



Queensland

Crime and Corruption and Other Legislation Amendment Act 2024

Act No. 41 of 2024

An Act to amend the Crime and Corruption Act 2001, the Integrity Act 2009, the Public Interest Disclosure Act 2010, the Public Sector Act 2022, the Right to Information Act 2009 and the Telecommunications Interception Act 2009 for particular purposes

[Assented to 30 August 2024]



Queensland

Crime and Corruption and Other Legislation Amendment Act 2024

Contents

		Page
Part 1	Preliminary	
1	Short title	9
2	Commencement	9
Part 2	Amendment of Crime and Corruption Act 2001	
3	Act amended	9
4	Amendment of s 20 (Meaning of unit of public administration) ..	10
5	Insertion of new ch 2, pt 3, div 5, sdiv 1, hdg	11
6	Amendment of s 49 (Reports about complaints dealt with by the commission)	11
7	Insertion of new ch 2, pt 3, div 5, sdiv 2	12
	Subdivision 2 Prosecution of corruption offences	
	49A Definitions for subdivision	12
	49B Commencing prosecution	13
	49C Commencing prosecution in exceptional circumstances	14
	49D Process after commencing prosecution	16
	49E Process if charge recommended but not laid	17
	49F Application of legal professional privilege to communications between commission and director of public prosecutions	18
	49G Memorandum of understanding	18
8	Insertion of new ch 2, pt 3, div 5, sdiv 3, hdg	20
9	Amendment of s 50 (Commission may prosecute corrupt conduct)	20
10	Insertion of new ch 2, pt 3, div 5, sdiv 4, hdg	21
11	Amendment of s 69 (Commission reports to be tabled)	21
12	Replacement of ch 3, pt 1, divs 1–3	21
	Division 1 Production powers	
	Subdivision 1 Power to require production for particular investigations, operations and functions	

Contents

	72	Application of subdivision	21
	73	Notice to produce	22
	74	Immediate production	22
	75	Form of notice to produce	23
	76	Offence not to comply with notice to produce	24
	77	Miscellaneous	25
	Subdivision 2 Power to require production for confiscation related investigation		
	78	Application of subdivision	25
	79	Notice to produce	26
	80	Immediate production	26
	81	Form of notice to produce	26
	81A	Offence not to comply with notice to produce	27
	81B	Miscellaneous	27
	Subdivision 3 Power to require immediate production at hearing		
	81C	Application of subdivision	28
	81D	Power to require immediate production	28
	Division 2 Discovery powers		
	81E	Notice to discover—crime investigation or specific intelligence operation (crime)	29
	81F	Notice to discover—corruption investigation or specific intelligence operation (corruption)	30
	81G	Form of notice to discover	30
	81H	Offence not to comply with notice to discover	31
	81I	Miscellaneous	32
	Division 3 Legal professional privilege		
	81J	Waiver of claim of legal professional privilege	32
	Division 3A Entry and search powers		
	81K	Application of division	33
	81L	Authorisation of entry and search of official premises	33
	81M	Power to enter and search etc.	33
	81N	Miscellaneous	34
13		Amendment of s 82 (Notice to attend hearing—general)	35
14		Amendment of s 84 (Notice may be a confidential document) ..	36
15		Amendment of s 85 (Notices requiring immediate attendance may be issued only by or with the approval of a Supreme Court judge) .	36
16		Insertion of new ch 3, pt 1, div 7	36

	Division 7	Giving notices	
	85AA	Giving notices by email	36
17		Amendment of s 94 (Limitation on search warrant powers for corruption investigations)	38
18		Amendment of s 110A (General power to seize evidence—confiscation related investigation)	39
19		Amendment of s 111 (General power to seize evidence—corruption investigation)	40
20		Replacement of ch 4, hdg and ch 4, pt 1, hdg	40
21		Amendment of s 177 (Whether hearings are to be open or closed)	41
22		Insertion of new ss 182A–182C	41
	182A	Use of audiovisual link or audio link for remote attendance	41
	182B	Return of sealed documents or things for decision on claim of reasonable excuse at hearing—return to person	43
	182C	Return of sealed documents or things for decision on claim of reasonable excuse at hearing—return to another person	43
23		Amendment of ch 4, pt 2, hdg (Refusals and claims of privilege and reasonable excuse)	44
24		Amendment of s 183 (Refusal to take oath)	44
25		Replacement of ch 4, pt 2, divs 2–4	44
	Division 2	Refusal to produce	
	184	Application of division	45
	185	Refusal to produce document or thing	45
	186	Claim of reasonable excuse	46
	187	Waiver of claim of legal professional privilege	46
	Division 3	Refusal to answer	
	188	Application of division	47
	189	Refusal to answer question	47
	190	Claim of reasonable excuse	47
	191	Claim of legal professional privilege	48
26		Amendment of s 197 (Restriction on use of privileged answers, documents, things or statements disclosed or produced under compulsion)	48
27		Amendment of s 198 (Contempt of person conducting commission hearing)	49
28		Amendment of s 199 (Punishment of contempt)	49
29		Amendment of s 200A (Confidentiality of particular proceedings)	50
30		Amendment of s 202 (Publication of names, evidence etc.)	50

Contents

31	Amendment of s 205 (Legal assistance)	51
32	Insertion of new ch 4A	52
	Chapter 4A Procedure on claims of reasonable excuse, including privilege	
	Part 1 Preliminary	
	205A Definitions for chapter	52
	205B Meaning of privilege	53
	205C Who is a journalist	54
	205D Journalist privilege relating to identity of informants	54
	205E Part of document or thing	56
	Part 2 Claims dealt with by commission	
	Division 1 Claims made outside of hearings	
	Subdivision 1 Dealing with claims	
	205F Application of subdivision	56
	205G Commission officer to consider claim	57
	205H Deciding officer to decide claim or decline to decide claim	58
	205I Deciding officer declines to decide claim of reasonable excuse based on privilege	59
	205J Reasonable excuse not based on privilege	59
	Subdivision 2 Procedures for documents and things	
	205K Application of subdivision	60
	205L Procedure for claims made outside of hearings	60
	205M Procedure if requirement is withdrawn	61
	205N Procedure if chairperson does not apply to Supreme Court after deciding officer declines to decide claim	61
	205O Procedure if person does not apply to Supreme Court	62
	205P Procedure if person or chairperson applies to Supreme Court	62
	205Q Action by registrar	63
	Division 2 Claims made in hearings	
	Subdivision 1 Dealing with claims	
	205R Application of subdivision	64
	205S Presiding officer to decide claim or decline to decide claim	65
	205T Presiding officer declines to decide claim of reasonable excuse based on privilege	65

205U	Reasonable excuse not based on privilege	66
Subdivision 2 Procedures for documents and things		
205V	Application of subdivision	66
205W	Procedure for claims made in hearings	67
205X	Action by registrar—if presiding officer declined to decide claim	68
205Y	Action by registrar—if presiding officer did not withdraw requirement	69
Division 3 Deciding claims of privilege		
205Z	Purpose and application of division	70
205ZA	Parliamentary privilege	71
205ZB	Legal professional privilege	71
205ZC	Public interest immunity	72
205ZD	Confidentiality	72
205ZE	Self-incrimination privilege	73
205ZF	Journalist privilege	73
205ZG	Claim not established or requirement made	76
Part 3 Claims dealt with by Supreme Court		
Division 1 Claims of reasonable excuse not based on privilege		
205ZH	Applications about decisions of deciding officers and presiding officers	76
205ZI	Supreme Court to decide claim	77
Division 2 Claims of reasonable excuse based on privilege		
205ZJ	Applications about decisions of deciding officers and presiding officers	79
205ZK	Applications after deciding officer or presiding officer declines to decide claim	79
205ZL	Supreme Court to decide claim	80
Division 3 Deciding claims of privilege		
205ZM	Purpose of division	82
205ZN	Parliamentary privilege	82
205ZO	Legal professional privilege	82
205ZP	Public interest immunity	83
205ZQ	Confidentiality	83
205ZR	Self-incrimination privilege	84
205ZS	Journalist privilege	84
Division 4 Other orders		

Contents

	205ZT	Access to, or return of, documents and things	86
	205ZU	Ancillary orders	86
	Part 4	Claims made in relation to search warrants and seizures	
	Division 1	Preliminary	
	205ZV	Application of part	87
	Division 2	Supreme Court to decide claim	
	205ZW	Applications to Supreme Court	88
	205ZX	Access to, or return of, documents and things	89
	205ZY	Ancillary orders	89
	Division 3	Procedure for documents and things	
	205ZZ	Procedure for documents and things subject to claim	90
	205ZZA	Action by registrar	91
	Part 5	Procedure for claims of legal professional privilege	
	205ZZB	Application of part	92
	205ZZC	Procedure for claims of legal professional privilege .	93
	205ZZD	Access to sealed document or thing	94
	Part 6	Claims made in confiscation related investigations	
	Division 1	Preliminary	
	205ZZE	Application of part	95
	205ZZF	Commission officer to consider claim made under s 81A	96
	205ZZG	Procedure for claims of legal professional privilege if person has no authority to waive privilege	96
	Division 2	Supreme Court to decide claim	
	205ZZH	Applications to Supreme Court	98
	205ZZI	Access to, or return of, documents and things	100
	205ZZJ	Ancillary orders	100
	Division 3	Procedure for documents and things	
	205ZZK	Procedure for documents and things subject to claim	101
	205ZZL	Action by registrar	102
33		Amendment of s 211 (Injury or detriment to witness)	103
34		Amendment of s 225 (Qualifications for appointment—chief executive officer and ordinary commissioners)	103
35		Amendment of s 228 (Prior consultation and bipartisan support for appointments)	104
36		Replacement of s 231 (Duration of appointment)	104
	231	Duration of commissioners' appointments	104

	231A	Duration of chief executive officer’s appointment . . .	105
37		Amendment of s 247 (Duration of appointment)	105
38		Amendment of s 247A (Notice to parliamentary committee)	106
39		Amendment of s 257 (Commission officers)	107
40		Amendment of s 270 (Delegation—chairperson)	107
41		Amendment of s 290 (Minutes)	107
42		Amendment of s 292 (Functions)	107
43		Amendment of s 314 (Functions of parliamentary commissioner)	108
44		Insertion of new s 346C	109
	346C	Possession of and dealing with data and records of CJC inquiry	109
45		Insertion of new s 347A	111
	347A	Corporations legislation displacement	111
46		Omission of s 374 (Parliamentary commissioner to have possession of and deal with records of the CJC inquiry)	111
47		Insertion of new ch 8, pt 20	111
	Part 20	Crime and Corruption and Other Legislation Amendment Act 2024	
	459	Application of ch 2, pt 3, div 5, sdiv 2 to prosecution of corruption offences	112
	460	Claims of reasonable excuse	112
	461	Misdemeanours	113
	462	Attendance at commission hearings under s 182A . .	113
	463	When document, thing or information given to journalist	113
	464	Reference in s 211	114
	465	Application of s 225 to existing ordinary commissioners and particular new appointments	114
	466	Application of provisions about responses to consultation on nominations under s 228	114
	467	Application of former s 231 to commissioners	115
	468	Application of s 257 to particular commission officers	115
	469	Application of former s 374 to particular applications for access to data and records of CJC inquiry	115
48		Amendment of sch 2 (Dictionary)	116
	Part 2A	Amendment of Integrity Act 2009	
48A		Act amended	118
48B		Amendment of s 45 (Who is an Opposition representative)	118
48C		Amendment of sch 2 (Dictionary)	118

Contents

Part 3	Amendment of Public Interest Disclosure Act 2010	
49	Act amended	119
50	Amendment of s 13 (Disclosure by a public officer)	120
51	Replacement of ch 8, hdg (Transitional provisions for Public Interest Disclosure Act 2010)	120
52	Amendment of s 73 (Definitions for ch 8)	120
53	Replacement of ch 9, hdg (Transitional provision for Public Service and Other Legislation Amendment Act 2012)	121
54	Insertion of new ch 8, pt 3	121
	Part 3 Transitional provision for Crime and Corruption and Other Legislation Amendment Act 2024	
	79 Application of s 13 to conduct of commission officer .	121
Part 4	Amendment of Public Sector Act 2022	
55	Act amended	122
56	Amendment of s 281 (Delegation of Minister’s functions)	122
Part 5	Amendment of Right to Information Act 2009	
57	Act amended	122
58	Amendment of sch 1 (Documents to which this Act does not apply)	122
Part 6	Amendment of Telecommunications Interception Act 2009	
59	Act amended	123
60	Amendment of s 25 (Inspecting entity may report on other contraventions)	123
61	Amendment of s 29 (Dealing with information for purposes of inspection and report)	123

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Crime and Corruption and Other Legislation Amendment Act 2024*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- sections 5 to 15
- sections 17 to 21
- section 22 to the extent it inserts new sections 182B and 182C
- sections 23 to 38
- sections 40 and 42
- section 47 to the extent it inserts new sections 459 to 461 and 463 to 467
- section 48.

Part 2 Amendment of Crime and Corruption Act 2001

3 Act amended

This part amends the *Crime and Corruption Act 2001*.

[s 4]

4 Amendment of s 20 (Meaning of *unit of public administration*)

Section 20—

insert—

- (3) The Minister may recommend to the Governor in Council the making of a regulation under subsection (1)(h) prescribing an entity to be a unit of public administration only if the Minister—
 - (a) is satisfied the entity—
 - (i) is supported directly or indirectly by government funds or other government assistance; or
 - (ii) is an entity over which government is in a position to exercise control; or
 - (iii) is established under an Act; or
 - (iv) is given public functions under an Act; and
 - (b) considers it is in the public interest for the entity to be prescribed as a unit of public administration.
- (4) In deciding whether it would be in the public interest for the entity to be prescribed as a unit of public administration, the Minister may have regard to each of the following matters—
 - (a) if the entity is a company, whether it is a company limited by shares;
 - (b) the size of the entity, having regard to the number of the entity's employees or the entity's turnover;
 - (c) the purpose of the entity, including whether it is performing functions that are generally identified with the functions of government;

-
- (d) the extent to which functions of the entity have previously been performed by government;
 - (e) the extent to which the entity has been the subject of an adverse comment by a regulatory or investigatory body such as the auditor-general or the commission;
 - (f) any other relevant matter.
- (5) Also, for subsection (1)(h), an entity may be prescribed under a regulation to be a unit of public administration in relation to only a part of the entity's functions.

