Western Australia

Corruption, Crime and Misconduct Act 2003

Compare between:

[01 Jul 2022, 07-d0-00] and [13 Apr 2023, 07-e0-00]

Western Australia

Corruption, Crime and Misconduct Act 2003

An Act to —

- **provide for the establishment and operation of a Corruption and Crime Commission with functions with respect to serious misconduct by public officers and organised crime and with respect to the confiscation of unexplained wealth and criminal benefits; and**
- **confer on the Public Sector Commissioner functions with respect to misconduct by public officers; and**
- **provide for the establishment and operation of a Parliamentary Inspector of the Corruption and Crime Commission.**

[Long title amended: No. 78 of 2003 s. 4; No. 35 of 2014 s. 4; No. 10 of 2018 s. 4.]

Part 1 — Preliminary

Division 1 — Introduction

[Heading inserted: No. 78 of 2003 s. 7(1).]

1. Short title

This Act may be cited as the *Corruption, Crime and Misconduct Act 2003* [1].

[Section 1 amended: No. 35 of 2014 s. 5.]

2. Commencement

(1) This Act comes into operation on a day to be fixed by proclamation [1].

(2) Different days may be fixed under subsection (1) for different provisions.

3. Terms used; relationship with other Acts

(1) In this Act unless the contrary intention appears —

A-CC means the Anti-Corruption Commission established under the *Anti-Corruption Commission Act 1988* [1];

allegation means —

(a) a report made to the Commission under section 25; or

(b) a proposition initiated by the Commission under section 26(1); or

(c) a matter notified to the Commission under section 28(2); or

(d) an allegation referred to the Commission under section 45M(d); or

(e) a received matter; or

(f) a report made to the Public Sector Commissioner under section 45E(1); or

(g) a proposition initiated by the Public Sector Commissioner under section 45F(1); or

(h) a matter notified to the Public Sector Commissioner under section 45H(2);

appropriate authority means a person, body or organisation who or which is empowered by a law of the State to take investigatory or other action, or both, in relation to misconduct, but does not include the Commission, an independent agency or either House of Parliament;

authorised officer has the meaning given in section 184(1);

bipartisan support means the support of —

(a) members of the Standing Committee who are members of the party of which the Premier is a member; and

(b) members of the Standing Committee who are members of the party of which the Leader of the Opposition is a member;

Commission means the Corruption and Crime Commission established under this Act;

Commissioner means the person holding the office of Commissioner established under this Act or acting in that office for the reasons mentioned in section 14(1)(a) or (b);

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892*;

contractor has the meaning given by the *Court Security and Custodial Services Act 1999*, the *Declared Places (Mentally Impaired Accused) Act 2015* or the *Prisons Act 1981*, as is relevant to the case;

criminal benefit has the meaning given in the *Criminal Property Confiscation Act 2000* section 145;

Director of Public Prosecutions has the meaning given to Director in the *Director of Public Prosecutions Act 1991*;

disciplinary action means any disciplinary action under any law or contract and includes —

(a) action under section 8 of the *Police Act 1892*; and

(b) the taking of action against a person, with a view to dismissing, dispensing with the services of or otherwise terminating the services of that person;

disciplinary offence includes any conduct or other matter that constitutes or may constitute grounds for disciplinary action;

disclose means —

(a) publish in any way; or

(b) divulge or communicate to any person in any way;

employee of the Police Department includes an Aboriginal police liaison officer, a police auxiliary officer and a police cadet under the *Police Act 1892*;

examination means an examination under Part 7;

independent agency means —

(a) the Parliamentary Commissioner; and

(b) the Director of Public Prosecutions; and

(c) the Auditor General; and

(d) the Inspector of Custodial Services; and

(e) the Public Sector Commissioner;

inquiry means an inquiry by the Parliamentary Inspector under section 197;

investigation means an investigation by the Commission, whether alone or in cooperation with another body, under section 21AD or Part 3 (including a preliminary investigation conducted under section 32(2));

minor misconduct means misconduct of a kind described in section 4(d) that is not any of the following —

(a) police misconduct;

(b) conduct engaged in by a member of a House of Parliament or the Clerk of a House of Parliament;

(c) conduct engaged in by —

(i) a member of a local government or council of a local government; or

(ii) a member of a council of a regional local government;

misconduct has the meaning given by section 4;

nominating committee means a committee consisting of —

(a) the Chief Justice; and

(b) the Chief Judge of the District Court; and

(c) a person appointed by the Governor to represent the interests of the community;

notifying authority means —

(a) a department or organisation as defined in the *Public Sector Management Act 1994*;

(b) an entity in respect of which a declaration is in effect under section 56(2) of the *Financial Management Act 2006*;

(c) a statutory authority as defined in the *Financial Management Act 2006*;

(d) an authority to which the *Parliamentary Commissioner Act 1971* applies;

(e) a person or body, or holder of an office —

(i) under whom or which a public officer holds office or by whom or which a public officer is employed; or

(ii) who or which is prescribed for the purposes of this subparagraph,

but does not include the President of the Legislative Council or the Speaker of the Legislative Assembly;

officer of the Commission means —

(a) the Commissioner; or

(b) a person appointed under section 179; or

(c) a person seconded or otherwise engaged under section 181; or

(d) a person engaged under section 182;

officer of the Parliamentary Inspector means —

(a) a person appointed under section 210; or

(b) a person seconded or otherwise engaged under section 212; or

(c) a person engaged under section 213;

officer of the Public Sector Commissioner means a public service officer employed in, or seconded to, the office of the Public Sector Commissioner;

organised crime means activities of 2 or more persons associated together solely or partly for purposes in the pursuit of which 2 or more Schedule 1 offences are committed, the commission of each of which involves substantial planning and organisation;

organised crime examination means an examination to which a person is summoned under an organised crime summons;

organised crime summons means a summons issued under section 96 on an application by the Commissioner of Police under section 48;

