

CRIMINAL JUSTICE ACT

No. 111 of 1989

ANALYSIS OF CONTENTS

PART I—PRELIMINARY

- 1.1 Short Title
- 1.2 Commencement
- 1.3 Objects of Act
- 1.4 Interpretation
- 1.5 Independence of holders of judicial office

PART II—CRIMINAL JUSTICE COMMISSION

Division 1—Establishment of Commission

- 2.1 Constitution of Commission
- 2.2 Membership of Commission
- 2.3 Qualifications for appointment to Commission
- 2.4 Disqualifications for appointment to Commission
- 2.5 Selection for appointment of Chairman
- 2.6 Appointment of members
- 2.7 Appointment of acting members
- 2.8 Tenure of office
- 2.9 Casual vacancy in membership
- 2.10 Proceedings of Commission
- 2.11 Remuneration of Commissioners

Division 2—Organizational Structure of Commission

- 2.12 Divisions of Commission
- 2.13 Function, jurisdictions etc.

Division 3—Functions and Responsibilities of Commission

- 2.14 Functions
- 2.15 Responsibilities
- 2.16 Role of Commission members
- 2.17 Commission hearings
- 2.18 Commission's reports
- 2.19 Commission's report on court procedures and confidential matters
- 2.19.1 Commission's report insufficient for judge's removal from Supreme Court

Division 4—Official Misconduct Division

- 2.20 Role and functions
- 2.21 Qualification of Director
- 2.22 Official misconduct
- 2.23 General nature of official misconduct
- 2.24 Reports of Division
- 2.25 Judicial review of Division's activities
- 2.26 Effect of further factors on order

Division 4A—Complaints Section

- 2.27 Establishment of section
- 2.28 Referral of matter to Section
- 2.29 Functions
- 2.30 Principal officer's duty upon Director's report of official misconduct

Division 5—Misconduct Tribunals

- 2.31 Tribunals constituted as required
- 2.32 Panel of Tribunal members
- 2.33 Term of appointment to panel
- 2.34 Remuneration for constituting Tribunal
- 2.35 Constitution of Tribunals
- 2.36 Jurisdiction
- 2.37 Tribunal's original jurisdiction exclusive
- 2.38 Appeal from Tribunal in original jurisdiction
- 2.39 Review of decisions on disciplinary charges

Division 5A—Procedures and Powers of Misconduct Tribunals

- 2.40 Proceedings in original jurisdiction
- 2.41 Proceedings in appellate jurisdiction
- 2.42 Director's duty following initiation of proceedings
- 2.43 Conduct of proceedings
- 2.44 Powers of Tribunals

Division 6—Research and Co-ordination Division

- 2.45 Role and functions
- 2.46 Liaison with other agencies

Division 7—Intelligence Division

- 2.47 Role and functions
- 2.48 Relinquishment of data of Commission of Inquiry
- 2.49 Duty to inform of criminal intelligence

Division 8—Witness Protection Division

- 2.50 Meaning of "witness protection"
- 2.51 Role and functions
- 2.52 Access to register

Division 9—Staff of Commission

- 2.53 Employment by Commission
- 2.54 Use of officers
- 2.55 Engagement of services
- 2.56 Officers of Commission
- 2.57 Superannuation

PART III—INVESTIGATIONS

Division 1—Powers to Assist the Collection or Presentation of Information

- 3.1 Notice to discover information
- 3.2 Entry of public premises
- 3.3 Warrant to enter, search and seize
- 3.4 Provisions re execution of warrant
- 3.5 Authority to seize other records or things
- 3.6 Summons to procure evidence
- 3.7 Restriction on exercise of authority under ss. 3.1 and 3.6 (1)
- 3.8 Obligation of person served with summons
- 3.9 Claim of privilege
- 3.10 Procedure upon claim of privilege
- 3.11 Apprehension of witness
- 3.12 Authority of and procedure relevant to warrant under s. 3.11
- 3.13 Attendance of prisoner or patient before Commission
- 3.14 Authority to use listening devices
- 3.15 Use of information disclosed by listening device
- 3.16 Further powers of officers of Commission

Division 2—Procedures for Taking Evidence

- 3.17 Application
- 3.18 Proceedings unaffected by personnel changes
- 3.19 Continuing duty to attend
- 3.20 Prohibition of publication of evidence
- 3.21 Commission not bound by rules or practice
- 3.22 Obligation to adduce evidence
- 3.23 Examination before Commission
- 3.24 Use of incriminating evidence against witness
- 3.25 Recoupment of witnesses

Division 3—Custody, Disposal and Inspection of Material in Commission's Possession

- 3.26 Custody of material seized or produced
- 3.27 Inspection of material in Commission's custody
- 3.28 Restricted access to Commission's material

Division 4—Protection and Reimbursement of Persons Associated with Commission

- 3.29 Immunities in conduct of proceedings
- 3.30 Protection from liability
- 3.31 Disclosure to Commission not breach of confidence
- 3.32 Personal protection for witnesses etc.
- 3.33 Reimbursement for assistance

Division 5—Contempt of Commission

- 3.34 Conduct constituting contempt
- 3.35 Punishment of contempt
- 3.36 General provisions re contempt
- 3.37 Conduct that is contempt and offence
- 3.38 Meaning of "offender"

PART IV—PARLIAMENTARY COMMITTEE

Division 1—Constitution and Membership

- 4.1 Constitution
- 4.2 Composition
- 4.3 Application of Standing Rules and Orders
- 4.4 Term of Committee
- 4.5 Casual vacancies
- 4.6 Quorum in particular case
- 4.7 Meeting times

Division 2—Functions and Powers of Parliamentary Committee

- 4.8 Functions and powers

PART V—SUPREME COURT APPLICATIONS

- 5.1 Applications under Parts II and III generally
- 5.2 Application pursuant to section 2.25
- 5.3 Application pursuant to s. 3.7
- 5.4 Application pursuant to section 3.9
- 5.5 Application pursuant to s. 3.14
- 5.6 Application pursuant to s. 3.16

PART VI—OFFENCES

- 6.1 Application of Criminal Code
- 6.2 Impersonating officer of Commission
- 6.3 Abuse of office in Commission
- 6.4 Bribery of holder of office in Commission
- 6.5 Obstruction or delay of Commission procedures
- 6.6 Injury or detriment to witness
- 6.7 Confidentiality to be maintained
- 6.8 Resisting exercise of powers
- 6.9 Commission notices to be obeyed
- 6.10 Offence to disregard Commission summons
- 6.11 Frivolous or vexatious complaint
- 6.12 General offence provisions

PART VII—MISCELLANEOUS PROVISIONS

- 7.1 Act binds Crown
- 7.2 Delegation of Chairman
- 7.3 Register of interests
- 7.4 Proof of Commission actions
- 7.5 Service of Documents
- 7.6 Proof of service
- 7.7 Authority to administer oaths etc.
- 7.8 Commission's budget
- 7.9 Audit
- 7.10 Annual report of Commission
- 7.11 Regulations

Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 111 of 1989

**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**

[ASSENTED TO 31ST OCTOBER, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

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

1.2 Commencement. (1) Section 1.1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided in subsection (1), the provisions of this Act or such of them as are specified in the Proclamation shall commence on the day or days appointed by Proclamation in respect of those provisions.

1.3 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;
 - (iii) to investigate the incidence of organized or major crime;
 - (iv) to take measures to combat organized or major crime for an interim period;
 - (v) to investigate complaints of official misconduct referred to the body and to secure the taking of appropriate action in respect of official misconduct;
 - (vi) to hear and determine disciplinary charges of official misconduct in prescribed circumstances;
 - (vii) to discharge such functions and responsibilities as are incidental to or in aid of discharge of the functions and responsibilities referred to in the foregoing provisions of this section;
- and
- (b) to provide for the establishment and maintenance of a Parliamentary body to inform the Legislative Assembly on the activities referred to in paragraph (a) and on matters pertinent thereto.

1.4 Interpretation. (1) In this Act, except where a contrary intention appears—

- “Chairman” means the Chairman of the Criminal Justice Commission constituted by this Act and includes any Commissioner who, in accordance with this Act, discharges the duties, or exercises the authorities, of the Chairman;
- “Commission” means the Criminal Justice Commission constituted by this Act and includes every organizational unit within the structure of the Commission;
- “Commissioner” means any member of the Commission including the Chairman;

- “Commission of Inquiry” means the Commission within the meaning of the *Commissions of Inquiry Act 1950-1989* 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;
- “delegate” means a person to whom a power or authority of the Chairman has been delegated by a delegation that subsists made under section 7.2;
- “investigate” includes examine and consider;
- “legal practitioner” means a barrister or solicitor of the Supreme Court;
- “Minister” includes a Minister of the Crown temporarily performing the duties of the Minister;
- “Parliamentary Committee” means the Parliamentary Criminal Justice Committee referred to in Part IV;
- “premises” includes any land, structure, vehicle, vessel, aircraft or place, and all parts thereof;
- “principal officer” does not include—
- (a) a judge of, or other person holding judicial office in, the Supreme Court;
 - (b) a judge of District Courts;
- or
- (c) a person holding judicial office in any other court, in his 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 therefrom, 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;
- “statutory declaration” means a declaration under and in accordance with the *Oaths Act 1867-1988*;
- “unit of public administration” means—
- (a) the Legislative Assembly, and the Parliamentary Service;
 - (b) the Executive Council;
 - (c) every department of the Public Service of Queensland within the meaning of the *Public Service Management and Employment Act 1988*;
 - (d) the Police Force;
 - (e) the Railway Department;
 - (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;

- (g) every non-corporate 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;
- (h) the courts of the State of whatever jurisdiction, and the registries and other administrative offices thereof.

