody of and deal with records of the CJC inquiry

(1) Possession, custody and control of all records of the CJC inquiry vest in the parliamentary commissioner.

(2) The parliamentary commissioner must secure the records in the parliamentary commissioner’s possession, custody or control so that only persons who satisfy the parliamentary commissioner that they have a legitimate need of access to the data and the records are able to have access to them.

(3) The parliamentary commissioner must review the records with a view to deciding if the records disclose any matter that should be investigated by an appropriate agency (an “**investigation matter**”).

(4) If the parliamentary commissioner considers the records disclose an investigation matter, the parliamentary commissioner must refer the matter, and give access to records about the matter, to the appropriate agency for investigation.

(5) In this section—

“**appropriate agency**” means the parliamentary committee, the commission, the Queensland police service, another law enforcement agency, the parliamentary commissioner for administrative investigations, the Auditor-General or other agency the parliamentary commissioner considers appropriate.

“**CJC inquiry**” means the commission within the meaning of the *Commissions of Inquiry Act 1950* constituted by order in council of 7 October 1996 published in the gazette of that date at pages 475 and 476.

118V Relinquishment of records of CJC inquiry

(1) A person in possession, custody or control of records of the CJC inquiry mentioned in section 118U must, on receiving the written request of the parliamentary commissioner, deliver possession, custody and control of the records to the parliamentary commissioner.

(2) The acknowledgment of receipt by the parliamentary commissioner of the records delivered under subsection (1) is a sufficient discharge to the person making delivery from all responsibility for the records.

118W Parliamentary commissioner has powers under Commissions of Inquiry Act 1950

For an investigation under this part—

- (a) the parliamentary commissioner has and may exercise all the powers, rights and privileges under the *Commissions of Inquiry Act 1950*, of a commission and the chairperson of a commission within the meaning of the Act; and
- (b) the *Commissions of Inquiry Act 1950* applies to the parliamentary commissioner, the investigation and the subject matter of the investigation as if the matter were one into which a commission constituted by the parliamentary commissioner was appointed to make an inquiry under that Act.

118X Confidentiality obligations not to apply

No obligation to maintain secrecy or other restriction on the disclosure of information in the possession, custody or control of—

- (a) the commission; or
- (b) a person because the person is or was a commissioner, officer of the commission or a person engaged by the commission under section 66;

whether imposed under this or another Act or by a rule of law, applies to the disclosure of information under this part.

118Y Commission not entitled to privilege

The commission is not entitled, in relation to an investigation under this part, to any privilege in relation to the production of documents or the giving of evidence allowed by law in legal proceedings.

118Z Investigations closed to the public unless authorised by parliamentary committee

(1) An investigation by the parliamentary commissioner is to be closed to the public unless the parliamentary committee authorises the investigation to be open to the public.

(2) In considering whether the investigation should be open to the public, the committee must have regard to—

- (a) the subject matter of the investigation; and
- (b) the nature of the information expected to be disclosed.

(3) A decision of the parliamentary committee to authorise the investigation to be open to the public must be supported by all or a majority of the committee, being a majority other than one consisting wholly of members of the political party or parties in government in the Legislative Assembly.

118ZA Protection of parliamentary commissioner and officers etc.

(1) A parliamentary commissioner officer is not liable to an action or other proceeding for damages for or in relation to anything done or omitted to be done in good faith and without negligence in the performance, or purported performance, of a function, or in the exercise or purported exercise of a power under this part.

(2) No civil or criminal proceedings may be brought against a parliamentary commissioner officer for an act mentioned in subsection (1) without the leave of the Supreme Court.

(3) The Supreme Court may give leave under subsection (2) only if satisfied there is substantial ground for claiming that the person to be proceeded against has not acted in good faith or has acted negligently.

(4) A parliamentary commissioner officer may not be called to give evidence or produce any document in any court, or in any judicial proceedings, in relation to any matter coming to the officer's knowledge while performing functions under this part.

