

CRIME COMMISSION BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The objectives of this legislation are to establish a Queensland Crime Commission (QCC) with the role of investigating organised crime and paedophilia.

The Act seeks to encourage a co-operative approach to law enforcement in Queensland. It is recognised and accepted that certain law enforcement information should remain confidential to the organisation possessing it. This, however, does not obviate either the need or the ability of law enforcement bodies to act in a way which results in an approach to law enforcement which is the most effective and efficient possible.

This legislation seeks to put in place the structures which will allow this co-operative approach.

Means of Achieving Policy Objectives

The objectives are achieved by creating a law enforcement body with greater powers than would normally be available to law enforcement, and placing strict accountability mechanisms to control the use of those powers.

Estimated Cost of Implementation for Government

An accurate cost to Government of implementing this proposal has not yet been calculated.

Consistency with Fundamental Legislative Principles

Two broad elements of the proposed legislation raise the question of

whether fundamental legislative principles are breached. These are discussed separately.

Rights and liberties dependent on administrative power

It is proposed that the QCC will have the power to direct an individual to produce a thing or to appear as a witness. In some cases a person may be directed to produce the thing or appear immediately. While this power clearly impacts on the rights and liberties of individuals, it is submitted that the power is sufficiently defined and subject to appropriate review.

A decision of the QCC to direct a person to produce or attend is open to judicial review. In addition, the legislation incorporates a scheme by which a subject person may appeal a QCC decision in the Supreme Court.

Protection against self incrimination

The legislation will also allow the QCC to compel a witness to answer a question even if the answer might tend to incriminate the witness. While this is in itself a breach of fundamental legislative principles, it is also a cornerstone of investigative hearings. The use of the power is balanced by the inclusion in the legislation of certain safeguards. These are that when a witness claims privilege against self incrimination, any answer given under compulsion may not be used against that witness in any subsequent criminal or civil hearing.

Consultation conducted in Development of the Bill

In the development of this Bill, the Minister for Police and Corrective Services and Minister for Racing conducted a series of public meetings across the State. At those meetings members of the public were invited to attend and raise issues of concern with the proposal to establish a Crime Commission. Concurrent with these meetings written submissions were invited from any interested person or organisation. To assist in providing input, an information paper was distributed to any person requesting one. The input provided by persons attending those meetings and providing written submissions has been considered during development of this legislation and where appropriate, incorporated into the legislation.

In addition, specialist advice was sought from senior officers of the National Crime Authority, the New South Wales Crime Commission and the New South Wales State Intelligence Group.

NOTES ON PROVISIONS

PART ONE—PRELIMINARY

Preliminary

Clauses 1 and 2—specify the short title of the proposed Act and provide for its commencement.

Act binds all persons

Clause 3—provides that the Act applies to the Crown, and also applies to other jurisdictions to the extent that the power of the Parliament allows.

Objects

Clause 4—outlines the objects of the Act. In summary, the objects of the legislation are to establish a law enforcement body which will have responsibility for investigating matters which relate to paedophilia offences and organised and major crime.

The legislation also creates a management committee which will have the role of overseeing the activities of the commission, and referring matters to it for investigation.

The legislation also provides for a means by which complaints against the Commission may be investigated, unhampered by the requirements of confidentiality.

This provision also outlines that it is an object of the Act to create an environment of co-operation in law enforcement in this State. It is intended that all law enforcement agencies, including the newly established Commission, will work together in a way which obtains the maximum benefit from the resources available to those agencies.

Dictionary

Clause 5—indicates that definitions of common terms used throughout the legislation are found in the dictionary, which is included as a schedule to

the Act.

Meaning of “criminal paedophilia”

Clause 6—provides the meaning of the term “criminal paedophilia”. A major focus of the Crime Commission being established by this legislation is the investigation of paedophilia. However, paedophilia is a general term only, which encompasses a range of offences against children. The term is defined in the legislation so that it is clear that the term means any offence of a sexual nature against a child. The term also includes offences which relate to obscene material depicting children.

The definition also indicates that the term includes offences committed outside Queensland, as long as the offender or child is a resident of Queensland. This is intended to allow the Crime Commission to investigate activities relating to paedophilia which occur outside Queensland if some link exists to this State.

Meaning of “major crime”

Clause 7—defines “major crime” to mean any indictable offence which carries a penalty of 14 years or more, and which is not relevant criminal activity (as that term is later defined). In later sections the legislation provides a scheme by which the Police Commissioner may, under certain circumstances, make a request for the Crime Commission take over an unsuccessful police investigation. This definition serves the purpose of limiting the offences which can be taken over by the Commission to only the most serious offences.

Meaning of “organised crime”

Clause 8—the role of the Crime Commission being established by this legislation is to create a body which has powers in excess of those normally given to police officers. The reason for doing so is to create a body which is able to successfully investigate criminal activity of a type which is difficult, or even impossible to investigate using conventional police powers.

Organised crime, which forms part of the later definition of “relevant criminal activity”, is defined in a way which intentionally limits the types of

offences and criminal activity which may generally be investigated by the Crime Commission. The definition provides five elements, each of which must be present for a matter to be considered as organised crime.

Meaning of “relevant criminal activity”

Clause 9—provides the meaning of the term “relevant criminal activity”. The term includes criminal paedophilia and organised crime, and also includes any activity which is undertaken to prepare for those types of activities, or to prevent detection or prosecution of those activities.

The definition includes preparatory activities which may not necessarily represent an offence, or an attempt to commit an offence, so that certain activities may be investigated by the Crime Commission. For example, a person who undertakes activities to organise a scheme for the distribution of child pornography among a group of paedophiles may not necessarily commit an offence in the preparatory stages of that undertaking. It is, however, an activity which comes within the definition of relevant criminal activity, and may therefore be referred to the Crime Commission for investigation.

The definition also ensures that only serious offences are caught within the definition by excluding, in the case of organised crime, any offence which carries a penalty of less than 7 years imprisonment.

References to criminal activity include suspected criminal activity

Clause 10—sets out that a reference in the legislation to criminal activity of the type mentioned also includes a reference to suspected criminal activity of that type.

PART 2—QUEENSLAND CRIME COMMISSION AND CRIME COMMISSIONER

Division 1—Queensland crime commission

Establishment

Clause 11—establishes the Queensland Crime Commission. Throughout the legislation, and in these notes, the designation “QCC” is used to refer to the Commission.

QCC is a body corporate etc.

Clause 12—provides for a number of provisions relating to the legal standing of the QCC.

Proposed section 12(1) provides that QCC is established as a body corporate, with a seal and the right to sue and be sued.

Proposed section 12(2) provides that the QCC consists of the Crime Commissioner and each Assistant Crime Commissioner, all of whom are collectively described as members. Provisions relating to the appointment of the Commissioner and Assistant Crime Commissioners are set out in a later clause. Those provisions require that a Commissioner be appointed, but there is no requirement to appoint any Assistant Crime Commissioners. The effect of this is that if no Assistant Crime Commissioners are appointed, the QCC consists only of the Crime Commissioner.