Parliamentary Commissioner has the meaning given to Commissioner under the *Parliamentary Commissioner Act 1971*;

Parliamentary Inspector means the person holding the office of Parliamentary Inspector of the Corruption and Crime Commission established under this Act or acting in the office for the reasons mentioned in section 193(1)(a) or (b);

perform includes to exercise;

Police Department means the agency (as defined in the *Public Sector Management Act 1994* section 3(1)) principally assisting the Minister responsible for the administration of the *Police Act 1892* in the administration of that Act;

police misconduct means —

(a) misconduct by —

(i) a member of the Police Force; or

(ii) an employee of the Police Department; or

(iii) a person seconded to perform functions and services for, or duties in the service of, the Police Department;

or

(b) reviewable police action;

Police Royal Commission has the meaning given to Commission under the *Royal Commission (Police) Act 2002*;

police service means the organisation consisting of —

(a) members of the Police Force; and

(b) employees of the Police Department; and

(c) persons seconded to perform functions and services for, or duties in the service of, the Police Department;

principal officer of a notifying authority means —

(a) in the case of a department or organisation as defined in the *Public Sector Management Act 1994*, the chief executive officer or chief employee of that department or organisation; and

(b) in the case of a notifying authority that is an entity in respect of which a declaration is in effect under section 56(2) of the *Financial Management Act 2006*, the holder of the office that is the subject of that declaration; and

(c) in the case of a contractor and any subcontractor under the relevant contract, the holder of the office specified in

the relevant contract to be the principal officer for the purposes of this Act; and

(d) in any other case —

(i) the person specified in the regulations as the principal officer of that notifying authority or a notifying authority of that class; or

(ii) if no person is specified under subparagraph (i), the person who is the head of that notifying authority, its most senior officer or the person normally entitled to preside at its meetings;

public authority means —

(a) a notifying authority; or

(b) a body mentioned in Schedule V Part 3 to the *Constitution Acts Amendment Act 1899*; or

(c) an authority, board, corporation, commission, council, committee, local government, regional local government, regional subsidiary or similar body established under a written law; or

(d) a body that is the governing authority of a body referred to in paragraph (b) or (c); or

(e) a contractor or subcontractor;

public officer has the meaning given by section 1 of *The Criminal Code*;

public service officer has the meaning given by section 3(1) of the *Public Sector Management Act 1994*;

received matter means —

(a) a matter referred to the Commission by the Police Royal Commission, the A-CC or the Parliamentary Commissioner; or

(b) a matter received by the Commission in the performance of its functions under section 19(2)(b); or

(c) any allegation made to the A-CC under the *Anti-Corruption Commission Act 1988* that has not been finally dealt with under that Act immediately before the repeal of that Act under section 54 of the *Corruption and Crime Commission Amendment and Repeal Act 2003*;

record includes anything that is a document as defined in section 79B of the *Evidence Act 1906*;

reviewable police action means any action taken by a member of the Police Force, an employee of the Police Department or a person seconded to perform functions and services for, or duties in the service of, the Police Department that —

(a) is contrary to law; or

(b) is unreasonable, unjust, oppressive or improperly discriminatory; or

(c) is in accordance with a rule of law, or a provision of an enactment or a practice, that is or may be unreasonable, unjust, oppressive or improperly discriminatory; or

(d) is taken in the exercise of a power or a discretion, and is so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations; or

(e) is a decision that is made in the exercise of a power or a discretion and the reasons for the decision are not, but should be, given;

Schedule 1 offence means an offence described in Schedule 1;

section 5 offence has the meaning given by section 5;

serious misconduct means —

(a) misconduct of a kind described in section 4(a), (b) or (c) by a public officer; or

(b) police misconduct;

Standing Committee means the committee referred to in section 216A;

State Records Commission means the Commission established under section 57 of the *State Records Act 2000*;

subcontractor has the meaning given by the *Court Security and Custodial Services Act 1999*, the *Declared Places (Mentally Impaired Accused) Act 2015* or the *Prisons Act 1981*, as is relevant to the case;

unexplained wealth has the meaning given in the *Criminal Property Confiscation Act 2000* section 144;

witness means a person who appears at an examination or an inquiry to give evidence, whether the person has been summoned or appears without being summoned.

(2) Nothing in this Act affects, or is intended to affect, the operation of the *Parliamentary Privileges Act 1891* or the *Parliamentary Papers Act 1891* and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable by a House of Parliament.

[Section 3 amended: No. 78 of 2003 s. 5 and 35(13); No. 77 of 2006 Sch. 1 cl. 35(1) and (2); No. 8 of 2008 s. 11(2) and 23(1); No. 21 of 2008 s. 654(2); No. 39 of 2010 s. 74(2); No. 35 of 2014 s. 6; No. 4 of 2015 s. 84(2); No. 26 of 2016 s. 48; No. 10 of 2018 s. 5; No. 9 of 2022 s. 424.]

4. Term used: misconduct

Misconduct occurs if —

(a) a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment; or

(b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or

(c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or

(d) a public officer engages in conduct that —

(i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or

(ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or

(iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or

(iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,

and constitutes or could constitute —

[(v) deleted]

(vi) a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the *Public Sector Management Act 1994* (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

[Section 4 inserted: No. 78 of 2003 s. 6; amended: No. 35 of 2014 s. 7.]

5. Term used: section 5 offence

A section 5 offence is a Schedule 1 offence committed in the course of organised crime.

