

Cross-Border Law Enforcement Legislation Amendment Bill 2005

Explanatory Notes

General Outline

Objective of the Legislation

The objective of the Bill is to amend existing Queensland legislation dealing with controlled operations, surveillance devices, assumed identities and witness anonymity to provide a legislative scheme to enable seamless cross-border investigation by law enforcement agencies of serious offences. This is achieved through the Bill substantially adopting the provisions of the model laws for a national set of powers for cross-border criminal investigations.

On 5 April 2002, the Leaders' Summit on Terrorism and Multi-Jurisdictional Crime agreed to develop the model laws covering the following four areas:

- Controlled operations (which authorise undercover law enforcement officers to engage in unlawful conduct under controlled conditions to investigate serious offences);
- Surveillance devices (listening, optical and tracking devices to monitor suspects);
- Assumed identities (regulates the acquisition and use of false identities for law enforcement purposes); and
- Witness anonymity (provides for the protection of a law enforcement operative's and protected witnesses' identity in court).

Current Queensland legislation dealing with these areas operates within Queensland only.

Subsequently, the Standing Committee of Attorneys-General and the Australasian Police Ministers' Council established the Joint Working Group on National Investigation Powers (the JWG) to examine the issues and develop detailed proposals.

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In November 2003, the JWG published its report, *Cross Border Investigative Powers for Law Enforcement*.

The *Cross-Border Law Enforcement Legislation Amendment Bill 2005* ('the Bill') will introduce appropriate legislation in terms of the model laws including nationally agreed 'back-end' accountability requirements (such as inspection, record keeping and reporting requirements) while retaining the additional protection of Queensland's existing 'front-end' accountability requirements (such as the Public Interest Monitor and the Controlled Operations Committee) with respect to covert police powers. Queensland will also retain a higher 'relevant offence' threshold which must be under investigation to access these powers. The offence threshold will be offences punishable by seven years imprisonment or more (three years for certain tracking device warrants) and prescribed offences (such as offences relating to child pornography and prostitution), as opposed to the model law relevant offence threshold of offences punishable by three years imprisonment.

Queensland agreeing to the minimum standards in the model laws will enable interstate law enforcement officers to operate in Queensland under a model law corresponding warrant or authority, even though the interstate legislation does not contain Queensland's higher offence threshold and additional levels of accountability. This would involve interstate law enforcement officers using these powers in Queensland, having satisfied (in their home state) lower procedural and accountability standards than their Queensland counterparts. Interstate law enforcement officers will also be able to use within Queensland (if they consider it an appropriate use of resources) surveillance and controlled operations powers to investigate offences less serious than could be investigated by their Queensland counterparts. This represents the trade-off inherent in the mutual recognition of national powers for seamless cross-border investigations.

The Bill confers powers on the Queensland Police Service (QPS), Crime and Misconduct Commission (CMC - for major crime function only) and the Australian Crime Commission (ACC). They will be able to obtain warrants and authorities that can operate in Queensland and interstate.

The model laws do not cover corruption commissions. Accordingly, the CMC's existing powers for its misconduct function will not change (and will not operate cross-border). The Bill therefore amends the *Crime and Misconduct Act 2001* (CM Act) to retain existing legislative provisions for surveillance device warrants, and to relocate existing controlled operations

(and associated assumed identities powers) and controlled activities from the PPRA to the CM Act for the CMC's misconduct function.

Means of Achieving Policy Objectives

The Bill achieves the objectives by amending the:

- *Police Powers and Responsibilities Act 2000*
- *Crime and Misconduct Act 2001*
- *Evidence Act 1977*
- *Witness Protection Act 2000*

The Bill also makes minor and consequential amendments to other Acts.

Alternative Means of Achieving Policy Objectives

There are no other viable alternatives that would achieve the policy objectives other than the amendments proposed in the Bill.

Estimated Cost for Government Implementation

Costs associated with the implementation of the Bill are not expected to significantly impact upon any of the agencies concerned and will be met from within existing agencies' budget allocation.

Consistency with Fundamental Legislative Principles

The Bill deals with policing powers that are regarded as being highly intrusive, particularly powers allowing the use of electronic surveillance and provisions relieving covert operatives of criminal responsibility for intentional actions that would otherwise be punishable offences. However, the infringement of civil liberties through the conferral of such intrusive powers, with appropriate safeguards, is generally accepted as being necessary for the investigation of serious offences. The proposed powers are, in general, not new powers. Instead, these powers are of a type currently conferred under Queensland legislation in the PPRA and the CM Act.

Further, the Bill will in general strengthen safeguards currently in place to ensure these powers are only used in appropriate circumstances. While retaining existing front-end safeguards currently in relevant Queensland

legislation, new back-end safeguards as required under the model laws have also been included in the Bill.

Another fundamental legislative principle (FLP) issue is the exercise of intrusive powers by officers from other jurisdictions. Under the Bill such officers will be permitted to exercise powers in Queensland but will not be subject to Queensland's higher offence threshold or its unique existing front-end safeguards such as the PIM and the Controlled Operations Committee. They will only be subject of the back-end safeguards adopted in their relevant jurisdictions. However, this trade off is required if Queensland is to participate in the legislative scheme. Therefore, it is considered that any potential breach of FLPs is considered necessary to give effect to Queensland's commitment to implement the model laws.

The Bill includes a Henry VIII provision (that is, a potentially inappropriate delegation of parliamentary power). The provision concerned involves a power to declare by regulation a law to be a 'corresponding law' for a provision of the Bill. However, it is considered that this is an appropriate delegation of parliamentary power as it is required to ensure flexibility for the national scheme. The provision is also limited in nature which may need to be amended at short notice.

Consultation conducted in Development of the Bill

Extensive consultation has occurred in the development of the Bill within the Department of the Premier and Cabinet, Queensland Police Service, Department of Justice and the Attorney-General, other Government Departments and non-government entities. The following persons and departments have been consulted during the development of the Bill:

Queensland

- Queensland Treasury;
- Registrar-General, Births Death and Marriages;
- Crime and Misconduct Commission;
- Public Interest Monitor;
- Independent Member of Controlled Operations Committee;
- Parliamentary Crime and Misconduct Committee;
- Parliamentary Crime and Misconduct Commissioner;
- Chief Justice of Queensland;

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- Chief Judge of the District Court and
- Chief Magistrate.

Other Governments

- Commonwealth - Department of the Prime Minister and Cabinet, Attorney-General's Department and the ACC;
- New South Wales - Cabinet Office and Department of the Attorney-General;
- Victoria - Department of the Premier and Cabinet and Department of Justice;
- South Australia - Department of the Premier and Cabinet and Attorney-General's Department;
- Tasmania - Department of the Premier and Cabinet and Department of Justice;
- Western Australia - Department of the Premier and Cabinet and Department of Police;
- Northern Territory - Department of the Chief Minister and Department of Justice; and
- ACT - Department of the Chief Minister and Department of Justice and Community Safety.

In addition, the following private entities have been consulted during the preparation of the Submission:

- Queensland Law Society;
- Bar Association of Queensland and
- Queensland Council for Civil Liberties.

A draft consultation of the Bill was forwarded to relevant Government Departments and non-government entities requesting written comments.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 specifies the short title of the Bill.

Commencement

Clause 2 provides for the commencement of the Bill on a day to be fixed by proclamation

Subclause (2) provides that the *Acts Interpretation Act 1954*, section 15DA does not apply to part 2, division 3 or part 3, division 3. These parts deal with provisions relating to the ACC.

Part 2 Amendment of *Police Powers and Responsibilities Act 2000*

Division 1 Preliminary

Act Amended in pt 2 and sch 1

Clause 3 states that this part and schedule 1 amend the *Police Powers and Responsibilities Act 2000*.

Division 2 Amendments

Insertion of new s 4A

Clause 4 inserts a new section 4A (Act binds all persons) into the PPRA to clarify that the Crown is bound by the Act but is not liable for offences.

Amendment of s 8 (Act does not affect court's common law discretion to exclude evidence)

Clause 5 amends section 8 of the PPRA by providing that the Act does not affect a courts power to stay a proceeding.

Omission of ch 4, pt 2, hdg and divs 1-5

Clause 6 removes the heading of chapter 4, part 2 and divisions 1 to 5 of the PPRA.

Replacement of ch 4, pt 2, div 7 hdg-

Clause 7 removes the existing chapter 4, part 2, division 7 heading and inserts new heading:

Part 5 Public interest monitor

Amendment of s 157 (Public interest monitor)

Clause 8 amends section 157 of the PPRA by inserting additional monitoring requirements for the public interest monitor.

Amendment of s 159 (Monitor's functions)

Clause 9 amends section 159 of the PPRA to reflect the new functions of the public interest monitor.

Amendment of s 160 (Monitor's annual report)

Clause 10 amends section 160 of the PPRA by removing the requirement for the public interest monitor to include matters relating to surveillance device warrants in the monitor's annual report to the Minister as the Bill now requires the monitor to report twice yearly on matters relating to surveillance device warrants.

Renumbering and relocation of ch 4, pt 2, div 7-

Clause 11 amends the PPRA by relocating the amended chapter 4, part 2, division 7 to chapter 11, part 5 and renumbering sections 152 to 157 as sections 443P to 443U.

Replacement of ch 5

Clause 12 removes the existing chapter 5 and inserts new chapters 5 (Controlled activities), 5A (Controlled Operations), 5B (Assumed identities) and 5C (Surveillance device warrants) into the PPRA.

Chapter 5 Controlled activities

Objects of ch 5

Section 132 sets out the objectives of this chapter. The objectives recognise that in the course of investigating offences it is sometimes necessary for the police service to conduct controlled activities in which a police officer may be required to commit offences in an endeavour to gather evidence of an offence.

The objectives of the chapter clarify that controlled activities should be approved only when such an activity is appropriate in all the circumstances of an individual case. In recognition of the need for such activities, the objects of the chapter also set out the intent of the legislation to provide protection from civil and criminal liability for persons who act in accordance with the provisions of the chapter and clarifies the admissibility of evidence obtained as a result of the controlled activity.

Relationship to other laws and matters

Section 133 clarifies this chapter does not affect other laws providing for the obtaining of evidence or intelligence through activities which may involve conduct for which the participants would otherwise be criminally responsible. For example controlled conduct performed under a controlled operation or controlled activities conducted by the CMC in relation to its misconduct function.

Subsection (2) clarifies that it is not intended that this legislation will affect unplanned police activities of a minor nature which involve the commission of offences by police officers. For example, it may be necessary for a police officer to commit traffic offences in order to effect the arrest of an offender. It is not intended that activities of this nature be subject to the provisions of this legislation.

Subsection (3) provides that controlled activities for the police service may only be approved under this chapter.

Lawfulness of particular actions

Section 134 clarifies that it is lawful for certain persons to undertake actions set out in the section. This provision explains the intent of the legislation in respect to the activities mentioned.

Authorised controlled activities

Section 135 defines the term controlled activity and creates a scheme for the approval and conduct of controlled activities which is an investigation of a covert nature by a police officer attempting to obtain evidence of an offence, and which involves a single meeting with a target of the investigation at which some illegality on the part of the officer is undertaken.

An example of this is a situation in which a police officer in plain clothes approaches a suspected drug trafficker and seeks to purchase drugs. Once the drugs have been purchased, the offender is immediately arrested. The police officer may meet with the suspect any number of times before this to make the arrangements for the sale and provided those meetings do not involve any illegality on the part of the officer, they are not controlled activities. However, once the officer takes part in the drug sale, he or she takes part in an offence and the meeting becomes a controlled activity. So that this legislation applies to that meeting, it must first be approved by an officer of the rank of Inspector or above, and must be approved and conducted in accordance with police service policy.

Protection from liability

Section 136 provides for protection from civil and criminal liability for persons who authorise or who are or were authorised to engage in a controlled activity. For the purposes of this section, these persons are termed "relevant persons".

Subsection (2) provides that a relevant person does not incur civil liability for an act undertaken pursuant to this legislation. This means that person who engages in a controlled activity does not incur civil liability for any act or omission done as part of the controlled activity. This protection applies provided that the act or omission is done in good faith.

Subsection (3) clarifies that this provision does not operate to remove the right of a person to seek a civil remedy. When a civil liability would otherwise be incurred, the liability will attach to the State instead of the individual.

Subsection (4) provides protection from criminal liability for an officer who engages in a controlled activity. This means that a police officer who engages in a controlled activity does not incur criminal liability for any act or omission done as part of the controlled activity. This protection applies provided that the act or omission was done in good faith, and that the act or omission was done or made in accordance with the policies and procedures of the police service.

Subsection (5) extends this protection from criminal liability for a police officer for an act or omission which was necessary to protect a person's safety.