5 Insertion of new ch 2, pt 3, div 5, sdiv 1, hdg

Before section 49—

insert—

Subdivision 1 Reports about corruption complaints

6 Amendment of s 49 (Reports about complaints dealt with by the commission)

(1) Section 49(2)(a)—

omit, insert—

- (a) a prosecuting authority, for the purpose of any prosecution proceedings;

Note—

Section 49B applies if the commission intends reporting to a prosecuting authority in relation to a corruption offence arising from a corruption investigation.

(2) Section 49—

insert—

- (4A) Also, if the director of public prosecutions has

[s 7]

given the commission written advice under section 49B in relation to an investigation, a report made under subsection (2)(a) or (3) about the investigation must be accompanied by the advice.

(3) Section 49(5), definition *prosecuting authority*—

omit, insert—

prosecuting authority—

- (a) includes a police officer seconded to the commission under section 255; but
- (b) does not include the director of public prosecutions.

(4) Section 49(4A) and (5)—

renumber as section 49(5) and (6).

7 Insertion of new ch 2, pt 3, div 5, sdiv 2

After section 49—

insert—

Subdivision 2 Prosecution of corruption offences

49A Definitions for subdivision

In this subdivision—

commence, a prosecution against a person, means—

- (a) arrest the person; or
- (b) make a complaint under the *Justices Act 1886*, section 42 in relation to the person; or
- (c) serve a notice to appear on the person.

prosecuting authority—

- (a) includes a police officer seconded to the commission under section 255; but
- (b) does not include the director of public prosecutions.

prosecuting entity means the entity prosecuting a person, including, for example, the director of public prosecutions.

49B Commencing prosecution

- (1) This section applies if the commission intends reporting on a corruption investigation, under section 49(2)(a), to a prosecuting authority for consideration by the authority as to whether to commence a prosecution against a person for a corruption offence arising from the investigation.
- (2) Before the commission reports to the prosecuting authority, the commission must—
 - (a) provide a report on the investigation to the director of public prosecutions; and
 - (b) seek the written advice of the director of public prosecutions as to whether the person should be prosecuted for 1 or more corruption offences arising from the investigation and, if so, for which corruption offence or offences the person should be prosecuted.
- (3) A report under subsection (2)(a) must contain, or be accompanied by, all relevant information known to the commission that—
 - (a) supports a charge that may be brought against the person; or
 - (b) supports a defence that may be available to the person.
- (4) For subsection (3), the reference to all relevant

[s 7]

information known to the commission includes a reference to evidence, documents and things—

- (a) obtained by the commission through the exercise of the commission's powers under this Act; and
 - (b) that would, other than for the exercise of those powers, be unobtainable by the commission because of the operation of a privilege.
- (5) Despite any other law, including sections 174(2) and 255, but subject to section 49C, the prosecuting authority may commence a prosecution against the person for a corruption offence arising from the investigation only if—
- (a) the commission has acted under subsection (2) in relation to the investigation; and
 - (b) the director of public prosecutions has given the commission written advice that the person should be prosecuted for the corruption offence.

49C Commencing prosecution in exceptional circumstances

- (1) The prosecuting authority may commence a prosecution against the person for a corruption offence arising from the investigation without the commission acting under section 49B(2) if, in the opinion of the authority, there are exceptional circumstances.

Example of exceptional circumstances—

an emergent situation where an immediate arrest is essential

- (2) If the prosecuting authority commences a prosecution against the person in the circumstances mentioned in subsection (1), the commission must, as soon as reasonably

practicable—

- (a) provide a report on the investigation to the director of public prosecutions; and
 - (b) seek the written advice of the director of public prosecutions in relation to the charge against the person.
- (3) A report under subsection (2)(a) must contain, or be accompanied by, the information mentioned in section 49B(3).
- (4) As soon as reasonably practicable after receiving the written advice of the director of public prosecutions, the commission must give a copy of the written advice—
- (a) to the prosecuting entity; and
 - (b) if the written advice relates to a prosecution for an offence under the Criminal Code, section 57—to the Attorney-General.
- (5) As soon as reasonably practicable after receiving the written advice, the prosecuting entity must—
- (a) inform the person and the court before which the person is required to attend that the written advice has been received by the commission; and
 - (b) either—
 - (i) if the charge against the person is consistent with the written advice—inform the person and the court of that fact; or
 - (ii) if the charge against the person is inconsistent with the written advice—take steps consistent with the written advice.

Examples of steps—

amend or withdraw the charge

[s 7]

- (6) Subsection (4)(a) does not apply if the prosecuting entity is the director of public prosecutions.

49D Process after commencing prosecution

- (1) If a prosecuting authority commences a prosecution against the person for a corruption offence arising from the investigation, the prosecuting entity must, as soon as reasonably practicable after the prosecution is commenced, file a notice in the court before which the person is required to attend stating that—
- (a) for a prosecution commenced under section 49B—
 - (i) the charge against the person is in accordance with the written advice of the director of public prosecutions; and
 - (ii) the written advice is subject to legal professional privilege and will not be given to the person; or
 - (b) for a prosecution commenced under section 49C—
 - (i) the written advice of the director of public prosecutions about the charge against the person was not obtained by the commission before the prosecution was commenced; and
 - (ii) the prosecuting authority was of the opinion that exceptional circumstances applied; and
 - (iii) the prosecuting entity will inform the person when the written advice is received by the commission; and

- (iv) the written advice will be subject to legal professional privilege and will not be given to the person.
- (2) The notice must be in the form approved by the chief executive.
- (3) The prosecuting entity must give a copy of the notice to the person.
- (4) The prosecuting entity may—
 - (a) electronically file the notice in the court under subsection (1); and
 - (b) electronically give a copy of the notice to the person under subsection (3).

49E Process if charge recommended but not laid

- (1) This section applies if—
 - (a) the director of public prosecutions provides written advice to the commission in response to a request by the commission under section 49B(2)(b); and
 - (b) the written advice states that a prosecution should be commenced against the person for a corruption offence; and
 - (c) the commission reports to a prosecuting authority for consideration by the authority as to whether to commence a prosecution against the person for the offence; and
 - (d) the prosecuting authority declines to commence a prosecution against the person for the offence.
- (2) The commission must inform the parliamentary committee and the parliamentary commissioner of the matters mentioned in subsection (1).

[s 7]

49F Application of legal professional privilege to communications between commission and director of public prosecutions

- (1) This section applies to communications made in or for the performance of the director of public prosecutions' function of giving the commission written advice under this subdivision—
 - (a) as to whether the person should be prosecuted for a corruption offence; or
 - (b) in relation to the charge for a corruption offence against the person.
- (2) Confidential communications between the commission and the director of public prosecutions are subject to legal professional privilege.
- (3) If legal professional privilege attaches to a confidential communication under this section, the commission does not waive the privilege only because the commission complies with a provision of this Act that requires the commission to disclose the communication.

Examples of provisions requiring the commission to disclose a confidential communication—

- section 49(5)
 - section 49C(4)
- (4) To remove any doubt, it is declared that this section does not affect the operation of any law imposing an obligation on the prosecuting entity to disclose material to the person in the course of the prosecution.

49G Memorandum of understanding

- (1) The commission and the director of public prosecutions must enter into a memorandum of understanding to facilitate the operation of this subdivision.

- (2) Without limiting subsection (1), the memorandum of understanding must provide for the following matters—
- (a) the information that must be included in a request by the commission for the director of public prosecutions' written advice, including, for example—
 - (i) the commission's view on the appropriate charges to be laid in a case; and
 - (ii) any legal issues identified by the commission in a case;
 - (b) processes to avoid unreasonable delays in the making of requests for written advice by the commission and the giving of written advice by the director of public prosecutions, including the setting of timeframes for requests and advices;
 - (c) processes for how the director of public prosecutions will deal with information received in a report given by the commission to the director of public prosecutions under this subdivision for the purposes of giving advice;
 - (d) how the commission and the director of public prosecutions will communicate and liaise, including how contrary views of the commission and the director of public prosecutions will be resolved;
 - (e) processes for the provision of additional information by the commission to the director of public prosecutions;
 - (f) the information that must be included in a written advice from the director of public prosecutions, including, for example,

[s 8]

reasons for recommending a particular charge be laid against a person.

- (3) Also without limiting subsection (1), the memorandum of understanding may provide guidance on circumstances that are exceptional circumstances for the purposes of section 49C(1).
- (4) The commission must publish a copy of the memorandum of understanding on the commission's website.
- (5) As soon as practicable after the memorandum of understanding is entered into, the commission must advise the Minister of the fact.
- (6) The commission must report at regular intervals to the Minister, the parliamentary committee and the parliamentary commissioner on the effectiveness and utility of the memorandum.
- (7) A report under subsection (6) must include information about the timeliness of written advice provided by the director of public prosecutions under this subdivision.

8 Insertion of new ch 2, pt 3, div 5, sdiv 3, hdg

Before section 50—

insert—

**Subdivision 3 Applications to QCAT
about corrupt conduct**

9 Amendment of s 50 (Commission may prosecute corrupt conduct)

Section 50, heading—

omit, insert—

50 Commission may apply to QCAT about corrupt conduct

10 Insertion of new ch 2, pt 3, div 5, sdiv 4, hdg

Before section 51—

insert—

Subdivision 4 General

11 Amendment of s 69 (Commission reports to be tabled)

Section 69(2), after ‘section 49’—

insert—

, 49B(2)(a), 49C(2)(a)

12 Replacement of ch 3, pt 1, divs 1–3

Chapter 3, part 1, divisions 1 to 3—

omit, insert—

Division 1 Production powers

Subdivision 1 Power to require production for particular investigations, operations and functions

72 Application of subdivision

This subdivision applies for the following—

- (a) a crime investigation;
- (b) a specific intelligence operation (crime);
- (c) a corruption investigation;

[s 12]

- (d) a specific intelligence operation (corruption);
- (e) the witness protection function.

73 Notice to produce

- (1) This section applies if the chairperson reasonably suspects a person possesses a document or thing relevant to an investigation, operation or function.
- (2) The chairperson may require the person, by giving the person a notice (a *notice to produce*), to give an identified commission officer the document or thing.
- (3) A reference to a document in subsection (2) includes a reference to a copy of the document.
- (4) The notice to produce must state a reasonable period within which, and the way, the person is required to produce the document or thing under the notice.
- (5) The notice to produce may be given whether or not the commission is conducting a hearing for the investigation, operation or function.
- (6) If the notice to produce is given in the context of the witness protection function, the notice may be given only if the chairperson considers it is necessary to protect—
 - (a) the security of a protected person; or
 - (b) the integrity of the witness protection program or other witness protection activities of the commission.

74 Immediate production

Despite section 73(4), a notice to produce may require a document or thing to be produced immediately if the chairperson believes on

reasonable grounds that—

- (a) delay in producing the document or thing may result in—
 - (i) its destruction, removal or concealment; or
 - (ii) serious prejudice to the conduct of the investigation, operation or function; or
- (b) for a notice given in the context of a specific intelligence operation (crime), delay in producing the document or thing may result in loss of an opportunity to obtain timely intelligence—
 - (i) before a significant event; or
 - (ii) that may help prevent a risk to public safety; or
- (c) for a notice given in the context of the witness protection function, delay in producing the document or thing may threaten—
 - (i) the security of a protected person; or
 - (ii) the integrity of the witness protection program or other witness protection activities of the commission.

75 Form of notice to produce

- (1) A notice to produce must state that it relates to—
 - (a) a crime investigation; or
 - (b) a specific intelligence operation (crime); or
 - (c) a corruption investigation; or
 - (d) a specific intelligence operation (corruption); or

[s 12]

- (e) for a notice to produce in relation to the witness protection function—a crime investigation.
- (2) The notice to produce may state—
 - (a) that a person acting for the person to whom the notice is directed may comply with the notice; and
 - (b) the person or class of person who may act for the person to whom the notice is directed.
- (3) The notice to produce must—
 - (a) identify the document or thing sufficiently to enable the person to know what is required; and
 - (b) state how the person may make a claim of reasonable excuse.

76 Offence not to comply with notice to produce

- (1) A person given a notice to produce under section 73 must comply with the notice unless the person has a reasonable excuse.

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

Note—

If a claim of reasonable excuse is made, the claim is dealt with under chapter 4A.

- (2) A person does not commit an offence against subsection (1) if the person has made a claim of reasonable excuse and 1 of the following applies—
 - (a) the commission withdraws the requirement the subject of the notice to produce;

- (b) the commission is ordered by the Supreme Court to withdraw the requirement the subject of the notice to produce.
- (3) It is not a reasonable excuse for subsection (1) that complying with the notice to produce might tend to incriminate the person.

Note—

If a claim of self-incrimination privilege is made, the claim is dealt with under chapter 4A.

77 Miscellaneous

- (1) A person does not, by complying with a notice to produce in relation to a document or thing—
 - (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the document or thing; or
 - (b) incur any civil liability in relation to the document or thing.
- (2) A document or thing produced under this subdivision is taken to have been seized under a search warrant under part 2.

Subdivision 2 Power to require production for confiscation related investigation

78 Application of subdivision

This subdivision applies for a confiscation related investigation.

79 Notice to produce

- (1) This section applies if the chairperson believes on reasonable grounds that a person possesses a document or thing relevant to a confiscation related investigation.
- (2) The chairperson may require the person, by giving the person a notice (a *notice to produce*), to give an identified commission officer the document or thing.
- (3) The notice to produce must state a reasonable period within which, and the way, the person is required to produce the document or thing under the notice.

80 Immediate production

Despite section 79(3), a notice to produce may require a document or thing to be produced immediately if the chairperson believes on reasonable grounds that delay in producing the document or thing may result in—

- (a) its destruction, removal or concealment; or
- (b) serious prejudice to the conduct of the investigation.

81 Form of notice to produce

- (1) The notice to produce may state—
 - (a) that a person acting for the person to whom it is directed may comply with the notice; and
 - (b) the person or class of person who may act for the person to whom the notice is directed.
- (2) The notice to produce must—

- (a) identify the document or thing sufficiently to enable the person to know what is required; and
- (b) state how the person may make a claim of reasonable excuse.

81A Offence not to comply with notice to produce

- (1) A person given a notice to produce under section 79 must comply with the notice unless the person has a reasonable excuse.

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

Note—

If a claim of reasonable excuse based on privilege is made, the claim is dealt with under chapter 4A, part 6.

- (2) A person does not commit an offence against subsection (1) if the person has made a claim of reasonable excuse based on privilege and 1 of the following applies—
 - (a) the commission withdraws the requirement the subject of the notice to produce;
 - (b) the commission is ordered by the Supreme Court to withdraw the requirement the subject of the notice to produce.
- (3) It is not a reasonable excuse for subsection (1) that complying with the notice to produce might tend to incriminate the person.