[Section 5 inserted: No. 78 of 2003 s. 6.]

6. Application

(1) The Commission may receive information and otherwise perform its functions in relation to acts, omissions or conduct occurring before or after the coming into operation of this Act.

(2) The Commission may receive information and otherwise perform its functions in relation to acts, omissions or conduct alleged to have been done, omitted or engaged in by a person who was a public officer at the time of the alleged acts, omissions or conduct even if the person has ceased to be a public officer.

[Section 6, formerly section 4, renumbered as section 6: No. 78 of 2003 s. 35(1).]

7. Act to bind Crown

This Act binds the Crown in right of the State and, so far as the legislative power of the State permits, the Crown in its other capacities.

[Section 7, formerly section 5, renumbered as section 7: No. 78 of 2003 s. 35(1).]

Division 2 — Purpose

[Heading inserted: No. 78 of 2003 s. 7(2).]

7A. Act's purposes

The main purposes of this Act are —

(a) to combat and reduce the incidence of organised crime; and

(b) to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector; and

(c) to facilitate the exercise of the Commission's functions under the *Criminal Property Confiscation Act 2000*.

[Section 7A inserted: No. 78 of 2003 s. 7(2); amended: No. 10 of 2018 s. 6.]

7B. How Act's purposes to be achieved

(1) The Act's purposes are to be achieved primarily by establishing a permanent commission to be called the Corruption and Crime Commission.

(2) The Commission is to be able to authorise the use of investigative powers not ordinarily available to the police service to effectively investigate particular cases of organised crime.

(3) The Act's purpose in relation to misconduct is to be achieved by conferring functions on the Commission and on the Public Sector Commissioner.

(4) The Commission is to be able to investigate cases of serious misconduct.

(5) The Public Sector Commissioner is to be able to investigate cases of minor misconduct.

(6) The Commission and the Public Sector Commissioner are to help public authorities to prevent, and to identify and deal effectively and appropriately with, misconduct.

(7) The Commission is to be able to investigate matters in relation to unexplained wealth and criminal benefits for the purpose of the exercise of its functions under the *Criminal Property Confiscation Act 2000*.

[Section 7B inserted: No. 78 of 2003 s. 7(2); amended: No. 35 of 2014 s. 8; No. 10 of 2018 s. 7.]

Part 2 — The Corruption and Crime Commission

Division 1 — Office of Corruption and Crime Commission

8. Corruption and Crime Commission established

(1) A commission called the Corruption and Crime Commission is established.

(2) The Commission is a body corporate with perpetual succession.

(3) Proceedings may be taken by or against the Commission in its corporate name.

[Section 8, formerly section 6, renumbered as section 8: No. 78 of 2003 s. 35(1).]

9. Corruption and Crime Commissioner

(1) There is to be a Commissioner who, in the name of the Commission, is to perform the functions of the Commission under this Act and any other written law.

(2) Without limiting subsection (1), if under this Act or any other written law an act or thing may or must be done by, to, by reference to or in relation to the Commission, the act or thing is to be regarded as effectually done if done to, by reference to or in relation to the Commissioner.

(3) The Commissioner is to be appointed on the recommendation of the Premier by the Governor by commission under the Public Seal of the State.

(3a) Except in the case of the first appointment, the Premier is to recommend the appointment of a person —

(a) whose name is on a list of 3 persons eligible for appointment that is submitted to the Premier by the nominating committee; and

(b) who, if there is a Standing Committee, has the support of the majority of the Standing Committee and bipartisan support.

(3b) Before making nominations under subsection (3a) the nominating committee shall advertise throughout Australia for expressions of interest.

(4) Except in the case of the first appointment, before an appointment is made under subsection (3), the Premier must consult with —

(a) the Standing Committee; or

(b) if there is no Standing Committee, the Leader of the Opposition, and the leader of any other political party with at least 5 members in either House.

(4a) In the case of the first appointment, before the appointment is made the Premier is to consult with the Leader of the Opposition.

(4B) Despite subsection (3), John Roderick McKechnie is reappointed as Commissioner for a period of 5 years commencing on the day on which the *Corruption, Crime and Misconduct Amendment Act 2021* section 4 comes into operation.

(5) The Commissioner is to hold office in accordance with this Act.

(6) The office of Commissioner is not an office in the Public Service.

[Section 9, formerly section 7, amended: No. 78 of 2003 s. 8; renumbered as section 9: No. 78 of 2003 s. 35(1); amended: No. 7 of 2021 s. 4.]

10. Qualifications for appointment as Commissioner

(1) A person is qualified for appointment as the Commissioner if the person has served as, or is qualified for appointment as, a judge of the Supreme Court of Western Australia or another

State or Territory, the High Court of Australia or the Federal Court of Australia.

[(2) deleted]

(3) A person who is or has been a police officer is not eligible to be appointed as Commissioner.

(4) A person holding a judicial office shall retire upon appointment as Commissioner.

[Section 10, formerly section 8, amended: No. 78 of 2003 s. 9 and renumbered as section 10: No. 78 of 2003 s. 35(1).]

11. Terms and conditions of service of Commissioner

Schedule 2 has effect with respect to the tenure, remuneration and conditions of service of the Commissioner and the other matters provided for in that Schedule.

[Section 11, formerly section 9, amended: No. 78 of 2003 s. 35(13) and renumbered as section 11: No. 78 of 2003 s. 35(1).]

12. Removal or suspension of Commissioner

(1) The Commissioner may, at any time, be suspended or removed from office by the Governor on addresses from both Houses of Parliament.

(2) If the Governor is satisfied that the Commissioner —

(a) is incapable of properly performing the duties of office; or

(b) has shown himself or herself incompetent properly to perform, or has neglected, those duties; or

(c) has been guilty of misconduct,

the Governor may suspend the Commissioner from office.