Subsection (6) limits the application of subsection (5) by providing that the protection from criminal liability does not apply where the conduct results in injury or death of a person or serious loss or serious damage to property.

Subsection (7) clarifies that this section does not limit section 10.5 of the *Police Service Administration Act 1990* (Liability for tort generally).

Admissibility of evidence obtained through controlled activities

Section 137 clarifies that evidence obtained in the course of a controlled activity is not inadmissible simply because the collection of the evidence involved an activity which would be unlawful except for this chapter. This provision does not interfere with the discretion of a court to exclude evidence on public policy or other grounds. The provision serves merely to clarify that the unlawfulness, if occurring within an approved controlled activity, does not render the evidence inadmissible.

Evidentiary provision

Section 138 is a deeming provision allowing the commissioner to provide a certificate to a court which certifies the things mentioned in the section. Having done this, the Court is then able to accept the certificate as evidence of the things in the certificate. This has the effect of removing the need for the prosecution to prove that a stated person of the agency had approved the controlled activity. This provision does not remove the right of an accused to contest those matters.

Chapter 5A Controlled operations

Part 1 Preliminary

Purposes of ch 5A

Section 139 sets out the purposes of this chapter. The chapter recognises that in the course of investigating particular offences, it is sometimes necessary for law enforcement agencies to conduct controlled operations in which covert operatives may be required to commit offences, in an endeavour to gather evidence of offences.

The purpose of the chapter is to clarify that controlled operations should be approved only when such an operation is appropriate in all the circumstances of an individual case and wherever possible only trained persons perform duties as a covert operative. The chapter provides for the authorisation, conduct and monitoring of such operations including operations conducted in Queensland and in one or more other jurisdictions and facilitates the recognition of activities undertaken under a controlled operation authorised by the corresponding law of another jurisdiction.

In recognition of the need for such operations, the chapter also sets out the intent of the legislation to provide protection from civil and criminal liability for persons who act in accordance with the provisions of the chapter and clarify the admissibility of evidence obtained as a result of the controlled operation.

Definitions for ch 5A

Section 140 provides definitions for terms used in this chapter. These definitions are necessary to complement the Bill.

Relationship to other laws and matters

Section 141 clarifies this chapter does not affect other laws providing for the obtaining of evidence through activities which may involve conduct for which the participants would otherwise be criminally responsible. For example conduct performed under an authorised controlled activity.

Subsection (2) provides that this chapter does not effect controlled operations and controlled activities conducted by the CMC under the

provisions of the *Crime and Misconduct Act 2001* in relation to the investigation of misconduct.

Subsection (3) identifies that it is not the intention that this legislation will affect unplanned police activities of a minor nature which involve the commission of offences by police officers. For example, it may be necessary for a police officer to commit traffic offences in order to effect the arrest of an offender. It is not intended that activities of this nature be subject to the provisions of this legislation.

Subsections (4) clarify that subject to the stated exceptions controlled operations may only be approved under this chapter.

Subsection (5) clarifies that this chapter only relates to the CMC for controlled operations relating to the investigation of major crime as defined by the *Crime and Misconduct Act 2001*.

Subsection (6) clarifies that evidence obtained in the course of a controlled operation is not inadmissible simply because the collection of the evidence involved an activity which would be unlawful except for this chapter. This provision does not interfere with the discretion of a court to exclude evidence on public policy or other grounds. The provision serves merely to clarify that the unlawfulness, if occurring within an approved controlled operation does not render the evidence inadmissible.

When a controlled operation is conducted in this jurisdiction

Section 142 clarifies when a controlled operation is taken to be conducted in this jurisdiction for the purposes of this chapter.

Part 2 Controlled operations committee

Division 1 Establishment

Establishment of controlled operations committee

Section 143 clarifies that the controlled operations committee is established and identifies who may be on the committee and who are the required members of committee including an independent member, the commissioner and the CMC chairperson or their nominee.

Subsection (3) provides for the inclusion of other persons on the committee whom the commissioner considers meets the criteria.

Independent member

Section 144 empowers the Minister for Police to appoint the independent member of the committee referred to in the previous section. The person appointed must be a retired Supreme Court or District Court Judge.

Subsection (2) requires the Minister to consult with the Premier, and the Attorney-General before making the appointment.

Acting independent member

Section 145 allows the appointment of an acting independent member when a vacancy occurs or during any time the incumbent is unable to perform the function.

Subsection (2) requires the Minister to consult with the Premier, and the Attorney-General before making the appointment.

Division 2 Functions, business and recommendations

Committee functions

Section 146 sets out the functions of the committee, which are to consider applications to conduct controlled operations and to make recommendations about whether such operations should be approved or varied. The committee's function also includes other functions conferred on it by legislation.

Committee business

Section 147 provides that the independent member is the chair of the committee, and that the independent member must be present for the committee to perform its functions. The committee may also conduct its business as it sees fit, except that the recommendations of the committee must be recorded.

Committee recommendations

Section 148 places conditions on the committee if it intends to recommend that a particular controlled operation be approved. Before making such a recommendation, the committee must be satisfied that the nature of the offences being investigated justifies approving an operation in which a covert operation will be authorised to commit offences. This provision is intended to ensure that the committee considers whether the nature of the offences being investigated justifies the use of a controlled operation.

Division 3 Protection

Protection for committee members

Section 149 protects the members of the committee from civil liability as a result of any action undertaken under this chapter.

Subsection (2) clarifies that this provision does not operate to remove the right of a person to seek a civil remedy. When a civil liability would otherwise be incurred, the liability will attach to the State instead of the individual.

Subsection (3) provides for protection from criminal liability for members of the committee for conduct undertaken in a controlled operation recommended by the committee.

Part 3 Authorisation of controlled operations

Division 1 Procedure for authorising controlled operations

Application for authority to conduct controlled operation

Section 150 contains the scheme by which a law enforcement officer of a law enforcement agency may apply to the agency's chief executive officer for authority to conduct a controlled operation.

Subsection (2) provides for a formal and urgent application process.

Subsection (3) requires that an application for an authority to conduct a controlled operation, which was the subject of a previous application, must be made by formal application.

Subsections (4) and (5) set out the information that must be provided in the application.

Subsection (6) provides that the chief executive officer of the agency who receives the application may request additional information.

Subsection (7) requires where an urgent application has been made, the applicant must as soon as practicable after making the application provide the chief executive officer with a record in writing of the application.

Application must be referred to committee

Section 151 requires the chief executive officer to refer an application for authority to conduct a controlled operation to the controlled operations committee, and must receive the committee's recommendations before he or she may consider the application unless there is insufficient merit to justify referring the application to the committee.

Subsection (3) provides that this section is subject to sections 152 (Particular CMC controlled operations) and 153 (Procedure in urgent circumstances other than if s 152 applies).

Particular CMC controlled operations

Section 152 applies in the case of a CMC controlled operation where the target of the operation may be a police officer. This section recognises that it would be inappropriate to require the CMC in these circumstances to obtain the recommendation of the committee, given that senior police officers will be members of the committee. In these cases, rather than refer the matter to the controlled operations committee for a recommendation, the chairperson of the CMC must consult with the independent member of the committee and take into account the independent member's recommendations before granting the authority for the operation. The section further provides that in urgent circumstances the chairperson may grant the authority and consult with the independent member after granting the authority.

Procedure in urgent circumstances other than if s 152 applies

Section 153 creates a scheme to deal with the granting of authority to conduct controlled operations in urgent circumstances, with the exception of operations proposed to be conducted by the CMC pursuant to section 152. The urgent application can be made under section 451 PPRA.

This section sets out that the chief executive officer may grant the authority for a controlled operation to be conducted for a maximum period of seven days, however, the chief executive officer must as soon as practicable after granting the authority refer the application to the committee. The committee may then consider the application and make recommendations as for a normal application. However, the chief executive officer is not bound by the committee's recommendation.

Deciding application

Section 154 provides that the chief executive officer may grant or refuse the authority to conduct a controlled operation after considering the application, any additional information that has been provided, and any recommendations of the controlled operations committee. The chief executive officer may grant the authority subject to conditions.

Matters to be taken into account

Section 155 sets out the range of matters that the chief executive officer must take into account before he or she may grant the authority to conduct a controlled operation. Unless the chief executive officer is satisfied on reasonable grounds that the circumstances set out in the section exist, he or she may not grant the authority for the controlled operation.

The chief executive officer is prohibited from granting authority for a controlled operation unless the committee has recommended its approval. This means that the chief executive officer may refuse to grant authority for a controlled operation, regardless of the committee's recommendation. However, and subject to the procedures in urgent circumstances, he or she may not grant authority for the controlled operation unless the committee so recommends.

Form of authority

Section 156 provides an authority to conduct a controlled operation may be granted by way of a written formal authority or an urgent authority granted

orally in person or under section 452 of the PPRA. The section also sets out the particulars required to be covered in the authority and for an urgent authority requires the chief executive officer to keep written notes of the particulars.

The particulars required includes a description of the controlled conduct in which any covert operative may engage in the course of the operation. For a covert operative who is not a police officer, that description must be a precise description of each illegal activity which will be engaged in. In the case of a covert operative who is a police officer, the description may be a description of the general classes of activities. The section also permits the covert operative to be identified in the authority by an assumed name, code name or code number.

Duration of authorities

Section 157 clarifies that unless an authority it is sooner cancelled, an authority is valid for the period stated in the authority. Section 156 provides that a formal authority may be valid for not more than 6 months and an urgent authority is valid for not more than 7 days.

Division 2 Variation and cancellation of authorities

Variation of authority

Section 158 enables the chief executive officer to vary the authority to conduct a controlled operation granted for the relevant agency. The variation can be made on the chief executive officer's own initiative. The variation may also be varied upon application by the principal law enforcement officer for the controlled operation or another law enforcement officer on his or her behalf.

Subsection (2) prohibits the variation of the period of validity for an urgent authority, which can only be for a period of 7 days.

Application for variation of authority

Section 159 provides a mechanism by which an application may be made to vary an existing controlled operation. The provision sets out the permissible purposes for which a variation of authority may be made and the required content for such an application. The section provides that the

application may be a written formal variation application or an urgent variation application made orally in person or under section 451 of the PPRA. The section permits the chief executive officer to require additional information for consideration of the application.

Variation must be referred to committee

Section 160 requires the chief executive officer to refer an application for variation to the controlled operations committee without deciding the application unless there is insufficient merit to justify referring the application to the committee or sections 161 or 162 are applicable.

Particular CMC controlled operations

Section 161 provides a scheme by which a variation of authority for a controlled operation being conducted by the CMC in which a police officer is or may be the target may be approved. This scheme is similar to that for new applications of this nature, and removes the need to refer the application to the Committee. Instead, the Chairperson of the CMC must consult with the independent member and obtain agreement to the variation. In relation to urgent variation applications the chairperson may vary the authority without consulting the independent member but must consult with the independent member about the variation as soon as possible after the authority is granted.

Procedure in urgent circumstances other than if s 161 applies

Section 162 creates a scheme to deal with the granting of a variation in urgent circumstances, with the exception of variation applications which section 161 applies. The urgent application can be made under section 451 of the PPRA.

This section sets out that the chief executive officer may grant the variation for a controlled operation to be conducted, however, the chief executive officer must as soon as practicable after granting the variation refer the application to the committee. The committee may then consider the application and make recommendations as for a normal application. The section requires the chief executive officer to consider the committee's recommendation but he or she is not bound by the committee's recommendations.

Deciding the application to vary the authority

Section 163 provides that the chief executive officer may grant or refuse the variation to the controlled operation after considering the application, any additional information that has been provided, and any recommendations of the controlled operations committee. The chief executive officer may grant the variation subject to conditions. In determining the application the chief executive officer must consider the range of matters set out in section 155.

The section prohibits the granting of the variation if the variation will authorise a significant change of the nature of the controlled operation or if the committee has not recommended the application be granted. In cases where the granting of a variation would significantly change the nature of a controlled operation a new application for the granting of authority to conduct a controlled operation would need to be made under section 150.

Way to vary authority

Section 164 limits the way in which an existing authority may be varied to a formal variation of authority or an urgent variation of authority. The section imposes a duty on the chief executive officer in relation to record keeping and the giving of documents in relation to the variation of authority.

Form of variation of authority

Section 165 sets out the information required to be stated in the variation of authority.

Cancellation of authority

Section 166 creates a scheme for the chief executive officer to cancel an authority for a controlled operation either on his or her own initiative or at the request of the principal law enforcement officer for the operation. The section sets out when an authority cancellation takes effect.

Division 3 Effect of authority

Effect of authority

Section 167 provides that an authority to conduct a controlled operation represents the authority for the covert operatives (participants) named in the authority to engage in unlawful conduct as specified in the authority in this or any participating jurisdiction.

If the conduct is to be engaged in is to occur in a participating jurisdiction, such conduct is subject to the laws of the participating jurisdiction.