(5) In this section—

“parliamentary commissioner officer” means—

- (a) the parliamentary commissioner; or
- (b) an officer or employee of the parliamentary service assigned to the parliamentary commissioner; or
- (c) a person engaged to provide the parliamentary commissioner with services, information or advice.

PART 5—SUPREME COURT APPLICATIONS

119 Applications under pts 2 and 3 generally

(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.

120 Application pursuant to s 34

(1) If the judge who hears the matter of an application under section 34¹⁸ 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.

(3) A judge hearing an application under section 34, on the ground any information or complaint does not warrant an investigation, may take or receive, in closed court, evidence from the commission on the basis for the investigation.

(4) The applicant and any person representing the applicant must not be present while evidence is being taken or received under subsection (3).

(5) Evidence taken or received by a court under subsection (3) must not be published or disclosed outside the court.

121 Application pursuant to s 75

(1) An application made pursuant to section 75¹⁹ 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.

18 Section 34 (Judicial review of division's activities)

19 Section 75 (Restriction on exercise of authority under ss 69 to 74(1))

(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.

122 Application pursuant to s 77

(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.

123 Application pursuant to s 82

(1) An application made pursuant to section 82²⁰ shall be heard *ex parte*.

(2) Subject to subsection (2A), 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.

(2A) Subsection (2) does not prevent the parliamentary committee or persons authorised by the parliamentary committee searching notices, reports and orders in the commission's possession, custody or control.

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

20 Section 82 (Authority to use listening devices)

- (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.

(6) This section applies subject to part 3, division 1A.²¹

124 Application pursuant to s 84

(1) An application made pursuant to section 84²² 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;

21 Part 3 (Investigations), division 1A (Public interest monitor)

22 Section 84 (Further powers of officers of commission)

- (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

125 Application of Criminal Code

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 is a judicial proceeding referred to in the Criminal Code, chapter 16;
 - (ii) the office of a commissioner is a judicial office referred to in the Criminal Code, chapter 16;
 - (iii) the commission is a tribunal referred to in the Criminal Code, chapter 16;and the provisions of that chapter have application accordingly.

126 Impersonating officer of commission

(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.

127 Abuse of office in commission

(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 can not be arrested without warrant.

128 Bribery of holder of office in commission

(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 can not be arrested without warrant.

129 Obstruction or delay of commission procedures

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.

130 Injury or detriment to witness

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;²³

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

131 Offence of victimisation

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;

23 Section 69 (Notice to discover information)

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 103²⁴ commits an offence against this Act.

Maximum penalty—85 penalty units.

132 Confidentiality to be maintained

(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, this Act or an investigation of an alleged contravention of this section.

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

(3) Unless subsection (4) applies, 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) a member of the parliamentary committee; or
- (b) the parliamentary commissioner; or
- (c) an officer of the parliamentary service; or
- (d) a person appointed, engaged or assigned to help the parliamentary committee or the parliamentary commissioner.

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

(4) A person is not guilty of an offence under subsection (3) if—

- (a) the disclosure of the information is in the discharge of a function of the parliamentary committee or the parliamentary commissioner under this Act; or

24 Section 103 (Personal protection for witnesses etc.)

- (b) the information is contained in a report of the commission that has been ordered by the Legislative Assembly to be printed; or
- (c) the disclosure is for an investigation of an alleged contravention of this section; or
- (d) the information is publicly available.

132A Commissions of Inquiry Act 1950 prevails over this Act

(1) The *Commissions of Inquiry Act 1950* prevails over this Act.

(2) Without limiting subsection (1), the commission or a person who is, or was, a commissioner, a commission officer or member of the commission's staff or other person engaged under section 66 must comply with any summons or requirement of an inquiry chairperson under the *Commissions of Inquiry Act 1950*, section 5.

(3) For the *Commissions of Inquiry Act 1950*, section 5, 10(4) or 14(1)(b), it is not a reasonable excuse for the commission or anyone else to fail to comply with the summons or requirement—

- (a) that compliance would disclose anything that is required not to be disclosed under this Act or would otherwise contravene this Act; or
- (b) that compliance would disclose anything that should not be disclosed because of its particular nature, content or subject matter.