(3) If the Commissioner has been suspended from office under subsection (2) the Commissioner is to be restored to office unless —

(a) a statement of the grounds of the suspension is laid before each House of Parliament during the first 7 sitting days of that House following the suspension; and

(b) each House of Parliament, during the session in which the statement is so laid, and within 30 sitting days of that statement being so laid, passes an address praying for the removal of the Commissioner from office.

[Section 12, formerly section 10, renumbered as section 12: No. 78 of 2003 s. 35(1).]

13. Declaration of inability to act

The Commissioner may declare himself or herself unable to act in respect of a particular matter by reason of —

(a) an actual or potential conflict of interest; or

(b) having to perform other functions under this Act.

[Section 13, formerly section 11, renumbered as section 13: No. 78 of 2003 s. 35(1).]

14. Acting Commissioner

(1) The Governor may appoint a person who is eligible for appointment as Commissioner to act in the office of Commissioner —

(a) during a vacancy in that office; or

(b) during any period or during all periods when the person holding the office of Commissioner, or a person appointed under this subsection, is unable to perform the functions of that office or is absent from the State; or

(c) in relation to any matter in respect of which the person holding the office of Commissioner, or a person appointed under this subsection, has under section 13 declared himself or herself unable to act.

(2) An appointment under this section —

(a) may be made at any time and may be terminated at any time by the Governor; and

(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(2a) The process for nomination and consultation with regard to the appointment of a person to act in the office of Commissioner shall be the same as that for the appointment of the Commissioner except that —

(a) the process may be carried out prospectively even though the necessity for an appointment has not arisen; and

(b) it may be carried out with respect to a number of persons each of whom is eligible to be appointed should the necessity arise; and

(c) any bipartisan support for a person lapses on the expiration of 12 months from the date of the resolution.

(3) Subject to this Act, the terms and conditions of appointment, including remuneration and other entitlements, of a person acting under this section are to be as determined from time to time by the Governor.

(4) A person acting under this section for the reason mentioned in subsection (1)(c) may perform functions of the Commissioner in relation to the matter for which he or she is appointed even though the Commissioner is at the same time performing other functions of the office.

(5) If a person is acting under this section for the reason mentioned in subsection (1)(c), a reference to the Commissioner in a provision of this Act that is relevant to the performance by that person of a function of the Commissioner in relation to the matter for which that person is appointed includes a reference to that person.

(6) The validity of anything done by or in relation to a person purporting to act under this section is not to be called into question on the ground that —

(a) the occasion for an appointment under this section had not arisen; or

(b) there is a defect or irregularity in the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

[Section 14, formerly section 12, amended: No. 78 of 2003 s. 10 and 35(13); renumbered as section 14: No. 78 of 2003 s. 35(1).]

15. Oath or affirmation of office

(1) Before beginning to perform the functions of the office of Commissioner a person is to take an oath or make an affirmation that he or she —

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

(b) will not, except in accordance with this Act, disclose any information received under this Act.

(2) The oath or affirmation is to be administered by a judge.

[Section 15, formerly section 13, renumbered as section 15: No. 78 of 2003 s. 35(1).]

Division 2 — Functions of Corruption and Crime Commission

16. General functions

The Commission has the functions conferred or imposed by or under this Act or any other written law.

[Section 16, formerly section 14, renumbered as section 16: No. 78 of 2003 s. 35(1).]

*[**17.** Deleted: No. 35 of 2014 s. 9.]*

18. Serious misconduct function

(1) It is a function of the Commission (the ***serious misconduct function***) to ensure that an allegation about, or information or matter involving, serious misconduct is dealt with in an appropriate way.

(2) Without limiting how the Commission may perform the serious misconduct function, the Commission performs the function by —

(a) receiving and initiating allegations of serious misconduct;

(b) considering whether action is needed in relation to allegations and matters related to serious misconduct;

(c) investigating or taking other action in relation to allegations and matters related to serious misconduct if it is appropriate to do so, or referring the allegations or matters to independent agencies or appropriate authorities so that they can take action themselves or in cooperation with the Commission;

(d) monitoring the way in which independent agencies and appropriate authorities take action in relation to allegations and matters that are referred to them by the Commission;

(e) regardless of whether or not there has been an allegation of serious misconduct, investigating whether serious misconduct —

(i) has or may have occurred; or

(ii) is or may be occurring; or

(iii) is or may be about to occur; or

(iv) is likely to occur;

(f) making recommendations and furnishing reports on the outcome of investigations;

(g) consulting, cooperating and exchanging information with independent agencies, appropriate authorities and —

(i) the Commissioner of the Australian Federal Police;

(ii) the Commissioner of a Police Force of another State or Territory;

(iii) the CEO of the Australian Crime Commission established by the *Australian Crime Commission Act 2002* of the Commonwealth;

(iv) the Commissioner of Taxation holding office under the *Taxation Administration Act 1953* of the Commonwealth;

(v) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth;

(vi) the Director of the Australian Transaction Reports and Analysis Centre under the *Financial Transaction Reports Act 1988* of the Commonwealth;

(vii) any person, or authority or body of this State, the Commonwealth, another State or a Territory that is declared by the Minister to be a person, authority or body to which this paragraph applies;

(h) assembling evidence obtained in the course of exercising the serious misconduct function and —

(i) furnishing to an independent agency or another authority, evidence which may be admissible in the prosecution of a person for a criminal offence against a written law or which may otherwise be relevant to the functions of the agency or authority; and

(ii) furnishing to the Attorney General or a suitable authority of another State, a Territory, the Commonwealth or another country, evidence which may be admissible in the prosecution of a person for a criminal offence against a law of the jurisdiction concerned or which may otherwise be relevant to that jurisdiction.