(2) For the purposes of this Act, a person holds an appointment in a unit of public administration if he holds any office, place or position therein, whether his appointment thereto is by way of election or selection.

1.5 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 II—CRIMINAL JUSTICE COMMISSION

Division 1—Establishment of Commission

2.1 Constitution of Commission. (1) There is hereby constituted a corporation called the “Criminal Justice Commission”, having perpetual succession and an official seal.

(2) Judicial notice shall be taken of the official seal of the Commission, and all courts and persons acting judicially shall presume the official seal affixed to any document to have been duly affixed until the contrary is proved.

2.2 Membership of Commission. (1) The Commission consists of five members qualified as prescribed, being a Chairman and four other members, appointed by the Governor-in-Council on the recommendation of the Minister, by notification published in the *Gazette*.

(2) Appointment of the Chairman shall be on a full-time basis.

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

2.3 Qualifications for appointment to Commission. (1) The Chairman 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;
 - (b) the Supreme Court of any other State or of a Territory of the Commonwealth;
 - (c) the High Court of Australia;
 - or
 - (d) the Federal Court of Australia.
- (2) Of the other members of the Commission—
- (a) one 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) three shall be persons who have demonstrated an interest and ability in community affairs, of whom at least one has proven senior managerial experience in a large organization.

2.4 Disqualifications for appointment to Commission. A person is disqualified for appointment as a member of the Commission if the person—

- (a) holds any judicial appointment;
- (b) is a member of the Legislative Assembly or the Executive Council;
- (c) holds the appointment, Director of Prosecutions;
- (d) is a member of the Police Force, or has been such a member within the five years preceding the time at which his qualification for such appointment arises;
- (e) holds an appointment in a unit of public administration or on the staff of a Minister of the Crown;
- or
- (f) is a member, appointed by the Governor-in-Council, of a statutory body (other than a person entitled to such membership *ex officio*), or a servant of a statutory body.

2.5 Selection for appointment of Chairman. (1) With a view to his selection of a person for recommendation for appointment as Chairman, the Minister shall cause notification of his intention to make such selection to be advertised nationally, calling for applications from suitably qualified persons to be considered for selection.

(2) Before proceeding to a selection of any person for recommendation for appointment as Chairman, 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 five members.

(3) Where consultation is had under subsection (2) with the Parliamentary Committee, a person shall not be recommended for appointment as Chairman unless his appointment is supported by the members of the committee, unanimously or by a majority thereof, other than a majority consisting wholly of members of the political party or parties in Government in the Assembly.

(4) It is declared that the advertisement nationally of a notification such as is referred to in subsection (1) before the commencement of this section is a sufficient compliance with that subsection for the purpose of the initial appointment of Chairman, and that subsection shall not be construed to require a further advertisement of such notification for that purpose.

2.6 Appointment of members. (1) Appointment of the Chairman shall be made independently of the appointment of other members of the Commission.

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

(3) After consulting with the Chairman, the Minister shall comply with section 2.5 (2).

The provisions of section 2.5 (2) and (3) apply in relation to the appointment of other members of the Commission as they apply in relation to the appointment of Chairman.

(4) For the purpose of selecting a person of the description specified in paragraph (a) of section 2.3 (2) to be recommended for appointment to the Commission, the Minister shall request each of them—

(a) The Bar Association of Queensland;

and

(b) The Queensland Law Society,

to nominate two persons having appropriate qualifications.

(5) Subject to subsection (3), the person to be recommended for appointment as the member of the Commission of the description specified in paragraph (a) of section 2.3 (2), shall be selected from the panel so nominated.

(6) If at any time when appointment is to be made of a member of the Commission of the description specified in paragraph (a) of section 2.3 (2) 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 recommended for such appointment may be made as prescribed by subsections (2) and (3) without further reference to the prescribed association or society.

The person so selected shall be deemed to have been duly nominated and, if he is qualified as prescribed, his appointment shall be taken to be in accordance with this section.

2.7 Appointment of acting members. (1) If a Commissioner is temporarily absent from the State or is suffering an incapacity, the Governor-in-Council may appoint, by notification published in the *Gazette*, a person to act as a Commissioner (including as Chairman) in his stead during such temporary absence or such incapacity.

(2) A person appointed to act in the stead of a Commissioner shall, as far as possible, have a similar qualification to that of the Commissioner in whose stead he is to act and while he so acts, is a member of the Commission having the duties and authorities of the Commissioner in whose stead he is acting.

(3) Section 2.5 does not apply in relation to an appointment under subsection (1) of a person to act in the Chairman's stead.

(4) Section 2.6 (4) or (5) does not apply in relation to an appointment under subsection (1) of a person to act in the stead of the Commissioner of the description specified in paragraph (a) of section 2.3 (2).

2.8 Tenure of office. (1) The first Chairman of the Commission shall be appointed for a term not less than two years and not more than three years.

(2) Subject to subsection (1), a Commissioner shall be appointed for a term not less than two years and not more than five years.

(3) The first Chairman of the Commission is not eligible to be appointed for a further term as Chairman.

A subsequent Chairman of the Commission is not eligible to be appointed for a further term as Chairman if the aggregate of his terms as Chairman would exceed five years.

(4) Subject to subsection (3), a Commissioner is eligible for re-appointment to the Commission, if he remains qualified as prescribed and the requirements of this Division are met.

(5) The office of a Commissioner becomes vacant if the Commissioner—

- (a) dies;
- (b) resigns his office by writing signed by him and given to the Minister;
- (c) becomes a patient within the meaning of the *Mental Health Services Act 1974-1989*;
- (d) becomes disqualified for appointment as a member of the Commission as prescribed by section 2.4;
- (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 6.7;
- (f) is absent, without prior leave of absence granted by the Commission, from three consecutive meetings of the Commission of which due notice has been given to him;
- (g) is removed from office by the Governor upon the address of the Legislative Assembly approved by the Assembly consequent upon a recommendation of the Parliamentary Committee supported by all or a majority of that committee, being a majority other than one consisting wholly of members of the same political party in the Assembly.

2.9 Casual vacancy in membership. (1) Where a vacancy occurs in the office of a Commissioner during his term of office, the Governor-in-Council may appoint, by notification published in the *Gazette*, a person to that vacancy for the balance of the term of appointment of his predecessor to that office.

(2) A person appointed to a vacancy under subsection (1)—

- (a) if his appointment is to be as Chairman, shall have a qualification prescribed for the Chairman;
- (b) if his appointment is to be as any other member of the Commission, shall, as far as possible, have a similar qualification for appointment as his predecessor.

(3) Section 2.5 (1) does not apply in relation to an appointment to a vacancy under subsection (1) in the office of Chairman.

2.10 Proceedings of Commission. (1) The Chairman 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 Chairman determines.

(3) The Chairman shall preside at every meeting of the Commission at which he is present and in his absence the person who shall so preside is—

(a) the person appointed under section 2.7 to act in the Chairman's stead;

or

(b) if there be no such person as that referred to in paragraph (a), a Commissioner appointed for the purpose by the members of the Commission present at the meeting.

(4) 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 thereon.

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.

(5) 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.

(6) Conduct of meetings of the Commission shall be as prescribed by the regulations or, insofar as not so prescribed, as the Commission resolves from time to time.

2.11 Remuneration of Commissioners. (1) The Chairman 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—Organizational Structure of Commission

2.12 Divisions of Commission. (1) Within the Commission there shall be established, in the first instance, and maintained as organizational units the following Divisions and Tribunals—

(a) Official Misconduct Division;

(b) Misconduct Tribunals;

(c) Witness Protection Division;

(d) Research and Co-ordination Division;

(e) Intelligence Division.

(2) The Commission may from time to time—

(a) establish and maintain as part of the Commission any other organizational unit or units, if the Commission considers

the maintenance by the Commission of such unit or units to be necessary or desirable;

or

- (b) terminate any organizational unit maintained as part of the Commission, whether the unit is one prescribed by subsection (1) or is one established by the Commission under this subsection, if the Commission considers the maintenance by the Commission of such unit to be unnecessary or undesirable.