Note—

If a claim of self-incrimination privilege is made, the claim is dealt with under chapter 4A, part 6.

81B Miscellaneous

- (1) A person does not, by complying with a notice to produce in relation to a document or thing—

[s 12]

- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the document or thing; or
 - (b) incur any civil liability in relation to the document or thing.
- (2) A document or thing produced under this subdivision is taken to have been seized under a search warrant under part 2.

Subdivision 3 Power to require immediate production at hearing

81C Application of subdivision

This subdivision applies for the following—

- (a) a crime investigation;
- (b) a specific intelligence operation (crime);
- (c) a corruption investigation;
- (d) a specific intelligence operation (corruption).

81D Power to require immediate production

- (1) This section applies if the presiding officer at a commission hearing believes on reasonable grounds that a witness at the hearing possesses a document or thing relevant to the investigation or operation.
- (2) The presiding officer may require the witness to produce the document or thing immediately (an *immediate production requirement (hearing)*).

Note—

For the offence of refusal to produce the document or thing, see section 185.

- (3) The presiding officer may adjourn the hearing to allow the witness to comply with the immediate production requirement (hearing).
- (4) The witness does not, by complying with the immediate production requirement (hearing)—
 - (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the document or thing; or
 - (b) incur any civil liability in relation to the document or thing.

Division 2 Discovery powers

81E Notice to discover—crime investigation or specific intelligence operation (crime)

- (1) This section applies if the chairperson reasonably suspects that a unit of public administration possesses information relevant to a crime investigation or specific intelligence operation (crime).
- (2) The chairperson may require a person holding an appointment in the unit of public administration, by giving the person a notice (a *notice to discover*), to give an identified commission officer an oral or written statement of the information.
- (3) The notice to discover may be given whether or not the commission is conducting a hearing for the investigation or operation.
- (4) The chairperson may require the person—

[s 12]

- (a) to give an oral statement of information under oath; or
- (b) to give a written statement of information by way of statutory declaration.

81F Notice to discover—corruption investigation or specific intelligence operation (corruption)

- (1) This section applies if the chairperson reasonably suspects a person possesses information relevant to a corruption investigation or specific intelligence operation (corruption).
- (2) The chairperson may require the person, by giving the person a notice (a *notice to discover*), to give an identified commission officer an oral or written statement of the information.
- (3) The notice to discover may be given whether or not the commission is conducting a hearing for the investigation or operation.
- (4) The chairperson may require the person—
 - (a) to give an oral statement of information under oath; or
 - (b) to give a written statement of information by way of statutory declaration.

81G Form of notice to discover

- (1) A notice to discover must—
 - (a) state that it relates to—
 - (i) a crime investigation; or
 - (ii) a specific intelligence operation (crime); or
 - (iii) a corruption investigation; or

-
- (iv) a specific intelligence operation (corruption); and
 - (b) identify the general nature of the information sought by reference to a particular matter or particular type of information; and
 - (c) state a reasonable period within which the information is to be given; and
 - (d) without limiting section 81E(4) or 81F(4), state the way in which the information is to be given; and
 - (e) state how the person given the notice may make a claim of reasonable excuse.
- (2) A notice to discover may state—
- (a) that a person acting for the person to whom it is directed may comply with the notice; and
 - (b) the person or class of person who may act for the person to whom the notice is directed.

81H Offence not to comply with notice to discover

- (1) A person given a notice to discover under section 81E or 81F must comply with the notice unless the person has a reasonable excuse.

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

Note—

If a claim of reasonable excuse is made, the claim is dealt with under chapter 4A.

- (2) A person does not commit an offence against subsection (1) if the person has made a claim of reasonable excuse and 1 of the following applies—

[s 12]

- (a) the commission withdraws the requirement the subject of the notice to discover;
 - (b) the commission is ordered by the Supreme Court to withdraw the requirement the subject of the notice to discover.
- (3) It is not a reasonable excuse for subsection (1) that complying with the notice to discover might tend to incriminate the person.

Note—

If a claim of self-incrimination privilege is made, the claim is dealt with under chapter 4A.

81I Miscellaneous

A person does not, by complying with a notice to discover in relation to information—

- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the information; or
- (b) incur any civil liability in relation to the information.

Division 3 Legal professional privilege

81J Waiver of claim of legal professional privilege

A claim of legal professional privilege is not a reasonable excuse for a person for an offence against section 76(1), 81A(1) or 81H(1) if—

- (a) the person has authority to waive the privilege and waives it; or
- (b) the privilege is waived by a person having authority to waive it.

Note—

See chapter 4A, part 5 for the procedure for a claim of legal professional privilege by a person where the person has no authority to waive the privilege.

Division 3A Entry and search powers

81K Application of division

This division applies for a corruption investigation.

81L Authorisation of entry and search of official premises

- (1) The chairperson may, by notice, authorise a commission officer to enter and search official premises for the purposes of the corruption investigation.
- (2) *Official premises* are premises occupied or used by, or for the official purposes of, a unit of public administration, but do not include any part of premises occupied or used by, or for the purposes of, a State court.
- (3) If asked by the occupier of the official premises, or a person acting for the occupier, a commission officer who exercises powers under the chairperson's authority must produce the authority for inspection by the occupier or person.

81M Power to enter and search etc.

- (1) A commission officer authorised to enter and search official premises under section 81L may—
 - (a) enter and search the official premises; or

[s 12]

- (b) inspect any document or thing found in or on official premises that is, or might be, relevant to the corruption investigation; or
 - (c) seize and remove from official premises any document or thing found in or on the premises that is relevant to a corruption investigation; or
 - (d) make copies of or take extracts from a document mentioned in paragraph (b) or (c); or
 - (e) require a person holding an appointment in a unit of public administration to give the officer reasonable help to exercise the powers mentioned in paragraphs (b) to (d).
- (2) However, the commission officer must not exercise a power under subsection (1)(b), (c) or (d) if the chief executive officer of the unit of public administration, or a person authorised by the chief executive officer for the purpose, claims that the document or thing is subject to privilege.

Note—

If a claim of privilege is made, the claim is dealt with under chapter 4A.

81N Miscellaneous

A person does not, by allowing the exercise of a power under section 81M in relation to a document or thing—

- (a) contravene a provision of an Act or a law imposing a statutory or commercial obligation or restriction to maintain secrecy in relation to the document or thing; or
- (b) incur any civil liability in relation to the document or thing.

13 Amendment of s 82 (Notice to attend hearing—general)

(1) Section 82(1)(a)(iii) and (b)—

omit.

(2) Section 82(1)(c)—

renumber as section 82(1)(b).

(3) Section 82(1)—

insert—

Note—

For a reasonable excuse for not producing the document or thing, see section 186.

(4) Section 82(2)(a)(ii)—

omit.

(5) Section 82(2)(a)(iii) and (iv)—

renumber as section 82(2)(a)(ii) and (iii).

(6) Section 82(4)(b)—

omit.

(7) Section 82(4)(c)—

renumber as section 82(4)(b).

(8) Section 82—

insert—

(5A) An offence against subsection (5) is a misdemeanour.

(9) Section 82(7), ‘subsection (6)’—

omit, insert—

subsection (7)

(10) Section 82(5A) to (7)—

renumber as section 82(6) to (8).

[s 14]

14 Amendment of s 84 (Notice may be a confidential document)

Section 84(2) and (3)—

omit.

15 Amendment of s 85 (Notices requiring immediate attendance may be issued only by or with the approval of a Supreme Court judge)

(1) Section 85(1A), (2)(b), (4) and (5)—

omit.

(2) Section 85(2)(c), note, ‘section 82(6)’—

omit, insert—

section 82(7)

(3) Section 85(2)(c)—

renumber as section 85(2)(b).

(4) Section 85(3), ‘Subsection (3A)’—

omit, insert—

Subsection (4)

(5) Section 85(3A)—

renumber as section 85(4).

16 Insertion of new ch 3, pt 1, div 7

Chapter 3, part 1—

insert—

Division 7 Giving notices

85AA Giving notices by email

(1) This section applies in relation to a notice that may be given under division 1, 2 or 4 in relation

to an investigation, operation or function, other than—

- (a) a notice requiring immediate production of a document or thing; or
 - (b) an attendance notice requiring immediate attendance at a commission hearing.
- (2) The chairperson may give the notice to a person by sending the notice by email to—
- (a) the person's email address; or
 - (b) the email address of a lawyer representing the person.
- (3) However, the chairperson may give the notice under subsection (2) only if the chairperson is satisfied—
- (a) that it is appropriate to give the notice by email; and
 - (b) that—
 - (i) the person gave the commission the person's email address or the email address of a lawyer representing the person for the purpose of receiving the notice under this section; or
 - (ii) a lawyer representing the person gave the commission the lawyer's email address for the purpose of receiving under this section—
 - (A) all notices for the investigation, operation or function; or
 - (B) all notices of a particular type for the investigation, operation or function; or
 - (C) all notices given during a particular period for the

[s 17]

investigation, operation or
function.

- (4) In deciding whether it is appropriate to give the notice by email, the chairperson may have regard to—
 - (a) whether the notice is a confidential document under section 84; and
 - (b) the number and identity of persons who may have access to the account of the email address given to the commission by the person or the person's lawyer; and
 - (c) the relevance of the document, thing or information the subject of the notice to the investigation, operation or function; and
 - (d) any other matter the chairperson considers relevant.
- (5) This section does not limit the operation of the *Acts Interpretation Act 1954*, part 10.
- (6) The *Electronic Transactions (Queensland) Act 2001* does not apply to the giving of a notice under this section.

17 Amendment of s 94 (Limitation on search warrant powers for corruption investigations)

- (1) Section 94(2), from 'may withdraw'—

omit, insert—

may—

- (a) decide to withdraw the requirement in relation to which the claim is made; or
- (b) decide not to withdraw the requirement and advise the person that, for a claim of privilege other than journalist privilege, the person may apply to, or be required to

attend before, the Supreme Court to establish the claim under section 205ZW.

Note—

For a claim of journalist privilege, see the *Evidence Act 1977*, part 2, division 2B, subdivision 3.

- (2) Section 94(3), from ‘does not’—

omit, insert—

decides not to withdraw the requirement—

- (a) for which a claim of journalist privilege has been made—the *Evidence Act 1977*, part 2, division 2B, subdivision 3 applies; or
- (b) for which another claim of privilege has been made—chapter 4A, part 4, division 3 applies.

- (3) Section 94(4), definition *privilege*, after ‘confidentiality’—

insert—

or self-incrimination privilege

18 Amendment of s 110A (General power to seize evidence—confiscation related investigation)

- (1) Section 110A(3)(a) and (b)—

omit, insert—

- (a) decide to withdraw the requirement in relation to which the claim is made; or
- (b) decide not to withdraw the requirement and advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 205ZZH.

- (2) Section 110A(4), ‘section 78C’—

omit, insert—

[s 19]

chapter 4A, part 6, division 3

19 Amendment of s 111 (General power to seize evidence—corruption investigation)

(1) Section 111(3)(a) and (b)—

omit, insert—

- (a) decide to withdraw the requirement in relation to which the claim is made; or
- (b) decide not to withdraw the requirement and advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 205ZW.

(2) Section 111(4), from ‘does not’—

omit, insert—

decides not to withdraw the requirement, chapter 4A, part 4, division 3 applies.

(3) Section 111(5), definition *privilege*, after ‘confidentiality’—

insert—

or self-incrimination privilege

20 Replacement of ch 4, hdg and ch 4, pt 1, hdg

Chapter 4, heading and chapter 4, part 1, heading—

omit, insert—

Chapter 4 Hearings and claims of reasonable excuse, including privilege

Part 1 Hearings

21 Amendment of s 177 (Whether hearings are to be open or closed)

- (1) Section 177(2)(b)—
omit.
- (2) Section 177(2)(c), ‘or (b)’—
omit.
- (3) Section 177(2)(c)—
renumber as section 177(2)(b).

22 Insertion of new ss 182A–182C

After section 182—

insert—

182A Use of audiovisual link or audio link for remote attendance

- (1) This section applies to a person who is required to attend a commission hearing under an attendance notice other than an attendance notice requiring immediate attendance at a commission hearing.
- (2) The person may attend the hearing by an audiovisual link or audio link if the presiding officer is satisfied the requirements in subsection (3) are met.
- (3) The requirements are—
 - (a) the person agrees to attend by an audiovisual link or audio link; and
 - (b) if the person’s lawyer is present at the place where the presiding officer is presiding—both that place and the place where the person is located have facilities that will allow private communication

[s 22]

- between the person and the person's lawyer;
and
- (c) it is appropriate for the person to attend the hearing by an audiovisual link or audio link.
- (4) In deciding whether the requirement mentioned in subsection (3)(c) is met, the presiding officer may have regard to—
- (a) the nature of the hearing and the importance of the hearing for the investigation to which it relates; and
 - (b) the ability of the person to comprehend and effectively participate in the hearing; and
 - (c) whether the person is represented by a lawyer or has received legal advice about attendance by an audiovisual link or audio link; and
 - (d) the desirability of attendance by an audiovisual link rather than an audio link, if an audiovisual link is available.
- (5) Subsection (6) applies if the person's lawyer is present at the place where the presiding officer is presiding.
- (6) A communication between the person and the person's lawyer is as confidential and as inadmissible in any proceeding as the communication would be if it took place between the person and the person's lawyer while in each other's presence.
- (7) Subsection (6) does not limit any other protection applying to the communication.
- (8) Section 60 does not apply to a communication that is confidential under subsection (6) or a recording of such a communication.
- (9) Provisions of this Act applying to a hearing apply with necessary changes in relation to a hearing

under this section.

(10) In this section—

audio link means facilities, including a telephone, that enable reasonably contemporaneous and continuous audio communication between persons at different places.

audiovisual link—

- (a) means facilities that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places; and
- (b) includes videoconferencing.

182B Return of sealed documents or things for decision on claim of reasonable excuse at hearing—return to person

(1) This section applies if—

- (a) a person has given a commission officer a sealed document or thing; and
- (b) the commission has given the person a notice to attend a hearing to produce the sealed document or thing.

(2) The commission must return the sealed document or thing to the person at the hearing before the person is required at the hearing to produce the sealed document or thing.