(3) When the Commission is deciding whether further action for the purposes of this Act in relation to an allegation is warranted, the matters to which it may have regard include the following —

(a) the seriousness of the conduct or involvement to which the allegation relates;

(b) whether or not the allegation is frivolous or vexatious or is made in good faith;

(c) whether or not the conduct or involvement to which the allegation relates is or has been the subject of appropriate investigatory or other action otherwise than for the purposes of this Act;

(d) whether or not, in all the circumstances, the carrying out of further action for the purposes of this Act in relation to the allegation is justified or is in the public interest.

(4) As an aspect of the serious misconduct function, the Commission may help public authorities to prevent serious misconduct by doing the following —

(a) analysing the information it gathers in performing the serious misconduct function, including the intelligence gathered in support of investigations into serious misconduct;

(b) analysing systems used within public authorities to prevent serious misconduct;

(c) providing information to, consulting with, and making recommendations to, public authorities about ways to prevent serious misconduct;

(d) generally increasing the capacity of public authorities to prevent serious misconduct by providing advice and training to those authorities and, if asked, to other entities;

(e) reporting on ways to prevent and combat serious misconduct.

[Section 18 inserted: No. 78 of 2003 s. 11; amended: No. 35 of 2014 s. 10.]

19. Functions in relation to Police Royal Commission

(1) In this section —

record includes —

(a) evidence in any form; and

(b) information and other things.

(2) Without limiting the Commission's functions under section 18, the Commission has the following functions in relation to the Police Royal Commission —

(a) to receive and assess all matters referred to the Commission by the Police Royal Commission under subsection (3);

(b) to receive and assess all matters not completed by the Police Royal Commission at the end of the Police Royal Commission (as determined under section 3(2) of the *Royal Commission (Police) Act 2002*);

(c) to treat any investigation or assessment of the Police Royal Commission in relation to a matter referred to in paragraph (a) or (b) as an investigation or assessment of the Commission;

(d) to initiate or continue the investigation of any such matters where appropriate, and otherwise deal with those matters;

(e) to receive and deal with records of the Police Royal Commission.

(3) The Police Royal Commission may refer any matter before the Police Royal Commission to the Commission to be dealt with under this Act.

(4) When the Commission receives a matter referred to in paragraph (2)(a) or (2)(b), any record of the Police Royal Commission for the purposes of or in relation to the matter is to be transferred to the Commission, and becomes a record of the Commission and may be dealt with accordingly.

(5) The Commission may enter into arrangements with the person appointed to be the Police Royal Commission regarding —

(a) the cooperative performance of the respective functions of the Commission and the Police Royal Commission; and

(b) the joint use of facilities and staff; and

(c) the transfer of records from the Police Royal Commission to the Commission.

(6) For the purposes of subsection (2), the Commission has, in addition to its functions under this Act, all of the functions of the Police Royal Commission.

(7) To the extent that a duty of the Commission under this Act is inconsistent with a duty of the Police Royal Commission, this Act prevails.

[Section 19, formerly section 16, amended: No. 78 of 2003 s. 13; renumbered as section 19: No. 78 of 2003 s. 35(1).]

20. Functions in relation to A-CC

The Commission may enter into arrangements with the A-CC regarding —

(a) the cooperative performance of the respective functions of the Commission and the A-CC; and

(b) the joint use of facilities and staff; and

(c) the transfer of records and other things from the A-CC to the Commission.

[Section 20, formerly section 17, renumbered as section 20: No. 78 of 2003 s. 35(1).]

21. Organised crime functions

The Commission has the functions set out in Part 4.

[Section 21 inserted: No. 78 of 2003 s. 15.]

21A. Reviewable police action

(1) The Commissioner of Police is required to notify the Commission of matters concerning, or that may concern, reviewable police action in accordance with guidelines issued under section 30.

(2) The Commission may deal with a matter notified under subsection (1) as if it were a matter notified under section 28(2).

(3) This section does not limit the powers of the Commission under section 22 or 24 in relation to police misconduct.

[Section 21A inserted: No. 78 of 2003 s. 16; amended: No. 35 of 2014 s. 11.]

21AA. Prevention and education function: police misconduct

(1) It is a function of the Commission (the ***prevention and education function***) to help to prevent police misconduct.

(2) Without limiting the ways the Commission may perform the prevention and education function, the Commission performs that function by doing the following —

(a) analysing the information it gathers in performing functions under this Act and any other Act, including the intelligence gathered in support of its police misconduct and organised crime functions;

(b) analysing systems used within the Police Department to prevent police misconduct;

(c) using information it gathers from any source in support of the prevention and education function;

(d) providing information to, consulting with, and making recommendations to, the Police Department;

(e) providing information relevant to the prevention and education function to members of the police service and to the general community;

(f) ensuring that in performing all of its functions it has regard to the prevention and education function;

(g) generally increasing the capacity of the Police Department to prevent and combat police misconduct by providing advice and training to the Police Department;

(h) reporting on ways to prevent and combat police misconduct.

(3) In performing the prevention and education function, the Commission may consult, cooperate, and exchange information, with the Public Sector Commissioner.

[Section 21AA inserted: No. 35 of 2014 s. 12.]

21AB. Capacity development function: public authorities

(1) If, in the course of performing its other functions, the Commission identifies a special need to increase the capacity of public authorities generally, or the capacity of a particular public authority, to prevent or combat misconduct, the Commission has the function (the ***capacity development function***) of assisting, in cooperation with the Public Sector Commissioner, those public authorities or that public authority to increase that capacity.