Proposed section 12(3) outlines the position of the QCC with respect to certain legislation. The QCC is a unit of public administration in terms of the *Criminal Justice Act 1989* and the *Public Sector Ethics Act 1994*. This means that the QCC and its officers may be investigated by the Criminal Justice Commission (CJC) in relation to official misconduct matters. It is also required to develop and maintain a code of conduct for its employees.

The QCC is also a statutory body within the meaning of the *Financial Administration and Audit Act 1977*. This Act places certain requirements on the QCC and the Crime Commissioner with respect to financial reporting.

The QCC is also exempt from the Corporations Law.

Proposed section 12(4) requires that judicial notice must be taken of the QCC's seal.

Division 2—Crime commissioner and assistant commissioners

Crime commissioner and assistant crime commissioners

Clause 13—establishes the offices of Crime Commissioner and Assistant Crime Commissioner. This clause also provides that the Crime Commissioner is the chief executive of the QCC, and is responsible for the administration of its budget in terms of the Financial Administration and Audit Act.

Appointment of crime commissioner and assistant crime commissioners

Clause 14—provides for the conditions under which the Crime Commissioner and Assistant Crime Commissioners are to be appointed.

Proposed section 14(1) requires appointments of members of the QCC to be made by the Governor in Council.

Proposed section 14(2) provides that to be qualified for appointment as the Commissioner a person must be eligible for appointment as a Judge of a Supreme Court.

Proposed section 14(3) provides that to be qualified for appointment as an Assistant Crime Commissioner a person must be nominated by the Minister administering this legislation. This means that there is no requirement for an Assistant Crime Commissioner to be a legal practitioner. At the time of commencement of the legislation the responsible Minister is the Minister for Police and Corrective Services and Minister for Racing.

Proposed section 14(4) provides that a person can not be appointed as the Crime Commissioner or an Assistant Crime Commissioner if the person has been convicted of an indictable offence. Due to the definition of an indictable offence, this means that a person who has been convicted of such an offence outside Queensland is also disqualified from appointment.

Proposed section 14(5) These provisions also exclude the appointment of the Crime Commissioner and Assistant Crime Commissioners from the operation of certain provisions of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. In essence, this provision prevents a prospective appointee from concealing a previous conviction which, in other circumstances, he or she could lawfully deny. The provision also allows the fact that a person has a previous conviction to be taken into account when selecting a person for appointment as the Crime Commissioner or an Assistant Crime Commissioner.

Proposed sections 14(6), 14(7) and 14(8) provide that the Commissioner and Assistant Crime Commissioners are not officers of the Public Service, but are employed under this legislation. The Assistant Crime Commissioner must be a full time officer, while the Assistant Crime Commissioners may be employed on either a full or part time basis.

Establishment of selection panel

Clause 15—provides for a scheme by which the Minister establishes a selection panel to consider prospective appointees to the QCC. The Minister is obliged to convene a panel consisting of the Minister and three other persons. The Minister is also obliged to invite the Leader of the Opposition to either sit on the panel or to nominate a person to sit in place of the Leader. Should the Leader of the Opposition elect to sit on the panel or to nominate a representative, the panel must include the Leader or nominee.

Nomination for appointment as commission member

Clause 16—compels the Minister to advertise for applicants and to consult with the selection panel before nominating a person for appointment as the Crime Commissioner or an Assistant Crime Commissioner.

Duration of appointment

Clause 17—provides that the Crime Commissioner and Assistant Crime Commissioners may be appointed for no longer than 5 years.

Terms of appointment

Clause 18—sets out that the conditions under which the Crime Commissioner and Assistant Crime Commissioners are appointed. Remuneration and allowances and any other conditions of office that are not expressly provided for in this legislation are to be decided by the Governor in Council.

Preservation of rights

Clause 19—applies if an officer of the public service is appointed as the Crime Commissioner or an Assistant Crime Commissioner. In such a case, any rights accrued by the person, as a result of his or her period as a public servant, are preserved. This means that for the purposes of calculating length of service, a period of appointment as the Crime Commissioner or an Assistant Crime Commissioner is counted towards continuous service. Such an officer is also guaranteed a position within the public service to return to after completing a period of appointment. The guaranteed position must be at a salary level at least the same as that the person left to take up an appointment to the Commission.

Leave of Absence

Clause 20—allows the Minister to grant leave to the Crime Commissioner and Assistant Crime Commissioners.

Resignation

Clause 21—provides a resignation mechanism for the Crime Commissioner and Assistant Crime Commissioners.

Termination of appointment

Clause 22—provides a number of circumstances in which the Governor in Council may terminate the appointment of the Crime Commissioner or an Assistant Crime Commissioner. The provisions also require that an appointment must be terminated if the appointee is convicted of an indictable offence or takes paid employment outside the duties of the Commission without the approval of the Minister.

Acting commission members

Clause 23—provides a scheme by which the Governor in Council may appoint a qualified person to act as the Crime Commissioner or an Assistant Crime Commissioner when a vacancy occurs or when the appointed Commissioner or Assistant Crime Commissioner is absent from duty.

Disclosure of pecuniary interests by commission members

Clause 24—requires the Crime Commissioner and any Assistant Crime Commissioner to disclose their pecuniary interests to the Minister and Management Committee after their appointment. While holding office, those persons are also obliged to advise of any substantial change in their pecuniary interests. The QCC is given an obligation to maintain a register of the interests declared.

Division 3—QCC staff and agents**QCC staff**

Clause 25—provides that QCC staff are officers of the public service. This provision also allows the Crime Commissioner to make arrangements with other units of public administration for officers of those other units to provide services to the QCC.

Engagement of agents

Clause 26—authorises the QCC to employ persons as agents for a temporary period on terms decided by the QCC.

Counsel assisting

Clause 27—allows the QCC to engage counsel with the approval of the Management Committee.

Division 4—QCC Functions**QCC's functions**

Clause 28—outlines the functions of the QCC. Among these QCC has the function of investigating relevant criminal activity and suspected major

crime, but this is limited to matters that are referred to it by the Management Committee.

QCC also has the function of maintaining an intelligence service to support its own functions, as well as forecasting trends in criminal activity. The intelligence function is an activity which is distinct from the investigation function, and it is not intended that the intelligence function be reference driven.

This provision also clarifies that the conferral of a function on QCC does not mean that another law enforcement agency can not also undertake that same task. This means, for example, that the Police Service may investigate major crime, or relevant criminal activity, and that this legislation is not intended to inhibit that ability. The provision makes it clear however that all law enforcement agencies are expected to work co-operatively towards maximising available law enforcement resources.

Crime commissioner may ask for reference or change to reference

Clause 29—enables the Crime Commissioner to ask the Management Committee to provide the QCC with a reference or to make a change to an existing reference.