182C Return of sealed documents or things for decision on claim of reasonable excuse at hearing—return to another person

(1) This section applies if—

- (a) a person has given the commission a sealed document or thing; and

[s 23]

- (b) the commission has given another person a notice to attend a hearing to produce the sealed document or thing.
- (2) The commission must give the sealed document or thing to the other person before the other person is required at the hearing to produce the sealed document or thing.

Example—

A lawyer has given the commission a sealed document or thing on behalf of a person. The commission gives the person a notice to attend a hearing to produce the sealed document or thing. The commission must give the sealed document or thing to the person before the person is required at the hearing to produce the sealed document or thing.

23 Amendment of ch 4, pt 2, hdg (Refusals and claims of privilege and reasonable excuse)

Chapter 4, part 2, heading, from ‘claims’—

omit, insert—

restrictions on use

24 Amendment of s 183 (Refusal to take oath)

Section 183—

insert—

- (2) An offence against subsection (1) is a misdemeanour.

25 Replacement of ch 4, pt 2, divs 2–4

Chapter 4, part 2, divisions 2 to 4—

omit, insert—

Division 2 Refusal to produce

184 Application of division

This division applies for the following—

- (a) a crime investigation;
- (b) a specific intelligence operation (crime);
- (c) a corruption investigation;
- (d) a specific intelligence operation (corruption).

185 Refusal to produce document or thing

- (1) A person required to produce a document or thing at a commission hearing under an attendance notice or immediate production requirement (hearing) must—
 - (a) if the document or thing is in the person's possession, bring the document or thing to the hearing, regardless of whether the person has a reasonable excuse for paragraph (b); and
 - (b) produce the document or thing at the hearing unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 5 years imprisonment.

Note—

If a claim of reasonable excuse is made, the claim is dealt with under chapter 4A.

- (2) An offence against subsection (1) is a misdemeanour.
- (3) It is not a reasonable excuse for subsection (1) that complying with the notice or requirement might tend to incriminate the person.

[s 25]

Note—

If a claim of self-incrimination privilege is made, the claim is dealt with under chapter 4A.

186 Claim of reasonable excuse

A person does not commit an offence against section 185(1) if the person has made a claim of reasonable excuse and 1 of the following applies—

- (a) the commission withdraws the requirement the subject of the attendance notice or immediate production requirement (hearing);
- (b) the commission is ordered by the Supreme Court to withdraw the requirement the subject of the attendance notice or immediate production requirement (hearing).

187 Waiver of claim of legal professional privilege

A claim of legal professional privilege is not a reasonable excuse for a person for an offence against section 185(1) if—

- (a) the person has authority to waive the privilege and waives it; or
- (b) the privilege is waived by a person having authority to waive it.

Note—

See chapter 4A, part 5 for the procedure for a claim of legal professional privilege by a person where the person has no authority to waive the privilege.

Division 3 Refusal to answer

188 Application of division

This division applies for the following—

- (a) a crime investigation;
- (b) a specific intelligence operation (crime);
- (c) a corruption investigation;
- (d) a specific intelligence operation (corruption).

189 Refusal to answer question

- (1) A witness at a commission hearing must answer a question, including a question about a claim of reasonable excuse made at the hearing, put to the person at the hearing by the presiding officer unless the person has a reasonable excuse.

Maximum penalty—200 penalty units or 5 years imprisonment.

- (2) An offence against subsection (1) is a misdemeanour.
- (3) It is not a reasonable excuse for subsection (1) that answering the question might tend to incriminate the person.

Note—

If a claim of self-incrimination privilege is made, the claim is dealt with under chapter 4A.

- (4) A person commits an offence under subsection (1) if the person remains silent.

190 Claim of reasonable excuse

A person does not commit an offence against section 189(1) if the person has made a claim of reasonable excuse and 1 of the following applies—

- (a) the commission withdraws the question;

[s 26]

- (b) the commission is ordered by the Supreme Court to withdraw the question.

191 Claim of legal professional privilege

- (1) A claim of legal professional privilege is not a reasonable excuse for a person for an offence against section 189(1) if—
 - (a) the person has authority to waive the privilege and waives it; or
 - (b) the privilege is waived by a person having authority to waive it.
- (2) Subsection (3) applies if—
 - (a) a person mentioned in section 189(1) refuses to answer a question on the ground the answer to the question would disclose a communication to which legal professional privilege attaches; and
 - (b) the person has no authority to waive the privilege.
- (3) The person must, if required by the presiding officer, tell the officer the name and address of the person to whom or by whom the communication was made.

Maximum penalty—200 penalty units or 5 years imprisonment.

- (4) An offence against subsection (3) is a misdemeanour.

26 Amendment of s 197 (Restriction on use of privileged answers, documents, things or statements disclosed or produced under compulsion)

Section 197(1)—

insert—

- (d) for a document or thing produced—the document or thing is produced other than in the context of a corruption investigation.

27 Amendment of s 198 (Contempt of person conducting commission hearing)

- (1) Section 198(4)(b)—

omit, insert—

- (b) a failure by a person, under section 185, to produce a document or thing at a commission hearing under an attendance notice or immediate production requirement (hearing) without reasonable excuse;

- (2) Section 198(4)(c), ‘190 or 192’—

omit, insert—

189

28 Amendment of s 199 (Punishment of contempt)

- (1) Section 199(8A)(a)(ii)—

omit, insert—

- (ii) a failure by a person, under section 185, to produce a document or thing at a commission hearing under an attendance notice or immediate production requirement (hearing) without reasonable excuse; or

- (2) Section 199(8A)(a)(iii), ‘190 or 192’—

omit, insert—

189

[s 29]

29 Amendment of s 200A (Confidentiality of particular proceedings)

Section 200A(1)(a) to (c)—

omit, insert—

- (a) a proceeding for contempt under section 199;
- (b) an application under section 205ZH, 205ZJ or 205ZK;
- (c) an appeal against a decision in a proceeding mentioned in paragraph (a) or (b).

30 Amendment of s 202 (Publication of names, evidence etc.)

(1) Section 202, heading, ‘Publication’—

omit, insert—

Disclosure

(2) Section 202(1), ‘publish’—

omit, insert—

disclose to anyone else

(3) Section 202(1)—

insert—

- (c) information that might enable the existence of a notice that is a confidential document under section 84 to be ascertained.

(4) Section 202(2), (3)(a) and (4), ‘publication’—

omit, insert—

disclosure

(5) Section 202—

insert—

(3A) In subsection (3), a reference to a witness is a

reference to a witness other than a witness who received a notice that is a confidential document under section 84.

(3B) Further, a person does not contravene subsection (1)(c) if the person has a reasonable excuse.

(3C) It is a reasonable excuse for a person to disclose the existence of a notice that is a confidential document under section 84 if—

(a) the disclosure is made for the purpose of—

(i) seeking legal advice in relation to the document or an offence against subsection (1)(c); or

(ii) obtaining information in order to comply with the document; or

(iii) making a complaint to the parliamentary committee about the document; or

(iv) the administration of this Act; and

(b) the person informs the person to whom the disclosure is made that it may be an offence to disclose the existence of the document to anyone else.

(6) Section 202(5)—

omit.

(7) Section 202(3A) to (4)—

renumber as section 202(4) to (7).

31 Amendment of s 205 (Legal assistance)

(1) Section 205(1)(b)—

omit, insert—

[s 32]

- (b) has been given notice under section 205G(1)(b), 205I(b) or 205T(b) in the context of—
 - (i) a crime investigation; or
 - (ii) an intelligence function; or
 - (iii) the witness protection function; or
 - (c) wishes to apply, or has applied, to the Supreme Court under section 205ZH or 205ZJ in the context of—
 - (i) a crime investigation; or
 - (ii) an intelligence function; or
 - (iii) the witness protection function.
- (2) Section 205(2), ‘or appeal’—
omit, insert—
, written submissions or application

32 Insertion of new ch 4A

After chapter 4—

insert—

Chapter 4A Procedure on claims of reasonable excuse, including privilege

Part 1 Preliminary

205A Definitions for chapter

In this chapter—

informant see section 205D(1)(c).

journalist see section 205C(1).

journalist privilege means the privilege established under section 205D.

news medium means a medium for the dissemination of news and observations on news to the public or a section of the public.

privilege see section 205B.

relevant person, for a journalist, means—

- (a) a current or previous employer of the journalist; or
- (b) a person who has engaged the journalist on a contract for services; or
- (c) a person who—
 - (i) is or has been involved in the publication of a news medium; and
 - (ii) works or has worked with the journalist in relation to publishing information in the news medium.

205B Meaning of *privilege*

Privilege, in relation to an answer, information, communication, document or thing, means—

- (a) parliamentary privilege; or
- (b) legal professional privilege; or
- (c) public interest immunity; or
- (d) a claim on the ground of confidentiality; or
- (e) self-incrimination privilege; or
- (f) journalist privilege.

205C Who is a *journalist*

- (1) A person is a *journalist* if the person is engaged and active in—
 - (a) gathering and assessing information about matters of public interest; and
 - (b) preparing the information, or providing comment or opinion on or analysis of the information, for publication in a news medium.
- (2) In deciding whether a person is a journalist, a deciding officer, presiding officer or the Supreme Court may consider the following matters—
 - (a) whether the person is regularly engaged and active in the activities mentioned in subsection (1);
 - (b) whether the person complies with a recognised professional standard or code of practice in carrying out the activities;
 - (c) whether the publisher of the news medium complies with a recognised professional standard or code of practice in publishing information in the news medium;
 - (d) any other matter the officer or court considers relevant.

205D Journalist privilege relating to identity of informants

- (1) This section applies if—
 - (a) a person makes a claim of reasonable excuse based on journalist privilege for not complying with a requirement to—
 - (i) produce a document, thing or information to the commission; or

- (ii) provide information in answer to a question at a commission hearing; and
 - (b) the person is a journalist or a relevant person for a journalist; and
 - (c) another person (the *informant*) gave the document, thing or information to the journalist, in the normal course of the journalist's activities as a journalist, in the expectation the document, thing or information may be published in a news medium; and
 - (d) the journalist promised the informant not to disclose the informant's identity as the source of the document, thing or information.
- (2) Subject to this chapter, the journalist or the relevant person can not be compelled to comply with the requirement if complying with the requirement would—
- (a) disclose the identity of the informant as the source of the document, thing or information; or
 - (b) enable the identity of the informant as the source of the document, thing or information to be ascertained.
- (3) However, this section applies in relation to a relevant person for the journalist only if the relevant person became aware of the identity of the informant as the source of the document, thing or information—
- (a) in the normal course of the relevant person's work with the journalist; or
 - (b) in the course of, or as a result of, an investigation or proceeding under this Act.
- (4) To remove any doubt, it is declared that this

[s 32]

section does not prevent a person from disclosing the informant's identity as the source of the document, thing or information.

205E Part of document or thing

- (1) A claim of reasonable excuse in relation to a document or thing required to be produced under this Act may be made in relation to only part of the document or thing.
- (2) A reference in this chapter to a document or thing includes a reference to a part of the document or thing.

Part 2 Claims dealt with by commission

Division 1 Claims made outside of hearings

Subdivision 1 Dealing with claims

205F Application of subdivision

- (1) This subdivision applies if—
 - (a) a person claims a reasonable excuse—
 - (i) under section 76(1) in relation to a requirement to produce a document or thing under a notice to produce; or
 - (ii) under section 81H(1) in relation to a requirement to give a statement of information under a notice to discover; and

- (b) the document, thing or information was not required to be produced at a commission hearing.
- (2) This subdivision also applies if a person claims privilege under section 81M(2) in relation to a document or thing found in or on official premises that a commission officer proposed, under an authorisation under section 81L—
 - (a) to inspect; or
 - (b) to seize and remove; or
 - (c) for a document—to make copies of or take extracts from.
- (3) In this subdivision, a reference to a requirement in relation to a document or thing includes a reference to a commission officer exercising a power under section 81M(1) in relation to the document or thing.

205G Commission officer to consider claim

- (1) The commission officer who required the document, thing or information to be given must consider the claim and may—
 - (a) decide to withdraw the requirement in relation to which the claim is made; or
 - (b) decide not to withdraw the requirement and advise the person by notice—
 - (i) that the claim will be dealt with under this part; and
 - (ii) that the person may make written submissions to the commission; and
 - (iii) the day by which the submissions must be made, which must be at least 7 days after the notice is given.
- (2) When considering the claim, the commission

[s 32]

officer must not access the document, thing or information the subject of the claim.

205H Deciding officer to decide claim or decline to decide claim

- (1) This section applies if the commission officer does not withdraw the requirement.
- (2) The chairperson or a senior officer (the *deciding officer*) must—
 - (a) consider the claim; and
 - (b) consider any written submissions made by the person; and
 - (c) either—
 - (i) decide the claim under section 205J or division 3; or
 - (ii) for a claim of reasonable excuse based on privilege—in the circumstances, decline to decide the claim.

Example of circumstances in which a deciding officer may decline to decide a claim—

The deciding officer is unable to decide the claim because the officer does not have enough information to decide the claim.

- (3) When considering the claim, the deciding officer must not access the document, thing or information the subject of the claim.
- (4) The deciding officer must deal with the claim expeditiously.
- (5) In this section—

senior officer means a senior officer who—

 - (a) is not the commission officer or part of the investigation, operation or function to which the requirement relates; and

- (b) holds a position at a level equivalent to or above the commission officer's level; and
- (c) is appropriately qualified to decide the claim.

205I Deciding officer declines to decide claim of reasonable excuse based on privilege

If the deciding officer declines to decide a claim of reasonable excuse based on privilege, the officer must give the person—

- (a) reasons for the decision; and
- (b) a notice advising the person that the person may be required to attend before the Supreme Court under section 205ZK to establish the claim.

205J Reasonable excuse not based on privilege

- (1) If the deciding officer decides a claim of reasonable excuse not based on privilege is established, the officer may—
 - (a) amend the requirement to which the claim relates; or
 - (b) withdraw the requirement to which the claim relates.
- (2) If the deciding officer decides a claim of reasonable excuse not based on privilege is not established, the officer must—
 - (a) require the person making the claim to comply with the requirement to which the claim relates; and
 - (b) give the person—
 - (i) reasons for the decision; and
 - (ii) an application notice for the decision.

Subdivision 2 Procedures for documents and things

205K Application of subdivision

This subdivision applies if—

- (a) a person makes a claim of reasonable excuse in relation to a document or thing the person is required to give or produce to the commission, other than at a commission hearing; and
- (b) the person acknowledges that the document or thing is in the person's possession; and
- (c) the commission officer who required the document or thing to be given decides not to withdraw the requirement under section 205G(1)(b); and
- (d) section 205ZZC does not apply.