Subsection 167(1)(c) also has the effect of authorising a participant to engage in conduct stated in the authority in a participating jurisdiction even if the participating jurisdiction is not named in the authority in accordance with section 156(3)(f).

Subsection (2) restricts the authority for a person to engage in unlawful conduct from being delegated to another person.

Defect in authority

Section 168 provides that only defects of a substantive nature can invalidate an application, authority or variation for a controlled operation. Minor matters relating to form or process do not invalidate an application, authority or variation.

Part 4 Conduct of controlled operations

Division 1 Controlled conduct engaged in for controlled operations

Protection from criminal responsibility for controlled conduct during authorised operations

Section 169(1) provides protection from criminal responsibility when law enforcement and civilian participants in a controlled operation engage in unlawful conduct provided that such conduct was in accordance with the terms of the authority and meets the requirements set out in this section. These requirements include the participant not intentionally inducing a

person to commit an offence that the person would not otherwise have intended to commit or the conduct of the participant is not likely to cause death, serious injury or involve a sexual offence. The section extends the protection to civilian participants where they act in accordance with the instructions of a law enforcement officer.

Subsections (2) and (3) are not a part of the model law and only operate to protect law enforcement officers as defined under the PPRA (see reference to this section in section 176(c) – Recognition of corresponding authorities).

Subsection (2) extends protection from criminal liability to a law enforcement officer, including a law enforcement participant, for conduct undertaken to protect the safety of any person or protect the identity of a participant. This provision encompasses situations where a law enforcement participant undertakes unlawful conduct not stated in the authority but which was reasonably necessary to protect the identity of the participant including the participant's criminal standing thereby maintaining the continuity of the controlled.

Subsection (2) (c) further extends the protection to situations where the law enforcement participant takes advantage of an opportunity to gather evidence about a relevant offence not mentioned in the authority. This means, for example, where a law enforcement participant is authorised to purchase illicit drugs and is offered a concealable firearm to purchase by an offender, the law enforcement participant would not be criminally responsible for the weapon offences committed in purchasing and possessing that firearm.

Subsection (3) restricts the protection from criminal responsibility for a law enforcement participant provided under subsection (2) where the conduct undertaken by the participant results in injury or death of a person, serious damage or serious loss of property. The subsection further limits the protection where the offender has been encouraged or induced by the law enforcement participant to commit an offence that the offender would not reasonably have been expected to engage in had it not been for the encouragement or inducement of the participant.

Indemnification of participants against civil liability

Section 170 requires a law enforcement agency to indemnify law enforcement and civilian participants from civil liability and reasonable costs when a participant engages in unlawful conduct provided that such conduct was in accordance with the terms of an authority and meets the

requirements set out in this section or under a regulation. These requirements include the participant not intentionally inducing a person to commit an offence that the person would not otherwise have intended to commit or the conduct of the participant is not likely to cause death, serious injury or involve a sexual offence. The section extends the indemnification to civilian participants where they act in accordance with the instructions of a law enforcement officer.

Effect of ss 169 -170 on other laws relating to criminal investigation

Section 171 provides that in addition to exceptions contained in sections 169 and 170 participants in controlled operations will not be protected from criminal and civil liability if activities are undertaken which could be authorised under other laws of the State relating to matters set out in the section. This ensures that the controlled operation laws are not used as a substitute for other laws through not permitting a participant gaining the benefit of the protection from criminal or civil indemnity if he or she utilises the powers under this chapter to circumvent requirements relating to criminal investigations in this State.

Effect of being unaware of variation or cancellation of authority

Section 172 provides that if a participant in a controlled operation is unaware of the existence of a variation or cancellation of the authority, the authority continues to have effect as if it was not varied or cancelled for as long as the participant is unaware. This protection is not provided to a participant who is reckless as to the existence of the variation or cancellation of the authority.

Protection from criminal responsibility for particular ancillary conduct

Section 173 extends protection from criminal responsibility to a person who has some connection with a controlled operation, irrespective if the person is a participant or not in the operation, and the person engaged in ancillary activity including conspiracy to commit offences and aiding or enabling the commission of an offence. This protection is conditional on the person having had a belief that the activities were ancillary or related to an authorised controlled operation.

Division 2 Compensation and notification of third parties

Compensation for property loss or serious damage

Section 174 provides that the State is liable to pay compensation to a person who suffers loss or serious damage to property as a direct result of a controlled operation authorised by a law enforcement agency of this jurisdiction (the Police or CMC - not the ACC) and where that person is an innocent third party in that he or she did not contribute to the commission of an offence. This provision also does not apply to a person who was a law enforcement officer at the time.

The section further provides that section 455 of the PPRA (Compensation) does not apply to compensation sought for loss as a result of an authorised operation. Compensation sought for loss as a result of other general powers exercised by police officers is to be decided under section 455 of the PPRA.

Notification requirements

Section 175 requires the principal law enforcement officer for a controlled operation to report any loss or serious damage to property or injury to the chief executive officer. In relation to loss or serious damage to property the section imposes a duty on the chief executive officer, subject to listed conditions, to undertake all reasonable steps to notify the owner.

Division 3 Recognition of corresponding authorities

Recognition of corresponding authorities

Section 176 creates a scheme where a controlled operation authorised by a participating jurisdiction under a 'corresponding authority', including any variation, is recognised in this jurisdiction as if it was a controlled operation authority granted under section 154.

This is the principal section which operates to ensure recognition, once a participating jurisdiction's model law legislation has been prescribed under regulation as a 'corresponding law'. However, only the specific provisions mentioned in the section are to apply to the corresponding authority as if it were an authority given under section 154.

Part 5 Compliance and monitoring

Division 1 Information restrictions

Unauthorised disclosure of information

Section 177 is designed to provide protection to persons participating in controlled operations and to ensure the integrity of investigations by creating offences for a person who, in particular circumstances, discloses certain protected information relating to a controlled operation.

Division 2 Reporting and record keeping

Principal law enforcement officer's reports

Section 178 places a requirement upon the principal law enforcement for a controlled operation to report back to the chief executive officer, in writing, within two months of the completion of the operation. The report will be a summary of the operation including the required content set out in the section.

Chief executive officers' reports

Section 179 established a reporting scheme for chief executive officers of each law enforcement agency that conduct a controlled operation. The chief executive officer is required to provide a report at stated intervals to the report entity for the agency stating the required details for any authorised controlled operation. The section also permits the report entity to require additional information on any authorised operation contained in the report.

Annual report by report entity

Section 180 establishes a reporting scheme for the report entity on the activities of the law enforcement agency and the comprehensiveness and adequacy of the documentation the agencies prepared. The report is required to be given to the chief executive officer of the agency and the relevant Minister or, for the CMC, the parliamentary committee

chairperson with the report being required to be tabled in the Legislative Assembly within 14 sitting days.

The reporting scheme also provides two tiers of protection from the disclosure of specified types of sensitive information through identifying the nature of information that must not be contained in the report and what may be excluded prior to tabling in the Legislative Assembly.

Keeping documents connected with authorised operations

Section 181 sets out the records a chief executive officer must cause to be retained in relation to authorised operations to enhance the monitoring process.

General register

Section 182 creates a scheme for the keeping of a general register for purposes of accountability and monitoring. The register must be or form part of the register of covert acts kept under chapter 11, part 2 of the PPRA.

Division 3 Inspections

Inspection of records

Section 183 creates a scheme for an inspection entity to inspect the records of a law enforcement agency to ascertain whether the requirements of this chapter and chapter 11, part 2 of the PPRA, where applicable, are being complied with by the agency. The inspection scheme places a requirement upon the inspection entity for yearly inspections as a minimum and sets out the processes and powers to enable such inspections. The section also sets out requirements imposed upon the chief executive officer to enable the inspection entity to perform the inspections.

Part 6 General

Division 1 Delegation

Delegation generally

Section 184 clarifies that a chief executive officer is restricted from delegating his or her powers under this chapter except as provided by this division. This restriction exists despite any power of the chief executive officer to delegate which might exist in other legislation.

Delegations - commissioner

Section 185 enables the delegation of the commissioner's powers under this chapter relating to authorisations, variations, cancellations and notifications requirements of controlled operations to the deputy commissioner or an assistant commissioner for crime operations.

Delegations - CMC chairperson

Section 186 enables the delegation of the CMC chairperson's powers under this chapter relating to authorisations, variations, cancellations and notifications requirements of controlled operations to a CMC assistant commissioner. However this power does not apply if the person under investigation is, was, or believed to be police officer.

Division 2 Evidentiary provisions

Evidence of authorities

Section 187 enables a controlled operation authority granted under section 154, or an authority under a corresponding law, to be admissible as evidence that the person granting the authority was satisfied of the facts required for the granting of the authority. The effect of this provision is to remove the need for the person who granted the authority to give evidence in court of the facts required for the granting of the authority.

However this provision does not apply in relation to criminal or disciplinary proceedings against a law enforcement officer.

Chapter 5B Assumed identities

Part 1 Preliminary

Purpose of ch 5B

Section 188 sets out the purpose of this chapter. The chapter recognises that for investigations, intelligence gathering and other law enforcement purposes it is sometimes necessary for law enforcement officers and authorised civilians to conceal their true identity.

How purpose is achieved

Section 189 sets out that the principal ways the chapter achieves its purpose. The chapter achieves this through the creation of a scheme for acquiring and using assumed identities and enabling recognition of things done relating to assumed identities under a corresponding law.

Definitions for ch 5B

Section 190 provides definitions for terms used in this chapter. These definitions are necessary to complement the Bill.

Relationship to other laws and matters

Section 191 provides that this chapter is only applicable to the CMC in relation to suspected major crime as defined under the *Crime and Misconduct Act 2001*.

Subsection (2) provides that activities and records under parts 2 to 7 of this chapter are exempt from the listed Acts.

Part 2 Authorities for assumed identities

Application for authority to acquire or use assumed identity

Section 192 contains the scheme by which a law enforcement officer of a law enforcement agency may apply in writing to the agency's chief executive officer for authority to acquire and/or use an assumed identity.

The provision requires a separate application for each identity and also sets out the information required in the application. The chief executive officer of the agency who receives the application may request additional information.

Nothing in this section prevents a law enforcement agency from acquiring one or more assumed identities to be kept for future use by an authorised officer without knowing the context in which they will be used.

Deciding application

Section 193 provides that the chief executive officer may grant or refuse the authority to acquire and/or use an assumed identity after considering the application, any additional information that has been provided. The chief executive officer may grant the authority subject to conditions. The section sets out the range of matters that the chief executive officer must take into account before granting the authority. Unless the chief executive officer is satisfied on reasonable grounds that the circumstances set out in the section exist, he or she may not grant the authority.

The section also establishes supervision requirements a law enforcement agency must comply with when the authority for an assumed identity is for a civilian.

Form of authority

Section 194 provides an authority to acquire and/or use an assumed identity may be granted by way of a written formal authority. The section also sets out the particulars required to be covered in the authority

Period of authority

Section 195 clarifies that an authority can be cancelled under section 196 and unless an authority it is sooner cancelled, an authority is valid for the period stated in the authority.

Variation or cancellation of authority

Section 196 enables the chief executive officer to vary or cancel the authority for the acquisition and/or use of an assumed identity that has been granted. The section places a requirement upon the chief executive officer to cancel the authority if he or she is satisfied, upon a review of the

authority or for any other reason, that the authority is no longer necessary. The section also clarifies when the variation or cancellation has effect.

The section places a notification requirement on the chief executive officer when an authority is varied or cancelled, including who is to be notified and what the written notice must contain.

Review of authority

Section 197 creates a scheme for the review of an assumed identity authority. The section sets out how often a review is to be conducted by the chief executive officer and requires the chief executive officer to decide whether the authority is still necessary and as a result must either cancel the authority or record his or her reasons why the authority is still necessary.

Part 3 Evidence of assumed identities

Division 1 Creation of birth certificates for assumed identities

Approval for creation of birth certificate for assumed identity

Section 197A sets out the scheme for the chief executive officer of a law enforcement agency to apply to the independent member by written application for an authority to create a birth certificate for use as an assumed identity.

Subsection (2) provides that the independent member may only grant the approval if satisfied that the creation and use of a birth certificate is justified having regard to the nature of activities to be undertaken.

Order authorising creation of birth certificate for assumed identity under corresponding authority

Section 197B provides that the chief executive officer of a law enforcement agency under a corresponding law may apply to the Supreme Court for an order for the creation of a birth certificate.

Subsection (2) provides that the Supreme Court may only grant the approval if satisfied that the creation and use of a birth certificate is justified having regard to the nature of activities to be undertaken.

Subsection (3) places restrictions on who may present at the application.

Giving effect to birth certificate approval

Section 197C sets out the scheme for the creation of the birth certificate as evidence of an assumed identity.