(3) An organizational unit established by the Commission under subsection (2)—

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

(4) Each Division of the Commission shall be under the control and direction of a Director who shall be directly responsible to the Chairman.

2.13 Functions, jurisdiction etc. (1) Each Division of the Commission has and shall discharge the functions and responsibilities, and may exercise the powers prescribed for it by this Act.

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

Division 3—Functions and Responsibilities of Commission

2.14 Functions. (1) The Commission shall—

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

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 thereon, shall 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.

(2) Subject to section 2.18, the Commission shall report to the Parliamentary Committee—

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

(3) The Commission shall monitor, review, co-ordinate 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.

2.15 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 offices of the Director of Prosecutions and of the Public Defender;
- (d) overseeing criminal intelligence matters and managing criminal intelligence with specific significance to major crime, organized crime and official misconduct;
- (e) researching, generating and reporting on proposals for reform of the criminal law and the law and practice relating to enforcement of, or administration of, criminal justice, including assessment of relevant initiatives and systems outside the State;
- (f) in discharge of such functions in the administration of criminal justice as, in the Commission's opinion, are not appropriate to be discharged, or cannot be effectively discharged, by the Police Force or other agencies of the State, undertaking—
 - (i) research and co-ordination of the processes of criminal law reform;
 - (ii) matters of witness protection;
 - (iii) investigation of official corruption in units of public administration;
 - (iv) investigation of organized or major crime.
- (g) monitoring the performance of the Police Force with a view

to ensuring that the most appropriate policing methods are being used, consistently with trends in the nature and incidence of crime, and to ensuring the ability of the Police Force to respond to those trends;

- (h) providing the Commissioner of Police 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 Force;
- (j) reporting regularly on the effectiveness of the administration of criminal justice, with particular reference to the incidence and prevention of crime (in particular, organized crime) and the efficiency of law enforcement by the Police Force;
- (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 Force;
- (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.

2.16 Role of Commission members. (1) Each member of the Commission shall, to the utmost extent that is practicable, play an active role within the field of his competence in advising and assisting the Chairman and staff of the Commission in relation to the proper discharge of the Commission's functions and responsibilities.

(2) Subject to section 2.17 (2), in discharging any of its functions or responsibilities or exercising any of its powers the Commission may be constituted by—

- (a) the Chairman alone, or, if the Chairman so elects, with one or more of the other Commissioners;
- or
- (b) one or more of the other Commissioners, if the Chairman so approves.

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

(2) When the Commission (other than a Misconduct Tribunal) is conducting a hearing for the purpose of discharging its functions or

responsibilities allotted to the Official Misconduct Division, it shall be constituted by—

- (a) the Chairman, alone or, if the Chairman so elects, with one or more of the other Commissioners;
- (b) the Director of the Official Misconduct Division;
- or
- (c) an officer of the Commission who is a legal practitioner, authorized by the Chairman for the purpose in a particular case.

(3) A Commissioner or other person conducting a hearing, any person nominated by him, or any justice may administer an oath or affirmation or take a statutory declaration required for the purposes of the Commission.

(4) A hearing of the Commission shall, as a general rule, be open to the public but if, having regard to the subject matter of the investigation, or the nature of the evidence expected to be given, the Commission considers it preferable, in the public interest, to conduct a closed hearing, it may do so.

(5) The Commission may—

- (a) appoint one of its officers who is a legal practitioner;
- or
- (b) engage the services of a legal practitioner,

to assist the Commission in the conduct of a hearing by the Commission.

2.18 Commission's reports. (1) Except as is prescribed or permitted by section 2.19, a report of the Commission, signed by its Chairman, shall be furnished—

- (a) to the chairman of the Parliamentary Committee;
- (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, he 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 (2), shall be tabled in the Legislative Assembly

on the next sitting day of the Assembly after it is received by him 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 referred to in section 7.10.

2.19 Commission's report on court procedures and confidential matter. (1) A report of the Commission relating to—

- procedures and operations of any court of the State;
- procedures and practices of the registry or administrative offices of any court of the State,

shall not be furnished as prescribed by section 2.18 but shall be furnished—

- (a) to the Chief Justice of the State, if the report deals with matters pertinent to the Supreme Court;
- (b) to the Chairman of District Courts, if the report deals with matters pertinent to District Courts;
- (c) to the judicial officer, or the principal such officer if there be more than one, in the court, or the system of courts, to which the matters dealt with in the report are pertinent.

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

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

2.19.1 Commission's report insufficient for judge's removal from Supreme Court. (1) A report of the Commission is not sufficient ground for an address of the Legislative Assembly for removal from office of a judge of the Supreme Court.

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

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

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

Division 4—Official Misconduct Division

2.20 Role and functions. (1) The Official Misconduct Division is the investigative unit within the Commission.

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

(2) It is the function of the Division—

- (a) to investigate the incidence of official misconduct generally in the State;
- (b) to further the investigative work carried out on behalf of the Commission of Inquiry continued in being by the *Commissions of Inquiry Continuation Act 1989*;
- (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;
- (d) to investigate all matters of complaint or information concerning suspected misconduct submitted to the Director of the Division by the Complaints Section of the Division pursuant to Division 4A;
- (e) to investigate all cases of—
 - (i) alleged or suspected misconduct by members of the Police Force;
 - 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 information from an anonymous source;
- (f) 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;
- (g) to give effect to the guidelines for operation of the Official Misconduct Division contained in the Report of the Commission of Inquiry;
- (h) to report as prescribed in relation to its investigations;
- (i) to perform such duties on behalf of the Commission as the Chairman directs.

(3) 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 removal from office;
- (b) shall be exercised by the Commission constituted by the Chairman;
- (c) shall be exercised in accordance with appropriate conditions and procedures settled in continuing consultations between the Chairman and the Chief Justice of the State.

2.21 Qualification of Director. The Director of the Official Misconduct Division shall be a legal practitioner.

2.22 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 2.23;
- (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;
 - (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 he is not the holder of an appointment in a unit of public administration may be official misconduct, if he 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.

2.23 General nature of official misconduct. (1) Official misconduct is—

- (a) conduct of a person, whether or not he 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 therein;
- (b) conduct of a person while he holds or held an appointment in a unit of public administration—
 - (i) that constitutes or involves the discharge of his functions or exercise of his powers or authority, as the holder of the appointment, in a manner that is not honest or is not impartial;

or

- (ii) that constitutes or involves a breach of the trust placed in him by reason of his holding the appointment in a unit of public administration;

or

- (c) conduct that involves the misuse by any person of information or material that he has acquired in or in connexion with the discharge of his functions or exercise of his powers or authority as the holder of an appointment in a unit of public administration, whether the misuse is for the benefit of himself 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;
- (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).

2.24 Reports of Division. (1) The Director of the Official Misconduct Division shall report on—

- (a) every investigation carried out by the Division;
- (b) every matter of complaint, or information, submitted to him by the Complaints Section of the Division.

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

- (a) the Director of Prosecutions, or other appropriate prosecuting authority, with a view to such prosecution proceedings as

the Director of Prosecutions or other authority considers warranted;

- (b) the Executive Director of the Commission with a view to a Misconduct Tribunal exercising jurisdiction in respect of the matter to which the report relates;
- (c) the Chief Justice of the State, if the report relates to conduct of a judge of, or other person holding judicial office in, the Supreme Court;
- (d) the Chairman of District Courts, if the report relates to conduct of a judge of District Courts;
- (e) the Chief Stipendiary Magistrate, if the report relates to conduct of a person holding judicial office in the system of Magistrates Courts or Children's Courts;
- (f) in a case to which paragraphs (c), (d) and (e) do not apply, the appropriate principal officer in a unit of public administration, with a view to disciplinary action being taken in respect of the matter to which the report relates.

(3) A report made to the Director of Prosecutions or the Executive Director of the Commission must contain, or be accompanied by, all relevant information known to the Official Misconduct Division, whether the information—

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

(4) Where a complaint of official misconduct or of misconduct has been furnished to the Complaints Section of the Division, the Director shall cause a response to be given to the complainant (if his identity and whereabouts are known to the Commission) that states—

- (a) if no action has been taken on the complaint, the reason for inaction;
- (b) if action has been taken on the complaint, what that action is, the reason that action is appropriate in the circumstances of the case and the result of that action, if it be known at the time of making the response.

2.25 Judicial review of Division's activities. A person who claims—

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

may make application to a judge of the Supreme Court for an order in the nature of a mandatory or restrictive injunction addressed to the Director of the Official Misconduct Division.

2.26 Effect of further factors on order. (1) An order made on an application under section 2.25 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 2.25 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 he thinks fit.

Division 4A—Complaints Section

2.27 Establishment of section. (1) Within the Official Misconduct Division there shall be established and maintained a Complaints Section.

(2) All complaints or information concerning misconduct to be brought to the notice of the Commission shall be furnished to the Complaints Section.