(2) Without limiting the ways the Commission may perform the capacity development function, the Commission performs that function by doing the following —

(a) analysing intelligence it gathers in support of its serious misconduct and organised crime functions;

(b) using information it gathers from any source in support of the capacity development function.

(3) In performing the capacity development function, the Commission may consult, cooperate, and exchange information, with the Public Sector Commissioner.

(4) This section does not limit the obligation of the Commission under section 45A(4) to support the Public Sector Commissioner.

[Section 21AB inserted: No. 35 of 2014 s. 12.]

21AC. Information about allegations received or initiated by Public Sector Commissioner

For the purpose of assisting the Commission in performing the serious misconduct function and the capacity development function, the Public Sector Commissioner will, if requested by the Commission to do so, provide the Commission with details about any allegation, or class of allegations, of minor misconduct received or initiated by the Public Sector Commissioner under section 45D(1).

[Section 21AC inserted: No. 35 of 2014 s. 12.]

21AD. Unexplained wealth functions

(1) The Commission has the functions (***unexplained wealth functions***) that are conferred on it under the *Criminal Property Confiscation Act 2000*.

(2) The Commission may decide to exercise its unexplained wealth functions on the basis of —

(a) consultations, and investigations and other actions (either by itself or in cooperation with independent agencies, appropriate authorities and other relevant persons or bodies); or

(b) information otherwise given to the Commission.

(3) The Commission may exercise its powers under this Act to assist in the performance of its functions under the *Criminal Property Confiscation Act 2000*.

(4) For the purposes of the *Criminal Property Confiscation Act 2000*, the Commission may make such use as it thinks fit of any information obtained by it under this Act.

(5) Without limiting how the Commission may perform its unexplained wealth functions, the Commission may —

(a) investigate, either by itself or in cooperation with another body, whether a person has or may have acquired unexplained wealth or a criminal benefit; and

(b) consult, cooperate and exchange information with independent agencies, appropriate authorities and any other relevant persons and bodies.

[Section 21AD inserted: No. 10 of 2018 s. 8.]

Part 3 — Serious misconduct: role of Commission

[Heading inserted: No. 35 of 2014 s. 13.]

Division 1 — Assessments and opinions

[Heading inserted: No. 78 of 2003 s. 17.]

22. Assessments and opinions as to occurrence of serious misconduct

(1) Regardless of whether or not there has been an allegation of serious misconduct, the Commission may make assessments and form opinions as to whether serious misconduct —

(a) has or may have occurred; or

(b) is or may be occurring; or

(c) is or may be about to occur; or

(d) is likely to occur.

(2) The Commission may make the assessments and form the opinions on the basis of —

(a) consultations, and investigations and other actions (either by itself or in cooperation with an independent agency or appropriate authority); or

(b) investigations or other action of the Police Royal Commission; or

(c) preliminary inquiry and further action by the A-CC; or

(d) investigations or other action of an independent agency or appropriate authority; or

(e) information included in any received matter or otherwise given to the Commission.

(3) The Commission may advise an independent agency or appropriate authority of an assessment or opinion.

[Section 22 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 31.]

*[**23.** Deleted: No. 35 of 2014 s. 14.]*

Division 2 — Allegations

[Heading inserted: No. 78 of 2003 s. 17.]

24. Allegations of serious misconduct

(1) Subject to section 27 the Commission —

(a) is to receive allegations of serious misconduct by way of —

(i) reports under section 25; and

(ii) matters notified under section 28(2); and

(iii) received matters;

and

(b) may initiate allegations of serious misconduct by way of propositions under section 26.

(2) Before assessing an allegation received by the Commission, the Commission may seek further information about the allegation from the person making the allegation in such form as the Commission thinks fit.

[Section 24 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 31.]

25. Any person may report serious misconduct

(1) A public officer or any other person may report to the Commission any matter which that person suspects on reasonable grounds concerns or may concern serious misconduct that —

(a) has or may have occurred; or

(b) is or may be occurring; or

(c) is or may be about to occur; or

(d) is likely to occur.

(2) A report may be made to the Commission orally or in writing.

(3) This section has effect despite —

(a) the provisions of any other Act, whether enacted before or after this Act; and

(b) any obligation the person has to maintain confidentiality about a matter to which the allegation relates.

(4) A person who exercises the power conferred by subsection (1) does not commit an offence by reason of that exercise.

(5) A person who makes a report under this section and who does so —

(a) knowing that the content of the report is false or misleading in a material respect;

(b) maliciously, or recklessly,

is guilty of a crime.

Penalty: Imprisonment for 3 years and a fine of $60 000.

Summary conviction penalty: $10 000.

(6) A charge cannot be brought against a person under subsection (5) other than by the Director of Public Prosecutions.

(7) A publication by —

(a) a complainant; or

(b) a person who has relied upon information derived from a complainant; or

(c) a person who has no reliable source of knowledge (which shall be presumed in the absence of proof to the contrary),

that an allegation has been made about a person to the Commission carries with it, an inference that there were reasonable grounds for making the complaint.

[Section 25 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 31.]

26. Commission may make proposition about serious misconduct

(1) The Commission may make a proposition that serious misconduct —

(a) has or may have occurred; or

(b) is or may be occurring; or

(c) is or may be about to occur; or

(d) is likely to occur.

(2) A proposition under subsection (1) may be based on the Commission's own experience and knowledge, or assessment of a received matter, and independently of any allegation referred to in section 25.

[Section 26 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 31.]

27. Allegation about Commissioner, Parliamentary Inspector or judicial officer not to be received or initiated

(1) An allegation about the Commissioner must not be received by the Commission.