Destruction of birth certificate created under s 197C

Section 197D creates a requirement for the chief executive officer of the agency for which the birth certificate was created to cause the created birth certificate to be destroyed as soon as practicable after the authority for the assumed identity is cancelled. The section further requires the chief executive officer to notify the registrar-general when the certificate has been destroyed.

Cancelling authority affecting entry in participating jurisdiction's register of births, deaths or marriages

Section 197E provides that where a chief executive officer cancels an authority for an assumed identity and a false entry has been made in a register of births deaths or marriages in a participating jurisdiction, the chief executive officer is required to apply for an order of the Supreme Court of the participating jurisdiction for an order under a corresponding law to cancel the false entry.

Restriction about records and access to application for authority to create birth certificate

Section 197F prohibits the making of a transcript of the proceeding of an application to the Supreme Court for an order to creation of a birth certificate under section 197B and creates an offence for the publication of a report of the proceeding.

Subsection (4) prohibits the searching of information in the custody of the Supreme Court relating to the proceeding unless a Supreme Court judge otherwise orders.

Division 2 Other provisions about evidence of assumed identities

Request for evidence of assumed identity

Section 197G enables a chief executive officer who gave an assumed identity authority to request the chief executive officer of any issuing agencies named in the authority to produce evidence of an assumed identity as set out in the authority, and to give evidence to the officer or person named in the authority.

The evidence of the assumed identity is defined broadly in the section and may include a variety of items including driver's licences, birth certificates, credit/EFTPOS cards, and Medicare cards.

Government issuing agency to comply with request

Section 197H compels government issuing agencies in any jurisdiction to comply with requests under this chapter for assumed identity documentation. The provision clarifies that the decision to create an assumed identity rests with the law enforcement agency and obviates the need for a government issuing agency to have a decision-making apparatus.

Non-government issuing agency may comply with request

Section 197I provides that non-government bodies with a discretion as to whether to issue evidence of an assumed identity in response to a request from the chief executive officer of a law enforcement agency.

Nothing under this section prevents a law enforcement agency from using documentation acquired through government issuing agencies such as a driver's licence, to acquire identity documents from other institutions such as financial institutions, without alerting those institutions that the documentation is being acquired for law enforcement purposes as part of a legally acquired assumed identity.

Cancelling evidence of assumed identity

Section 197J requires the issuing agency to cancel any evidence of identity or other record of identity on the written direction of the chief executive officer of a law enforcement agency who requested the issue of the assumed identity.

Division 3 Protection and indemnities

Protection from criminal responsibility – officer of issuing agency

Section 197K provides for protection from criminal responsibility for any person who, apart from this section, commits an offence in giving effect to a birth certificate approval.

Subsection (2) provides protection from criminal responsibility to officers and employees of issuing agencies who provide evidence of an assumed identity in response to a requirement or request to do so under this chapter.

Indemnity for issuing agency and officers in relation to creation of birth certificates

Section 197L provides that the law enforcement agency which produces a birth certificate approval to the registrar-general must indemnify the registrar-general and their employees for any civil liability and reasonable costs incurred as a consequence of complying with section 197C subject to any requirements prescribed by regulation having been met.

Indemnity for issuing agency and officers in relation to other evidence of assumed identities

Section 197M provides that the law enforcement agency which makes the request for evidence of an assumed identity must indemnify the issuing agency or an officer of the agency for any civil liability and reasonable costs incurred as a consequence of complying with the request or requirement made under this chapter and subject to any requirements prescribed by regulation having been met.

Protection from criminal responsibility for particular ancillary conduct

Section 197N provides protection from criminal responsibility to a person who engages in ancillary activity including conspiracy to commit offences and aiding or enabling the commission of an offence in relation to assumed identities where another person engages in conduct for which the person is exempt from criminal responsibility under section 197K.

Subsection (2) provides protection from criminal responsibility despite any other law of this jurisdiction if at the time the person engaged in the ancillary conduct they believed that the other related conduct was or would be engaged in by an authorised person or an issuing officer of an agency.

Part 4 Effect of authorities

Assumed identity may be acquired and used

Section 197O enables an authorised officer or authorised civilian to acquire and use an assumed identity if the acquisition and/or use was in accordance with the authority, and for an authorised officer, in course of his or her duty. In relation to an authorised civilian, a further level of protection and supervision is provided, which is that the acquisition and use must also be in accordance with any directions given by the person's supervisor.

Protection from criminal responsibility – authorised person

Section 197P provides that an authorised person who acquire and use evidence of an assumed identity would not be criminally responsible for the acquisition and use. However, authorised persons would only receive protection if their conduct met the specified conditions. An authorised officer would be protected for conduct engaged in in the course of duty and in accordance with the authorisation conditions. An authorised civilian would only receive protection for conduct that was in accordance with the instruction of a supervising officer and any authorisation conditions. This protection from criminal responsibility would only be available for conduct which would not constitute an offence if the assumed identity was the person's real identity.

Indemnity for authorised person

Section 197Q requires a law enforcement agency to indemnify the authorised person against any civil liability incurred in the acquisition and/or use of an assumed identity for persons authorised to acquire and/or use an assumed identity. The indemnity would only be available if the actions of the authorised person was in accordance with the authority and any conditions or directions.

Particular qualifications

Section 197R provides that an authorised person would not receive protection from liability or indemnity for conduct that requires a qualification if that person does not in fact have that qualification, regardless of whether the authorised person has acquired documentation that establishes that he or she has that qualification. This limitation ensures that authorised persons cannot use an assumed identity to engage in activities they are not qualified to engage in.

Effect of being unaware of variation or cancellation of authority

Section 197S provides that a person authorised to acquire and/or use an assumed identity would continue to be protected from criminal responsibility and receive the indemnity for civil liability for the acquisition and use of the identity in certain circumstances even if the authority has been varied or cancelled. If the authority had been varied or cancelled, and the person is unaware of this change, the person would still be protected from civil and criminal liability, unless he or she is reckless about the existence of the variation or cancellation.

Part 5 Recognition of assumed identities

Request to participating jurisdiction for evidence of assumed identity

Section 197T enables a chief executive officer of a law enforcement agency in this jurisdiction to make a request to an issuing agency in a participating jurisdiction for that agency to issue evidence of an assumed identity.

Request from participating jurisdiction for evidence of assumed identity

Section 197U provides for the chief executive officer of an issuing agency in this jurisdiction to produce evidence of an assumed identity if a request is received from a law enforcement agency in a participating jurisdiction. If the request is made to a government issuing agency that agency must comply with the request. If the request is made to a non-government agency, that agency has a discretion as to whether they choose to comply.

Directions from participating jurisdiction to cancel evidence of assumed identity

Section 197V provides that when an authority is cancelled in the participating jurisdiction, and that authority has been used to request evidence of an assumed identity in this jurisdiction under section 197U, the chief executive officer of the issuing agency who issued the documentation must cancel it if directed in writing to do so by the chief executive officer of the requesting law enforcement agency.

Indemnity for issuing agency and officer

Section 197W provides that when a law enforcement agency in this jurisdiction grants an authority to request evidence of an assumed identity from an issuing agency in a participating jurisdiction, the law enforcement agency must indemnify the issuing agency and its officers for any liability incurred, notwithstanding that the issuing agency is in a different jurisdiction.

Application of ch 5B to corresponding authority

Section 197X, for the purposes of the listed provisions, enables an assumed identity authority granted by a law enforcement agency in a participating jurisdiction to be recognised as if it had been granted in this jurisdiction.

Part 6 Compliance and monitoring

Division 1 Misuse of assumed identity and information

Misuse of assumed identity

Section 197Y creates offences for the misuse of assumed identities by authorised officers or authorised civilians.

Disclosing information about assumed identity

Section 197Z is designed to provide protection to persons acquiring and using assumed identities and to ensure the integrity of investigations and intelligence gathering by creating offences for a person, in particular

circumstances, to disclose certain information relating to assumed identities.

Division 2 Reporting and record keeping

Report about authorities for assumed identities etc.

Section 197ZA establishes a reporting scheme for the chief executive officer of a law enforcement agency on identified criteria relating to assumed identities. The report is required to be given to the report entity for the agency with a copy of the report being required to be tabled in the Legislative Assembly within 14 sitting days by the report entity.

The reporting scheme also provides for protection from the disclosure of specified types of sensitive information through identifying the nature of information that must not be contained in the report.

Record keeping

Section 197ZB places a requirement upon the chief executive officer of a law enforcement agency to keep records about the agency's operations under this chapter. The section sets out the information required to be contained in the records.

Audit of records

Section 197ZC creates a scheme for the auditing of records about authorities for assumed identities kept under section 197ZB. The section sets out the frequency of the audits and establishes who is to conduct the audit in relation to the specific agency. The section also imposes a duty on the auditor to report back to the chief executive officer of the results of the audit.

Part 7 Delegation

Delegation generally

Section 197ZD clarifies that a chief executive officer is restricted from delegating his or her powers under this chapter except as provided by this

part. This restriction exists despite any power of the chief executive officer to delegate that might exist in other legislation.

Delegation - commissioner

Section 197ZE enables the delegation of the commissioner's powers under this chapter. The section sets out the class of person stated powers may be delegated to. The section also limits the number of delegation that may be in force under this section.

Delegation - CMC chairperson

Section 197ZF enables the delegation of the CMC chairperson's powers under this chapter. The section sets out the class of person stated powers may be delegated to. The section also limits the number of delegation that may be in force under this section.

Chapter 5C Surveillance device warrants

Part 1 Preliminary

Purposes of ch 5C

Section 197ZG sets out the purposes of this chapter. The chapter recognises that electronic surveillance is a crucial tool for effective and efficient law enforcement. The chapter establishes procedures for law enforcement agencies of this jurisdiction for obtaining warrants and authorisations for the installation, use and retrieval of surveillance devices in this and participating jurisdictions. The chapter facilitates the recognition of warrants and emergency authorisations issued or given by the corresponding law of another jurisdiction.

The chapter further provides for privacy safeguards and accountability measures through restricting the use, communication and publishing of information obtained from surveillance devices, the secure storage and destruction of records, and the making of reports to the courts and to parliament.

Definitions for ch 5C

Section 197ZH provides definitions for terms used in this chapter. These definitions are necessary to complement the Bill.

Meaning of relevant offence

Section 197ZI defines the meanings of relevant offence for this chapter.

When an investigation is conducted in this jurisdiction

Section 178ZJ identifies, for the purposes of this chapter, when an investigation into a relevant offence is taken to be conducted in this jurisdiction.

Relationship to other laws and matters

Section 197ZK clarifies that this chapter has no effect on other laws of this jurisdiction in relation to the use of surveillance devices. For example this chapter has no effect on surveillance device legislation contained in the *Crime in Misconduct Act 2001* for the investigation of misconduct offences.

Subsection (2) declares that warrants and emergency authorisations may be issued for the instillation, use, maintenance and retrieval of surveillance devices and any associated enhancement equipment. Any warrant or emergency authorisation is valid in this jurisdiction and any participating jurisdiction.

Subsection (3) clarifies that a function provided for by this chapter in relation to the activities of the CMC applies only in relation to their major crime function.

Subsection (4) provides that this chapter does not authorise the interception of telecommunications or the doing of any other thing which would require a warrant under the Commonwealth's *Telecommunications (Interception) Act 1979*.

Subsection (5) sets out when this chapter has no effect on the lawful use of an optical surveillance device by a law enforcement officer.

Subsections (6) and (7) identify certain Acts which do not apply to activities and records under this chapter.

Part 2 Warrants

Division 1 Introduction

Types of warrants

Section 197ZL identifies the two types of warrants that may be issued under this part. The section further provides that a Supreme Court judge may issue a warrant in respect of 1 or more kinds of surveillance devices. This includes composite devices that have more than one function.

Who may issue warrants

Section 197ZM identifies who may issue surveillance and retrieval warrants. The section provides that a Supreme Court judge may issue any warrant under this part.

Subsection (2) limits a magistrate to only issuing a surveillance device warrant for a tracking device and only when the installation of the device does not require covert entry to a building for installation. This would permit law enforcement officers to enter and install a tracking device in a public place including a car park. It will also enable entry into a carport or an open car parking area underneath a unit complex. This section would also permit law enforcement officers to enter a private building with the permission of an occupant.

The section further provides that a magistrate may issue a retrieval warrant for a tracking device and only if a magistrate issued the original warrant. The retrieval warrant issued by a magistrate must not authorise covert entry into a building to retrieve the device.

Division 2 Surveillance device warrants

Application for surveillance device warrant

Section 197ZN creates a scheme for the application for a surveillance device warrant by a senior officer of a law enforcement agency. The section sets out the criteria that the applicant must reasonably believe to be able to apply for the warrant. The application must be made to the appropriate judicial officer and must be sworn and state the information required by the

section. The section further imposes a duty upon the applicant to advise the public interest monitor of the application.