(4) This section—

- (a) applies only for the purpose of a commission within the meaning of the *Commissions of Inquiry Act 1950*, section 3; and
- (b) applies despite another provision of this or another Act.

(5) In this section—

“inquiry chairperson” means the chairperson of a commission within the meaning of the *Commissions of Inquiry Act 1950*, section 3.

132B Provisions for CJC inquiry

(1) This section applies to the inquiry established under the *Commissions of Inquiry Act 1950* under the order in council published in the gazette on 7 October 1996 at pages 475 and 476 (the **“CJC inquiry”**).

(2) A person is not liable, civilly, criminally or under an administrative process for helping the CJC inquiry.

(3) Without limiting subsection (2)—

- (a) in a proceeding for defamation the person has the defence of absolute privilege for disclosing anything in good faith to the CJC inquiry; and
- (b) if the person would otherwise be required under an Act, oath, rule of law or practice to maintain confidentiality about anything disclosed by the person to the CJC inquiry—the person—
 - (i) does not contravene the Act, oath, rule of law or practice for making the disclosure; and
 - (ii) is not liable to disciplinary action for making the disclosure.

(4) A person must not, other than for the CJC inquiry or as required by law, disclose information that comes to the person's knowledge because the person is, or was—

- (a) a commissioner of the CJC inquiry; or
- (b) a person appointed, engaged or seconded to help the inquiry or who otherwise helped the inquiry.

(5) Nothing in this section derogates from the Parliamentary privileges attaching to Parliamentary Committees and their deliberations.

132C Protection of Carruthers Inquiry

(1) Sections 132A and 132B and the *Commissions of Inquiry Act 1950* apply subject to this section.

(2) The CJC inquiry must not take any action that has the effect of hindering the deliberations of the Carruthers Inquiry, including the completion of a report for the Carruthers Inquiry.

(3) Without limiting the generality of subsection (2), the CJC inquiry must not during the deliberations of the Carruthers Inquiry—

- (a) summons a person involved in the conduct of the Carruthers Inquiry to give evidence about the Carruthers Inquiry or about information, or anything else, in the person's possession because of the Carruthers Inquiry's deliberations or use of its powers; or
- (b) require any person involved in the conduct of the Carruthers Inquiry to disclose information, or produce anything, in the

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person's possession because of the Carruthers Inquiry's deliberations or use of its powers; or

- (c) search for or seize anything in the possession of the Carruthers Inquiry, or a person involved in the conduct of the Carruthers Inquiry, because of the Carruthers Inquiry's deliberations or use of its powers.

(4) The commencement of this section does not make a person liable civilly, criminally or under an administrative process, if the person would not be so liable if this section had not commenced, for anything done by the person in relation to the Carruthers Inquiry under sections 132A and 132B or the *Commissions of Inquiry Act 1950* after the commencement of the *Criminal Justice Legislation Amendment Act 1996* and before the Bill for the *Carruthers Inquiry Enabling Act 1996* was passed by the Legislative Assembly.

(5) In this section—

“Carruthers Inquiry” means—

- (a) the Criminal Justice Commission's inquiry that the Honourable Kenneth Carruthers QC has been appointed to conduct including—
 - (i) the inquiry into circumstances of the execution of a memorandum of understanding purported to be signed by the Honourable Robert Borbidge, then Leader of the Opposition, the Honourable Russell Theo Cooper, the coalition spokesman for Police, Corrective Services and Racing, and Sergeant Gary Wilkinson, President, Queensland Police Union of Employees; and
 - (ii) the investigation into circumstances relating to a letter dated 13 July 1995 purported to be signed by the then Premier, the Honourable W.K. Goss and addressed to Sporting Shooters of Australia (Queensland) Incorporated; or
- (b) the Criminal Justice Commission's inquiry mentioned in paragraph (a) conducted by someone appointed by the Criminal Justice Commission to continue the inquiry after the resignation of the Honourable Kenneth Carruthers QC or anyone else appointed by the Criminal Justice Commission to conduct the inquiry.

“CJC inquiry” means the CJC inquiry into the Criminal Justice Commission mentioned in section 132B(1).