205L Procedure for claims made outside of hearings

- (1) The commission officer must require the person to seal the document or thing immediately and give it to the commission officer for safekeeping.
- (2) The person must immediately seal the document or thing and give it to the commission officer for safekeeping.

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

- (3) The commission officer must—
 - (a) give the person a receipt for the sealed document or thing; and

- (b) place it in safe custody at the commission's place of business at the earliest reasonable opportunity.
- (4) A person must not open the sealed document or thing unless authorised to open it under this Act or a court order.

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

205M Procedure if requirement is withdrawn

- (1) This section applies if the requirement to give a document or thing sealed under section 205L is withdrawn under section 205J or division 3.
- (2) The commission must return the sealed document or thing to the person within 7 days after the requirement is withdrawn.

205N Procedure if chairperson does not apply to Supreme Court after deciding officer declines to decide claim

- (1) This section applies if—
 - (a) a document or thing sealed under section 205L is the subject of a decision by a deciding officer to decline to decide a claim under section 205I; and
 - (b) the chairperson fails to apply to the Supreme Court under section 205ZK within the period allowed under that section.
- (2) The commission must return the sealed document or thing to the person within 7 days after the end of the period mentioned in subsection (1)(b).

205O Procedure if person does not apply to Supreme Court

- (1) This section applies if—
 - (a) a document or thing sealed under section 205L is the subject of—
 - (i) a decision by a deciding officer under section 205J in relation to which the officer advised the person of their right to apply to the Supreme Court under section 205ZH; or
 - (ii) a decision by a deciding officer under division 3 in relation to which the officer advised the person of their right to apply to the Supreme Court under section 205ZJ; and
 - (b) the person fails to apply to the Supreme Court under section 205ZH or 205ZJ within the period allowed under the relevant section.
- (2) The commission may access the sealed document or thing.

205P Procedure if person or chairperson applies to Supreme Court

- (1) This section applies if—
 - (a) a document or thing sealed under section 205L is the subject of—
 - (i) a decision by a deciding officer under section 205J in relation to which the officer advised the person of their right to apply to the Supreme Court under section 205ZH; or
 - (ii) a decision by a deciding officer under division 3 in relation to which the officer advised the person of their right

to apply to the Supreme Court under section 205ZJ; and

- (b) the person applies to the Supreme Court under section 205ZH or 205ZJ within the period allowed under the relevant section.
- (2) This section also applies if—
- (a) a document or thing sealed under section 205L is the subject of a decision by a deciding officer to decline to decide a claim under section 205I; and
 - (b) the chairperson applies to the Supreme Court under section 205ZK within the period allowed under that section.
- (3) The commission's representative must immediately deliver the sealed document or thing to a registrar of the Supreme Court to be held in safe custody.

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

- (4) The commission's representative must notify the person that the sealed document or thing has been delivered to the registrar.
- (5) A person must not open the sealed document or thing unless authorised to open it under this Act or a court order.

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

205Q Action by registrar

- (1) This section applies if a sealed document or thing has been delivered to a registrar of the Supreme Court under section 205P.
- (2) The registrar must keep the sealed document or thing in safe custody until—

[s 32]

- (a) the application under section 205ZH, 205ZJ or 205ZK is decided by the Supreme Court; or
 - (b) the person and the commission's representative give the registrar notice that agreement has been reached on the disposal of the sealed document or thing.
- (3) The registrar must—
- (a) if the application under section 205ZH, 205ZJ or 205ZK is decided by the Supreme Court—dispose of the sealed document or thing in the way ordered by the court; or
 - (b) if the person and the commission's representative give the registrar notice that agreement on the disposal of the sealed document or thing has been reached—dispose of the sealed document or thing in the way agreed.

Division 2 Claims made in hearings

Subdivision 1 Dealing with claims

205R Application of subdivision

- (1) This subdivision applies if—
 - (a) a person claims a reasonable excuse under section 81H(1) in relation to a requirement to give a statement of information under a notice to discover; and
 - (b) the statement was required to be given at a commission hearing.
- (2) This subdivision also applies if a person claims a reasonable excuse—

- (a) under section 185(1) in relation to a document or thing required to be produced under an attendance notice or immediate production requirement (hearing); or
- (b) under section 189(1) in relation to a requirement to answer a question.

205S Presiding officer to decide claim or decline to decide claim

- (1) The presiding officer must—
 - (a) consider the claim; and
 - (b) hear the person’s submissions; and
 - (c) either—
 - (i) decide the claim under section 205U or division 3; or
 - (ii) for a claim of reasonable excuse based on privilege—in the circumstances, decline to decide the claim.

Example of circumstances in which a presiding officer may decline to decide a claim—

The presiding officer is unable to decide the claim because the officer does not have enough information to decide the claim.

- (2) When considering the claim, the presiding officer must not access the document, thing or information the subject of the claim.

205T Presiding officer declines to decide claim of reasonable excuse based on privilege

If the presiding officer declines to decide a claim of reasonable excuse based on privilege, the officer must give the person—

- (a) reasons for the decision; and

[s 32]

- (b) a notice advising the person that the person may be required to attend before the Supreme Court under section 205ZK to establish the claim.

205U Reasonable excuse not based on privilege

- (1) If the presiding officer decides a claim of reasonable excuse not based on privilege is established, the officer may—
 - (a) amend the requirement to which the claim relates; or
 - (b) withdraw the requirement to which the claim relates.
- (2) If the presiding officer decides a claim of reasonable excuse not based on privilege is not established, the officer must—
 - (a) require the person making the claim to comply with the requirement to which the claim relates; and
 - (b) give the person—
 - (i) reasons for the decision; and
 - (ii) an application notice for the decision.

Subdivision 2 Procedures for documents and things

205V Application of subdivision

- (1) This subdivision applies if—
 - (a) a person makes a claim of reasonable excuse in relation to a document or thing the person is required to give or produce at a commission hearing; and

-
- (b) the person acknowledges that the document or thing is in the person's possession; and
 - (c) 1 of the requirements mentioned in subsection (2) is met; and
 - (d) section 205ZZC does not apply.
- (2) The requirements are—
- (a) the presiding officer declines to decide the claim under section 205T; or
 - (b) both of the following—
 - (i) the presiding officer does not withdraw the requirement under section 205U or division 3;
 - (ii) the person informs the presiding officer that—
 - (A) the person wishes to apply to the Supreme Court or consider an application to the Supreme Court under section 205ZH or 205ZJ in relation to the document or thing; or
 - (B) the person does not intend to comply with the requirement.

205W Procedure for claims made in hearings

- (1) The presiding officer must require the person to seal the document or thing immediately and give it to the presiding officer for safekeeping.
- (2) The person must immediately seal the document or thing under the supervision of the presiding officer.

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

- (3) The commission's representative and, if

[s 32]

practicable, the person must immediately deliver the sealed document or thing to a registrar of the Supreme Court to be held in safe custody.

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

205X Action by registrar—if presiding officer declined to decide claim

- (1) This section applies if—
 - (a) the commission’s representative and, if applicable, the person delivered a sealed document or thing to a registrar of the Supreme Court under section 205W(3); and
 - (b) the requirement mentioned in section 205V(2)(a) applies.
- (2) The registrar must keep the sealed document or thing in safe custody until the first of the following happens—
 - (a) the person and the commission’s representative give the registrar notice that agreement has been reached on the disposal of the sealed document or thing;
 - (b) an application is made to the Supreme Court under section 205ZK to decide the claim of reasonable excuse;
 - (c) the end of the period in which an application may be made to the Supreme Court under section 205ZK.
- (3) The registrar must—
 - (a) if the person and the commission’s representative give the registrar notice that agreement has been reached on the disposal of the sealed document or thing—dispose of the sealed document or thing in the way agreed; or

- (b) if an application is made to the Supreme Court under section 205ZK to decide the claim of reasonable excuse—dispose of the sealed document or thing in the way ordered by the court; or
- (c) if subsection (2)(a) does not apply and an application is not made by the end of the period in which the chairperson may apply to the Supreme Court under section 205ZK—give the sealed document or thing to the person.

205Y Action by registrar—if presiding officer did not withdraw requirement

- (1) This section applies if—
 - (a) the commission’s representative and, if applicable, the person delivered a sealed document or thing to a registrar of the Supreme Court under section 205W(3); and
 - (b) the requirement mentioned in section 205V(2)(b) applies.
- (2) The registrar must keep the sealed document or thing in safe custody until the first of the following happens—
 - (a) the person and the commission’s representative give the registrar notice that agreement has been reached on the disposal of the sealed document or thing;
 - (b) an application is made to the Supreme Court under section 205ZH or 205ZJ to decide the claim of reasonable excuse;
 - (c) the end of the period in which the person may apply to the Supreme Court under section 205ZH or 205ZJ.
- (3) The registrar must—

[s 32]

- (a) if the person and the commission's representative give the registrar notice that agreement has been reached on the disposal of the sealed document or thing—dispose of the sealed document or thing in the way agreed; or
- (b) if an application is made to the Supreme Court under section 205ZH or 205ZJ to decide the claim of reasonable excuse—dispose of the sealed document or thing in the way ordered by the court; or
- (c) if subsection (2)(a) does not apply and an application is not made by the end of the period in which the person may apply to the Supreme Court under section 205ZH or 205ZJ—give the sealed document or thing to the commission, who may access it.

Division 3 Deciding claims of privilege

205Z Purpose and application of division

- (1) This division provides for—
 - (a) how claims of privilege being considered by a deciding officer under division 1 or a presiding officer under division 2 are decided; and
 - (b) the circumstances in which a person can be required to produce a document, thing or information, or answer a question, even if the deciding officer or presiding officer decides a claim of confidentiality, self-incrimination privilege or journalist privilege is established.

Note—

See section 197 for a restriction on the use of an answer, document, thing or statement disclosed or produced where a person claims self-incrimination privilege in relation to the answer, document, thing or statement.

- (2) In this division, a reference to a requirement in relation to a document or thing includes a reference to a commission officer exercising a power under section 81M(1) in relation to the document or thing.

205ZA Parliamentary privilege

- (1) If the deciding officer or presiding officer decides a claim on the ground of parliamentary privilege is established, the officer must withdraw the requirement to which the claim relates.
- (2) If the deciding officer or presiding officer decides a claim on the ground of parliamentary privilege is not established, section 205ZG(2) applies.

205ZB Legal professional privilege

- (1) If the deciding officer or presiding officer decides a claim on the ground of legal professional privilege is established, the officer must withdraw the requirement to which the claim relates.
- (2) If the deciding officer or presiding officer decides a claim on the ground of legal professional privilege is established but the privilege has been waived by a person having authority to waive it, the person must comply with the requirement to which the claim relates.
- (3) If the deciding officer or presiding officer decides a claim on the ground of legal professional privilege is not established, section 205ZG(2) applies.

205ZC Public interest immunity

- (1) If the deciding officer or presiding officer decides a claim on the ground of public interest immunity is established, the officer must withdraw the requirement to which the claim relates.
- (2) If the deciding officer or presiding officer decides a claim on the ground of public interest immunity is not established, section 205ZG(2) applies.

205ZD Confidentiality

- (1) Subsection (2) applies if the deciding officer or presiding officer decides a claim on the ground of confidentiality is established and it would not be against the public interest—
 - (a) for a claim related to a requirement to produce a document, thing or information—for the document, thing or information to be produced; or
 - (b) for a claim related to a requirement to answer a question—for the question to be answered.
- (2) The deciding officer or presiding officer must require the person to comply with the requirement to which the claim relates.
- (3) If the deciding officer or presiding officer makes a requirement of the person under subsection (2), section 205ZG(2) applies.
- (4) If the deciding officer or presiding officer decides a claim on the ground of confidentiality is established and it would be against the public interest for the document, thing or information to be produced or question to be answered, the officer must withdraw the requirement to which the claim relates.
- (5) If the deciding officer or presiding officer decides

a claim on the ground of confidentiality is not established, section 205ZG(2) applies.

205ZE Self-incrimination privilege

- (1) If the deciding officer or presiding officer decides a claim on the ground of self-incrimination privilege is established, the person must comply with the requirement to which the claim relates.

Note—

See section 197 for a restriction on the use of an answer, document, thing or statement disclosed or produced where a claim of self-incrimination privilege in relation to the answer, document, thing or statement is established.

- (2) If the deciding officer or presiding officer decides a claim on the ground of self-incrimination privilege is not established, section 205ZG(2) applies.

205ZF Journalist privilege

- (1) Subsections (2) and (3) apply if the deciding officer or presiding officer decides a claim made by a journalist or a relevant person for a journalist on the ground of journalist privilege is established in relation to a requirement to produce a document, thing or information or provide information in answer to a question and the public interest in disclosing the identity of the informant the subject of the claim outweighs—
 - (a) any likely adverse effect of the disclosure on the informant or another person; and
 - (b) the public interest in—
 - (i) the communication of facts and opinion to the public by the news media; and

[s 32]

- (ii) the ability of the news media to access sources of facts.
- (2) The deciding officer or presiding officer—
 - (a) may require the journalist or relevant person to comply with the requirement to which the claim relates; or
 - (b) otherwise—must withdraw the requirement to which the claim relates.
- (3) In deciding whether to make the requirement of the journalist or relevant person, the deciding officer or presiding officer may have regard to the following matters—
 - (a) whether the document, thing or information is a matter of public interest;
 - (b) the nature and subject matter of the investigation, operation or function to which the requirement relates;
 - (c) the importance of the document, thing or information, and the informant’s identity, to the investigation, operation or function to which the requirement relates and the availability of other evidence in relation to the document, thing or information;
 - (d) any likely adverse effect of disclosing the informant’s identity on the informant or another person and whether the effect can be mitigated;
 - (e) whether the informant’s identity as the source of the document, thing or information is already in the public domain;
 - (f) any decision previously made by the commission or a court about a claim, objection or application in relation to the document, thing or information;

- (g) the way in which the document, thing or information has been used or kept by the journalist, including whether the journalist—
 - (i) verified the document, thing or information; or
 - (ii) used the document, thing or information in a way that is fair and accurate and minimised any likely adverse effect on another person;
 - (h) whether the journalist complied with a recognised professional standard or code of practice in obtaining, using or receiving the document, thing or information;
 - (i) whether obtaining, using, giving or receiving the document, thing or information—
 - (i) involved an offence or misconduct by the informant or the journalist; or
 - (ii) poses a risk to national security or the security of the State;
 - (j) the extent to which making the requirement is likely to deter other persons from giving information to journalists;
 - (k) any other matter the deciding officer or presiding officer considers relevant.
- (4) If the deciding officer or presiding officer requires the journalist or relevant person to comply with the requirement to which the claim relates, section 205ZG(2) applies.
- (5) If the deciding officer or presiding officer decides a claim on the ground of journalist privilege is not established, section 205ZG(2) applies.