The section provides that the judicial officer may require additional information and may refuse to consider the application until that information is provided.

Who may be present at consideration of application

Section 197ZO lists the persons who may be present when the judge or magistrate hears an application for a surveillance device warrant. The section requires that the application must be heard in the absence of the suspect or anyone likely to inform the suspect of the application, and without the suspect having been informed of the application.

Deciding application

Section 197ZP provides that a Supreme Court judge or magistrate must be satisfied that there are reasonable grounds for the belief founding the application and that in the context of a remote application, it would have been impracticable for the application to be made in person.

Subsection (2) sets out the issues that the Supreme Court judge or magistrate must have regard to in deciding the application.

Subsection (3) restricts the issue of a warrant to authorise the use of a surveillance device in a lawyer's office to circumstances relating to the lawyer's involvement in a relevant offence.

Subsection (4) provides that a magistrate can issue a warrant for the installation of a tracking device however such warrant cannot authorise covert entry into a building by the person installing the tracking device.

What must a surveillance device warrant contain

Section 197ZQ lists the information that must be stated in the warrant. This includes a statement that the judge or magistrate is satisfied of the matters referred to in section 197ZP(1) and has had regard to the matters referred to in section 197ZP(2).

What a surveillance device warrant authorises

Section 197ZR provides the powers a law enforcement officer may exercise under a surveillance device warrant. The section identifies the kinds of

warrants and the powers authorised for each kind of warrant. The section also provides general powers available to all the kinds of surveillance device warrants including a retrieval power, the use of enhancement equipment, power to remove and return objects, use of force, the use of electricity and the connection of devices and equipment to a telephone system and subsequent use. The section also authorises doing things to conceal actions undertaken.

The section provides a number of safeguards relating to use of surveillance devices and enabling the warrant to be subject to specified conditions.

Extension and variation of surveillance device warrant

Section 197ZS established the process for the extension and variation of a surveillance device warrant. The section provides that before the expiry of a surveillance device warrant, a senior officer of a law enforcement agency to whom a warrant has been issued may apply to a judicial officer to vary any of the terms of the warrant or extend the warrant for an additional period of up to 90 days. The section clarifies to whom the application must be made and requires the application to address the same matters required in the original application where relevant. The application may be granted subject to any conditions and the new expiry date or varied terms must be endorsed by the judge or magistrate on the original warrant. The section provides that there is no limit to the number of times a warrant may be extended or varied.

Revocation of surveillance device warrant

Section 197ZT creates a process for the revocation of a surveillance device warrant by a Supreme Court judge or magistrate either on their own initiative or after receiving a report provided in accordance with section 197ZZQ. The section also imposes notification requirements on a judge or magistrate who revokes a surveillance device warrant.

Discontinuance of use of surveillance device under warrant

Section 197ZU provides an obligation on certain law enforcement officers to inform the chief executive officer that a surveillance device warrant is no longer necessary. The section also sets out the circumstances when the chief executive officer is to cause the use of the surveillance device to cease and requires written notification of the discontinuance to be provided to the public interest monitor. The section clarifies that the warrant ceases to have

effect, other than for retrieval purposes, when the notice is given to the public interest monitor.

Division 3 Retrieval warrants

Application for retrieval warrant

Section 197ZV sets out the process for the application for a retrieval warrant by a law enforcement officer. The section identifies the criteria that the applicant must reasonably believe to be able to apply for the warrant.

The section requires the application to be to the appropriate judicial officer and must be sworn and state the information required by the section. The section also imposes a duty upon the applicant to advise the public interest monitor. The judicial officer may require additional information and may refuse to consider the application until that information is provided.

Who may be present at consideration of application

Section 197ZW lists the only persons who may be present when the judge or magistrate hears an application for a retrieval warrant. The section requires that the application must be heard in the absence of the suspect or anyone likely to inform the suspect of the application, and without the suspect having been informed of the application.

Deciding application

Section 197ZX provides that a Supreme Court judge or magistrate must be satisfied that there are reasonable grounds for the suspicion founding the application and that in the context of a remote application, it would have been impracticable for the application to be made in person.

Subsection (2) sets out the issues that the Supreme Court judge or magistrate must have regard to in deciding the application.

What must a retrieval warrant contain

Section 197ZY provides the information that must be provided in the warrant. This includes a statement that the judge or magistrate is satisfied of the matters referred to in section 197ZX(1) and has had regard to the matters referred to in section 197ZX(2). The section clarifies other matters

that must be stated in the warrant and requires the person issuing the warrant to sign it and include their name.

What a retrieval warrant authorises

Section 197ZZ states the powers a law enforcement officer may exercise under a retrieval warrant. This includes a power of entry and if necessary the opening or removal and return of an object which contain the surveillance device and/or associated enhancement equipment.

The warrant authorises the use of the surveillance device and associated equipment only for the purpose of retrieving the device and any associated equipment. The section also authorises doing things to conceal actions undertaken.

Revocation of retrieval warrant

Section 197ZZA creates a process for the revocation of a retrieval warrant by a Supreme Court judge or magistrate either on their own initiative or after receiving a report from a law enforcement officer under section 197ZZQ. The section further imposes notification requirements on a judge or magistrate who revokes a retrieval warrant.

Discontinuance of retrieval warrant

Section 197ZZB provides an obligation on the law enforcement officer who is issued with a retrieval warrant to inform the chief executive officer when a retrieval warrant is no longer necessary. The section further requires the chief executive officer to notify the public interest monitor when the grounds for the issue of the retrieval warrant cease to exist. Upon the issue of the notice to the public interest monitor the retrieval warrant ceases to have effect.

Part 3 Emergency authorisations

Emergency authorisation – risk of serious personal violence or substantial property damage

Section 197ZZC creates a scheme for a law enforcement officer to apply, either orally or in writing or under the provisions of section 451 of the PPRA, to a senior officer of the law enforcement agency to give an

emergency authorisation for the use of a surveillance device if the law enforcement officer reasonably believes that the listed criteria exists. The senior officer may grant the application if satisfied that there are reasonable grounds for the law enforcement officer's belief founding the application. The emergency authorisation provides the same powers as a surveillance device warrant.

The rational for the use of the emergency authorisation is that the risk of violence or damage is so great and imminent as to justify the use of the surveillance device without judicial authorisation.

Application for approval after use of surveillance device under emergency authorisation

Section 197ZZD requires that where a surveillance device has been used under an emergency authorisation, approval of the use must subsequently be sought from a Supreme Court judge. A senior officer must apply to a judge by way of a sworn application within 2 business days of the giving of the emergency authorisation. The section sets out the required details to be included in the application. The section enables the judge to require additional information and may refuse to consider the application until the additional information is provided. A reporting requirement is also placed upon the applicant to advise the public interest monitor.

Who may be present at consideration of application

Section 197ZZE lists the only persons who may be present when the judge hears an application for approval of the emergency authorisation. The section requires that the application must be heard in the absence of the suspect or anyone likely to inform the suspect of the application, and without the suspect having been informed of the application.

Consideration of application

Section 197ZZF requires the judge, before deciding whether to approve an application for approval of the emergency authorisation, must consider the listed criteria whilst being mindful of the intrusive nature of using a surveillance device.

Judge may approve emergency use of powers

Section 197ZZG provides that a judge, after considering the application for approval of a specified emergency authorisation, may approve the application if satisfied there were reasonable grounds to believe the stated criteria relevant to the specified emergency authorisation. If the judge approves the application, he or she may issue a surveillance device warrant for the continued use of the surveillance device as if the application was an application for a surveillance device warrant.

If the judge does not approve the authorisation he or she may order the use of the surveillance device cease and may order the retrieval of the device subject to any conditions the judge considers appropriate.

Whether or not the judge approves the application he or she may make an order that the information obtained through the use of the surveillance device be dealt with in a stated way.

Admissibility of evidence

Section 197ZZH provides that evidence obtained through the use of a listening device under an emergency authorisation which is subsequently approved under section 197ZZG is not inadmissible only because the evidence was obtained prior to the approval.

Part 4 Recognition of corresponding warrants and authorisations

Corresponding warrants

Section 197ZZI enables a corresponding warrant, in accordance with its terms, to be executed in this jurisdiction as though it was a surveillance warrant or retrieval warrant issued in this jurisdiction.

Section 197ZZI(2) and (3) clarify that a warrant issued in another jurisdiction can be executed in Queensland, notwithstanding that the Queensland legislation may impose higher standards or greater restrictions than the corresponding law. This is to ensure recognition of corresponding warrants even though Queensland is to maintain existing standards where these are higher than the model laws.

Corresponding emergency authorisation

Section 197ZZJ enables a corresponding emergency authorisation, in accordance with its terms, to use a surveillance device in this jurisdiction as though it was an emergency authorisation issued in this jurisdiction. The section also states that a corresponding emergency authorisation will no longer be valid in this jurisdiction if or when the judge in the issuing jurisdiction has ordered that the use of the surveillance device is to cease.

Section 197ZZJ(3) clarifies that a corresponding emergency authorisation issued in another jurisdiction can be executed in Queensland, notwithstanding that an authorisation equivalent to the corresponding emergency authorisation could not have been issued in Queensland. This subsection is particularly directed at clause 22 of the model laws (Emergency authorisation – continued use of authorised surveillance device in participating jurisdiction) which, when enacted by a participating jurisdiction and is recognised by Queensland as a ‘corresponding law’, would allow for a corresponding emergency authorisation to authorise use of a device in Queensland without a corresponding warrant being issued. Queensland legislation does not contain such a clause as it does not distinguish between local and cross-border warrants.

Part 5 Compliance and monitoring

Division 1 Restrictions on use, communication and publication of information

Definitions for div 1

Section 197ZZK provides definitions for terms used in this chapter. These definitions are necessary to complement the Bill.

Prohibition on communication or publication of protected information

Section 197ZZL creates an offence for the unauthorised use, communication or publication of protected information. In circumstances where a person has used, communicated or published protected information with the intention of endangering the health or safety of any person or prejudicing the effective conduct of an investigation into a

relevant offence, or has been reckless to that effect, the maximum penalty is increased to 10 years imprisonment. It is not an offence if the information is used, communicated or published for certain stated purposes.

Permitted use of protected information

Section 197ZZM sets out when protected information may be used, communicated or published. The section also establishes when the listed reasons for permitted use, communication or publication of protected information do not apply.

Dealing with records obtained by use of surveillance devices

Section 197ZZN provides an obligation on the chief executive officer of a law enforcement agency to ensure that records of information or reports obtained using surveillance devices are kept in a secure place that is not accessible to those who are not entitled to deal with them. The section also requires the chief executive officer to ensure that such material in the possession of the relevant law enforcement agency is destroyed once it is no longer likely to be required in connection with any of the relevant permitted purposes under this chapter. This obligation does not extend to information that is received into evidence in legal or disciplinary proceedings.

Protection of surveillance device technologies and methods

Section 197ZZO provides that for a proceeding under this chapter for an application, order or approval, a transcript or publication of the proceedings is prohibited. The section creates an offence to publish a report of such a proceeding.

The section requires a person conducting or presiding over a proceeding in specified circumstances to make orders prohibiting or restricting publication of information relating to surveillance device technologies and methods, except where the person who is conducting or presiding over a proceeding considers otherwise in the interests of justice.

Protected information in the custody of a court

Section 197ZZP ensures that a person is not entitled to search any protected information in the custody of a court unless a Supreme Court judge otherwise orders in the interest of justice.

Division 2 Reporting and record keeping

Report to judge or magistrate

Section 197ZZQ imposes reporting requirements upon a law enforcement officer who either applies for a warrant or is primarily responsible for the execution of a warrant issued under this chapter. The section clarifies when and to whom the report is to be made and specifies the information to be included in the report and what may be undertaken as a result of receiving the report.

Annual reports

Section 197ZZR places a requirement upon a chief executive officer of a law enforcement agency to report on specified matters to the Minister or Chairperson of the PCMC for each financial year. The Minister or Chairperson must then table the report in the Legislative Assembly within 14 sittings days.

Keeping documents connected with warrants and emergency authorisations

Section 197ZZS requires chief executive officer of a law enforcement agency to cause specified records to be kept to enable compliance with reporting requirements under this chapter.

Other records to be kept

Section 197ZZT places an additional record keeping requirement upon the chief executive officer of a law enforcement agency in relation to specified records.

Register of warrants and emergency authorisations

Section 197ZZU requires law enforcement agencies to keep a register of warrants and emergency authorisations and clarifies how this is to be achieved.

Division 3 Inspections

Inspection of records

Section 197ZZV creates a scheme for the inspection entity for a law enforcement agency to inspect the records of a law enforcement agency to determine the agency's compliance with this chapter.