Division 5—QCC's interaction with other entities

Police task forces to assist QCC

Clause 30—provides that the Management Committee may make arrangements with the Police Commissioner for the establishment of a task force to assist the QCC with an investigation. The Management Committee may give guidelines and directions to the QCC and the Police Commissioner, but only in relation to the establishment of the task force. The conduct of the task force remains under the control of the Police Commissioner.

Liaison with other entities

Clause 31—allows the QCC to liaise with and exchange criminal data and intelligence with other organisations. The QCC may liaise for this

purpose with any other law enforcement agency, but must seek the authority of the Management Committee to liaise with other non law enforcement organisations.

This provision also allows the QCC to enter operational agreements with other organisations to facilitate ongoing provision of information.

QCC may give information to other entities

Clause 32—authorises the QCC or a QCC officer in possession of evidence of an offence to pass that evidence on to the appropriate law enforcement agency. This position does not affect the right of a police officer to commence a prosecution.

CJC to be advised of official misconduct

Clause 33—requires the QCC to advise the CJC of any evidence of official misconduct it uncovers during an investigation. This requirement is qualified by not requiring that advice to be given if there is likelihood that doing so might endanger an investigation.

In the event that the QCC determines that providing advice to the CJC under this section would endanger an investigation, the QCC is required to notify the Parliamentary Commissioner, and the Parliamentary Commissioner is required to monitor the investigation and determine when that advice should be given.

Division 6—Public sittings

Public Sittings

Clause 34—sets out a scheme by which the QCC may hold public sittings. Sittings held under this provision are not hearings, and therefore a witness could not be compelled to attend a sitting.

Division 7—Delegations and authorised QCC officers**Delegation**

Clause 35—provides for the delegation of the power of the QCC and the Crime Commissioner to QCC members and officers. The power to delegate is limited in that any power which is assigned to a particular person may not be delegated. This means that if the legislation indicates that the Crime Commissioner may do something, that power may not be delegated to another QCC officer.

Authorised QCC officer

Clause 36—authorises the Crime Commissioner to appoint certain QCC employees as authorised QCC officers. The legislation provides that certain of the powers of the Commission may be exercised by authorised QCC officers. The Crime Commissioner may only appoint a QCC employee who is suitably qualified to perform the functions that he or she will be authorised to perform.

Any police officer who is attached to a police task force assisting the QCC is an authorised QCC officer.

Division 8—QCC’s annual report**Annual report**

Clause 37—imposes an obligation of the Crime Commissioner to prepare and present to the Minister an annual report. This clause also prescribes what information must appear in that report, and what information must not appear.

The Minister is also obliged to table a copy of the report in the Legislative Assembly.

PART 3—MANAGEMENT COMMITTEE

Division 1—Establishment of management committee

Establishment of management committee

Clause 38—establishes the Queensland Crime Commission Management Committee. Throughout the legislation, and in these notes, the designation "Management Committee" is used to refer to the committee.

Membership of management committee

Clause 39—provides for the membership of the Management Committee.

Proposed section 39(1) nominates the members of the Management Committee.

Proposed section 39(2) requires the Minister to advertise state-wide before nominating a person as a community representative on the committee.

Proposed section 39(3) requires the Minister to also consult with the Leader of the Opposition before nominating a person as a community representative.

Proposed section 39(4) lists a range of persons who are not eligible to be appointed as a community representative.

Deputy committee member

Clause 40—allows the Commissioner of the Queensland Police Service, the Chairperson of the CJC and the Chairperson of the National Crime Authority to nominate a deputy to act as a Committee member in their place. Other members of the Committee do not have the option of nominating such a representative.

Duration of appointment of appointed member

Clause 41—provides that community representatives may only be

appointed to serve on the committee for a period no longer than 3 years.

Terms of appointment of appointed member

Clause 42—provides that community representatives are to be appointed on a part time basis. The terms of the appointment, if not included in the legislation, are decided by the Governor in Council.

Resignation of appointed member

Clause 43—provides the means of resignation for a community representative.

Termination of appointment of appointed member

Clause 44—provides a number of circumstances in which the Governor in Council may terminate the appointment of a community representative. The provision also requires that an appointment must be terminated if the community representative is convicted of an indictable offence.

Division 2—Functions

Management committee's functions

Clause 45—sets out the functions of the Management Committee. The functions are:

- (a) to refer matters to the QCC for investigation;
- (b) to make arrangements for joint investigations by the QCC, the Police Service and any other entity;
- (c) to receive complaints against the QCC or any of its members or employees;
- (d) to generally review and monitor the QCC.

The provision also requires the QCC to provide the Management Committee with the administrative support it requires.

Division 3—Referrals**Referrals to QCC**

Clause 46—provides for the circumstances under which the Management Committee may refer matters to the QCC for investigation.

Proposed section 46(1) allows the Management Committee to refer suspected relevant criminal activity to the QCC either on its own initiative, or on request of the Police Commissioner or the QCC.

Proposed section 46(2) allows the Management Committee to refer suspected major crime to the QCC only at the request of the Police Commissioner.

Proposed section 46(3) requires a referral to be written.

Proposed section 46(4) provides that the committee may only refer relevant criminal activity to the QCC when it is satisfied that an investigation using ordinary police powers would not be effective, and also that it is in the public interest for the QCC to investigate. The criteria which the committee may have reference to in determining the public interest are included in proposed section 46(6).

Proposed section 46(5) provides that the committee may only refer a matter to the QCC at the request of the Police Commissioner when it is satisfied that the Police Service has already carried out an unsuccessful investigation into the matter, and any further police investigation is not likely to be effective. The committee must also be satisfied that the referral would be in the public interest.

Proposed section 46(6) sets out a range of issues which the committee may take into account when determining whether the public interest is served by referring a matter to the QCC for investigation. These matters generally refer to the seriousness, extent and consequences of the activity, but also include whether the use of QCC is a justifiable use of resources under the circumstances.

Proposed section 46(7) provides a standing reference to allow the QCC to investigate criminal paedophilia. This will allow the QCC to investigate suspected paedophilia without any further reference from the Management Committee.

Management committee may give QCC directions about investigations

Clause 47—gives the Management Committee authority over the QCC in its investigations. The Management Committee will have the ability to give QCC directions about the way an investigation is to be conducted, including placing limits on what powers may be exercised by QCC in the course of an investigation.

The Management Committee will also have the power to direct the QCC to end an investigation under certain circumstances. The QCC is obliged to comply with any direction given under this provision.

Referrals to police service

Clause 48—creates a scheme by which the Management Committee may refer a matter to the Police Service rather than to the QCC. In these cases the Police Commissioner may be obliged to advise the Management Committee of the result of any investigation, and is also obliged to take into account any comments by the Management Committee about the investigation.

Division 4—Management committee powers and associated QCC duties**Management committee may obtain information from QCC**

Clause 49—authorises the Management Committee to gain access to information held by the QCC, and which it needs to perform its functions. This could, for example, include information about operational matters, provided that the Committee reasonably needs the information. The QCC is obliged to assist the Management Committee to locate the information it needs.