205ZG Claim not established or requirement made

- (1) This section applies if the deciding officer or presiding officer—
 - (a) decides that the claim is not established; or
 - (b) requires the person to comply with the requirement to which the claim relates.
- (2) The deciding officer or presiding officer must give the person—
 - (a) reasons for the decision; and
 - (b) an application notice for the decision.

Part 3 Claims dealt with by Supreme Court

Division 1 Claims of reasonable excuse not based on privilege

205ZH Applications about decisions of deciding officers and presiding officers

- (1) This section applies in relation to—
 - (a) a decision of a deciding officer under section 205J(2) that a claim by a person of reasonable excuse not based on privilege is not established; or
 - (b) a decision of a presiding officer under section 205U(2) that a claim by a person of reasonable excuse not based on privilege is not established.
- (2) The person may apply to the Supreme Court for the court to decide the claim of reasonable excuse

not based on privilege if—

- (a) the person applies for leave to apply within 7 days after the day the person receives the application notice under the relevant section; and
 - (b) the Supreme Court grants leave to make the application.
- (3) The Supreme Court may grant leave to make the application only if the court is satisfied—
- (a) if the application relates to a document or thing that the person has acknowledged is in the person's possession—the document or thing has been delivered to a registrar of the Supreme Court; and
 - (b) in all cases—
 - (i) the application has a significant prospect of success; or
 - (ii) there is some important question of law involved.
- (4) An application for leave to make an application must state the grounds of the application for leave.

205ZI Supreme Court to decide claim

- (1) This section applies if leave to make an application about a decision of a deciding officer or presiding officer is granted under section 205ZH.
- (2) The burden of proof in the application is on the person making the application.
- (3) The Supreme Court must—
 - (a) consider the claim of reasonable excuse the subject of the decision; and

[s 32]

- (b) hear the person's submissions and the commission's submissions.
 - (4) The Supreme Court must deal with the application expeditiously.
 - (5) The Supreme Court may hear the application in any way it considers appropriate, including, for example, by hearing the matter afresh, in whole or part.
 - (6) When considering the claim, the Supreme Court may access the document, thing or information the subject of the claim.
 - (7) The application is to be heard in closed court.
- Note—*
- See also section 200A in relation to the confidentiality of proceedings under this section.
- (8) However, the Supreme Court may permit another person to be present at a hearing for the application if the court considers it is in the interests of justice to do so.
 - (9) On hearing the application, the Supreme Court may—
 - (a) order the person to produce the document, thing or information or answer the question; or
 - (b) order the commission to withdraw the requirement to which the claim relates.
 - (10) The Supreme Court must give reasons for the court's decision, which may be given orally.
 - (11) Costs of the application are to be borne by the commission, unless otherwise ordered by the Supreme Court on the ground that the claim is frivolous or vexatious.

Division 2 Claims of reasonable excuse based on privilege

205ZJ Applications about decisions of deciding officers and presiding officers

- (1) This section applies in relation to—
 - (a) a decision of a deciding officer or presiding officer under part 2, division 3 that a claim of reasonable excuse based on privilege is not established; or
 - (b) a decision of a deciding officer or presiding officer under any of the following sections to make a requirement of a person—
 - (i) section 205ZD(2);
 - (ii) section 205ZF(2)(a).
- (2) The person may apply to the Supreme Court for the court to decide the claim of reasonable excuse based on privilege the subject of the decision.
- (3) The person must apply within 7 days after the day the person receives the application notice under the relevant section.
- (4) The person may apply only once under subsection (2) in relation to a particular requirement—
 - (a) to produce information or a document or thing; or
 - (b) to answer a question.

205ZK Applications after deciding officer or presiding officer declines to decide claim

- (1) This section applies if—

[s 32]

- (a) a deciding officer declines under section 205I to decide a claim of reasonable excuse based on privilege; or
 - (b) a presiding officer declines under section 205T to decide a claim of reasonable excuse based on privilege.
- (2) The chairperson may apply to the Supreme Court for the court to decide the claim.
 - (3) The chairperson must apply within 7 days after the day the person making the claim receives the notice under the relevant provision.

205ZL Supreme Court to decide claim

- (1) This section applies in relation to an application made under section 205ZJ or 205ZK.
- (2) Other than for a claim on the ground of journalist privilege, the burden of proof on the application is on the person who seeks—
 - (a) to withhold the document, thing or information; or
 - (b) not to answer the question; or
 - (c) to prevent the exercise of authority.
- (3) For a claim on the ground of journalist privilege—
 - (a) the burden of proof for establishing the claim is on the journalist or relevant person for the journalist; and
 - (b) the burden of proof in relation to the matters mentioned in section 205ZS(1), other than the establishment of the claim, is on the commission.
- (4) The Supreme Court must—

- (a) consider the claim of reasonable excuse based on privilege the subject of the application; and
 - (b) hear the person's submissions and the commission's submissions; and
 - (c) decide the claim under division 3.
- (5) The Supreme Court must deal with the application expeditiously.
 - (6) The Supreme Court may hear the application in any way it considers appropriate, including, for example, by hearing the matter afresh, in whole or part.
 - (7) When considering the claim, the Supreme Court may access the document, thing or information the subject of the claim.
 - (8) The application is to be heard in closed court.
- Note—*
- See also section 200A in relation to the confidentiality of proceedings under this section.
- (9) However, the Supreme Court may permit another person to be present at a hearing for the application if the court considers it is in the interests of justice to do so.
 - (10) The Supreme Court must give reasons for the court's decision, which may be given orally.
 - (11) Costs of the application are to be borne by the commission, unless otherwise ordered by the Supreme Court on the ground that the claim is frivolous or vexatious.

Division 3 Deciding claims of privilege

205ZM Purpose of division

This division provides for how claims of privilege being considered by the Supreme Court under the following provisions are decided—

- (a) division 2;
- (b) part 4, division 2;
- (c) part 6, division 2.

205ZN Parliamentary privilege

- (1) If the Supreme Court decides a claim on the ground of parliamentary privilege is established, the court must order the commission to withdraw the requirement to which the claim relates.
- (2) If the Supreme Court decides a claim on the ground of parliamentary privilege is not established, the court must order the person to produce the document, thing or information or answer the question.

205ZO Legal professional privilege

- (1) If the Supreme Court decides a claim on the ground of legal professional privilege is established, the court must order the commission to withdraw the requirement to which the claim relates.
- (2) If the Supreme Court decides a claim on the ground of legal professional privilege is established but the privilege has been waived by a person having authority to waive it, the court must order the person to produce the document, thing or information or answer the question.
- (3) If the Supreme Court decides a claim on the ground of legal professional privilege is not established, the court must order the person to

produce the document, thing or information or answer the question.

205ZP Public interest immunity

- (1) If the Supreme Court decides a claim on the ground of public interest immunity is established, the court must order the commission to withdraw the requirement to which the claim relates.
- (2) If the Supreme Court decides a claim on the ground of public interest immunity is not established, the court must order the person to produce the document, thing or information or answer the question.

205ZQ Confidentiality

- (1) Subsection (2) applies if the Supreme Court decides a claim on the ground of confidentiality is established and it would not be against the public interest—
 - (a) for a claim related to a requirement to produce a document, thing or information—for the document, thing or information to be produced; or
 - (b) for a claim related to a requirement to answer a question—for the question to be answered.
- (2) The Supreme Court must order the person—
 - (a) to produce the document, thing or information; or
 - (b) to answer the question.
- (3) If the Supreme Court decides the claim is established and it would be against the public interest for the document, thing or information to be produced or question to be answered, the court

[s 32]

must order the commission to withdraw the requirement to which the claim relates.

- (4) If the Supreme Court decides a claim on the ground of confidentiality is not established, the court must order the person to produce the document, thing or information or answer the question.
- (5) This section does not apply to a claim under section 94(2)(b) or 111(3)(b).

205ZR Self-incrimination privilege

- (1) Whether or not the Supreme Court decides a claim on the ground of self-incrimination privilege is established, the court must order the person to produce the document, thing or information or answer the question.

Note—

See section 197 for a restriction on the use of an answer, document, thing or statement disclosed or produced where a claim of self-incrimination privilege in relation to the answer, document, thing or statement is established.

- (2) This section does not apply to a claim under section 94(2)(b) or 111(3)(b).

205ZS Journalist privilege

- (1) Subsections (2) and (3) apply if the Supreme Court decides a claim made by a journalist or a relevant person for a journalist on the ground of journalist privilege is established in relation to a requirement to produce a document, thing or information or provide information in answer to a question and the public interest in disclosing the identity of the informant the subject of the claim outweighs—

- (a) any likely adverse effect of the disclosure on the informant or another person; and
- (b) the public interest in—
 - (i) the communication of facts and opinion to the public by the news media; and
 - (ii) the ability of the news media to access sources of facts.
- (2) The Supreme Court—
 - (a) may order the person—
 - (i) to produce the document, thing or information; or
 - (ii) answer the question; or
 - (b) otherwise—must order the commission to withdraw the requirement to which the claim relates.
- (3) In deciding whether to make the order, the Supreme Court may have regard to—
 - (a) the matters mentioned in section 205ZF(3)(a) to (j); and
 - (b) any other matter the court considers relevant.
- (4) If the Supreme Court decides a claim on the ground of journalist privilege is not established, the court must order the person to produce the document, thing or information or answer the question.
- (5) This section does not apply to a claim under section 94(2)(b).

Division 4 Other orders

205ZT Access to, or return of, documents and things

- (1) This section applies if a document or thing was delivered to a registrar of the Supreme Court under section 205P or 205W.
- (2) The Supreme Court must make an order directing that the document or thing be given to the commission if—
 - (a) the Supreme Court declines to grant leave to make an application under section 205ZH(2) in relation to the document or thing; or
 - (b) the Supreme Court orders a person under section 205ZI(9)(a) to produce the document or thing to the commission; or
 - (c) the Supreme Court orders a person under division 3 to produce the document or thing to the commission.
- (3) If the Supreme Court orders the commission under section 205ZI(9)(b) or division 3 to withdraw a requirement in relation to the document or thing, the court must also make an order directing that the document or thing be given to the person.

205ZU Ancillary orders

- (1) In addition to any order the Supreme Court may make under this part, the court may make any order the court considers appropriate in the circumstances.
- (2) Without limiting subsection (1), the Supreme Court may make an order restricting access to any material, including a document, thing or information given to the court in the proceedings for the application (the *relevant material*), including an order that the relevant material—

- (a) is not required to be disclosed to another party; and
 - (b) is not to be publicly accessible.
- (3) In deciding whether to make an order under subsection (2), the Supreme Court may have regard to whether disclosure of the relevant material would—
- (a) prejudice a proceeding, or an investigation or intelligence operation of the commission or the police service; or
 - (b) cause harm or detriment to a person; or
 - (c) not be in the public interest; or
 - (d) in the context of a claim of reasonable excuse based on journalist privilege, or a claim of journalist privilege—
 - (i) disclose the identity of the informant as the source of the relevant material; or
 - (ii) enable the identity of the informant as the source of the relevant material to be ascertained.

Part 4 Claims made in relation to search warrants and seizures

Division 1 Preliminary

205ZV Application of part

This part applies in relation to a decision of a commission officer under section 94(2)(b) or 111(3)(b) not to withdraw a requirement of a person in relation to a document or thing.

Division 2 Supreme Court to decide claim

205ZW Applications to Supreme Court

- (1) The chairperson or the person making the claim of privilege in relation to the document or thing may apply to the Supreme Court to decide whether the claim is established and, if established, whether it is to be upheld.
- (2) The burden of proof on the application is on the person who seeks to withhold the document or thing or to prevent the exercise of authority.
- (3) The Supreme Court must—
 - (a) consider the claim of privilege; and
 - (b) hear the submissions of the person making the claim and the commission's submissions; and
 - (c) decide the claim—
 - (i) for a claim under section 94(2)(b)—under part 3, division 3, other than sections 205ZQ to 205ZS; or
 - (ii) for a claim under section 111(3)(b)—under part 3, division 3, other than sections 205ZQ and 205ZR.
- (4) The Supreme Court may hear the application in any way it considers appropriate.
- (5) The Supreme Court must give reasons for the court's decision, which may be given orally.
- (6) Costs of an application are to be borne by the commission, unless otherwise ordered by the Supreme Court on the ground that the claim is frivolous or vexatious.

205ZX Access to, or return of, documents and things

- (1) If the Supreme Court orders a person under part 3, division 3 to produce a document or thing to the commission and the document or thing was delivered to a registrar of the Supreme Court under section 205ZZ, the court must also make an order directing that the document or thing be given to the commission.
- (2) If the Supreme Court orders the commission under part 3, division 3 to withdraw a requirement in relation to a document or thing and the document or thing was delivered to a registrar of the Supreme Court under section 205ZZ, the court must also make an order directing that the document or thing be given to the person mentioned in section 205ZZ(1).

205ZY Ancillary orders

- (1) In addition to any order the Supreme Court may make under this part or part 3, division 3, the court may make any order the court considers appropriate in the circumstances.
- (2) Without limiting subsection (1), the Supreme Court may make an order restricting access to any material, including a document or thing given to the court in the proceedings for the application (the *relevant material*), including an order that the relevant material—
 - (a) is not required to be disclosed to another party; and
 - (b) is not to be publicly accessible.
- (3) In deciding whether to make an order under subsection (2), the Supreme Court may have regard to whether disclosure of the relevant material would—

[s 32]

- (a) prejudice a proceeding, or an investigation or intelligence operation of the commission or the police service; or
- (b) cause harm or detriment to a person; or
- (c) not be in the public interest; or
- (d) in the context of a claim of reasonable excuse based on journalist privilege, or a claim of journalist privilege—
 - (i) disclose the identity of the informant as the source of the relevant material; or
 - (ii) enable the identity of the informant as the source of the relevant material to be ascertained.

Division 3 Procedure for documents and things

205ZZ Procedure for documents and things subject to claim

- (1) This section applies if the document or thing is in a person's possession or a person acknowledges that the document or thing is in the person's possession.
- (2) For subsection (1), the person may or may not be the person claiming privilege in relation to the document or thing.
- (3) The commission officer must require the person to seal the document or thing immediately and give it to the commission officer for safekeeping.
- (4) The person must immediately seal the document or thing under the supervision of the commission's representative.