Report on inspection

Section 197ZZW requires the inspection entity for a law enforcement agency to report at 6 monthly intervals on the results of inspections to the relevant Minister or chairperson for tabling in the Legislative Assembly. The Inspection entity may also include comments and observations regarding the use and effectiveness of surveillance devices in the report.

Division 4 General

Evidentiary certificates

Section 197ZZX provides for a senior officer of a law enforcement agency to issue an evidentiary certificate to provide evidence about the actions of law enforcement officers and any assistants in connection with the execution of surveillance device warrants or emergency authorisations or information obtained by the use of surveillance devices under a warrant or authorisation. The section clarifies the admissibility of the certificate issued under this section or under a corresponding law.

Amendment of s 373 (Assistance in exercising powers)

Clause 13 amends section 373 of the PPRA changing the term 'surveillance warrant' to 'surveillance device warrant' and by inserting a new subsection

(6) to, in addition to a police officer, also include a person acting as a law enforcement officer under chapters 5A and 5C.

Amendment of s 375 (Power to use force – exercise of certain powers)

Clause 14 amends section 375 of the PPRA by extending the use of force powers provided to a police officer or a person assisting to a law enforcement officer.

Replacement of ch 11, pt 2, div 2 hdg

Clause 15 removes the existing chapter 11, part 2, division 2, heading of the PPRA and inserts a new heading.

Division 2 Register of covert acts

Subdivision 1 Preliminary

Amendment of s 400 (Application of div 2)

Clause 16 omits the term covert act in section 400(2) of the PPRA.

Insertion of new ch 11, pt 2, div 2, sdiv 2, hdg and s 402A

Clause 17 inserts new subdivision 2 into chapter 11, part 2, division 2 and inserts new section 402A into the PPRA.

Subdivision 2 Covert acts under chapters 4 and 4A

Application of sdiv 2

Section 402A identifies the particular covert acts that this subdivision applies to.

Amendment of s 403 (Information to be recorded in register)

Clause 18 amends section 403 of the PPRA by amending the heading so that it applies to subdivision 2. The clause further amends section 403 by requiring information specified on the responsibilities code about covert acts that must be recorded in the register only to apply to covert acts to which the subdivision applies.

Insertion of new ch 11, pt 2, div 2 sdiv 3 and sdiv 4, hdg

Clause 19 amends the PPRA by inserting before section 404 a new subdivision 3.

Subdivision 3 Covert acts under chapters 5A and 5C

Application of sdiv 3

Section 403A identifies the particular covert acts that this subdivision applies to.

Information to be included in register for surveillance device warrants and retrieval warrants

Section 403B identifies the information about surveillance device warrants and retrieval warrants that must be included in the register.

Information to be included in register for emergency authorisations

Section 403C identifies the information about emergency authorisations that must be included in the register.

Information to be included in the register for controlled operations

Section 403D identifies the information about controlled operations that must be included in the register.

Subdivision 4 General

Amendment of s 404 (Who must record information in register)

Clause 20 amends section 404 of the PPRA by changing the heading.

Amendment of s 409 (Other authorised inspections)

Clause 21 amends section 409 of the PPRA by replacing the term ‘entity’ to ‘law enforcement agency’ and ‘entity’s’ to ‘law enforcement agency’s’ reflecting the changes in terms used.

Subclause (3) further amends the PPRA by replacing section 409(2)(c) to allow for a person to inspect a register for preparing an application for an approval, authorisation, order or warrant to which this division applies.

Amendment of s 411 (Application of div 3)

Clause 22 amends section 411 of the PPRA by including that the exercising of a power under a retrieval warrant and emergency authorisation are not included as enforcement acts for the purposes of division 3.

Amendment of s 419 (Correcting registers)

Clause 23 extends the application of section 419(1) of the PPRA to include that information required to be entered into a register under sections 403, 403B, 403C and 403D.

Amendment of s 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

Clause 24 amends section 451 of the PPRA by including a law enforcement officer as a person who can utilise this section for remote applications under the PPRA. The section is also amended to allow for a prescribed authority to be applied for under this section by email. Section 451 is further amended renumbering subsection (5) as subsection (6) by replacing subsection (4) with new subsections (4) and (5) clarifying how the prescribed authority may be applied for.

Amendment of s 452 (Steps after issue of prescribed authority)

Clause 25 amends section 452 of the PPRA by placing a recording requirement on a person who issues a prescribed authority on a remote application made under chapter 5C

Subclause (2) amends section 452(2), (3) and (4) of the PPRA by extending the application of the section to a law enforcement officer.

Subclauses (3), (4) and (5) amends section 452 of the PPRA by setting out when documents required to be sent under subsection (4) must be sent.

Subclause (6) clarifies that a proscribed authority form completed by a police officer or law enforcement officer is the same as a prescribed authority signed by the issuer.

Amendment of s 453 (Presumption about exercise of powers under prescribed authority)

Clause 26 amends section 453 of the PPRA by extending the application of the section to a law enforcement officer.

Amendment of s 454 (Protection of methodologies)

Clause 27 amends section 454(4) of the PPRA by inserting a note advising that provisions relating to the protection of surveillance device technologies and methods under chapter 5C are contained in section 197ZZO.

Insertion of new ch 13, pt 5

Clause 28 amends chapter 13 of the PPRA by insert a new part 5.

Part 5 Transitional Provisions for Cross Border Law Enforcement Legislation Amendment Act 2005

Division 1 Preliminary

Definitions for pt 5

Section 484 provides definitions for terms used in this part. These definitions are necessary for the transitional provisions of this Bill.

Division 2 Controlled activities

Transitional provision for controlled activities

Section 485 sets out the transitional requirements for controlled activities, protections from liability and powers not to be delegated.

Division 3 Controlled operations

Subdivision 1 Definitions

Definitions for div 3

Section 486 provides definitions for terms used in this division. These definitions are necessary for the transitional provisions of this Bill.

Subdivision 2 Controlled operations committee

Transitional provisions about committee membership

Section 487 sets out the transitional requirements about the controlled operations committee membership.

Transitional provisions about committee business

Section 488 sets out the transitional requirements about the controlled operations committee business.

Subdivision 3 Controlled operation approvals

Transitional provisions for police service controlled operation approvals

Section 489 sets out the transitional requirements for controlled operation approval and controlled operation urgent approval of the police service.

Transitional provisions for CMC controlled operation approvals

Section 490 sets out the transitional requirements for controlled operation approval and controlled operation urgent approval of the CMC.

Transitional provision for pre-commencement day recommendations

Section 491 sets out the transitions requirements for recommendations made by the committee.

Subdivision 4 Covert operatives

Transitional provisions for police service covert operatives

Section 492 sets out the transitional requirements for police and civilian covert operatives named in controlled operation approval or controlled operation urgent approval of the police service and relevant documents.

Transitional provisions for CMC covert operatives

Section 493 sets out the transitional requirements for civilian covert operatives named in controlled operation approval or controlled operation urgent approval of the CMC and relevant documents.

Division 4 Assumed identities

Authorities for identity documents that are birth certificates

Section 494 sets out the transitional requirements for created birth certificates.

Identity documents other than birth certificates

Section 495 sets out the transitional requirements for created identity documents.

Division 5 Surveillance devices

Subdivision 1 Definitions

Definitions for div 5

Section 496 provides definitions for terms used in this division. These definitions are necessary for the transitional provisions of this Bill.

Subdivision 2 Transitional provisions for police service surveillance devices

Transitional provisions for existing police service surveillance devices

Section 497 sets out the transitional requirements for existing police service surveillance warrants and authorisations.

Transitional provisions for protection of records

Section 498 sets out the transitional requirements for the protection of records relating to surveillance device warrants and applications including information in the custody of the court.

Transitional provisions for use and disclosure of information obtained from using surveillance devices

Section 499 sets out the transitional requirements for the use and disclosure of information obtained by the police service from the use of surveillance devices.

Subdivision 3 Transitional provisions for CMC surveillance devices

Transitional provisions for existing CMC surveillance devices

Section 500 sets out the transitional requirements for existing CMC surveillance warrants and authorisations.

Transitional provisions for protection of records

Section 501 sets out the transitional requirements for the protection of records relating to CMC surveillance device warrants and applications including information in the custody of the court.

Transitional provisions for use and disclosure of information obtained from using surveillance devices

Section 502 sets out the transitional requirements for the use and disclosure of information obtained by the CMC from the use of surveillance devices.

Division 6 General

Transitional regulation-making power

Section 503 sets out the transitional provision allowing for ‘relevant offences’ for the purposes of chapters 5A and 5C to be prescribed by regulation for a period of 12 months from commencement. This is to ensure that all relevant offences for which these powers are to be exercised are captured. Following this, the only way the definition can be amended is by another Act of Parliament.

Insertion of new schs 2-3A

Clause 29 inserts new schedules 2 (Relevant offences for controlled operations and surveillance device warrants) and schedule 3 (Relevant offences for chapter 5C disclosure of information provisions). These schedules set out additional relevant offences for which these powers are to be exercised but that fall below the relevant offence threshold of either seven or three years imprisonment.

Amendment of sch 4 (Dictionary)

Clause 30 amends the Schedule 4 Dictionary of the PPRA

Subclause (1) omits definitions *authorised person, chapter 4 application, class A surveillance device, class B surveillance device, committee, controlled activity, controlled operation, corresponding law, covert act, covert operative, entity, misconduct offence, monitor, otherwise unlawful activity, relevant offences, relevant place* and *responsible chief executive officer*. These definitions have been excluded to give effect to the model law provisions being inserted by the Bill.

Subclause (2) inserts new definitions for terms used in the Bill. These definitions are necessary to complement the Bill.

Subclause (3) amends the definition of chief executive officer to include the Commissioner of Police, the Chairperson of the Crime and Misconduct Commission and the chief executive officer of an issuing agency under the assumed identities provisions in chapter 5B.

Subclause (4) amends the definition of police officer.

Division 3 Amendments relating to Australian Crime Commission activities

Subdivision 1 Controlled operations related amendments

Amendment of s 141 (Relationship to other laws and matters)

Clause 31 amends section 141 to enable the ACC to utilise chapter 5A for the purpose of its suspected serious and organised crime power and

function provided under the *Australian Crime Commission (Queensland) Act 2003*.

Amendment of s 143 (Establishment of controlled operations committee)

Clause 32 amends section 143 to enable the chief executive officer of the ACC to be a member of the controlled operations committee in circumstances where an application is made under chapter 5A by the ACC for a controlled operation.

Amendment of s 180 (Annual report by report entity)

Clause 33 amends section 180 by inserting a note at the end of subsection (2) indicating that reports by the ACC about activities under a State law are provided for by Commonwealth legislation.

Amendment of s 182 (General Register)

Clause 34 replaces section 182 to clarify that the section only applies to the police service and the CMC.

Amendment of s 184 (Delegations generally)

Clause 35 amends section 184 by inserting new subsection (2) to clarify that a reference in this division to a power includes a reference to a function.

Insertion of new s 186A

Clause 36 inserts new section 186A (Delegations – ACC).

Delegations-ACC

Section 186A sets out the delegation of the ACC's chief executive officer's powers under chapter 5A and defines the term senior officer.

Amendment of sch 4 (Dictionary)

Clause 37 amends the definitions of *law enforcement agency*, *chief executive officer* and *law enforcement officer* in schedule 4. These

amendments are necessary to complement the Bill in enabling the ACC to utilise powers and functions under chapter 5A.

Subdivision 2 Assumed identities related amendments

Amendment of s 191 (Relationship to other laws and matters)

Clause 38 amends section 191 to enable the ACC to utilise chapter 5B for the purpose of its suspected serious and organised crime power and function provided under the *Australian Crime Commission (Queensland) Act 2003*.

Amendment of s 193 (Deciding application)

Clause 39 amends section 193 by inserting new subsection (4)(c) to clarify for the ACC who can be a supervisor the acquisition and use of an assumed identity by an authorised civilian.

Amendment of s 197ZA (Report about authorities for assumed identities)

Clause 40 amends section 197ZA by inserting a note at the end of subsection (4) indicating that reporting requirements for the ACC about activities under a State law are provided for by Commonwealth legislation.

Amendment of s 197ZD (Delegations generally)

Clause 41 amends section 197ZD by inserting new subsection (2) to clarify that a reference in this division to a power includes a reference to a function.

Insertion of new s 197ZFA

Clause 42 inserts new section 197ZFA (Delegation – ACC).

Delegation-ACC

Section 197ZFA sets out the delegation of the ACC's chief executive officer's powers under chapter 5B and defines the term senior officer.

Amendment of sch 4 (Dictionary)

Clause 43 amends the definition of law enforcement officer to include relevant ACC officers.