(2) An allegation about a person in his or her capacity as the Parliamentary Inspector, or an officer of the Parliamentary Inspector, must not be received or initiated by the Commission.

(3) An allegation about a person in his or her capacity as the holder of a judicial office must not be received or initiated by the Commission unless the allegation relates to —

(a) the commission or attempted commission of; or

(b) the incitement of the commission of; or

(c) a conspiracy to commit,

an offence under section 121 of *The Criminal Code* or is of a kind that, if established, would constitute grounds for removal from judicial office.

(4) The Commission, when performing its functions in relation to the conduct of a holder of judicial office must proceed having proper regard for preserving the independence of judicial officers.

(5) When investigating a holder of judicial office, the Commission must act in accordance with conditions and procedures formulated in continuing consultation with the Chief Justice.

(6) In this section —

holder of a judicial office has the same meaning as it has in section 121 of *The Criminal Code*.

[Section 27 inserted: No. 78 of 2003 s. 17.]

*[**27A, 27B.** Deleted: No. 35 of 2014 s. 15.]*

Division 3 — Duty to notify

[Heading inserted: No. 78 of 2003 s. 17.]

28. Certain officers obliged to notify serious misconduct

(1) This section applies to the following persons —

(a) the Parliamentary Commissioner;

(b) the Inspector of Custodial Services;

(c) the principal officer of a notifying authority;

(d) an officer who constitutes a notifying authority.

(2) Subject to subsections (4), (5) and (6), a person to whom this section applies must notify the Commission in writing of any matter —

(a) which that person suspects on reasonable grounds concerns or may concern serious misconduct; and

(b) which, in the case of a person referred to in subsection (1)(c) or (d), is of relevance or concern to that person in his or her official capacity.

(3) The Commission must be notified under subsection (2) as soon as is reasonably practicable after the person becomes aware of the matter.

(4) A person to whom this section applies is not required to notify the Commission of —

(a) a matter that —

(i) is being dealt with by that person, or the notifying authority of which that person is the principal officer, under section 33(1)(b); or

(ii) is referred to that person, or the notifying authority of which that person is the principal officer, by the Commission under section 33(1)(c);

or

(b) a matter that —

(i) is referred to that person, or a notifying authority of which that person is the principal officer, by the Parliamentary Inspector under section 196(3)(f); and

(ii) relates to conduct by the Commission, an officer of the Commission or an officer of the Parliamentary Inspector.

(5) The Director of Public Prosecutions is not required to notify the Commission of a matter if the matter does not relate to conduct by —

(a) the Deputy Director, as defined in section 3 of the *Director of Public Prosecutions Act 1991*; or

(b) a member of staff appointed or made available for the performance of the functions of the Director of Public Prosecutions under section 30 of the *Director of Public Prosecutions Act 1991*.

(6) A person to whom this section applies is not required to notify the Commission of a matter which concerns or may concern reviewable police action.

[Section 28 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 31.]

29. Duty to notify under s. 28 is paramount

(1) The duty of a person to make a notification under section 28 must be complied with despite —

(a) the provisions of any other Act, whether enacted before or after this Act; or

(b) any obligation the person has to maintain confidentiality about a matter to which the allegation relates,

and the person does not commit an offence by reason of that compliance.

(2) Subsection (1) does not affect an obligation under another written law to notify misconduct.

[Section 29 inserted: No. 78 of 2003 s. 17.]

30. Commission may issue guidelines about notifications

(1) The Commission may issue guidelines about —

(a) what matters are or are not required to be notified to the Commission under section 28;

(b) what reports are required with respect to such matters and also with respect to the matters referred to in section 21A.

(2) A person who would otherwise have had a duty to notify but for guidelines issued under this section shall have a like duty to make a report in accordance with the guidelines.

[Section 30 inserted: No. 78 of 2003 s. 17.]

31. Commission may report breach of duty to report or notify

If a person to whom section 21A, 28 or 30 applies does not comply with the duty to make a notification or report under that section, the Commission may report that non-compliance —

(a) in the case of the principal officer referred to in paragraph (c) of the definition of ***principal officer of a notifying authority***, to the CEO as defined in section 3 of the *Court Security and Custodial Services Act 1999*, the CEO as defined in the *Declared Places (Mentally Impaired Accused) Act 2015* section 3, or the chief executive officer as defined in section 3 of the *Prisons Act 1981*, as is relevant to the case; and

(b) in any other case, to a person or body who or which has the power to take disciplinary action against the person to whom section 28 applies.

[Section 31 inserted: No. 78 of 2003 s. 17; amended: No. 4 of 2015 s. 84(3).]

Division 4 — Assessments, opinions and investigation

[Heading inserted: No. 78 of 2003 s. 17.]

32. Dealing with allegations

(1) The Commission is to deal with an allegation by assessing the allegation and forming an opinion under section 22, and making a decision under section 33 that the Commission considers appropriate in the circumstances.

(2) For the purposes of subsection (1) the Commission may conduct a preliminary investigation into the allegation.

(3) The Commission may consult about an allegation or other matter relating to serious misconduct the persons and bodies that the Commission considers desirable and practicable to consult.

[Section 32 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 16.]

33. Decision on further action on allegation

(1) Subject to subsection (2), having made an assessment of an allegation the Commission may decide to —

(a) investigate or take action without the involvement of any other independent agency or appropriate authority; or

(b) investigate or take action in cooperation with an independent agency or appropriate authority; or

(c) refer the allegation to an independent agency or appropriate authority for action; or

(d) take no action.

(2) The Commission may deal with a matter reported to it under section 30 as if it were a matter notified under section 28(2).

[Section 33 inserted: No. 78 of 2003 s. 17.]