Maximum penalty—85 penalty units or 1 year's

imprisonment.

- (5) The commission's representative and, if practicable, the person must immediately deliver the sealed document or thing to a registrar of the Supreme Court to be held in safe custody.

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

205ZZA Action by registrar

- (1) This section applies if the commission's representative and, if applicable, the person delivered a sealed document or thing to a registrar of the Supreme Court under section 205ZZ.
- (2) The registrar must keep the sealed document or thing in safe custody until the first of the following happens—
 - (a) the person and the commission's representative give the registrar notice that agreement has been reached on the disposal of the sealed document or thing;
 - (b) an application is made to the Supreme Court under section 205ZW to decide the claim of privilege;
 - (c) the end of 3 business days after the day on which the sealed document or thing is given to the registrar.
- (3) The registrar must—
 - (a) if the person and the commission's representative give the registrar notice that agreement has been reached on the disposal of the sealed document or thing—dispose of the sealed document or thing in the way agreed; or

[s 32]

- (b) if an application is made to the Supreme Court under section 205ZW to decide the claim of privilege—dispose of the sealed document or thing in the way ordered by the court; or
- (c) if subsection (2)(a) does not apply and an application is not made by the end of 3 business days after the day on which the sealed document or thing is given to the registrar—return the sealed document or thing to the person.

Part 5 Procedure for claims of legal professional privilege

205ZZB Application of part

This part applies if—

- (a) a person makes a claim of legal professional privilege in relation to a document or thing the person is required to give or produce to the commission, whether or not at a commission hearing; and
- (b) either—
 - (i) for a document or thing not required to be produced at a commission hearing—the commission officer who required the document or thing to be given decides not to withdraw the requirement under section 205G(1)(b); or
 - (ii) for a document or thing required to be produced at a commission hearing—the presiding officer does not

withdraw the requirement under part 2,
division 3; and

- (c) the person has no authority to waive the privilege.

205ZZC Procedure for claims of legal professional privilege

- (1) For a document or thing mentioned in section 205ZZB(b)(i), the person must, if required by the commission officer—
 - (a) tell the officer the name and address of the person entitled to waive the privilege; and
 - (b) seal the document or thing and give it to the commission for safekeeping.

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

- (2) For a document or thing mentioned in section 205ZZB(b)(ii), the person must, if required by the presiding officer—
 - (a) tell the officer the name and address of the person entitled to waive the privilege; and
 - (b) seal the document or thing and, at the hearing, give it to the commission for safekeeping.

Maximum penalty—200 penalty units or 5 years imprisonment.

- (3) An offence against subsection (2) is a misdemeanour.
- (4) The commission officer or presiding officer must—
 - (a) give the person a receipt for the sealed document or thing; and

[s 32]

- (b) place it in safe custody at the commission's place of business at the earliest reasonable opportunity.
- (5) A person must not open the sealed document or thing unless authorised to open it under this Act or a court order.

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

205ZZD Access to sealed document or thing

- (1) This section applies in relation to a sealed document or thing given to the commission under section 205ZZC.
- (2) The commission must return the sealed document or thing to the person who gave it to the commission if—
 - (a) in the context of a witness protection function—the chairperson or the person entitled to waive the privilege has not, within 3 months after the day on which the sealed document or thing was given to the commission, made an application under subsection (3); or
 - (b) otherwise—the commission has not, within 3 months after the day on which the sealed document or thing was given to the commission, given the person entitled to waive the privilege a notice to attend a hearing to produce the sealed document or thing.
- (3) In the context of a witness protection function, the chairperson or the person entitled to waive the privilege may apply to the Supreme Court for the court to decide whether a claim of legal professional privilege in relation to the sealed document or thing is established.

- (4) Sections 205ZL and 205ZO apply to an application made under subsection (3).
- (5) If the Supreme Court decides that the claim of legal professional privilege in relation to the sealed document or thing is established, the court must make an order that the sealed document or thing be given to the person.
- (6) If the Supreme Court decides that the claim of legal professional privilege in relation to the sealed document or thing is not established, the court must make an order that the commission may access the sealed document or thing.

Part 6 **Claims made in confiscation related investigations**

Division 1 **Preliminary**

205ZZE Application of part

- (1) This part applies if a person claims privilege under section 81A(1) in relation to a requirement to produce a document or thing under a notice to produce.
- (2) This part also applies if a person claims privilege under 110A(3) in relation to a document or thing found at a place that a commission officer proposed to seize.

Note—

However, sections 205ZZF and 205ZZG apply only to claims of privilege under section 81A(1).

- (3) In this part, a reference to a requirement in relation to a document or thing includes a

[s 32]

reference to a commission officer exercising a power under section 110A(2) in relation to the document or thing.

205ZZF Commission officer to consider claim made under s 81A

- (1) This section applies if the person claims privilege under section 81A(1) in relation to a requirement to produce a document or thing under a notice to produce.
- (2) The commission officer who required the document or thing to be given must consider the claim and may—
 - (a) decide to withdraw the requirement in relation to which the claim is made; or
 - (b) decide not to withdraw the requirement and advise the person that the person may apply to, or be required to attend before, the Supreme Court to establish the claim under section 205ZZH.

205ZZG Procedure for claims of legal professional privilege if person has no authority to waive privilege

- (1) This section applies if—
 - (a) a person makes a claim of legal professional privilege under section 81A(1) in relation to a requirement to produce a document or thing under a notice to produce; and
 - (b) the person has no authority to waive the privilege.
- (2) The person must, if required by the commission officer identified in the notice to produce—
 - (a) tell the officer the name and address of the person entitled to waive the privilege; and

(b) seal the document or thing and give it to the commission for safekeeping.

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

(3) The commission officer must—

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

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

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

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

(5) The commission must return the sealed document or thing to the person who gave it to the commission if the chairperson has not, within 3 months after the day on which the sealed document or thing was given to the commission, made an application under section 205ZZH.

(6) If the chairperson or the person makes an application under section 205ZZH, the commission's representative must immediately deliver the sealed document or thing to a registrar of the Supreme Court to be held in safe custody.

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

(7) The commission's representative must notify the person that the sealed document or thing has been delivered to the registrar.

(8) The registrar must keep the sealed document or thing in safe custody until—

[s 32]

- (a) the person and the commission's representative give the registrar notice that agreement has been reached on the disposal of the sealed document or thing; or
 - (b) the application under section 205ZZH is decided by the Supreme Court.
- (9) The registrar must—
- (a) if the person and the commission's representative give the registrar notice that agreement on the disposal of the sealed document or thing has been reached—dispose of the sealed document or thing in the way agreed; or
 - (b) if the application under section 205ZZH is decided by the Supreme Court—dispose of the sealed document or thing in the way ordered by the court.

Division 2 Supreme Court to decide claim

205ZZH Applications to Supreme Court

- (1) The chairperson or the person making the claim of privilege in relation to a document or thing may apply to the Supreme Court to decide whether the claim is established and, if established, whether it is to be upheld.
- (2) In subsection (1), a reference to the person making the claim of privilege in relation to a document or thing includes a reference to a person mentioned in 205ZZG(2)(a) who is entitled to waive legal professional privilege in relation to the document or thing.
- (3) Other than for a claim on the ground of journalist

privilege, the burden of proof on the application is on the person who seeks to withhold the document or thing or to prevent the exercise of authority.

- (4) For a claim on the ground of journalist privilege—
 - (a) the burden of proof for establishing the claim is on the journalist or relevant person for the journalist; and
 - (b) the burden of proof in relation to the matters mentioned in section 205ZS(1), other than the establishment of the claim, is on the commission.
- (5) The Supreme Court must—
 - (a) consider the claim of privilege; and
 - (b) hear the submissions of the person making the claim and the commission's submissions; and
 - (c) decide the claim—
 - (i) if the claim was made under section 81A(1)—under part 3, division 3; or
 - (ii) if the claim was made under section 110A(3)—under part 3, division 3, other than sections 205ZQ and 205ZR.
- (6) The Supreme Court may hear the application in any way it considers appropriate.
- (7) The Supreme Court must give reasons for the court's decision, which may be given orally.
- (8) Costs of an application are to be borne by the commission, unless otherwise ordered by the court on the ground that the claim is frivolous or vexatious.

205ZZI Access to, or return of, documents and things

- (1) If the Supreme Court orders a person under part 3, division 3 to produce a document or thing to the commission and the document or thing was delivered to a registrar of the court under section 205ZZG or 205ZZK, the court must also make an order directing that the document or thing be given to the commission.
- (2) If the Supreme Court orders the commission under part 3, division 3 to withdraw a requirement in relation to a document or thing and the document or thing was delivered to a registrar of the court under section 205ZZG or 205ZZK, the court must also make an order directing that the document or thing be given to the person mentioned in the relevant section.

205ZZJ Ancillary orders

- (1) In addition to any order the Supreme Court may make under this part and part 3, division 3, the court may make any order the court considers appropriate in the circumstances.
- (2) Without limiting subsection (1), the Supreme Court may make an order restricting access to any material, including a document or thing given to the court in the proceedings for the application (the *relevant material*), including an order that the relevant material—
 - (a) is not required to be disclosed to another party; and
 - (b) is not to be publicly accessible.
- (3) In deciding whether to make an order under subsection (2), the Supreme Court may have regard to whether disclosure of the relevant material would—

- (a) prejudice a proceeding, or an investigation or intelligence operation of the commission or the police service; or
- (b) cause harm or detriment to a person; or
- (c) not be in the public interest; or
- (d) in the context of a claim of reasonable excuse based on journalist privilege, or a claim of journalist privilege—
 - (i) disclose the identity of the informant as the source of the relevant material; or
 - (ii) enable the identity of the informant as the source of the relevant material to be ascertained.

Division 3 Procedure for documents and things

205ZZK Procedure for documents and things subject to claim

- (1) This section applies if—
 - (a) the document or thing is in a person's possession or a person acknowledges that the document or thing is in the person's possession; and
 - (b) the commission officer decides not to withdraw the requirement in relation to the document or thing under section 110A(3)(b) or 205ZZF(2)(b); and
 - (c) section 205ZZG does not apply.
- (2) For subsection (1), the person may or may not be the person claiming privilege in relation to the document or thing.

[s 32]

(3) The commission officer must require the person to seal the document or thing immediately and give it to the commission officer for safekeeping.

(4) The person must immediately seal the document or thing under the supervision of the commission's representative.

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

(5) The commission's representative and, if practicable, the person must immediately deliver the sealed document or thing to a registrar of the Supreme Court to be held in safe custody.

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

205ZZL Action by registrar

(1) This section applies if the commission's representative and, if applicable, the person delivered a sealed document or thing to a registrar of the Supreme Court under section 205ZZK.

(2) The registrar must keep the sealed document or thing in safe custody until the first of the following happens—

(a) the person and the commission's representative give the registrar notice that agreement has been reached on the disposal of the sealed document or thing;

(b) an application is made to the Supreme Court under section 205ZZH to decide the claim of privilege;

(c) the end of 3 business days after the day on which the sealed document or thing is given to the registrar.

(3) The registrar must—

-
- (a) if the person and the commission's representative give the registrar notice that agreement has been reached on the disposal of the sealed document or thing—dispose of the sealed document or thing in the way agreed; or
 - (b) if an application is made to the Supreme Court under section 205ZZH to decide the claim of privilege—dispose of the sealed document or thing in the way ordered by the court; or
 - (c) if subsection (2)(a) does not apply and an application is not made by the end of 3 business days after the day on which the sealed document or thing is given to the registrar—return the sealed document or thing to the person.

33 Amendment of s 211 (Injury or detriment to witness)

- (1) Section 211(a), (b) and (c), before 'person'—

insert—

other

- (2) Section 211(c), 'section 75'—

omit, insert—

section 81F

34 Amendment of s 225 (Qualifications for appointment—chief executive officer and ordinary commissioners)

Section 225(2)—

omit, insert—

- (2) A person is qualified for appointment as an ordinary commissioner if—

[s 35]

- (a) the person has qualifications, experience or standing appropriate to assist the commission to perform its functions; and
- (b) were the person to be appointed, at least 2 of the ordinary commissioners would have a demonstrated interest, and an ability, in community affairs, public administration or organisational leadership.

35 Amendment of s 228 (Prior consultation and bipartisan support for appointments)

Section 228—

insert—

- (2) Within 30 days after the Minister consults with the parliamentary committee, the committee must notify the Minister in writing as to whether the nomination has the bipartisan support of the committee.
- (3) However, if the parliamentary committee informs the Minister within the 30 days that it requires more time to consider the matter, the committee must notify the Minister in writing within a further 14 days as to whether the nomination has the bipartisan support of the committee.

36 Replacement of s 231 (Duration of appointment)

Section 231—

omit, insert—

231 Duration of commissioners' appointments

A commissioner holds office for a fixed, non-renewable term of 7 years.

231A Duration of chief executive officer's appointment

- (1) The chief executive officer holds office for the term, not longer than 5 years, stated in the officer's instrument of appointment.
- (2) A person holding office as the chief executive officer may be reappointed to the office for a further term or terms as long as—
 - (a) no term of appointment is longer than 5 years; and
 - (b) the person does not hold office for more than 10 years in total.
- (3) Subsection (2)(b) has effect despite the *Acts Interpretation Act 1954*, section 25(1)(c).
- (4) Section 228 applies to the appointment of the chief executive officer for a further term under this section.

37 Amendment of s 247 (Duration of appointment)

- (1) Section 247(3) and (3A)—

omit, insert—

- (3) However, a person must not hold office in the commission as a senior officer for more than 15 years in total.

Example—

A person held office as a senior officer for 10 years, comprising an appointment for an initial term of 5 years and a reappointment for a further term of 5 years. The person may be reappointed as a senior officer for a further term of 5 years. However, the person must not continue in, or be reappointed to, the office at the end of that 5-year term.

- (2) Section 247(3B), 'or (3A)'—

omit.

[s 38]

- (3) Section 247(3C), ‘to (3B)’—
omit, insert—
and (4)
- (4) Section 247—
insert—
- (3D) Subsection (7) applies if 10 years have elapsed since a person last held office in the commission as a senior officer and it is proposed to appoint the person as a senior officer in the commission.
- (3E) The period for which the person previously held office is not to be counted in calculating under subsection (3) the total period for which the person may hold office in the commission as a senior officer.
- (5) Section 247(4), ‘(3C)’—
omit, insert—
(7)
- (6) Section 247(3B) to (5)—
renumber as section 247(4) to (9).