2.28 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 he suspects involve, or may involve, official misconduct—

- (a) the Parliamentary Commissioner for Administrative Investigations;
- (b) the principal officer (other than the Commissioner of Police) 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 Police to refer to the Complaints Section all complaints of, or matters involving, suspected misconduct by members of the Police Force, whether such complaints and matters arise within or from outside the Police Force.

(4) A person shall discharge the duty prescribed for him 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) whereupon any such duty shall be subject to the guidelines that relate to it.

(6) A person referred to in subsection (2) or (3) shall comply with the directions in writing of the Chairman, or his delegate, 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 therefrom.

2.29 Functions. Subject to any guidelines relating thereto, issued by the Commission, it is the function of the Complaints Section—

- (a) to assess the substance of all complaints and information concerning suspected misconduct furnished to it, including from anonymous sources, and of all matters involving suspected misconduct referred to it;
- (b) to summarily reject such complaints and information as appear to the chief officer of the Section to have been furnished frivolously or vexatiously;
- (c) to submit to the Director of the Official Misconduct Division all complaints, information, and matters not dealt with under paragraph (b), accompanied by observations of the chief officer of the Section—
 - (i) as to whether the complaint or information involves, or may involve, official misconduct;
 - and
 - (ii) as to what further action (if any) is necessary or desirable, if action is to be taken by the Commission in respect thereof.

2.30 Principal officer's duty upon Director's report of official misconduct. (1) Where the Director of the Official Misconduct Division reports to a principal officer of a unit of public administration that—

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

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

(2) In subsection (1) the expression "prescribed person" means—

- (a) a member of the Police Force;
- (b) a person who holds an appointment in a unit of public administration (other than the Police Force), which appointment or unit is for the time being declared by Order-in-Council to be subject to the jurisdiction of a Misconduct Tribunal.

(3) It is not competent to the Governor-in-Council to 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 5—Misconduct Tribunals

2.31 Tribunals constituted as required. There shall be constituted from time to time, as part of the Official Misconduct Division, one or more tribunals to be called Misconduct Tribunals having the jurisdiction prescribed by this Division of this Act.

2.32 Panel of Tribunal members. (1) For the purpose of constituting Misconduct Tribunals the Executive Director of the Commission shall establish and maintain a panel of three persons, at the least, who—

(a) have served, or are qualified for appointment, as a judge of—

(i) the Supreme Court of Queensland;

(ii) the Supreme Court of any other State or a Territory of the Commonwealth;

(iii) the High Court of Australia;

or

(iv) the Federal Court of Australia;

and

(b) hold no other office in any unit of public administration (other than an office held *ex officio*) or in the Commission.

(2) Persons to be appointed to the panel shall be nominated to the Minister by the Commission and shall be appointed as members of the panel by the Governor-in-Council, by notification published in the *Gazette*.

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

2.33 Term of appointment to panel. (1) A person shall be appointed to the panel for a term specified in his appointment, not exceeding in any case three years.

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

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

2.35 Constitution of Tribunals. (1) A Misconduct Tribunal—

(a) shall be constituted by one member of the panel nominated by the Chairman for the purpose of hearing and determining

a particular matter, or a group of matters, assigned to that Tribunal by the Chairman;

(b) may be constituted at any place in the State.

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

2.36 Jurisdiction. (1) Original jurisdiction is hereby conferred on every Misconduct Tribunal from time to time constituted—

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

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

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

(3) For the purposes of the exercise of jurisdiction of a Misconduct Tribunal a prescribed person is—

(a) a member of the Police Force;

(b) a person who holds an appointment in a unit of public administration (other than the Police Force), which appointment or unit is for the time being declared by Order-in-Council to be subject to the jurisdiction of a Misconduct Tribunal.

(4) It is not competent to the Governor-in-Council to 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.

2.37 Tribunal's original jurisdiction exclusive. (1) A disciplinary charge of official misconduct made against a prescribed person after the commencement of section 2.36 shall be heard and determined by a Misconduct Tribunal to the exclusion of authority conferred by law on any other person or tribunal to hear and determine at first instance disciplinary charges made against the prescribed person.

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

2.38 Appeal from Tribunal in original jurisdiction. (1) A person aggrieved by a decision of a Misconduct Tribunal exercising original jurisdiction may appeal therefrom, within 28 days from the date on which the decision is announced, to a Judge of the Supreme Court on one or more of the following grounds—

- (a) denial of natural justice;
- (b) error of law;
- (c) manifest excessiveness of penalty.

(2) An appeal may be instituted in accordance with the Rules of Court or, insofar as those rules do not provide, as directed by a Judge of the Supreme Court.

(3) If an appeal is allowed on a ground specified in subsection (1) (a) or (b), the judge may set aside the decision appealed from and may, in addition, remit the matter to the Misconduct Tribunal to be disposed of according to law, as he considers just.

(4) If an appeal on the ground specified in subsection (1) (c) is allowed, the Judge may quash the penalty order and may substitute such penalty as the Misconduct Tribunal is authorised to order and as he considers should have been ordered by the Misconduct Tribunal.

2.39 Review of decisions on disciplinary charges. (1) A person aggrieved by a decision in respect of a disciplinary charge of misconduct made against a prescribed person after the commencement of section 2.36 (other than a decision of a court or a Misconduct Tribunal) may seek a review of the decision by a Misconduct Tribunal.

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

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

Division 5A—Procedures and Powers of Misconduct Tribunals

2.40 Proceedings in original jurisdiction. A person may initiate a matter in the original jurisdiction of a Misconduct Tribunal by—

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

2.41 Proceedings in appellate jurisdiction. A person may initiate a matter in the appellate jurisdiction of a Misconduct Tribunal by—

- (a) lodging with the Director of the Official Misconduct Division, within 14 days from the date on which the decision to be

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

and

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

2.42 Director's duty following initiation of proceedings. Upon initiation of proceedings in the jurisdiction of a Misconduct Tribunal and, in the case of proceedings in original jurisdiction, upon receipt by the Director of a notification that the prescribed person concerned has been served as prescribed, the Director—

- (a) shall take all such steps as are necessary to secure the constitution of a Misconduct Tribunal to hear and determine the matter as soon as is practicable;

and

- (b) in the case of proceedings in appellate jurisdiction, shall take such steps as are necessary to obtain possession of all documents and exhibits (if any) relating to the decision, to which the appeal relates, and to the relevant charge.

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

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

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

The person constituting the Tribunal, a person nominated by him, or any justice may administer any oath or affirmation, or take any statutory declaration required by the Tribunal.

(3) A hearing of a Misconduct Tribunal shall be open to the public.

(4) A Misconduct Tribunal may conduct proceedings in exercise of its jurisdiction in the absence of the prescribed person concerned if—

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

(5) To the extent that this Division does not sufficiently provide, proceedings before a Misconduct Tribunal shall be conducted as directed by the Tribunal.

2.44 Powers of Tribunals. (1) In exercise of its original jurisdiction a Misconduct Tribunal may order one or more of the following sanctions—

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

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

(3) In exercise of its appellate jurisdiction, a Misconduct Tribunal may, by its order—

- (a) affirm the decision reviewed;
- (b) quash the decision reviewed;
- (c) vary the decision reviewed in such manner as the Tribunal considers just;

or

- (d) quash the decision reviewed and substitute such decision as the Tribunal considers should have been made at first instance,

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

(4) In proceedings initiated in either of its jurisdictions, a Misconduct Tribunal may, by its order, remit any matter to the Director of the Official Misconduct Division for the making of investigations, or further investigations, with a view to the taking of criminal proceedings, or for any other purpose, and may adjourn its proceedings until those investigations are completed.

Division 6—Research and Co-ordination Division

2.45 Role and functions. (1) The Research and Co-ordination Division is the unit within the Commission that will—

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

It will operate of its own initiative as well as in response to requests of other Divisions of the Commission.

(2) It is the function of the Division—

- (a) to co-ordinate and to develop systems and procedures for co-ordinating the activities of the Commission;
- (b) to define trends in criminal activity, in particular any trend to organized crime, to identify competing needs, and to establish priorities for allocation of resources for enforcement of the criminal law;
- (c) to develop compatible systems for, and to foster co-operation between, agencies for—
 - (i) law enforcement;
 - (ii) prosecution of offenders;
 - (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 Force and their supporting staff;
 - (g) to review the use and treatment by the Police Department of intelligence information concerning criminal activity, in particular when required by the Intelligence Division to do so;
 - (h) to prepare for the Commission reports, and suggested directions to the Commissioner of Police, 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 Chairman, as the Director of the Division thinks appropriate, or as required by the Chairman, on the discharge of the Division's functions with a view to alerting the Commission and aiding the Commission's determinations.

2.46 Liaison with other agencies. (1) In discharge of its functions, the Division shall liaise with, and co-ordinate its activities with those of, departments of government of the State 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 thereof) 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

2.47 Role and functions. (1) The Intelligence Division is the unit within the Commission to function as a professional and specialist criminal intelligence unit providing an effective criminal intelligence

service as the hub about which an integrated approach to major crime, in particular—

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

may be structured.