This provision also outlines that information provided to the Management Committee is deemed to be provided in confidence. This then subjects committee members to the secrecy provisions of clause 126.

Management committee may give directions and guidelines to QCC

Clause 50—gives the Management Committee the authority to direct QCC in the performance of its functions and compels the QCC to comply.

Division 5—Complaints**Complaints**

Clause 51—provides a scheme for dealing with complaints against the QCC and its members and employees. In the case of complaints which provide evidence of official misconduct, the Management Committee is obliged to refer the matter to the CJC. For complaints about any other matter, the Management Committee may take the action it sees as appropriate under the circumstances.

Division 6—Meetings and other business of management committee**Meaning of “required minimum number” of committee members**

Clause 52—provides a definition of the term "required minimum number" for the purposes of division 6. The number is one more than half the members. At the commencement of the legislation the required minimum number of committee members is five.

Conduct of meetings and other business

Clause 53—allows the Management Committee to conduct its functions in any manner it sees fit.

Time and places of meetings

Clause 54—allows the Management Committee to decide where and when it sits. However, the chairperson of the committee is required to convene a meeting if requested by five of the members.

Presiding at meetings

Clause 55—requires the chairperson, who will be the Crime Commissioner, to preside at meetings. If that person is not present, the committee may select a member to preside.

Quorum and voting at meetings

Clause 56—provides for a quorum at Management Committee meetings and sets out that a simple majority of votes is sufficient to carry a decision. The clause also provides that the chairperson has a deliberative vote on any question before the committee, as well as a casting vote when necessary.

Participation in meetings by telephone etc.

Clause 57—allows the Management Committee to conduct meetings with one or more members at other locations using any means of instant communication.

Resolutions without meetings

Clause 58—provides a scheme by which members of the Management Committee may make a collective decision without the need to convene a meeting.

Minutes

Clause 59—requires the Management Committee to keep minutes of its meetings.

PART 4—PARLIAMENTARY COMMISSIONER*Division 1—Functions*

Functions of parliamentary commissioner for this Act

Clause 60—sets out the functions of the Parliamentary Commissioner. The Parliamentary Commissioner is appointed under the Criminal Justice Act 1989, and this legislation imposes two main functions on that officer. They are to undertake an annual intelligence data review and to review decisions of the QCC to refuse the CJC access to QCC information. The Parliamentary Commissioner is also required to provide advice to the Management Committee on these matters.

The Parliamentary Commissioner also has other minor functions as set out in the legislation. These are the monitoring of decisions under clause 33 and the function of assisting in transitional arrangements as set out in clause 132(7).

Division 2—Reviews**Intelligence data review**

Clause 61—sets out the requirements and role of the Parliamentary Commissioner in undertaking the annual intelligence data review.

Proposed section 61(1) creates the requirement for the Parliamentary Commissioner to conduct an annual review of the intelligence data held by the QCC, the Police Service and the CJC.

Proposed section 61(2) sets out the purposes of the review. In essence, the review is intended to assess the effectiveness of the total criminal intelligence effort of the three law enforcement bodies under review. To that end, the Parliamentary Commissioner is to consider whether it is appropriate for each agency to hold the intelligence data which it does, whether the agencies are duplicating intelligence, and whether the agencies are working as co-operatively as possible in the management of intelligence.

The Parliamentary Commissioner is also to consider whether any agency is restricting access by other agencies to its intelligence data unnecessarily .

Proposed section 61(3) requires the Parliamentary Commissioner to provide the Management Committee with advice on the review.

Proposed section 61(4) provides that the report is not to disclose confidential intelligence matters.

Proposed section 61(5) sets out that the Parliamentary Commissioner

must be mindful of the need for the investigation of official misconduct to be independent of general law enforcement. This provision is intended to illustrate that intelligence holdings of the CJC which relate wholly or in part to official misconduct should not generally be made available to other law enforcement agencies.

Proposed sections 61(6) and 61(7) provide the times within which the Parliamentary Commissioner must conduct the first intelligence data review and all subsequent reviews.

CJC access review

Clause 62—provides a scheme through which the CJC may seek a review of a decision by the QCC not to allow access to QCC information. When the CJC is investigating official misconduct, it may require access to information held by the QCC. It would be open to the QCC to claim that the information was confidential and the secrecy provisions of this legislation apply.

These provisions allow the CJC to ask the Parliamentary Commissioner to review that decision and to make a determination as to whether the CJC will be allowed to have access to the information sought for the purposes of its investigation.

Parliamentary Commissioner to decide whether access to be given

Clause 63—provides the power for the Parliamentary Commissioner to decide if the CJC is to be given access to QCC documents for the purposes of a CJC investigation.

Division 3—Powers

Powers—general

Clause 64—provides the Parliamentary Commissioner with the powers required to undertake the functions of the position. This includes the ability to access information held by the QCC and take possession of and retain documents. The QCC is also obliged to assist the Parliamentary

Commissioner to locate information sought.

Powers—intelligence data

Clause 65—authorises the Parliamentary Commissioner, as part of reviewing the intelligence functions of the three law enforcement agencies, to recommend the removal of an access restriction. Agencies may store intelligence data on a common computer network, but place restrictions on who may have access to the information. The Parliamentary Commissioner will have the authority to recommend whether access restrictions should be removed and data should be shared.

Powers—CJC access review

Clause 66—sets out the circumstances under which the Parliamentary Commissioner may order that the CJC be given access to QCC material for the purposes of a CJC investigation.

Division 4—General

Confidentiality obligations not to apply

Clause 67—excludes from any requirements of confidentiality communications to or at the direction of the Parliamentary Commissioner which are made under this legislation.

Protection of parliamentary commissioner

Clause 68—provides a range of protections for the Parliamentary Commissioner. The Commissioner is not liable for any act done in good faith as part of the functions of that office, and proceedings may only be brought against the Parliamentary Commissioner by leave of the Supreme Court. In addition, the Parliamentary Commissioner may not be called to give evidence in relation to matters relating to the duties of the position.

PART 5—PUBLIC INTEREST MONITOR

Public interest monitor

Clause 69—provides for the appointment of a Public Interest Monitor and Deputy Public Interest Monitors, and outlines conditions of the appointment. The role of the Monitor includes appearing at applications for surveillance warrants and covert search warrants by the QCC to allow an independent person to test the validity of those applications.

Monitor's functions

Clause 70—provides the functions of the Monitor, and gives the Monitor specific power to carry out the functions.

Monitor's annual report

Clause 71—requires the Monitor to prepare an annual report, which the Minister is required to table in the Legislative Assembly.

Secrecy

Clause 72—creates an offence for the Monitor or a person who has been the Monitor to disclose information obtained as a result of that role. The clause also provides that the Monitor may not be compelled to disclose that type of information in any Court.