“**person involved**”, in the conduct of the Carruthers Inquiry, includes a person helping the Carruthers Inquiry.

133 Resisting exercise of powers

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.

134 Commission notices to be obeyed

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.

135 Offence to disregard commission summons

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.

136 Frivolous or vexatious complaint

(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.

137 False complaints or information

(1) A person must not wilfully—

- (a) make, or cause to be made, a false complaint to the commission; or
- (b) otherwise give, or cause to be given, 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.

138 General offence provisions

(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

139 Act binds Crown

This Act binds the Crown.

139A Delegation by commission

The commission may delegate the commission's powers under 1 or more of the following provisions to the chairperson—

- section 19(4)
- section 29(3)(h)
- section 64(3)
- section 67(2).²⁵

140 Delegation by chairperson

(1) The chairperson may delegate the chairperson's powers under this Act or the *Police Powers and Responsibilities Act 2000*, chapter 11, part 2 (other than section 345(1)(c)), to a director of the commission.

(2) The chairperson may delegate the chairperson's powers under section 97(6)²⁶ to an officer of the commission.

25 Section 19 (Divisions of commission)

Section 29 (Role and functions)

Section 64 (Employment by commission)

Section 67 (Officers of commission)

26 Section 97 (Custody of material seized or produced)

141 Appointment to act as director

(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.

142 Register of interests

(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.

143 Proof of commission actions

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 of the matters contained in the certificate.

144 Service of documents

(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.

145 Proof of service

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.

146 Authority to administer oaths etc.

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

147 Commission's budget

(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.

147A Application of Financial Administration and Audit Act 1977

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.

147B Commission to give financial information to the Minister

(1) If asked by the Minister, the commission must give the Minister the details of the proposed and actual expenditure of the commission set out in the request.

(2) However, subsection (1) does not require the commission to give the Minister any details that would, if given, prejudice a current sensitive operation of or investigation by the commission.

148 Regulation making power

(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.

PART 8—TRANSITIONAL PROVISIONS**149 Transitional provision for Criminal Justice Legislation Amendment Act 1997**

Despite the commencement of the *Criminal Justice Legislation Amendment Act 1997*, section 11, any division of the commission in existence before the commencement continues to exist (and continues to have the functions and powers the division had immediately before the commencement) until the commission decides otherwise.

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 26 October 2001. 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

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	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
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman 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
3A	to Act No. 2 of 1996	8 August 1996
3B	to Act No. 55 of 1996	17 January 1997
3C	to Act No. 17 of 1997	4 July 1997
3D	to Act No. 61 of 1997	1 April 1998
3E	to Act No. 68 of 1997	28 April 1998
4	to Act No. 68 of 1997	29 May 1998
4A	to Act No. 33 of 1999	8 October 1999
5	to Act No. 16 of 2000	7 July 2000
5A	to Act No. 63 of 2000	9 February 2001
5B	to Act No. 63 of 2000	16 March 2001
5C	to Act No. 2 of 2001	1 June 2001

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

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Corrected minor errors	1, 4
Obsolete and redundant provisions	2, 3
Renumbered provisions	1, 2, 3, 4

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, 111–18, 125–9, 132–3, 138–43 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 (No. 2) 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

District Courts Legislation Amendment Act 1996 No. 32 pts 1, 3

date of assent 18 September 1996

commenced on date of assent

Criminal Justice Legislation Amendment Act 1996 No. 34 pts 1–2

date of assent 15 October 1996

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Carruthers Inquiry Enabling Act 1996 No. 55 ss 1–2, pt 2

date of assent 20 November 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 15 October 1996 (see s 2 and 1996 No. 34)

Miscellaneous Acts (Non-bank Financial Institutions) Amendment Act 1997 No. 17 ss 1–2, 74 sch

date of assent 15 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 163)

Misconduct Tribunals Act 1997 No. 59 ss 1–2, 48 sch 1

date of assent 5 November 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 8 December 1997 (1997 SL No. 417)