(2) It is the function of the Intelligence Division—

- (a) to build up a data base of intelligence information concerning criminal activities and persons concerned therein, using for the purpose information acquired by it from—
 - (i) its own operations;
 - (ii) the Official Misconduct Division of the Commission;
 - (iii) the Police Force of the State;
 - (iv) sources of the Commonwealth or any State or Territory of the Commonwealth, which supplies such information to it;
 - (v) any other source available to it,
 and to disseminate such information to such persons, authorities and agencies, and in such manner, as the Commission considers appropriate to the discharge of its functions and responsibilities;
- (b) to assume possession and control of all data and records of the Commission of Inquiry continued in being by the *Commission of Inquiry Continuation Act 1989*;
- (c) to secure such data base and records in its possession and control so that only persons who satisfy the Director of the Intelligence Division or the Chairman that they have a legitimate need of access to the same are able to have access thereto;
- (d) subject to the direction of the Commission, to assume or, as the case may be, oversee—
 - (i) the performance of the role of the Bureau of Criminal Intelligence of the State, being part of the Police Department;
 - and
 - (ii) the Police Department's liaison with law enforcement agencies of the Commonwealth or any State or Territory of the Commonwealth and with the National Crime Authority;
- (e) subject to the Commission's approval, to report to the Minister and the Minister of the Crown responsible for the Police Force on matters of criminal intelligence pertinent to the deliberations, policies and projects of the Government.

2.48 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 *Commissions of Inquiry Continuation Act 1989* shall, upon his receiving a request in writing of the Chairman or his delegate to do so, deliver possession and control of that data and those records to the Director of the Intelligence Division.

The acknowledgement 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.

(2) 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 sections 20 and 21 of the *Special Prosecutor Act 1988* apply (subject to all necessary adaptation) as if—

- (a) the Commission of Inquiry therein referred to were the Commission constituted by this Act;
and
- (b) the Chairman therein referred to were the Chairman under this Act.

2.49 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 Police,

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 Force as is requested by the Chairman to be conveyed forthwith to the Director of the Intelligence Division of the Commission.

Division 8—Witness Protection Division

2.50 Meaning of “witness protection”. In this Division the expression “witness protection” means protection of the personal safety of a person who—

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

2.51 Role and functions. (1) The Witness Protection Division is the unit within the Commission directly responsible for providing

witness protection to persons who, in the opinion of the Chairman, following consultation with the Director of the Division, are in need of it.

- (2) It is the function of the Division—
- (a) to provide witness protection through officers of the Division to persons who are considered, as prescribed by subsection (1), to be in need of it by reason that they have assisted the Commission or a law enforcement agency of the State in the discharge of its functions and responsibilities;
 - (b) to provide, to persons receiving witness protection, facilities and means whereby they may assume new identities and may be relocated and re-established in employment or business, if in the opinion of the Chairman, such facilities or means are necessary;
 - (c) to devise methods whereby witness protection may be provided adequately to persons generally or in particular cases;
 - (d) to devise programs for training, and to train personnel, whether officers of the Division or not, for the duties involved in providing witness protection;
 - (e) to accurately maintain a register of the factual particulars and the assumed particulars of persons who have assumed new identities for the purpose of witness protection provided to them;
 - (f) to advise the Minister and the Commission in relation to arrangements with authorities of the Commonwealth and the other States and the Territories of the Commonwealth, with a view to the establishment and operation of a national witness protection program.

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

2.52 Access to register. The only persons who may have access to the register of particulars referred to in paragraph (e) of section 2.51 (2) are—

- (a) the Chairman;
- (b) the Executive Director of the Commission;
- and
- (c) the Director of the Witness Protection Division.

Division 9—Staff of Commission

2.53 Employment by Commission. (1) The Commission may employ an Executive Director and such Directors and other staff as are necessary for the effective and efficient discharge of the functions and responsibilities, and exercise of the powers, of the Commission and of each of its organizational units.

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

Employment in an office under the Commission, or in an office of a class of office under the Commission, approved by the Chairman 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.

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

2.54 Use of officers. The Commission may, with the Minister's approval and the consent of the Minister of the Crown responsible for the unit of public administration concerned, or in the case of the Parliamentary Service, the consent of the Chairman of the Parliamentary Service Commission, 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.

The expression "staff" includes members of the Police Force.

2.55 Engagement of services. The Commission may engage suitably qualified persons to provide the Commission with services, information or advice.

2.56 Officers of Commission. (1) While a person is employed by the Commission under section 2.53 or a person's services are utilized by the Commission under section 2.54 that person is, for the purposes of this Act, an officer of the Commission.

(2) In discharge of his duties an officer of the Commission—

- (a) being the Executive Director, is subject to the direction and control of the Chairman;
- (b) being a Director, is subject to the direction and control of the Chairman;
- (c) being any other officer, is subject to the direction and control of the Executive Director, the Director of the organizational unit in which the officer is employed, and any other officer of the Commission to whom he is for the time being made subject by such lastmentioned Director,

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

(3) A person who is a member of the Police Force or of a unit of public administration, or of an office administered within such a unit, whose services are for the time being utilized by the Commission under section 2.54 remains a member of the Police Force or the staff of that unit or office, subject to subsection (2), and retains all powers and authorities had by him as such a member.

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

- (a) retains and is entitled to all rights that had accrued to him by reason of employment as such a member, or that would accrue in the future to him by reason of employment as

- such a member, if his services were not being utilized by the Commission;
- (b) continues to be required to contribute to any superannuation scheme to which he is required to contribute by reason of employment as such a member, regardless of utilization of his services by the Commission;
- and
- (c) shall be taken to have continuous service as such a member, regardless of utilization of his services by the Commission.

2.57 Superannuation. (1) Subject to the approval of the Governor-in-Council, the Commission—

- (a) may establish and maintain, or participate in a scheme or arrangement;
- (b) may amend a scheme or arrangement established and maintained by it,

that secures superannuation or provident benefits for its employees or their dependants.

In this subsection the expression “employees” does not include officers of the Commission whose services are being utilized under section 2.54.

(2) It is not competent to the Commission to continue to participate in a scheme or arrangement such as is referred to in subsection (1) that is amended subsequently to the Commission commencing its participation therein, unless the approval of the Governor-in-Council is obtained to its continued participation.

(3) The Auditor-General shall audit the accounts and records of a scheme or arrangement such as is referred to in subsection (1) established and maintained by the Commission.

Audits under this section shall be performed in such manner and at such manner and at such times as the Auditor-General thinks fit.

The provisions of the *Financial Administration and Audit Act 1977-1988* that apply in relation to audits of accounts required by any Act to be performed by the Auditor-General apply in relation to audits under this section.

PART III—INVESTIGATIONS

Division 1—Powers to Assist the Collection or Presentation of Information

3.1 Notice to discover information. (1) If the Chairman, or his delegate, is satisfied that there are reasonable grounds to suspect that any person has information, or custody of any record or thing, that is relevant to the subject-matter of an investigation, or proposed investigation, by the Commission, in discharge of the functions and responsibilities of the Commission or of the functions of an organizational

unit thereof, the Chairman or delegate may, by notice signed by him and 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 authorize the service of a notice on a prescribed person referred to in section 2.36 subject to a disciplinary charge of official misconduct (or any of his 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.

3.2 Entry of public premises. (1) An officer of the Commission authorized in writing by the Chairman, or his delegate, is authorized—

- (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.

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

(2) 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 Chairman under which the officer purports to act.

(3) 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.

(4) The authority conferred by paragraphs (b), (c) and (d) of subsection (1) are subject to section 3.9.

3.3 Warrant to enter, search and seize. (1) The Chairman, or his delegate, 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, authorizing the officers or officer—

- (a) to enter on and search premises specified therein;
- (b) to search, if necessary, any person or persons found in the premises;
- (c) to seize any record or thing (of a description specified therein) found in the premises and to bring it before the Chairman, or his delegate, 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;
 - (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.

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

(3) The authority conferred by the warrant and referred to in paragraph (c) of subsection (1) is subject to section 3.9.

3.4 Provisions re execution of warrant. (1) A person authorized to execute a warrant under section 3.3—

- (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.

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

In this subsection—

“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.

(3) The authority conferred on any person by a warrant under section 3.3 extends to all persons acting in aid of him in its execution.

3.5 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 he reasonably suspects to afford admissible evidence of an indictable offence against the law of the Commonwealth or of any State or Territory of the Commonwealth;

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 authorized to seize the record or thing on behalf of the Commission.

(2) The authority conferred by subsection (1) is subject to section 3.9.

3.6 Summons to procure evidence. (1) The Chairman, or his delegate, by notice signed by him—

- (a) may summon a person to attend before the Commission on a day and at a time and place specified therein and—
 - (i) where the attendance is before a Misconduct Tribunal, to then and there give evidence in relation to the disciplinary charge of official misconduct before the Tribunal;

or

- (ii) where the attendance is before the Commission other than a Misconduct Tribunal, to then and there give evidence in relation to the subject-matter of the Commission's investigation;
- (b) may require a person to produce to the Commission a record or thing in the person's custody or control specified in the notice.