38 Amendment of s 247A (Notice to parliamentary committee)

- (1) Section 247A(1), ‘section 247(3A)’—
omit, insert—
section 247(2) and the appointment will result in the person holding office in the commission as a senior officer for more than 10 years in total
- (2) Section 247A(2)(c)—
omit, insert—

- (c) how the matters mentioned in section 247(2)(a) and (b) apply in relation to the person;

39 Amendment of s 257 (Commission officers)

Section 257(1)—

omit, insert—

- (1) This section applies to commission officers who are—
- (a) employed under section 254; or
 - (b) seconded under section 255; or
 - (c) engaged under section 256.

40 Amendment of s 270 (Delegation—chairperson)

Section 270(2)(a), ‘section 82(6)’—

omit, insert—

section 82(7)

41 Amendment of s 290 (Minutes)

Section 290(2) and (3), ‘commission’—

omit, insert—

committee

42 Amendment of s 292 (Functions)

- (1) Section 292—

insert—

- (ga) to publish, as part of the committee’s annual report under the *Parliament of Queensland Act 2001*, section 108, information about the committee’s involvement in each

[s 43]

nomination of a person for appointment under section 228, including—

- (i) the number of days within which the committee notified the Minister as to whether the nomination had bipartisan support; and
- (ii) if the committee notified the Minister as to whether the nomination had bipartisan support after the time in which the notification was required under section 228—the reasons for the delay in notification; and
- (iii) if bipartisan support for the nomination was not given—the reasons for the withholding of support;

(2) Section 292(ga) and (h)—

renumber as section 292(h) and (i).

(3) Section 292—

insert—

(2) Information published under subsection (1)(h)(ii) or (iii) must not include personal information or confidential information.

(3) In this section—

confidential information means information the disclosure of which would found an action for breach of confidence.

personal information see the *Information Privacy Act 2009*, section 12.

43 Amendment of s 314 (Functions of parliamentary commissioner)

Section 314—

insert—

(8) In this section—

corrupt conduct, of a commission officer, means conduct that would, if the officer were an officer in a unit of public administration, be corrupt conduct.

44 Insertion of new s 346C

After section 346B—

insert—

346C Possession of and dealing with data and records of CJC inquiry

- (1) This section applies to the data and records of the CJC inquiry vested in the parliamentary commissioner.
- (2) The parliamentary commissioner may request the archivist to—
 - (a) keep, store and preserve the data and records; and
 - (b) give persons access to the data and records in accordance with subsection (5).
- (3) If the parliamentary commissioner makes a request under subsection (2)—
 - (a) the archivist must comply with the request; and
 - (b) the archivist has the functions mentioned in subsection (2)(a) and (b) on behalf of the parliamentary commissioner.
- (4) A person may apply to the archivist for access to the data and records.

Note—

See also section 469 for particular applications to the parliamentary commissioner for access to the data and records.

[s 44]

- (5) The archivist must give the person access to the data and records if the parliamentary commissioner informs the archivist in writing that the commissioner is satisfied the person has a legitimate need to access them.
- (6) The archivist may give a person access to the data and records only under subsection (5).
- (7) The parliamentary commissioner must review, in consultation with the archivist—
 - (a) the appropriateness of the requirement in subsection (5) for the commissioner to be satisfied of a person’s legitimate need to access the data and records before giving access to them; and
 - (b) whether the data and records should become public records under the *Public Records Act 2002*.
- (8) The parliamentary commissioner must carry out the review within 15 years after the commencement and subsequently at least every 5 years.
- (9) The parliamentary commissioner must inform the archivist in writing of the outcome of each review.
- (10) Also, the parliamentary commissioner must inform the Minister in writing if the commissioner is satisfied that the requirement in subsection (5) is no longer appropriate and the data and records should become public records.
- (11) In this section—

archivist means the archivist under the *Public Records Act 2002*.

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

and 476.

45 Insertion of new s 347A

After section 347—

insert—

347A Corporations legislation displacement

- (1) A regulation may declare a provision of this Act that applies in relation to a prescribed corporation to be a Corporations legislation displacement provision for the purposes of the Corporations Act, section 5G.
- (2) A regulation under subsection (1) may be declared to apply in relation to—
 - (a) the whole of the Corporations legislation or a particular provision of the Corporations legislation; or
 - (b) all prescribed corporations or a particular prescribed corporation.
- (3) In this section—

prescribed corporation means a corporation, within the meaning of the Corporations Act, that is prescribed under section 20 to be a unit of public administration.

46 Omission of s 374 (Parliamentary commissioner to have possession of and deal with records of the CJC inquiry)

Section 374—

omit.

47 Insertion of new ch 8, pt 20

Chapter 8—

insert—

Part 20

Crime and Corruption and Other Legislation Amendment Act 2024

459 Application of ch 2, pt 3, div 5, sdiv 2 to prosecution of corruption offences

Chapter 2, part 3, division 5, subdivision 2 applies only in relation to the prosecution of a corruption offence—

- (a) that is commenced against a person after the commencement of this section; and
- (b) whether the investigation from which the prosecution arises commenced before or after the commencement of this section.

460 Claims of reasonable excuse

(1) This section applies in relation to a person if—

- (a) before the commencement—
 - (i) the person was given a notice to discover, notice to produce or an attendance notice; and
 - (ii) a requirement was made of the person under the notice to—
 - (A) produce a document, thing or information to the commission; or
 - (B) provide information in answer to a question at a commission hearing; and
- (b) either of the following applies—
 - (i) the period within which the person must produce the document, thing or information ends on or after the

commencement and the person has not complied with the requirement before the commencement;

(ii) the stated time at which the person is required to attend at the commission hearing to produce the document, thing or information, or provide information in answer to a question, is on or after the commencement; and

(c) on or after the commencement, the person makes a claim of reasonable excuse, including privilege.

(2) This Act as in force from the commencement applies to the person.

461 Misdemeanours

Sections 82(6) and 183(2) apply only in relation to an offence committed after the commencement.

462 Attendance at commission hearings under s 182A

Section 182A applies to the attendance of a person at a commission hearing under an attendance notice whether the attendance notice was issued before or after the commencement.

463 When document, thing or information given to journalist

For section 205D(1)(c), it is irrelevant whether the informant gave the document, thing or information to the journalist before or after the commencement.

464 Reference in s 211

- (1) In section 211(c) a reference to section 81F is taken to include a reference to former section 75.
- (2) In this section—
former section 75 means the provision of that number as in force from time to time before the commencement.

465 Application of s 225 to existing ordinary commissioners and particular new appointments

- (1) Section 225(2) as in force immediately before the commencement continues to apply to an ordinary commissioner who holds office on the commencement despite the amendment of that section by the *Crime and Corruption and Other Legislation Amendment Act 2024*.
- (2) If, at the time of the appointment of an ordinary commissioner (the *appointee*), none of the ordinary commissioners holds the qualifications mentioned in section 225(2)(b)—
 - (a) section 225(2)(b) does not apply to the appointment; and
 - (b) the appointee must hold the qualifications mentioned in section 225(2)(b).

466 Application of provisions about responses to consultation on nominations under s 228

- (1) Section 228(2) and (3) applies to consultation by the Minister on a nomination only if the consultation starts after the commencement.
- (2) Section 292(1)(h) applies to information about the parliamentary committee's involvement in a nomination only if the Minister's consultation on the nomination starts after the commencement.

467 Application of former s 231 to commissioners

Section 231 as in force immediately before the commencement continues to apply to a commissioner who holds office on the commencement despite the replacement of that section by the *Crime and Corruption and Other Legislation Amendment Act 2024*.

468 Application of s 257 to particular commission officers

Section 257, as amended by the *Crime and Corruption and Other Legislation Amendment Act 2024*, applies to a commission officer engaged by the commission under section 256 only if—

- (a) the officer was engaged after the commencement; or
- (b) if the officer was engaged before the commencement (an *existing engagement*)—the officer is further engaged after the commencement and the further engagement is a replacement or renewal of the existing engagement.

469 Application of former s 374 to particular applications for access to data and records of CJC inquiry

- (1) Until the parliamentary commissioner makes a request of the archivist under section 346C(2) in relation to the data and records of the CJC inquiry, a person may apply for access to the data and records under former section 374(2).
- (2) Subsection (3) applies if an application under former section 374(2)—
 - (a) was made before the commencement and on the commencement is not decided; or

[s 48]

- (b) is made after the commencement.
- (3) If the parliamentary commissioner is satisfied the person has a legitimate need to access the data and records, the commissioner must give the person access to them.
- (4) If an application mentioned in subsection (2) is not decided at the time the parliamentary commissioner makes a request of the archivist under section 346C(2), section 346C(5) applies to the application.
- (5) In this section—
archivist see section 346C(11).
CJC inquiry see section 346C(11).
former section 374(2) means the provision of that number as in force immediately before the commencement.

48 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *court day*, *notice to discover*, *notice to produce*, *privilege*, *section 75B requirement* and *witness protection function hearing*—
omit.
- (2) Schedule 2—
insert—
application notice, for a decision, means a notice advising a person that the person may apply to the Supreme Court under section 205ZH or 205ZJ for the court to decide whether the person’s claim of reasonable excuse the subject of the decision is established.
commence, a prosecution against a person, for chapter 2, part 3, division 5, subdivision 2, see section 49A.

commission's representative, in relation to delivery of a sealed document or thing, means—

- (a) a commission officer; or
- (b) a person directed by the commission to deliver the sealed document or thing.

deciding officer see section 205H(2).

immediate production requirement (hearing) see section 81D(2).

informant, for chapter 4A, see section 205D(1)(c).

journalist, for chapter 4A, see section 205C(1).

journalist privilege, for chapter 4A, see section 205A.

news medium, for chapter 4A, see section 205A.

notice to discover—

- (a) for a crime investigation or specific intelligence operation (crime), see section 81E(2); and
- (b) for a corruption investigation or specific intelligence operation (corruption), see section 81F(2).

notice to produce—

- (a) for an investigation, operation or function under chapter 3, part 1, division 1, subdivision 1, see section 73(2); and
- (b) for a confiscation related investigation under chapter 3, part 1, division 1, subdivision 2, see section 79(2).

official premises see section 81L(2).

privilege see section 205B.

prosecuting authority, for chapter 2, part 3, division 5, subdivision 2, see section 49A.

[s 48A]

prosecuting entity, for chapter 2, part 3, division 5, subdivision 2, see section 49A.

(3) Schedule 2, definition *relevant person*—

insert—

(d) for a journalist, for chapter 4A, see section 205A.

Part 2A Amendment of Integrity Act 2009

48A Act amended

This part amends the *Integrity Act 2009*.

48B Amendment of s 45 (Who is an *Opposition representative*)

(1) Section 45—

insert—

(ba) an opposition spokesperson;

(bb) an opposition assistant spokesperson;

(2) Section 45(ba) to (c)—

renumber as section 45(c) to (e).

48C Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

opposition assistant spokesperson—

(a) means a member of the opposition appointed by the Leader of the Opposition as an opposition assistant spokesperson for a

particular area of public business or policy;
and

- (b) includes a person appointed to a position mentioned in paragraph (a)—
 - (i) whether the title of the position includes the words ‘opposition assistant spokesperson’ or ‘shadow assistant Minister’ or another description; and
 - (ii) whether or not the person is remunerated for holding the position.

opposition spokesperson—

- (a) means a member of the opposition appointed by the Leader of the Opposition as the main opposition spokesperson for a particular area of public business or policy;
and
- (b) includes a person appointed to a position mentioned in paragraph (a)—
 - (i) whether the title of the position includes the words ‘opposition spokesperson’ or ‘shadow Minister’ or another description; and
 - (ii) whether or not the person is remunerated for holding the position.

Part 3 Amendment of Public Interest Disclosure Act 2010

49 Act amended

This part amends the *Public Interest Disclosure Act 2010*.

[s 50]

50 Amendment of s 13 (Disclosure by a public officer)

Section 13—

insert—

(4) If the other person is a commission officer, subsection (1)(a)(i) applies as though the Crime and Corruption Commission were a unit of public administration.

(5) In this section—

commission officer see the *Crime and Corruption Act 2001*, schedule 2, definition *commission officer*, paragraph (a).

unit of public administration see the *Crime and Corruption Act 2001*, section 20.

51 Replacement of ch 8, hdg (Transitional provisions for Public Interest Disclosure Act 2010)

Chapter 8, heading—

omit, insert—

Chapter 8 Transitional provisions

Part 1 Transitional provisions for Act No. 38 of 2010

52 Amendment of s 73 (Definitions for ch 8)

(1) Section 73, heading, ‘ch 8’—

omit, insert—

part

(2) Section 73, ‘chapter’—

omit, insert—

part

53 Replacement of ch 9, hdg (Transitional provision for Public Service and Other Legislation Amendment Act 2012)

Chapter 9, heading—

omit, insert—

Part 2 Transitional provision for Public Service and Other Legislation Amendment Act 2012

54 Insertion of new ch 8, pt 3

Chapter 8—

insert—

Part 3 Transitional provision for Crime and Corruption and Other Legislation Amendment Act 2024

79 Application of s 13 to conduct of commission officer

Section 13, as amended by the *Crime and Corruption and Other Legislation Amendment Act 2024*, applies to the conduct of a commission officer whether the conduct occurs before or after, or both before and after, the commencement.

[s 55]

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

55 **Act amended**

This part amends the *Public Sector Act 2022*.

56 **Amendment of s 281 (Delegation of Minister’s functions)**

Section 281(1), from ‘to’—

omit, insert—

to—

- (a) the chief executive of the department in which the *Parliament of Queensland Act 2001* is administered; or
- (b) another appropriately qualified person.

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

57 **Act amended**

This part amends the *Right to Information Act 2009*.

58 **Amendment of sch 1 (Documents to which this Act does not apply)**

Schedule 1, section 3—

insert—

- (g) a document to the extent it comprises data, or that is or forms part of a record, of the CJC inquiry mentioned in the *Crime and Corruption Act 2001*, section 346C.

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

59 **Act amended**

This part amends the *Telecommunications Interception Act 2009*.

60 **Amendment of s 25 (Inspecting entity may report on other contraventions)**

Section 25—

insert—

- (3) To remove any doubt, it is declared that for the purposes of subsection (1), a contravention of a condition or restriction specified in a warrant is a contravention of a provision of the Commonwealth Act.

61 **Amendment of s 29 (Dealing with information for purposes of inspection and report)**

Section 29, after ‘the authority’s’—

insert—

part 2-5 warrant

© State of Queensland 2024