PART 6—POWERS

Division 1—Units of public administration

Commission member may require information etc. from units of public administration

Clause 73—provides QCC with the power to obtain information from

units of public administration.

Proposed section 73(1) gives QCC the authority to require an employee of a unit of public administration to provide information held by the unit.

Proposed section 73(2) gives QCC the authority to require an employee of a unit of public administration to attend before the Crime Commissioner or an Assistant Crime Commissioner and to produce a document or thing.

Proposed section 73(3) creates a scheme in which an officer of a unit of public administration may seek to avoid the requirement to produce a document or thing. An officer of the unit has the capacity to make representations to the QCC to avoid complying with an order, and the QCC must consider those submissions and decide whether the production will be insisted on.

Proposed sections 73(4)(5)(6) and (7) impose an obligation on the unit of public administration to comply with an order to produce, and that obligations of secrecy do not excuse production. These provisions also include a recognition that a regulation may provide reasons which will excuse production under these provisions.

Division 2—Search warrants generally

Search warrant

Clause 74—outlines a scheme by which the QCC may obtain a search warrant. The warrant may only be issued by a Magistrate, who can issue the warrant after taking sworn evidence. The warrant may only be issued to search for evidence that will assist an investigation into relevant criminal activity or major crime being conducted by the QCC.

Powers for search warrant

Clause 75—provides the power for a QCC officer or a police officer to seize evidence located subsequent to the execution of a warrant. The provision allows the seizure of evidence for which the warrant was not issued provided that the other evidence relates to a QCC investigation and that the evidence would be lost if it was not seized at that time.

Search to prevent loss of evidence

Clause 76—provides a scheme by which an authorised QCC officer, under urgent circumstances, may take possession of property without first obtaining a warrant.

Proposed section 76(1) sets out that the powers under this section only apply when the QCC officer suspects that at some place there is evidence which would support a QCC investigation, and the evidence will be lost unless the place is entered and searched immediately.

Proposed section 76(2) confers on the QCC officer under those urgent circumstances, the same power as if the officer had obtained a search warrant for the place from a Magistrate.

Proposed section 76(3) requires that as soon as possible after executing the search, the officer must go to a Magistrate and seek the Magistrate's approval of the search.

Proposed section 76(4) provides that the Magistrate may only approve the search if the suspicion which the QCC officer had was a reasonable one under the circumstances, and that the likelihood that the evidence would be lost was also reasonable. The Magistrate must also be satisfied that it is in the public interest to approve the search.

Proposed sections 76(5), (6), (7) and (8) set out a scheme which allows the Magistrate to make an order about what is to be done with the property, and provides an avenue for the QCC officer to appeal that decision.

Supplying warrant copy, officer's details receipt for seized thing etc

Clause 77—sets out a number of requirements on a QCC officer or police officer who executes a search warrant under this legislation.

Proposed section 77(1) sets out that this section applies when a QCC officer or police officer searches a place or seizes property under a general search warrant. This provision does not apply to a warrant or seizure under a covert search warrant.

Proposed sections 77(2) and (3) require the officer to give the occupier of the place a copy of the warrant and a document which shows the rights and obligations of the person under the warrant. If the person is not there the officer must leave it in a conspicuous place.

Proposed sections 77(4), (5) and (6) require the officer who is in charge of the search to identify him or her self as a QCC officer, and if not a police officer in uniform, show the officer's identification. An officer who is not in charge is only required to identify him or her self if asked.

Proposed sections 77(7), (8) and (9) require an officer who takes possession of property to give a receipt to the person from whom it was taken, or if the person is not there, to leave a receipt at the place.

Proposed section 77(10) requires the officer to record the details of the search in the warrants register.

Requirements after property is sei

Clause 78—sets out a number of requirements on QCC officers after property has been seized. The officer must take the property before a Magistrate and apply for an order as to its disposal unless a proceeding has been commenced which relates to the property, or the owner consents to its retention. The Magistrate may exercise a number of options in regard to its disposal, including that it be retained by the QCC or be returned to the owner.

Access to seized things

Clause 79—requires that when the QCC has seized property in its possession, the QCC is required to give the owner access to it.

Return of seized things

Clause 80—requires the QCC to return property to the owner as soon as any related court matters are finalised, or when the thing is no longer required as evidence.

Division 3—Surveillance powers

Certain Acts do not apply to this part

Clause 81—excludes the part of the legislation dealing with surveillance powers from the operation of the *Libraries and Archives Act 1988* and the *Freedom of Information Act 1992*. This part creates the authority for the QCC to undertake certain covert activities, such as static and mobile surveillance and covert searches of premises.

In normal circumstances, documentation associated with government activities would be available under the Freedom of Information Act, and is also subject to certain record keeping requirements under the Libraries and Archives Act. Either of these would allow very sensitive information to be made public, with the possible result that persons are unfairly identified as the subjects of investigation, or the safety of witnesses and informants is put in peril. For these reasons, the covert activities and associated documentation are excluded from the operation of the legislation mentioned.

Surveillance warrants

Clause 82—provides a scheme by which the QCC may obtain a warrant to place a listening device or visual surveillance device in a place, and to record private conversations and images with those devices.

Proposed section 82(1) sets out that the power provided by this section is not available unless the Crime Commissioner believes that a suspect is involved in a matter being investigated by the QCC. Unless the Crime Commissioner so believes, this provision does not apply.

Proposed section 82(2) limits the persons who can apply for a surveillance warrant to authorised QCC officers. An officer must also have the approval of the Crime Commissioner before he or she may make an application.

Proposed section 82(3) requires that if the applicant is a police officer, he or she must hold the rank of Inspector or above.

Proposed section 82(4) provides that applications for class A devices must be made to a Supreme Court Judge, and applications for the use of class B devices must be made to a Magistrate. The difference between the two classes of device is explained in the dictionary.

Proposed section 82(5) requires an applicant for a surveillance warrant to give sworn evidence in making the application and to advise the Judge

hearing the application of any surveillance warrants issued in the last year for the same place or suspect.

Proposed section 82(6) requires the applicant to advise the Public Interest Monitor that the application is to be made.

Proposed section 82(7) authorises the Judge or Magistrate to refuse to hear the application until the applicant has provided to the Judge or Magistrate any information needed, and has provided it in the format required.

Proposed sections 82(8) and (9) limit the people who can be at an application for a surveillance warrant. In particular the suspect, or any person who may tell the suspect may not be present.

Proposed section 82(10) sets out a number of matters the Judge or Magistrate must consider before issuing a surveillance warrant. These matters generally revolve around the question of whether the seriousness or nature of the offence under investigation justifies the invasion of privacy that the use of a surveillance device entails.

Proposed section 82(11) authorises the Judge or Magistrate to issue the surveillance warrant if there are reasonable grounds for believing that a person or persons at the place to which the warrant is directed is involved in a matter under investigation by the QCC.