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

3.7 Restriction on exercise of authority under ss. 3.1 to 3.6 (1). (1) If it appears to the Chairman or his delegate that—

- (a) a notice under section 3.1 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 3.6 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 he would be required by the notice of summons to furnish or produce,

the Chairman or his delegate 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 by or under the foregoing provisions of this Division if the information or record sought by the Commission is available for inspection, search and copying by the public.

3.8 Obligation of person served with summons. (1) A person served with a notice of summons duly issued under section 3.6 shall either—

- (a) comply in all respects with the notice;

or

- (b) within the prescribed period, satisfy the Chairman or his delegate that—

- (i) he has a lawful excuse for not complying with the notice;

or

- (ii) he is not a subject person.

(2) In subsection (1)—

“the prescribed period” means the period specified in the notice of summons as the period within which the person is required to satisfy the Chairman or his delegate 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;

“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;
 - (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 thereafter.

(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 he 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 he is required by the summons to furnish or produce;
or
- (c) the person summoned was served outside the State with the notice of summons.

3.9 Claim of privilege. If privilege in respect of any information, record or thing to which a notice under section 3.1 relates, or which is sought by a notice of summons under section 3.6, or in respect of which an authority conferred by section 3.2 or by a warrant under section 3.3 is about to be exercised, is claimed by a person entitled to claim the privilege on the ground—

- (a) of legal professional privilege;
- (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 thereof.

3.10 Procedure upon claim of privilege. (1) If a claim of privilege referred to in section 3.9 is made in relation to any record in respect of which a person seeks to exercise authority under section 3.2 or 3.3 the following procedures shall be followed:—

- (a) the claimant, or his 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 therein, and that record and the container shall be endorsed by the claimant (or his representative) and such person to the effect that authority under section 3.2 or 3.3 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 his representative) and such person to the Registrar of the Supreme Court to be held by him in safe keeping until—
 - (i) application to a judge of the Supreme Court is made for determination of the claim of privilege;
 - (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 his 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 his representative);
- (f) where the registrar is duly informed that agreement has been reached as to disposal of the container's contents, he 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 3.9 will not participate in the procedures prescribed by subsection (1), or any of them, the person seeking to exercise authority under section 3.2 or 3.3 in respect of the record in question may carry out the procedures on his own account and on behalf of the claimant.

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.

3.11 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 3.8 (1), the Chairman, or his delegate, 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 members of the Police Force, or any of them, for the person's apprehension and production before the Commission.

(2) If the Chairman, or his delegate, is satisfied by evidence on oath or affirmation or by statutory declaration that—

- (a) it is probable that a person, whose evidence may be relevant to the subject-matter of an investigation by the Commission, or to a disciplinary charge of official misconduct before a Misconduct Tribunal, and is desired by the Commission, will not attend before the Commission unless compelled to do so;
- (b) a person whose evidence may be relevant to such subject-matter or charge, and is desired by the Commission, is making preparations or is about to leave the State, whereby the Commission may be deprived of his evidence;
- or
- (c) for any other reason, a person's evidence is desired by the Commission, and it is not desirable that he be first served with notice to that end,

the Chairman, or his delegate, 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 members of the Police Force, or any of them, for the person's apprehension and production before the Commission.

The Chairman, his delegate, a person nominated by either of them, or any justice may administer any oath or affirmation or take any statutory declaration required for the purposes of this subsection.

3.12 Authority of and procedure relevant to warrant under s. 3.11.

(1) A warrant under section 3.11 authorizes—

- (a) the apprehension of the person concerned and his detention in custody as prescribed with a view to his being brought before the Commission;
- (b) any officer to whom it is addressed and all persons acting in aid of him—
 - (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 forthwith be brought before the Commission or dealt with in accordance with the *Bail Act 1980-1988*, the provisions of which apply in relation to the

person in custody as if he were in custody charged with commission of an offence.

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

3.13 Attendance of prisoner or patient before Commission. (1) If the attendance of a prisoner before the Commission is required, the Chairman, or his delegate, may, by writing signed by him and served on the general manager in whose custody the prisoner is, direct the general manager to produce the prisoner named therein on the day and at the time and place specified therein.

(2) If the attendance of a patient detained in a hospital pursuant to the *Mental Health Services Act 1974-1989* before the Commission is required, the Chairman, or his delegate, may, by writing signed by him and served on the appropriate hospital administrator, direct the hospital administrator to produce the patient specified therein at the time and place specified therein.

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

The general manager or hospital administrator shall comply with the direction served on him.

(4) In this section—

- (a) the expressions “prisoner” and “general manager” have the meanings given to them respectively by the *Corrective Services Act 1988*;
- (b) the expressions “patient” and “hospital administrator” have the meanings given to them respectively by the *Mental Health Services Act 1974-1989*.

3.14 Authority to use listening devices. (1) Section 43 (1) of the *Invasion of Privacy Act 1971-1988* (or any provision to a similar effect passed in substitution therefor) does not apply in relation to use of a listening device within the meaning of that Act by a person authorized in writing to do so by the Chairman 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 Chairman 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 Chairman or his delegate may apply to a judge of the Supreme Court for an order approving such use.

The Chairman, a person nominated by him, or any justice may administer any oath or affirmation, or take any statutory declaration required for the purposes of this subsection.

3.15 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 he 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 Chairman or to a person nominated by the Chairman 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 Chairman'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 Chairman'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 thereof is relevant.

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

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

if it is performed by an officer of the Commission authorized in writing by the Chairman, or his delegate, to do so.

This subsection does not authorize or make lawful the doing of any act, other than the conduct of surveillance, that is an unlawful act.

(2) With the approval of a judge of the Supreme Court first obtained, an officer of the Commission is authorized—

- (a) to take possession of passports, other travel documents, instruments of title to property, securities and financial

documents found in the possession or control of persons concerned in an investigation by the Commission;

- (b) to enter, at any time during business hours, on premises in which are to be found records of any bank or other financial institution, insurance company, stock and share broker, person engaged in a business of investing money on behalf of others, or of providing credit facilities, or person suspected of having a relevant association with a person to whom an investigation by the Commission relates and to inspect and make copies of, or extracts from, such records so far as they relate to the affairs of such lastmentioned person;
- (c) to require any person to furnish to him one 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.

(2) The officer of the Commission or any justice may administer any oath or affirmation or take any statutory declaration required for the purposes of subsection (1).

Division 2—Procedures for Taking Evidence

3.17 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 organizational unit of the Commission.

3.18 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 or tribunal for the purposes of the proceedings.

3.19 Continuing duty to attend. A person who attends before the Commission or a Misconduct Tribunal as a witness or proposed witness, shall continue to attend at the proceedings on each day on which the proceedings are to continue, and report himself at or before the commencement of the proceedings on each such day, unless he is excused by the Commission or the Tribunal from further attendance.

3.20 Prohibition of publication of evidence. The Commission may, by its order, prohibit the publication of evidence taken before it, or the contents or a summary of a record produced to it, if, in its opinion, publication thereof would be unfair to any person or contrary to the public interest.

3.21 Commission not bound by rules or practice. (1) The Commission is not bound by rules or the practice of any court or tribunal as to evidence or procedure in the discharge of its functions and responsibilities, or the exercise of its powers or authorities, but may inform itself on any matter and conduct its proceedings as it thinks proper.

(2) The Commission shall, at all times—

- (a) act independently, impartially, fairly, and in the public interest;
- (b) act openly, except where to do so would be unfair to any person or contrary to the public interest;
- (c) include in its reports—
 - (i) its recommendations with respect to the relevant subject-matter;
 - (ii) an objective summary and comment with respect to all considerations of which it is aware that support or oppose or are otherwise pertinent to its recommendations.

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

3.22 Obligation to adduce evidence. (1) Except as prescribed by section 3.9, 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 him to give evidence with respect to that matter;
- (b) to refuse or fail to answer a question relating to any such matter that the Commission requires him to answer;
- (c) to refuse or fail to produce any record or thing that, in the Commission's opinion, is relevant to the Commission's

investigation, if the Commission requires him to produce it,
on the ground that to comply with the requirement would tend to incriminate him.

(3) A person served with a notice of summons duly issued under section 3.6 to attend before the Commission to furnish information or to produce a record or thing is not entitled to refuse or fail—

- (a) to furnish the information, if it is within his 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 his custody or control and, in the Commission's opinion, is relevant to the Commission's investigation.

(4) Subsection (2) and (3) apply subject to this subsection.

A person is not compellable to disclose a secret process of manufacture applied by him solely for a lawful purpose.

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

3.23 Examination before Commission. (1) In any proceedings of the Commission a person concerned therein 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 authorized by the Commission to represent a person concerned in any proceedings of the Commission and any person authorized 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.