Criminal Justice Legislation Amendment Act 1997 No. 61 pts 1–2 (as amd 1997 No. 68 ss 1–2, pt 15 commenced 3 April 1998 (1998 SL No. 70))

date of assent 5 November 1997

ss 1–2 commenced on date of assent

s 34 commenced 6 November 1998 (automatic commencement under AIA s 15DA(2))

remaining provisions commenced 8 December 1997 (1997 SL No. 416)

Crime Commission Act 1997 No. 68 ss 1–2, pt 12

date of assent 1 December 1997

ss 1–2 commenced on date of assent

ss 134, 136–139 commenced 15 May 1998 (1998 SL No. 70)

remaining provisions commenced 3 April 1998 (1998 SL No. 70)

Corrective Services Legislation Amendment Act 1999 No. 9 pt 1 sch

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 1999 (1999 SL No. 72)

Police Powers and Responsibilities and Other Acts (Registers) Amendment Act 1999**No. 22 ss 1–2, 3(2) sch**

date of assent 30 April 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 11 June 1999 (1999 SL No. 106)

Industrial Relations Act 1999 No. 33 ss 1, 2(2), 747 sch 3

date of assent 18 June 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1999 (1999 SL No. 159)

Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev 373) sch 3 (as amd 2000 No. 22 ss 1, 28 (as from 23 June 2000))

date of assent 23 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

Mental Health Act 2000 No. 16 ss 1–2, 590 sch 1 pt 2

date of assent 8 June 2000

ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions not yet proclaimed into force (automatic commencement under AIA s 15DA(2) deferred to 8 June 2002 (2001 SL No. 46 s 2))

Witness Protection Act 2000 No. 56 ss 1–2, 52 sch 1

date of assent 17 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 9 March 2001 (2001 SL No. 7)

Commission for Children and Young People Act 2000 No. 60 ss 1–2, 175 sch 3

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 2 February 2001 (2001 SL No. 1)

Corrective Services Act 2000 No. 63 ss 1, 2(2), 276 sch 2

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (2001 SL No. 88) (remaining provisions were to commence 2 April 2001 but the commencing proclamation (2000 SL No. 335) was repealed (2001 SL No. 23))

Parliamentary Committees and Criminal Justice Amendment Act 2001 No. 2 pts 1, 3

date of assent 3 May 2001

commenced on date of assent

Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

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

amd 1997 No. 59 s 48 sch 1; 1997 No. 61 s 4; 1997 No. 68 s 134

Definitions**prov hdg**

sub 1995 No. 58 s 4 sch 1

s 3

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 schdef “**chairperson**” ins 1993 No. 75 s 2 schdef “**chief officer**” ins 1993 No. 75 s 3def “**commission**” sub 1997 No. 61 s 5(1)–(2)def “**delegate**” om 1993 No. 75 s 2 schdef “**Minister**” om 1993 No. 75 s 2 schdef “**monitor**” ins 1997 No. 68 s 135def “**parliamentary commissioner**” ins 1997 No. 61 s 5(2)def “**parliamentary committee**” sub 1995 No. 38 s 35 sch 1; 1996 No. 2 s 10def “**premises**” amd 1993 No. 75 s 2 schdef “**principal officer**” amd 1997 No. 61 s 5(3)–(4)def “**record**” amd 1993 No. 75 s 2 schdef “**statutory declaration**” om 1993 No. 75 s 2 schdef “**unit of public administration**” ins 1997 No. 61 s 5(8)

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s 3A amd 1993 No. 75 s 2 sch; 1997 No. 61 s 5(5)–(6)
 reloc as s 3A 1997 No. 61 s 5(7)
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Division 1—Establishment and membership of commission

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s 6 amd 1993 No. 75 s 5; 2001 No. 45 s 29 sch 3

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s 7 ins 1993 No. 75 s 6

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

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s 10 amd 1990 No. 1 s 5; 1991 No. 44 s 5; 1993 No. 75 s 2 sch; 1997 No. 61 s 6

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; 1997 No. 61 s 7

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

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 2000 No. 16 s 590 sch 1 pt 2