Proposed section 82(12) requires that if the surveillance warrant is sought to install a visual surveillance device in a person's home, the warrant must indicate the locations in the house in which the device may be installed. This will allow, for example, a Judge to indicate that a surveillance warrant does not authorise the installation of a visual surveillance device in a bedroom.

Proposed section 82(13) prevents the issue of a class A surveillance warrant relating to a lawyer's premises, unless the lawyer is a target of the investigation. This prevents the issue of a warrant on a lawyer's office if the investigation is only targeting the lawyer's client or some other visitor to the office, and not the lawyer.

Proposed section 82(14) requires that the warrant must authorise powers set out in clause 84.

Proposed section 82(15) allows the Judge or Magistrate to place conditions on a surveillance warrant.

Proposed section 82(16) creates a scheme by which the Judge or Magistrate who issues a surveillance warrant may order the destruction of any recordings made with the device if they are not relevant to the matter under investigation.

Proposed section 82(17) provides that a surveillance warrant is only valid for 30 days, but may be extended by application.

Proposed section 82(18) clarifies that the procedures in this provision relating to an application for a warrant also apply to an application to extend a warrant.

Proposed section 82(19) provides that despite proposed section 82(17) a warrant expires when the investigation to which it relates ends, unless the warrant has uncovered evidence of relevant criminal activity or a major crime which is not subject of the investigation.

Proposed section 82(20) prohibits a transcript of the application being made.

Proposed section 82(21) creates an offence of publishing the proceedings of an application for a surveillance warrant or an extension of a surveillance warrant.

Proposed section 82(22) restricts access to information about a covert search warrant application which is in the possession of the Supreme Court.

Emergency use of surveillance devices

Clause 83—provides a power in extraordinary circumstances for the Crime Commissioner to authorise the use of a surveillance device by an authorised QCC officer before obtaining a warrant from a Supreme Court Judge.

An authorisation under this provision may only be made for the purpose of reducing the risk of injury to a person which arises as a result of an activity under investigation by the QCC. The provision also requires that within 7 days the officer must seek the ratification of the decision by a Supreme Court Judge.

Powers under surveillance warrant

Clause 84—sets out the powers available to a QCC officer acting under

the authority of a surveillance warrant. The warrant authorises entry on to a place for installing and servicing a surveillance device, as well as a range of other activities necessary to do this.

Disclosure of information obtained using surveillance warrant

Clause 85—requires that information obtained by virtue of a surveillance warrant, unless it has already been released in open court, may only be passed to certain persons. The persons to whom information can be given are essentially law enforcement and judicial officers.

Register to be kept

Clause 86—requires the QCC to maintain a register which records instances in which information obtained by use of a surveillance device is passed on to another entity. The provision contains requirements in regard to the keeping and security of the register.

Destruction of records

Clause 87—compels the QCC to keep information obtained by a surveillance device in a secure place, and to destroy the information as soon as possible when it is no longer needed.

Covert Search warrants

Clause 88—provides a scheme by which the QCC may obtain a warrant to enter and search a place without the permission or knowledge of the occupier of the premises. The scheme puts in place a number of safeguards, as described below.

Proposed section 88(1) authorises an approved QCC officer to apply to a Supreme Court Judge for a covert search warrant. The provision requires that the authorised officer must first obtain the permission of the Crime Commissioner to make the application.

Proposed section 88(2) requires that if a police officer is the applicant for the covert search warrant he or she must be of at least the rank of Inspector.

Proposed section 88(3) requires an applicant for a surveillance warrant to give sworn evidence in making the application and to advise the Judge

hearing the application of any warrants issued in the last year for the same place or suspect.

Proposed section 88(4) requires an applicant for a covert search warrant to advise the Public Interest Monitor of the application.

Proposed section 88(5) authorises a Judge to refuse to hear the application until the applicant has provided to the Judge any information the Judge may need, and has provided it in the format required.

Proposed sections 88(6) and (7) limit the people who can be at an application for a surveillance warrant. In particular the suspect, or any person who may tell the suspect may not be present.

Proposed section 88(8) sets out a number of matters the Judge must consider before issuing a covert search warrant. These matters generally revolve around the question of whether the seriousness or nature of the offence under investigation justifies the invasion of privacy that the execution of a covert search warrant entails.

Proposed section 88(9) sets out the conditions which the Judge must be satisfied exist before a covert search warrant may be issued.

Proposed section 88(10) provides a number of conditions which must be included on a covert search warrant. These include the conditions that the execution of the warrant must be videotaped if it is practicable to do so. The warrant must also state that the QCC officer or police officer executing the warrant may enter the place covertly, and have reasonable help to do so. In this sense “reasonable” means reasonable under all the circumstances of the matter. For example, the executing officer may obtain the help of a locksmith to open a lock without leaving any sign that the lock has been disturbed. Alternatively, the help of a chemist may be used to identify chemicals at a scene of a suspected illicit drug laboratory, rather than take the chemicals away for testing.

Proposed section 88(11) authorises the Judge to impose any other conditions on the warrant necessary in the public interest.

Proposed section 88(12) provides that a covert search warrant is only valid for 30 days, but may be extended by application.

Proposed section 88(13) clarifies that the procedures in this provision relating to an application for a warrant also apply to an application to extend a warrant.

Proposed section 88(14) prohibits a transcript of the application being made.

Proposed section 88(15) creates an offence of publishing the proceedings of an application for a covert search warrant.

Proposed section 88(16) restricts access to information about a covert search warrant application which is in the possession of the Supreme Court.

Powers for covert search warrant

Clause 89—sets out the powers which may be exercised when executing a covert search warrant. The warrant allows entry on to premises without the knowledge of the owner or occupant, and provides the power to search for and seize evidence and to open locked areas for the purpose of searching. The warrant also provides the ability for the executing officer to obtain reasonable help in executing the warrant. As discussed in the preceding provision, this means help which is reasonable in the circumstances of the case. Examples of what might be considered reasonable help are discussed above.

Report on covert search

Clause 90—places a number of requirements on a person who executes a covert search warrant. This includes providing a report to the Judge who issued the warrant, and taking before the Judge any property seized under the warrant. The Judge then has the authority to direct how the property is to be dealt with.

Application of the Invasion of Privacy Act

Clause 91—excludes the use of a listening device under the authority of a surveillance warrant from the operation of certain offence provisions and destruction requirements of the *Invasion of Privacy Act 1971*.

Register of warrants and applications for warrants

Clause 92—imposes an obligation on QCC to maintain a register of applications for covert search warrants and surveillance warrants. The register is to be accessible by only the Parliamentary Commissioner and Public Interest Monitor, and by a QCC officer making an application for such a warrant. It is necessary for a QCC officer to have this access because in making an application the applicant is required to give to the Judge information about the success or otherwise of warrants issued previously.

Division 5—Notice to produce**Notice to produce**

Clause 93—creates a scheme by which the QCC may serve a notice on a person to produce a document or thing.

Proposed section 93(1) creates the authority for the Crime Commissioner to direct a person, by written notice, to produce any document or thing. This power is limited to directing the production of a thing which is relevant to an investigation.