(2) 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.

3.24 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 him, 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) Except as prescribed by 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 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.

3.25 Recoupment of witnesses. A person required by the Commission to attend before it, and who does so attend, is entitled to be paid, from moneys appropriated by Parliament to the purposes of the Commission, a sum on account of his expenses of attendance in accordance with the prescribed scale or, in the absence of such a scale, in a reasonable amount determined by the Commission.

Division 3—Custody, Disposal and Inspection of Material in Commission's Possession

3.26 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 forthwith before the Chairman or his delegate.

(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 Chairman, or his delegate, directs, taking appropriate care for the preservation of the record or thing as the circumstances may require.

The Commission is entitled to custody of the record or thing until it is dealt with in accordance with this section.

(3) 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 therein, and for a reasonable time thereafter 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 Chairman's opinion, be relevant evidence, until the record or thing is transferred to the custody of the Director of Prosecutions or other appropriate prosecuting authority.

(4) If a record or thing is seized under the authority of section 3.5 the Commission's custody of it may continue until, by direction of the Chairman, it is delivered to the Minister or the Director of Prosecutions, with the Commission's recommendation as to the appropriate further action to be taken in respect of it.

(5) If the record or thing—

(a) is one to which subsection (3) applies but paragraph (b) of that subsection is not relevant;

or

(b) is one to which subsection (4) applies and, in the Chairman's opinion, no further action is required in respect of it,

and is one that in the Chairman'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 Chairman to be entitled to it or, if that course of action is impracticable, shall be disposed of in such manner as the Chairman directs.

No liability is incurred by the Chairman or any other person because of the disposal of a record or thing as authorized by this subsection.

3.27 Inspection of material in Commission's custody. A Commissioner, or any person authorized in writing by the Chairman, 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 thereof or extracts therefrom for use in connexion with the Commission's investigation to which the record or thing is relevant.

3.28 Restricted access to Commission's material. Except as permitted by section 3.27, any information, record or thing in the possession of the Commission may be utilized and dealt with in discharge of the functions and responsibilities of the Commission or of the functions of any organizational unit of the Commission, but otherwise shall not be made available for inspection by any person without the express authority in writing of the Chairman.

Division 4—Protection and Reimbursement of Persons Associated with Commission

3.29 Immunities in conduct of proceedings. (1) A Commissioner and a person constituting a Misconduct Tribunal engaged in discharging his duties or exercising the Tribunal's jurisdiction has the same protection and immunity as a judge of the Supreme Court.

(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.

3.30 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 authorized 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 organizational 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 organizational unit of the Commission.

3.31 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;
- (d) breached the oath, affirmation, declaration, rule or practice or a provision of any law relevant thereto;
- or
- (e) rendered himself liable to disciplinary action,

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

3.32 Personal protection for witnesses etc. 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;
- (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 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.

3.33 Reimbursement for assistance. A person who—

- (a) is interviewed by a Commissioner or officer of the Commission in connexion with an investigation, or proposed investigation;

or

- (b) assists the Commission in connexion with an investigation, or proposed investigation, by furnishing information or producing any record or thing, or otherwise,

may be paid, out of moneys appropriated by Parliament to the purposes of the Commission, a sum on account of any expense incurred by him by reason thereof in accordance with the prescribed scale or, in the absence of such a scale in a reasonable amount determined by the Commission.

Division 5—Contempt of Commission

3.34 Conduct constituting contempt. A person who—

- (a) having been served with a notice of summons, duly issued in accordance with Division 1 of this Part, to attend before the Commission, fails to attend in obedience to the notice unless he is excused by or under this Act from attending;

- (b) having been served with a notice of summons, duly issued in accordance with Division 1 of this Part, to produce to the Commission a record or thing in his custody or control, fails to produce the record or thing in obedience to the notice, unless he is excused by or under this Act from doing so;

- (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 he has lawful excuse for his refusal;

- (ii) refuses or fails to answer a question, relevant to the subject matter of the hearing, that he is required by the Commission to answer unless he has lawful excuse for his refusal or failure;

or

- (iii) refuses or fails to produce a record or thing in his possession or control that he is required by the Commission to produce unless he has lawful excuse for his refusal or failure;

- (d) having attended at proceedings of the Commission (whether in response to a notice of summons or otherwise) as a

- witness or a proposed witness, fails to continue to attend at the proceedings as prescribed;
- (e) by writing or speech, uses words that are false and defamatory of the Commission, any Commissioner, a person constituting a Misconduct Tribunal or any person conducting proceedings of the Commission;
 - (f) wilfully threatens or insults—
 - (i) a Commissioner or an officer of the Commission;
 - (ii) a person constituting a Misconduct Tribunal;
 - (iii) a legal practitioner appointed or engaged to assist the Commission, or authorized by the Commission to appear at proceedings of the Commission, or any other person authorized by the Commission to appear at proceedings of the Commission;
 - (iv) a witness or a person summoned to attend before the Commission;
 - (g) misbehaves at, or interferes with, proceedings of the Commission;
 - (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;
 - (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.

3.35 Punishment of contempt. (1) A contempt of the Commission may be punished in accordance with this section.

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

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

- (a) the Supreme Court shall thereupon inquire into the alleged contempt;
- (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 Chairman's certificate of contempt is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

(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 his attendance may be enforced by warrant in accordance with this Act.

3.36 General provisions re contempt. (1) In the case of an alleged contempt of the Commission, the Chairman 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 Chairman is offered for the failure, the Chairman 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 he 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 he is already in custody under this section, and to bring the offender forthwith before the Supreme Court.

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

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

and

- (c) may be revoked by the Chairman 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 paragraph (f) or (g) of section 3.34 the offender may be excluded from the place where the Commission or Misconduct Tribunal is sitting (with the use of such reasonable force as is necessary for the purpose) upon the order of the person then and there constituting the Commission or, as the case may be, Tribunal.

3.37 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 he is not liable to be punished twice for the same conduct.

3.38 Meaning of "offender". In this Division, "offender" means a person guilty, or alleged to be guilty of contempt of the Commission.

PART IV—PARLIAMENTARY COMMITTEE

Division 1—Constitution and Membership

4.1 Constitution. (1) As soon as is practicable after the commencement of this Act and as soon as is practicable after the commencement of the first session of each Parliament there shall be appointed a Committee of Members of the Legislative Assembly to be called the "Parliamentary Criminal Justice Committee".

(2) The practice of the Legislative Assembly in relation to the appointment of members of Select Committees, to the extent that the practice does not conflict with the provisions of this Part, shall apply in relation to the appointment of members of the Parliamentary Committee.

4.2 Composition. (1) The Parliamentary Committee shall consist of seven Members of the Legislative Assembly, appointed by the Assembly, of whom—

- (a) not more than four shall be nominated for appointment by the Minister of the Crown who is recognized in the Assembly as the Leader of the House;

and

- (b) not less than two shall be nominated for appointment by the Leader of the Opposition in the Assembly.

(2) Where a political party, other than one in Government or in Opposition, is represented in the Legislative Assembly by at least five members, the remaining member of the Parliamentary Committee shall be a person nominated for appointment by the leader in the Assembly of such members.

If there be two or more such political parties at any time, such remaining member shall be nominated jointly by the leaders in the Assembly of the members thereof.

(3) A Minister of the Crown shall not be a member of the Parliamentary Committee.

4.3 Application of Standing Rules and Orders. Subject to the provisions of this Part, the Standing Rules and Orders of the Legislative Assembly relating to Select Committees apply in relation to the Parliamentary Committee and the conduct of its business as they apply to any other Select Committee of the Assembly.

4.4 Term of Committee. (1) The members of the Parliamentary Committee shall go out of office upon the dissolution, or expiry of the term, of the Legislative Assembly.

(2) A member who so goes out of office is eligible to be re-appointed as a member of the Parliamentary Committee.

4.5 Casual vacancies. (1) The office of a member of the Parliamentary Committee becomes vacant if—

- (a) he dies;
- (b) he delivers to the Speaker of the legislative Assembly, or if the office of Speaker be vacant, to The Clerk of the Parliament his resignation in writing signed by him;
- (c) he ceases to be a member of the Legislative Assembly;
- (d) he becomes a Minister of the Crown;
- (e) he is absent without the approval by resolution of the committee from three consecutive meetings of the committee duly summoned;
- or
- (f) he is discharged from service on the committee by resolution of the Legislative Assembly.

(2) Subject to section 4.2, the Legislative Assembly may appoint one of its Members to a casual vacancy in the membership of the Parliamentary Committee.

4.6 Quorum in particular case. When the Parliamentary Committee meets to consider its report to the Legislative Assembly, a quorum consists of five members.

4.7 Meeting times. The Parliamentary Committee may sit and conduct its business on any day at any time while the Legislative

Assembly is not sitting and, with the leave of the Assembly, at any time while the Assembly is sitting.