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

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s 16A ins 1997 No. 61 s 10

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s 16B ins 1997 No. 61 s 10

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s 33 amd 1992 No. 16 s 4; 1993 No. 75 ss 13, 2 sch; 1994 No. 24 s 3(1) sch; 1997
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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 61 sub 2000 No. 56 s 52 sch 1

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s 62 amd 1993 No. 75 s 2 sch
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om 2000 No. 56 s 52 sch 1

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div hdg (prev div 11) renum 1997 No. 59 s 48 sch 1

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s 67 amd 1993 No. 75 s 2 sch; 1997 No. 61 s 29

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s 76 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 79 amd 1993 No. 75 s 2 sch; 1997 No. 59 s 48 sch 1

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s 80 amd 1993 No. 75 s 2 sch; 1997 No. 68 s 140; 2000 No. 5 s 373 sch 3; 2000 No. 63 s 276 sch 2

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s 82 amd 1993 No. 75 s 2 sch; amd 1997 No. 68 s 140

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s 83 amd 1993 No. 75 s 2 sch

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sub 1997 No. 61 s 34

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s 92 amd 1993 No. 75 s 19; 1997 No. 59 s 48 sch 1

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s 93 ins 1993 No. 75 s 20

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s 94 amd 193 No. 75 s 2 sch; 1997 No. 59 s 48 sch 1; 1997 No. 61 s 35

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

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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; 1997 No. 61 s 36

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s 99 amd 1993 No. 75 s 2 sch

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s 103 amd 1990 No. 79 s 10; 1993 No. 75 s 2 sch; 1997 No. 61 s 38; 2000 No. 56 s 52 sch 1

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s 104 ins 1990 No. 79 s 10
amd 1997 No. 59 s 48 sch 1; 1999 No. 33 s 747 sch 3

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s 118C ins 1997 No. 61 s 41

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s 118E ins 1997 No. 61 s 41

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s 118F ins 1997 No. 61 s 41

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s 118J ins 1997 No. 61 s 41

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s 118K ins 1997 No. 61 s 41

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s 118L ins 1997 No. 61 s 41

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s 118M ins 1997 No. 61 s 41

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s 118N ins 1997 No. 61 s 41
amd 2000 No. 16 s 590 sch 1 pt 2

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s 118P ins 1997 No. 61 s 41

Administrative and support services for parliamentary commissioner

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9 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act, 1992, s 5(c)).

Mental Health Act 2000 No. 16 s 590 sch 1 pt 2 reads as follows—

CRIMINAL JUSTICE ACT 1989

1. Section 14(7)(c)—

omit.

2. Section 81(2)—

omit, insert—

‘(2) If the attendance of an involuntary patient detained in an authorised mental health service before the commission is required, the chairperson may, by signed notice served on the administrator of the health service, direct the administrator to produce the patient at the time and place stated in the direction.’.

3. Section 81(3), ‘hospital’—

omit.

4. Section 81(4)—

omit, insert—

‘(4) The general manager or administrator must comply with the direction.’.

5. Section 81(5), definitions “hospital administrator” and “patient”—

omit.

6. Section 81(5)—

insert—

‘**“administrator”**, of an authorised mental health service, see the *Mental Health Act 2000*, schedule 2.²⁷

“authorised mental health service” see the *Mental Health Act 2000*, schedule 2.²⁸

“involuntary patient” see the *Mental Health Act 2000*, schedule 2.²⁹.

7. Section 118N(c)—

omit.

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27 For the declaration of administrators of authorised mental health services, see the *Mental Health Act 2000*, section 497 (Declaration of administrators of authorised mental health services and high security units).

28 For the declaration of health services providing treatment and care of people having mental illnesses to be authorised mental health services, see the *Mental Health Act 2000*, section 495 (Declaration of authorised mental health services).

29 *Mental Health Act 2000*, schedule 2 (Dictionary)—

“involuntary patient” means a person—

- (a) who is, or is liable to be, detained, under chapter 2, part 4, in an authorised mental health service for assessment; or
- (b) for whom an involuntary treatment order is in force; or
- (c) who is a classified or forensic patient.