Subdivision 3 Surveillance device warrant related amendments

Amendment of s 197ZH (Definitions for ch 5C)

Clause 44 amends section 197ZH by amending the definition of *inspection entity* so that it does not apply to the ACC and inserting a note identifying that inspection requirements for the ACC are provided for by section 55A of the Surveillance Devices Act 2004 (Cwlth).

Clause 44(3) amends section 197ZH by inserting a new subsection (c) to the definition of *senior officer* thereby identifying who is a senior officer for the ACC.

Amendment of s 197ZK (Relationship to other laws and matters)

Clause 45 amends section 197ZK to enable the ACC to utilise chapter 5C for the purpose of its suspected serious and organised crime power and function as provided for under the *Australian Crime Commission (Queensland) Act 2003*.

Amendment of s 197ZN (Application for surveillance device warrant)

Clause 46 amends section 197ZN by requiring a supporting affidavit to be provided with an application made by the ACC.

Amendment of s 197ZZL (Prohibition on communication of protected information)

Clause 47 amends s197ZZL to allow for the communication by the Public Interest Monitor to the Commonwealth ombudsman of information relating to surveillance device warrants obtained by the ACC. This is necessary to enable the Commonwealth ombudsman to perform the inspection and reporting functions under Commonwealth legislation.

Amendment of s 197ZZR (Annual reports)

Clause 48 amends section 197ZZR by inserting a note at the end of subsection (4) indicating the reporting requirements for the ACC are contained in the *Surveillance Devices Act 2004* (Cwlth).

Amendment of sch 4 (Dictionary)

Clause 49 amends the definitions of *law enforcement agency*, *chief executive officer* and *law enforcement officer* in schedule 4. These amendments are necessary to complement the Bill in enabling the ACC to utilise powers and functions under chapter 5C.

Part 3 Amendment of *Evidence Act 1977*

Division 1 Preliminary

Act amended in pt 3

Clause 50 provides that this part amends the *Evidence Act 1977*.

Division 2 Amendments relating to police and Crime and Misconduct Commission activities

Replacement of pt 2, div 5 (Witness anonymity)

Clause 51 amends part 2, division 5 of the *Evidence Act 1977* by omitting the existing division and inserting a new part 2, division 5 (Witness identity protection) which contains the following sections.

Division 5 Witness identity protection

Subdivision 1 Preliminary

Purposes of div 5

Section 21B provides the purposes of the division which are twofold. In relation to investigations of criminal activity including cross-border investigations the division will assist law enforcement by providing a scheme to enable the identity of operatives to be protected and to enable mutual recognition of interstate schemes of the same nature. In relation to misconduct investigations conducted by the CMC the division will provide a scheme to enable the identity of operatives to be protected.

Definitions for div 5

Section 21C provides the definitions for the division.

Application of div 5 to lawyer of party to a proceeding

Section 21D makes it clear that for the division a party's lawyer may do anything which the party to the proceeding is permitted to do. Also, where a party to a proceeding is required to be given something, or notified, the section makes it clear the requirement is able to be satisfied by giving the thing to or notifying the party's lawyer.

Subdivision 2 Witness identity protection certificates for operatives

Application of sdiv 2

Section 21E(1) provides that the new subdivision 2 applies to a proceeding in which an operative is or may be required to give evidence that was obtained when the person was an operative.

Subsection (2) makes it clear that the subdivision is not to affect the common law relating to the protection of the identities of other persons, who are not operatives, and who are or intended to be witnesses in a proceeding.

Giving witness identity protection certificate

Section 21F(1) allows the chief executive of a law enforcement agency to give a witness identity protection certificate for the purposes of a proceeding in circumstances where an operative of the agency is or may be required to give evidence and where the chief executive is satisfied on reasonable grounds that disclosure of the operative's identity or the place where the operative lives is likely to endanger the safety of the operative or another person or adversely affect an investigation.

Subsection (2) requires the chief executive to make all reasonable enquiries necessary to enable the inclusion in the witness identity protection certificate of all the information required under section 21G.

Subsection (3) provides that the decision to give a witness identity protection certificate is final and conclusive and can not be impeached, appealed against, reviewed, called into question, quashed or invalidated in any court.

Subsection (4) makes it clear that subsection (3) does not prevent the decision being called into question where disciplinary proceedings are taken against the person who made the decision.

Form of witness identity protection certificate

Section 21G(1) provides that a witness identity protection certificate must state:

- (a) either the name, not being the real name, the operative is known by to a party in the proceeding or the party's lawyer (the assumed name) or if not known to the party or lawyer by a name then a court name for the proceeding;
- (b) the period the operative was involved in the investigation to which the proceeding relates;
- (c) the law enforcement agency's name;
- (d) the certificate's date;
- (e) a general description of the reasons for issuing the certificate;
- (f) if the operative has been convicted of any offences anywhere, and if so, stating the offences;
- (g) if any charges against the operative are outstanding anywhere, and if so, stating the charges;

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- (h) if the operative is or was a law enforcement officer, whether the operative has been found guilty of professional misconduct and if so, giving details and also whether any allegations of professional misconduct are outstanding and if so, giving details;
- (i) if to the knowledge of the person giving the certificate, a court (defined in schedule 3 of the *Evidence Act 1977* to mean the court, tribunal, judge, justice, arbitrator, body or person before whom or which a proceeding is held or taken) has made any adverse comment on the credibility of the operative and if so, what was said about the operative;
- (j) if to the knowledge of the person giving the certificate, the operative has ever made a false representation when the truth was required and if so, details about the representation;
- (k) details of anything else known to the person giving the certificate which may be relevant to the credibility of the operative.

Subsection (2) provides that a witness identity protection certificate must not include information that may enable the actual identity of the operative or where the witness lives to be disclosed.

Subsection (3) clarifies what is meant by a charge or allegation of professional misconduct being outstanding.

Subsection (4) provides that the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure of information under subsection (1)(f) or (g). Therefore despite the legislation about spent convictions the certificate must contain details of all offences and charges including spent offences.

Subsection (5) contains definitions for the purposes of the section.

Filing and notification

Section 21H(1) provides that if the chief executive officer of a law enforcement agency gives a witness identity protection certificate then the agency must—

- (a) file the certificate with the relevant court before the person for whom the certificate was given is called to give evidence; and
- (b) if the agency is the police service, give a copy of the certificate and notice of the date it was filed to the chairperson of the Crime and Misconduct Commission (CMC).

Subsection (2) provides that the law enforcement agency must also give a copy of the witness identity protection certificate to each party to the proceeding at least 14 days or shorter agreed period prior to the day the operative is to be called to give evidence.

Subsection (3) provides that the relevant court may also by order require a copy of the certificate to be given to a stated person.

Effect of witness identity protection certificate

Section 21I(1) sets out when the section is to apply. The section applies once the witness identity protection certificate is filed and either a copy given as required by 21H(2) and (3) or the relevant court gives leave for the section to apply despite non-compliance with those subsections.

Subsection (2) provides that once the section applies the operative may give evidence in the proceeding under the assumed name or court name stated in the certificate and, subject to section 21K—

- (i) a question may not be asked of a witness, including the operative, that may lead to the disclosure of the actual identity of the operative or where the operative lives; and
- (ii) a witness, including the operative, is not required to, and must not, answer any question, give any evidence or provide any information that may lead to the disclosure of the actual identity of the operative or where the operative lives; and
- (iii) a person involved in the proceeding must not make a statement that discloses or could disclose the actual identity of the operative or where the operative lives.

Subsection (3) sets out which persons are included in the term “person involved in a proceeding”.

Orders to protect operative’s identity etc.

Section 21J(1) provides that the court with which a witness identity protection certificate is filed may make any order it considers necessary to protect the identity of the operative or to prevent disclosure of the place where the operative resides. The subsection contains examples of the types of order which may be made.

Subsection (2) provides an offence for contravention of an order under subsection (1). The maximum penalty upon conviction is 2 years imprisonment.

Subsection (3) provides that the offence does not limit the court's power to punish for contempt.

Disclosure of operative's identity etc. despite certificate

Section 21K(1) sets out when the section is to apply. The section applies once a witness identity protection certificate is filed with a court.

Subsection (2) provides that a party to the proceeding or a lawyer assisting the court in the proceeding may make an application to the court to ask questions of a witness, including the operative, or for a person to make a statement that, if answered or made, may disclose the operative's actual identity or where the operative lives. The party or lawyer may also apply for an order requiring a witness, including the operative, to answer a question, give evidence or provide information that discloses or may disclose the operative's actual identity or where the operative lives.

Subsection (3) provides for leave to be given or an order to be made.

Subsection (4) provides that leave cannot be given or an order made unless the court is satisfied—

- (a) there is some evidence that, if believed, would call into question the credibility of the operative ; and
- (b) it would be impractical to properly test the credibility of the operative without allowing the risk of disclosing or disclosing the actual identity of the operative or where the operative lives; and
- (c) it is in the interests of justice for the party to be able to test the credibility of the operative.

Subsection (5) provides that the application for leave or an order must be heard in the absence of a jury empanelled for the proceeding.

Subsection (6) provides that the court must be closed when the application is made or, if leave is given or an order made, when the question is asked and answered, the evidence is given, the information is provided or the statement is made. However, the court does not have to be closed if the court considers it is in the interests of justice for it not to be closed.

Subsection (7) provides that the court must make an order to prevent the publication of anything said during the relevant part of the proceeding.

Subsection (8) makes it clear that subsection (7) does not affect the taking of a transcript of the proceedings. However, the court may make an order about how the transcript is to be dealt with including preventing its publication.

Subsection (9) allows the court to make any other necessary orders to protect the operative's actual identity or prevent disclosure of where the operative lives.

Subsection (10) provides an offence for contravention of an order made under subsections (7), (8) or (9). The maximum penalty upon conviction is 2 years imprisonment.

Subsection (11) provides that the offence in the previous subsection does not limit the court's power to punish for contempt.

Directions to jury

Section 21KA(1) sets out when the section is to apply. The section applies once a witness identity protection certificate is filed with a court, a jury has been empanelled and the operative gives evidence.

Subsection (2) sets out the direction the court must give to the jury. However, the court does not have to give the jury a direction if it considers it inappropriate to do so. For example the jury may not have become aware that the operative has given evidence under an assumed name or a court name and in this case the court may consider that it is inappropriate to give a direction because to do so would only make the jury aware of that fact.

Witness identity protection certificate - cancellation

Section 21KB(1) sets out when the section is to apply. The section applies if a chief executive officer of a law enforcement agency gives a witness identity protection certificate for an operative for a proceeding.

Subsection (2) provides for the cancellation of the certificate by the chief executive officer once that officer considers it is no longer necessary or appropriate to prevent disclosure of the identity of the operative or where the operative lives.

Subsection (3) provides for written notice of cancellation to be given to the court and each party to the proceeding.

Permission to give information disclosing operative's identity etc.

Section 21KC(1) sets out when the section is to apply. The section applies if the chief executive officer of a law enforcement agency gives a witness identity protection certificate for an operative for a proceeding.

Subsection (2) allows the chief executive officer, if considered necessary or appropriate, to authorise a person to give information, other than in a proceeding, that may disclose or lead to the disclosure of the identity of the operative or where the operative lives.

Subsection (3) sets out the requirements for the written permission.

Subsection (4) provides that the permission may also specify how the information, which may be given, is to be given.

Disclosure offences

Section 21KD(1) makes it an offence, in certain circumstances, to do something which discloses or is likely to lead to the disclosure of the operative's identity or where the operative lives. The maximum penalty upon conviction is 2 years imprisonment.

Subsection (2) makes it a crime if a person commits the offence in subsection (1) in certain aggravating circumstances. The maximum penalty upon conviction is 10 years imprisonment.

Review of giving of witness identity protection certificate by police service

Section 21KE(1) sets out when the section is to apply. The section applies to all witness identity protection certificates filed by the police service.

Subsection (2) provides that as soon as practicable after the end of a proceeding in which a witness identity protection certificate is filed by the police service, notice of the date the proceeding to which the certificate relates ended must be given by the commissioner to the chairperson of the CMC.

Subsection (3) provides that the chairperson of the CMC must—

- (a) review the giving of each witness identity protection certificate as soon as practicable after the end of the proceeding to which the certificate relates; and in any event, within 3 months after the end of the year in which the certificate is filed; and

- (b) consider whether it was appropriate to give the certificate, in the circumstances; and
- (c) if the chairperson considers it was inappropriate to give the certificate, the chairperson must notify, as soon as practicable, whichever of the following is relevant of that fact—
 - (i) each party to the proceeding;
 - (ii) a lawyer assisting the court.

Subsection (4) provides that the commissioner, if asked, is to give the chairperson—

- (a) all information used by the police service in deciding whether or not to give the certificate; and
- (b) particulars relating to each person to whom a copy of the certificate was given under section 21H.