Proposed section 93(2) clarifies that this power may be exercised independently, and it is not necessary for the QCC to be conducting a hearing.

Proposed section 93(3) creates the authority for the notice to require the production of the document or thing immediately under certain urgent circumstances.

Proposed section 93(4) provides that the notice may include a condition of secrecy, such that the person receiving the notice may not disclose information about information contained in it. This does not prevent disclosure about the existence of the notice itself, or the fact that a person has been compelled to produce something.

Proposed section 93(5) creates an offence for a person to fail to comply with a notice.

Proposed section 93(6) establishes the ability of a recipient of a notice to seek to establish a claim that he or she need not produce the thing sought

because privilege of some type applies to the thing.

Notice to produce—claim of privilege

Clause 94—provides a scheme in which a person served with a notice to produce may seek to establish a claim that he or she is entitled not to produce the thing sought by QCC. A person who wishes to establish a claim of privilege must be advised that a hearing will be convened by QCC for the purpose of establishing the ground of privilege. The person must then seal the thing sought and hand it to the person who served the notice.

QCC must then convene a hearing and take submissions from the person on privilege. This process is detailed in later provisions.

A penalty is provided for a QCC officer, or any other person who opens the sealed item unless authorised to do so.

Division 6—Attendance notice

Attendance notice

Clause 95—creates a scheme by which the QCC may serve a notice on a person to attend a QCC hearing and to give evidence, produce a document or thing or to establish a ground of privilege claimed as a result of the service of a notice to attend.

The provision also allows an authorised QCC officer, with the approval of the Crime Commissioner to make application to the Supreme Court for a notice to attend immediately, under certain urgent circumstances.

The notice served on the person must contain general information about the nature of questioning the person will be subject to, unless this would prejudice an investigation. This does not, however, stop the QCC from questioning on any matter relating to an investigation.

Offence not to attend hearing

Clause 96—creates an offence for a person who has been served with an attendance notice, to fail to attend as required by the notice, or fail to remain at the hearing until excused.

Division 7—Arrest**Arrest warrant**

Clause 97—creates a scheme for the arrest of certain witnesses.

Proposed section 97(1) provides that an authorised QCC officer may apply to a Supreme Court Judge for the arrest of a witness. The application may only be made with the approval of the Crime Commissioner and may only be made in respect of a witness on whom an attendance notice has been served.

Proposed section 97(2) sets out the circumstances under which the Judge may issue the warrant. These are that the person has either failed to appear, or it appears that the person intends not to appear, and it is in the public interest to compel appearance.

Proposed section 97(3) allows the warrant to be issued even though the time for attendance has not yet passed.

Proposed section 97(4) provides that the warrant authorises the detention of the person named, and the taking of that person before a QCC hearing. The warrant must require that the person is taken before a QCC hearing immediately.

Proposed section 97(5) requires that if a person is required to be detained overnight for the purpose of appearing before a QCC hearing, the person must be accommodated in the same general manner in which juries are accommodated. This is qualified to the extent that the warrant of the Supreme Court may provide otherwise, and direct that the person is to be detained at another place.

Proposed sections 97(6) (7) and (8) set out who may execute the warrant, and that reasonable force may be used in doing so. These provisions also set out that the arrest of a person by virtue of a warrant does

not remove any liability the person may have for failing to appear in the first instance.

Division 8—General

QCC’s powers generally

Clause 98—provides a general power for the QCC to do that which is necessary in the performance of its functions.

The provision also gives the Crime Commissioner all the powers of the QCC.

General power to seize evidence

Clause 99—sets out a scheme by which an authorised QCC officer may seize property which is evidence for an investigation being conducted by QCC. If the officer is lawfully in or on a place, whether by virtue of a warrant or not, and locates evidence, this provision allows the officer to seize it, even though the officer was not at the place for that purpose.

The provision requires that when property is seized under this provision it is then to be treated as if it was seized by virtue of a warrant.

PART 7—HEARINGS

QCC may hold hearings

Clause 100—provides the authority for the QCC to conduct hearings. A hearing must be conducted by at least one commission member, and the presiding member must be a law

Conduct of hearings

Clause 101—provides for the way in which a hearing is to be conduct

Hearings are closed

Clause 102—requires that hearings are closed to the public, except under special circumstances. The Commission will have an authority to hold a public hearing only if the Management Committee approves. The Committee may only approve a public hearing in circumstances in which opening the hearing would result in a more effective investigation, and there would be no unfairness as a result. The Management Committee may also approve a public hearing if it would be unfair to a person to hold a closed hearing.

Legal representation and examination

Clause 103—provides that a person giving evidence may be legally represented, and may be questioned by certain parties to the hearing. This provision also allows a person who is not giving evidence to be represented at the hearing if the presiding member considers it appropriate in the circumstances.

Right to interpreter

Clause 104—imposes an obligation on the QCC to provide an interpreter if one is needed, for any witness appearing before it.

Refusal to produce—claim of reasonable excuse

Clause 105—sets out a scheme by which a witness before a hearing is compelled to produce a document or thing, and seeks to claim legal professional privilege in respect to the document. The document or thing can not be withheld on the basis of any claim of privilege other than legal professional privilege. When this ground of privilege is claimed the thing must be sealed and retained by the QCC for determination pursuant to later provisions.

Return of sealed documents or things for decision on claim of privilege at hearing

Clause 106—sets out a scheme for the production of documents at a hearing for which privilege has been previously claimed. In accordance

with other provisions, when a person is served with a notice to produce a document or thing, and the person claims a ground of privilege, the person is required to seal the thing and hand it to the QCC for safe keeping.

This provision requires the QCC to hand the thing back to the witness at the hearing to allow the witness to either comply with the direction to produce it, or seek to establish a claim of privilege or other reasonable excuse for not producing.

Refusal to take oath or affirmation or to answer question

Clause 107—creates an offence for a person who is appearing at a QCC hearing to refuse to be sworn in as a witness, either by oath or affirmation, or who refuses to answer any questions put to him or her.

The person may only refuse to answer on the ground of legal professional privilege. No other ground provides an excuse for not answering. This includes the ground that the answer might be self incriminatory.

Presiding member to decide whether refusal to answer questions or produce documents or things is justified

Clause 108 —sets out a scheme in which a witness at a hearing may seek to avoid answering a question or produce a document as directed by the QCC. This provision allows a step at which the witness is given an opportunity to make submissions to the QCC that he or she should not be compelled to answer or produce. The QCC can either accept or reject the arguments raised. When the submissions are rejected, the witness then has the ability to appeal the decision to the Supreme Court.

Appeals to Supreme Court

Clause 109—sets out the scheme by which a person may appeal the decision of the QCC that the person must answer a question or produce a document or thing. The person must first obtain leave of the Supreme Court to appeal the decision, and leave may not be granted unless there is a significant prospect of success, or there is an important question of law to determine.