Division 2—Functions and Powers of Parliamentary Committee

4.8 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 three years from its appointment—
 - (i) to review the activities of the Commission during such three years;
 - and
 - (ii) to report to the Legislative Assembly and to the Minister as to further action that should be taken in relation to this Act or the functions, powers and operations of the Commission.

(2) The Parliamentary Committee has such powers as—

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

PART V—SUPREME COURT APPLICATIONS

5.1 Applications under Parts II and III generally. (1) An application to the Supreme Court required or authorized by provisions of Part II or III 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;
- (b) approval of a judge of the Supreme Court of the exercise of a power or authority;
- (c) determination of a judge of the Supreme Court of a claim of privilege;
- (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, insofar 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) A transcript of all proceedings upon an application shall be made and kept by the Court.

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

5.2 Application pursuant to section 2.25. (1) If the judge who hears the matter of an application under section 2.25 is satisfied as to the matter claimed by the applicant, he may, by his 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, as the case may require,
- (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 2.25, 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 thereof.

5.3 Application pursuant to s. 3.7. (1) An application made pursuant to section 3.7 shall be made by the Chairman or his delegate and be

heard *ex parte*, unless the judge directs that any person with an interest therein be given notice of the application.

- (2) Upon the application the judge shall have regard to—
 - (a) the gravity of the subject-matter of the investigation, or proposed investigation, by the Commission;
 - (b) the extent to which the privacy of any person is likely to be affected by disclosure of the information, or production of the record or thing, in question;
 - (c) the extent to which the investigation by the Commission is likely to be assisted by such disclosure or production.

5.4 Application pursuant to section 3.9. (1) Where a claim of privilege referred to in section 3.9 is made, application may be made to a judge of the Supreme Court by the Chairman or his delegate, 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 3.2 or a warrant under section 3.3.

(3) Costs of an application made in relation to a claim of privilege claimed on a ground prescribed by section 3.9 shall be borne by the Commission, unless otherwise ordered by the judge on the ground that the claim is frivolous or vexatious.

5.5 Application pursuant to s. 3.14. (1) An application made pursuant to section 3.14 shall be heard *ex parte*.

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

- (2) Upon the application, the judge shall have regard to—
 - (a) the gravity of the subject-matter of the investigation by the Commission;
 - (b) the extent to which the privacy of any person is likely to be affected by use of a listening device in the particular case;
 - (c) the extent to which the Commission's investigation is likely to be assisted by disclosure of information expected to be disclosed by use of a listening device.

The applicant shall make full disclosure of all factors, of which he 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.

(3) 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.

5.6 Application pursuant to s. 3.16. (1) An application made pursuant to section 3.16 shall be made by the Chairman or his delegate, and be heard *ex parte*, unless the judge directs that any person having an interest therein be given notice of the application.

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

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

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

The applicant shall make full disclosure of all factors, of which he 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 VI—OFFENCES

6.1 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 Chapter XIII of *The Criminal Code* have application in relation to such an officer accordingly;
- (b) that—
 - (i) a proceeding of the Commission or before a Misconduct Tribunal is a judicial proceeding referred to in Chapter XVI of *The Criminal Code*;
 - (ii) the office of a Commissioner and the office of a person constituting a Misconduct Tribunal is each a judicial office referred to in Chapter XVI of *The Criminal Code*;
 - (iii) the Commission and a Misconduct Tribunal is each a tribunal referred to in Chapter XVI of *The Criminal Code*,

and the provisions of that Chapter have application accordingly.

6.2 Impersonating officer of Commission. (1) A person shall not, directly or indirectly, falsely represent himself to be a Commissioner or an officer of the Commission.

Penalty: 50 penalty units or imprisonment for twelve months, or both.

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

6.3 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 duty, or to influencing the Commissioner or officer in the discharge of his duty is guilty of a crime.

(2) Any Commissioner or officer of the Commission who uses or takes advantage of his office to improperly gain benefit or advantage for himself 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 seven years and to be fined at the discretion of the court.

(4) The offender cannot be arrested without warrant.

6.4 Bribery of holder of office in Commission. 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 duty;
- (b) influencing the Commissioner or officer in the discharge of his duty;
- or
- (c) the Commissioner or officer using or taking advantage of his office to facilitate the commission of an offence,

is guilty of a crime and is liable upon conviction on indictment to imprisonment for seven years and to be fined at the discretion of the court.

The offender cannot be arrested without warrant.

6.5 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;
- (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 three years.

6.6 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;
- (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 3.1,

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

6.7 Confidentiality to be maintained. (1) Any Commissioner or officer of the Commission who wilfully discloses, except for the purposes of the Commission, or of this Act, information that has come into the possession of the Commission, or the Commissioner or officer in the course of discharging a function or exercising a power or authority under this Act, or for the purposes of this Act, commits an offence against this Act.

(2) A member of the Parliamentary Committee who wilfully discloses information that has come to his knowledge from the Commission because he is a member of the committee, except where—

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

commits an offence against this Act.

6.8 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 him by this Act, or attempts so to do, commits an offence against this Act.

6.9 Commission notices to be obeyed. A person to whom a notice under section 3.1 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 his knowledge is false in a material particular;
- (c) produces to the Commission a record of a description sought by the notice that he has rendered, or caused to be rendered, or to his knowledge has been rendered, false in a material particular,

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

6.10 Offence to disregard Commission summons. A person served with a notice of summons duly issued under section 3.6 who fails to satisfy the requirements of section 3.8 in relation thereto commits an offence against this Act.

6.11 Frivolous or vexatious complaint. (1) A person who has been notified in writing by, or on behalf of, the Commission that information given by him to the Commission, or a complaint made by him 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.

(2) It is a defence to a charge of an offence defined in subsection (1) to prove—

(a) that the information or complaint does not concern frivolous matter;

or, as the case may be,

(b) that the information was not given, or the complaint was not made, vexatiously.

6.12 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 1886-1988* on the complaint of an officer of the Commission authorized generally or in a particular case by the Chairman.

(3) The identity of a complainant and his 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 twelve months, or both.

PART VII—MISCELLANEOUS PROVISIONS

7.1 Act binds Crown. This Act binds the Crown.

7.2 Delegation of Chairman. (1) The Chairman may, either generally or otherwise as provided by the instrument of delegation, by instrument in writing signed by him delegate to an officer of the Commission, who is a Director or for the time being is acting in the position of Director,

any of the powers and authorities conferred on the Chairman by this Act.

(2) A delegation may be made subject to such conditions and limitations as the Chairman thinks fit.

Where the exercise of a power or authority is, in the hands of the Chairman, subject to prescribed restrictions, the exercise of that power or authority by the delegate is subject to the same restrictions.

(3) A delegation may be revoked in writing by the Chairman at any time but, while it subsists, the delegate may do and suffer such acts and things in accordance with its terms as he thinks necessary or expedient for the proper exercise of the delegated power or authority.

An act or thing done or suffered by the delegate is of the same force and effect as if it were done or suffered by the Chairman.

(4) A delegation of power or authority does not—

- (a) affect the exercise of the power or authority by the Chairman;
- or
- (b) relieve the Chairman of responsibility to ensure that the power or authority is properly exercised.

7.3 Register of interests. (1) The Commission shall maintain—

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

(2) Each Commissioner shall furnish to the Commission, the Minister and the Chairman of the Parliamentary Committee—

- (a) a summary in writing of pecuniary interests had by him at the time of his appointment as a Commissioner;
- (b) advice in writing of such associations had by him at the time of his 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 12 months of a Commissioner's term of office.

7.4 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 Chairman relating to such proof shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

7.5 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 him 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 pre-paid 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 pre-paid 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 Chairman.

7.6 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 1886-1988* in relation to service of a summons.

7.7 Authority to administer oaths etc. Any justice is authorized to administer any oath or affirmation or to take any statutory declaration for the purposes of this Act.

7.8 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.

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

(2) 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.

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

(3) The Commission shall observe its budget as approved for the time being.

(4) 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.

7.9 Audit. For the purposes of the *Financial Administration and Audit Act 1977-1988*, the Commission is a statutory body within the meaning of that Act.

7.10 Annual report of Commission. (1) The Commission shall in each year report to the Minister in respect of the Commission's activities during the preceding period of twelve months.

(2) The Commission's annual report shall be tabled in the Legislative Assembly within three sitting days after presentation of the report to the Minister.

7.11 Regulations. The Governor-in-Council may make regulations not inconsistent with this Act prescribing with respect to—

- (a) all matters required or permitted by this Act to be prescribed where the means of such prescription is not specified;
- (b) forms for the purposes of this Act;
- (c) procedures to be followed in proceedings before the Commission;
- (d) procedures to be observed by Commissioners, officers of the Commission, and other persons in discharging the Commission's functions and responsibilities, or in exercising the powers and authorities conferred by this Act;

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- (e) all matters necessary or convenient for the administration of this Act or the attainment of the objects and purposes of this Act.