Subsection (5) provides that the chairperson must give a copy of any report on the review to the commissioner as soon as practicable after the report is completed.

(Note: Under section 314 of the *Crime and Misconduct Act 2001*, the parliamentary commissioner has the functions to audit the records kept by the CMC and the CMC's operational files including for the purpose of deciding whether the way the CMC has exercised power is an appropriate way. This provision will enable audits of the giving of certificates by the CMC.)

Giving information about witness identity protection certificates

Section 21KF(1) provides for the giving of reports by law enforcement agencies other than the CMC as soon as practicable after the end of each financial year, and specifies what information must be contained in the report.

Subsection (2) ensures that information which might disclose an operative's identity or place of residence is not included in any report unless the witness identity protection certificate for the operative has been cancelled.

Report about witness identity protection certificates

Section 21KG(1) provides the reporting arrangements for the CMC and specifies what information is to be contained in the annual report.

Subsection (2) ensures that information which might disclose an operative's identity or place of residence is not included in the report unless the witness identity protection certificate for the operative has been cancelled.

Subsection (3) defines annual report for the purposes of the section which means the annual report made by the CMC under the *Financial Administration and Audit Act 1977*, section 46J.

Recognition of witness identity protection certificates under corresponding laws

Section 21KH provides for the recognition of corresponding witness identity protection certificates made under corresponding laws and ensures sections 21H to 21KA and section 21KD apply to them, with any necessary changes, as if they were certificates given under section 21F.

Subdivision 3 General

Delegation

Section 21KI(1) provides that except as provided in the section the powers of a chief executive officer of a law enforcement agency under this division may not be delegated to any other person. The subsection also makes it clear that the limitation on delegation in the section applies despite any other Act or law to the contrary.

Subsection (2) provides that the chief executive officer of a law enforcement agency may delegate his or her powers under the division to a senior officer of the agency. However, the power of delegation may not be delegated.

Subsection (3) defines the term "senior officer" of a law enforcement agency for the section. For the police service a senior officer is a deputy commissioner of the police service and for the CMC an assistant commissioner of the CMC.

Insertion of new pt 9, div 3

Clause 52 inserts new part 9, division 3 after section 142.

Division 3 Cross-Border Law Enforcement Legislation Amendment Act 2005

Witness anonymity certificates

Section 143 sets out the transitional requirements and provides terms used for this section.

Amendment of sch 3 (Dictionary)

Clause 53 amends schedule 3.

Subclause (1) omits definitions *controlled operation*, *covert operative*, *protected witness*, *relevant entity* and *relevant proceeding*.

Subclause (2) inserts new definitions for terms used in the Bill. These definitions are necessary to complement the Bill.

Subclause (3) amends the definition of *law enforcement agency*.

Division 3 Amendments for Australian Crime Commission activities

Amendment of s 21C (Definitions for div 5)

Clause 54 amends section 21C.

Subclause (1) inserts new definition *ACC*.

Subclause (2) amends the definition *chief executive officer*.

Subclause (3) amends the definition *law enforcement agency*.

Amendment of s 21G (Form of witness identity protection certificate)

Clause 55 amends section 21G(5) by inserting new part (c) into the definition of *law enforcement officer* to include a member of the staff of the ACC.

Amendment of s 21H (Filing and notification)

Clause 56 amends section 21H(1) by inserting new subsection (c) which requires that if the agency is the ACC, a copy of the certificate and a notice the date was filed must be provided to the Commonwealth Ombudsman.

Amendment of s 21KI (Delegation)

Clause 57 amends section 21KI(3) by inserting the definition of senior officer for the ACC. For the ACC a senior officer is the director national operations of the ACC or another prescribed office of the ACC.

Amendment of sch 3 (Dictionary)

Clause 58 amends schedule 3 by inserting the definition for ACC.

Part 4 *Amendment of Witness Protection Act 2000*

Act amended in pt 4 and sch 2

Clause 59 provides that this part and schedule 2 amend the *Witness Protection Act 2000*.

Replacement of pt 3, div 2 (Provisions about proceedings involving protected witnesses)

Clause 60 replaces part 3, division 2 to insert the model law provisions about proceedings involving protected witnesses.

Division 2 Proceedings involving protected witnesses

Subdivision 1 Preliminary

Definitions for div 2

Section 24 inserts new definitions for part 3 division 2 in accordance with the model law. The definition of ‘complementary non-disclosure certificate’ links in with the existing definition of ‘corresponding witness protection law’, which is in turn defined as a law of the Commonwealth or a State declared by regulation to be a complimentary witness protection law.

The definition of ‘party’ to a proceeding also differs from the model law to ensure that a witness is only a party to the proceeding if granted leave by the court.

The model law term ‘previous identity’ has not been included as term ‘former identity’ which is used is already defined in the Act.

Application of div 2 to lawyer of party to a proceeding

Section 24A provides that anything permitted to be done by a party to the proceeding may be done by the party’s lawyer, or any requirement to give something to a party to the proceeding is satisfied by giving the thing to a party’s lawyer. This allows lawyers to effectively act for parties to a proceeding.

Subdivision 2 Proceedings involving protected witnesses

Requirement if protected witness becomes a witness in a proceeding

Section 25 provides that where a protected witness is required to give evidence in a proceeding in court (whether under the person’s new or former identity) they must notify the chairperson of this fact. A protected witness commits an offence if he or she knows, or is reckless as to whether,

he or she is required to give evidence in a proceeding and either intentionally, knowingly or recklessly fails to notify the chairperson under the section.

Once notified, the chairperson must give a non-disclosure certificate to the person and file a copy of the certificate with the court. A 'court' includes a court, within the meaning of the Act, of another jurisdiction.

What non-disclosure certificate must state

Section 26 stipulates what a non-disclosure certificate must state and provides that the certificate must not include information that discloses, or may lead to the disclosure of, the protected witness's identity or where the person lives.

Effect of non-disclosure certificate

Section 27 sets out what the effect of providing a non-disclosure certificate which is filed with a court in Queensland. Subject to section 27A, a question must not be asked of a witness (including the protected witness) that may lead to the disclosure of the protected witness' protected identity or where the protected witness lives. Similarly, a witness (including the protected witness) can not be required to and must not answer such a question.

The section also stipulates who, for the purposes of the section, is a person involved in the proceeding.

The Court may disclose to each party to the proceeding that the court has been given a non-disclosure certificate regarding a protected witness who is to give evidence and what the certificate states. This disclosure however, must be made in the absence of the jury and the public. The Court must also inform the parties of the effect of the certificate.

Subsection (7) states that the section applies despite any other Act.

Disclosure of protected witness's identity despite certificate

Section 27A creates the scheme for the court to give leave for the questioning of a witness or ordering a witness to make a statement which may disclose a protected witness's protected identity or where the witness lives. This is subject to the court being satisfied of the list criteria dealing with issues of credibility.

The section requires that any such application for disclosure must be done in the absence of any jury and unless the court consider otherwise, the application and any evidence subsequently given, must be made in a closed court. The section further requires orders be made suppressing publication of the application and any evidence subsequently given. Further, the section provides that the court may also make orders on how transcripts are to be dealt with and any other order the court considers appropriate.

The section creates offences for the contravention of any order.

Recognition of corresponding non-disclosure certificate

Section 27B establishes how corresponding non-disclosure certificates are to be recognised in Queensland.

Amendment of s 30 (Dealing with rights, obligations and restrictions of protected witness)

Clause 61 amends section 30 by removing tribunals and commission of inquires from proceedings that the chairperson will accept process from on behalf of a protected witness, as these are covered within the new definition of “court” inserted by this Bill.

Amendment of s 36 (Offence of disclosures about protected witnesses or officers)

Clause 62 amends section 36(3)(d) by allowing for the disclosure of information about a protected witness when permitted leave or required to do so under an order granted under section 27A.

Amendment of s 37 (Offences of disclosure by prescribed persons)

Clause 63 amends section 37(3)(d) by providing it is not an offence to disclose information about a protected witness when permitted leave required to do so under an order granted under section 27A.

Amendment of s 48 (Delegation)

Clause 64 amends section 48 by providing that the chairperson can not delegate a power to grant a certificate under section 25(2)(a).

Insertion of new pt 5, div 2

Clause 65 inserts a new part 5, division 2 dealing with transitional provisions.

Division 2 Transitional provisions for Cross-Border Law Enforcement Legislation Amendment Act 2005

Definition for div 2

Section 55 provides definitions for terms used in this division. These definitions are necessary for the transitional provisions of this Bill.

Existing non-disclosure certificates

Section 56 sets out the transitional requirements for existing non-disclosure certificates.

Provision about notice under pre-amended Act

Section 57 sets out the transitional requirements in relation to notices under the existing section 24.

Amendment of sch 2 (Dictionary)

Clause 62 amends schedule 2 by deleting the definitions of *protected person*, *relevant entity* and *relevant proceeding* and inserts new definitions for terms used in this chapter. These definitions are necessary to complement the Bill.

Part 5 Amendment Of *Crime And Misconduct Act 2001*

Act amended in pt 5

Clause 67 states that part 5 and schedule 2 amends the *Crime and Misconduct Act 2001*.

Amendment of s 40 (Commission may issue notification about how notifications are to be made)

Clause 68 amends section 40 by amending the section reference in the PPRA relating to unauthorised disclosure of information necessary to reflect changes made by the Bill.

Insertion of new ch 3, pt 6A

Clause 69 inserts new chapter 3, part 6A (Controlled operations and controlled activities for misconduct offences) after chapter 3, part 6. Part 6A replicates the existing legislative provisions of chapter 5 of the PPRA dealing with controlled operations (and associated identity documents) and controlled activities relating to the CMC's misconduct function. It also inserts provisions regarding the Controlled Operations Committee and includes cross-references where required to the PPRA. These amendments effectively maintain the status quo regarding the use of these powers for the CMC's misconduct function and make it clear that these powers do not have cross-border operation, unlike the powers in the PPRA for the CMC's major crime function.

Amendment of s 317 (Powers of parliamentary commissioner)

Clause 70 amends section 317 by inserting new subsection (7) to allow enable the Parliamentary Commissioner to delegate his or her powers as an inspection entity under Chapters 5A (Controlled operations) or 5C (Surveillance device warrants) of the PPRA to a legal practitioner referred to in section 315(2) of the *Crime and Misconduct Act 2001*.

Insertion of new ch 8, pt 2, hdg

Clause 71 amends the *Crime and Misconduct Act 2001* by replacing the heading of chapter part 2 with the new heading"

Part 2 Transitional Provisions for Crime and Misconduct Act 2001

Insertion of new ch 8, pt 3

Clause 72 inserts after section 375B a new chapter 8, part 3 (Transitional provisionals for Cross-Border Law Enforcement Legislation Amendment Act 2005). These sections set out the transitional provisions necessary due to the relocation of the controlled operations and controlled activity provisions relating to the CMC's misconduct function from the PPRA to the *Crime and Misconduct Act 2001*.

Amendment of sch 2 (Dictionary)

Clause 73 amends schedule 2 by deleting the terms of *affected by bankruptcy action*, *class A surveillance device*, *class B surveillance device* and *surveillance warrant* and inserts new definitions for terms used in this act. These definitions are necessary to complement the Bill.

Part 6 Minor and Consequential Amendments

Amendment of other Acts

Clause 74 provides that schedule 4 amends the Acts mentioned in the schedule.

Schedule 1 Minor and Consequential Amendments of *Police Powers And Responsibilities Act 2000*

Consequential amendments

Clauses 1 to 19 provide for minor and consequential amendments to the PPRA which have been altered as a result of the Bill.

Schedule 2 Minor Amendments of *Witness Protection Act 2000*

Consequential amendments

Clauses 1 to 3 provide for minor amendments to the *Witness Protection Act 2000* which has been altered as a result of the Bill.

Schedule 3 Minor and Consequential Amendments of *Crime and Misconduct Act 2001*

Consequential amendments

Clauses 1 to 36 provide for minor and consequential amendments to the *Crime and Misconduct Act 2001* which have been altered as a result of the Bill. This is particularly in relation to removing the references to ‘major crime’ in the surveillance device provisions of the Act as these are now dealt with under chapter 5C of the PPRA.

Schedule 4 Other Acts Amended

Criminal Code

Clauses 1 and 2 provide for amendments to the Criminal Code which has been altered as a result of the Bill.

Police Service Administration Act 1990

Clauses 1 to 8 provide for amendments to the *Police Service Administration Act 1990* which have been altered as a result of the Bill.

Prostitution Act 1990

Clause 1 provides for amendment to the *Prostitution Act 1999* which has been altered as a result of the Bill.

Freedom of Information Act 1992

Clause 1 provides for amendment to the *Freedom of Information Act 1992* which has been altered as a result of the Bill.