Any appeal must be commenced within 7 working days, and the Court is

required to deal with the matter expeditiously.

Restriction on use of privileged answers, documents and things disclosed or produced under compulsion

Clause 110—provides that when a witness is compelled to answer a question at a hearing, and a ground of privilege would otherwise apply to that question, the answer may not be used against the person at a later criminal or civil proceeding. The provision includes a number of exceptions to this protection. These include for example if the person consents to its use, or if the proceeding is about the falsity of the answer.

Publication of names, evidence etc.

Clause 111—prohibits the publication a range of material relating to any QCC hearing. In this provision “publish” can mean passing information to another person in any way.

QCC must give evidence to defence unless court certifies otherwise

Clause 112—provides a scheme by which a person who stands charged before a Court can obtain access to otherwise confidential material of the QCC, if that material is relevant to the person’s defence. The scheme requires that the Court must first consider the material and make a determination as to whether in the circumstances it is appropriate to release the material to the defence.

Protection of members, legal representatives and witnesses

Clause 113—sets out that parties to a QCC hearing have the same privileges and protections as the equivalent party to a Supreme Court proceeding.

Contempt of commission member

Clause 114—sets out the circumstances under which the Crime Commissioner or Assistant Crime Commissioner at a hearing, may find a person in contempt.

Punishment of contempt

Clause 115—sets out a scheme by which a person in contempt of the QCC may be punished. When the presiding member finds a person in contempt, the QCC may detain the person and take him or her before the Supreme Court. The Supreme Court may then punish the person as if the contempt had arisen in the Supreme Court.

Conduct that is contempt and offence

Clause 116—protects a person from being prosecuted twice in the event that the same set of circumstances represents both a contempt of a commission member and an offence.

Allowances for witness

Clause 117—provides that a witness before a QCC hearing has the same entitlements to an allowance as a witness before a Magistrate's Court.

Legal Assistance

Clause 118—sets out a scheme by which the Attorney General may approve financial assistance to a person to enable the person to obtain legal representation. The Attorney General may approve assistance for a person who has been compelled to appear before the QCC, or who has appeared and wishes to appeal a decision of the QCC to the Supreme Court.

The Attorney General is empowered to provide assistance if hardship would otherwise result to the person, or if in all the circumstances of the case assistance should be provided.

The costs of assistance are to be met from the QCC budget.

PART 9—OFFENCES**Disclosures about QCC notices**

Clause 119—creates the offence of disclosing information contained in a

QCC notice if the notice itself contains a direction that information must not be disclosed. This provision relates to notices to attend and notices to produce a document or thing, but the provision does not operate unless the notice specifically contains a direction that information about it must not be disclosed.

The provision allows that no offence occurs if the disclosure is about the existence of the notice and is made by or with the permission of the person to whom the notice applies. A person who is served with a notice is free to tell others of the fact that he or she has been served with the notice. However, the QCC may direct that the witness must not disclose information about what questions may be asked of the witness, or what documents or things are required to be produced.

False or misleading statements or documents

Clause 120—creates an offence of providing false or misleading documents or answers to the QCC.

Obstruction of QCC etc.

Clause 121—creates an offence to obstruct the QCC or a QCC officer.

Injury or detriment to witness etc.

Clause 122—creates the offence of injuring or threatening or otherwise causing detriment to a witness or potential QCC witness. The offence created in this provision is an indictable offence.

Pretending to be a commission member or QCC officer

Clause 123—creates an offence of pretending to be a QCC officer. This term includes the Crime Commissioner and Assistant Crime Commissioners.

Indictable and summary offences

Clause 124—provides that, with the exception of the offence of injury or detriment to a witness, offences against this legislation are summary

offences, and as such may be dealt with in a Magistrate's Court.

Proceedings for indictable offence

Clause 125—sets out the procedure for the prosecution of an indictable offence under this legislation.

PART 10—GENERAL

Secrecy

Clause 126—creates an offence for any current or former members of the Management Committee, Commission Members or QCC officers to make a record of or to disclose information which has come into their possession as a result of being in that position.

This provision also provides that one of the persons mentioned may not be compelled to produce a QCC document in a Court except under certain circumstances.

Protecting officials from liability

Clause 127—provides members of the Management Committee, QCC members and QCC officers with protection against civil action, for anything done under this legislation. This protection only applies to things done honestly and without negligence.

To protect the rights of a third party, the clause also provides that where a liability of a person is avoided because of this provision, that liability moves to the State.

Protection of witnesses etc.

Clause 128—allows the QCC to seek assistance of the CJC Witness Protection Division in the event that a QCC witness is seen to be in danger. This section does not compel a witness to take part in the witness protection program.

Record of execution of warrant

Clause 129—requires a QCC officer who executes a warrant to endorse the back of the warrant with details about its execution as well as his or her personal details.

Regulation-making power

Clause 130—gives the Governor in Council the authority to make regulations for this legislation.

Expiry

Clause 131—provides that this legislation expires after 5 years.

PART 11—TRANSITIONAL PROVISIONS**Audit of investigations**

Clause 132—provides arrangements by which investigations that are currently being conducted by the CJC may be taken over by the QCC or the Police Service. The provisions require the Chairperson of the CJC to brief the Management Committee on any matters which the CJC is investigating or is yet to investigate. This includes matters which are under consideration for investigation.

If the Management Committee decides that an investigation should pass from the CJC to the QCC or Police Service, the CJC is obliged to brief the entity taking the investigation and help it to take over or to commence the investigation.

**PART 12—AMENDMENT OF CRIMINAL JUSTICE
ACT 1989****Act amended in pt 12**

Clause 133—identifies the Act being amended in this part as the *Criminal Justice Act 1989*.

Clauses 134 to 141—effect a number of amendments to the Criminal Justice Act which have the effect of removing from the CJC:

- (i) responsibility for major or organised crime;
- (ii) authority to overview the intelligence function of the Police Service.

The provisions also appoint a Public Interest Monitor under the Criminal Justice Act to fill a role similar to that provided for the QCC. The Monitor will have the function of appearing at applications by the CJC for the use of listening devices.

Clause 142—further amends the provisions of the Criminal Justice Act dealing with the publication of evidence. These amendments now allow a person who has been required to attend a CJC hearing to tell other persons of that fact.

PART 13—AMENDMENT OF JUDICIAL REVIEW ACT 1991

Act amended in pt 13

Clause 143—identifies the Act being amended in this part as the *Judicial Review Act 1991*.

Amendment of sch 2 (Decisions for which reasons need not be given)

Clause 144—amends schedule 2 of the Judicial Review Act, which outlines a range of decisions about which a person may not apply for reasons for the decision. This amendment includes in that schedule certain decisions of the QCC, including decisions relating to the criminal intelligence function and decisions relating to surveillance warrants and covert search warrants.

SCHEDULE**DICTIONARY**

The schedule to the legislation provides the dictionary of terms used throughout the body of the legislation as provided for in clause 5.