34. Matters to be considered in deciding who should take action

(1) Without limiting the matters to which the Commission may have regard when deciding whether or not to make a decision under section 33(1)(a) or (b), the Commission is to have regard to the nature of the serious misconduct that —

(a) has or may have occurred; or

(b) is or may be occurring; or

(c) is or may be about to occur; or

(d) is likely to occur.

(2) Without limiting the matters to which the Commission may have regard when deciding whether or not to make a decision under section 33(1)(c), the Commission is to have regard to the following —

(a) the seniority of any public officer to whom the allegation relates;

(b) the nature of the serious misconduct that —

(i) has or may have occurred; or

(ii) is or may be occurring; or

(iii) is or may be about to occur; or

(iv) is likely to occur;

(c) the need for there to be an independent investigation rather than an investigation by a public authority with which any public officer to whom the allegation relates is connected by membership or employment or in any other respect.

[Section 34 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 17.]

35. Informant to be notified of decision not to take action

If —

(a) a person makes an allegation under section 25 or 28(2); or

(b) an allegation under the A-CC Act is referred to the Commission; or

(c) a complaint under the *Parliamentary Commissioner Act 1971* is referred to the Commission,

and the Commission decides to take no action, the Commission must notify the person who made the allegation or complaint that the Commission has decided that no action will be taken.

[Section 35 inserted: No. 78 of 2003 s. 17.]

36. Person investigated can be advised of outcome of investigation

The Commission may inform a person to whom an allegation relates as to the outcome of any investigation carried out by the

Commission or an appropriate authority in relation to the allegation if —

(a) the person requests the information; or

(b) the Commission considers that giving the information to the person is in the person's best interests,

and the Commission considers that giving the information to the person is in the public interest.

[Section 36 inserted: No. 78 of 2003 s. 17.]

37. Referring allegation to another agency or authority

(1) If the Commission decides under section 33(1)(c) to refer an allegation to an independent agency or appropriate authority, the Commission is to refer the allegation as soon as is practicable after making that decision.

(2) The allegation may be accompanied by a report which may include —

(a) a recommendation under section 43; and

(b) such other recommendations as the Commission thinks fit in respect of the action to be taken; and

(c) such information as the Commission considers would assist the agency or authority to take the action.

(3) If the allegation is referred to an appropriate authority, the report may also include a recommendation as to the period within which the action should be taken.

[Section 37 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 18.]

38. Referring allegations to Parliamentary Commissioner or Auditor General

(1) The Commission is not to refer an allegation to the Parliamentary Commissioner or the Auditor General under

section 33(1)(c) without having first consulted the Parliamentary Commissioner or the Auditor General.

(2) If an allegation is referred to the Parliamentary Commissioner, the allegation is to be treated by the Parliamentary Commissioner as if it were a complaint duly made under section 17 of the *Parliamentary Commissioner Act 1971* and that Act applies to and in relation to the allegation accordingly.

(3) If an allegation is referred to the Auditor General, the Auditor General may investigate the allegation and the *Auditor General Act 2006* applies to the investigation as if it were an investigation under section 18(2) of that Act.

(4) Nothing in the *Auditor General Act 2006* prevents the Auditor General, or any person to whom section 46(2) of that Act applies, from disclosing to the Commission, or an officer of the Commission, information obtained in the course of an investigation under subsection (3).

[Section 38 inserted: No. 78 of 2003 s. 17; amended: No. 77 of 2006 Sch. 1 cl. 35(3) and (4); No. 35 of 2014 s. 19.]

39. Commission may decide to take other action

(1) Despite having made a decision to act under section 33(1)(a), (b) or (c), the Commission may at any time decide to act under another of those paragraphs.

(2) The Commission may make the decision whether or not it has acted under the first-mentioned decision.

(3) The Commission is not to reconsider action taken under section 33(2) except on fresh evidence.

(4) If an allegation has been referred to the Parliamentary Commissioner, subsection (1) does not apply unless the carrying out of the action by the Commission has been requested or agreed to by the Parliamentary Commissioner.

[Section 39 inserted: No. 78 of 2003 s. 17.]

40. Commission's monitoring role of appropriate authorities

(1) If —

(a) an appropriate authority takes action in relation to an allegation in cooperation with the Commission; or

(b) an allegation is referred to an appropriate authority by the Commission,

the appropriate authority must prepare a detailed report of the action the appropriate authority has taken in relation to the allegation.

(2) The report is to be given to the Commission in writing as soon as practicable after the action is taken.

(3) The Commission may, by written notice, direct the appropriate authority to give the Commission a detailed report on —

(a) action the appropriate authority has taken in relation to the allegation; and

(b) if action recommended by the Commission under section 37(2) has not been taken, or any action has not been taken within the time recommended under section 37(3), the reasons for not so taking the action.

(4) The appropriate authority must comply with a direction given to it under subsection (3).

(5) A report referred to in this section must include details of any prosecution initiated or disciplinary action taken as a consequence of the recommendations.

[Section 40 inserted: No. 78 of 2003 s. 17.]

41. Commission may review how appropriate authority has dealt with serious misconduct

(1) The Commission may review the way an appropriate authority has dealt with serious misconduct, in relation to either a particular allegation, complaint, information or matter involving

serious misconduct or in relation to a class of allegation, complaint, information or matter involving serious misconduct.

(2) The appropriate authority must give the Commission all necessary help to undertake a review under subsection (1).

[Section 41 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 31.]

42. Commission may direct Public Sector Commissioner or appropriate authority not to take action

(1) In this section —

misconduct matter means an allegation, complaint, information or matter involving misconduct specified in a notice given under subsection (2).

(2) The Commission may, by written notice, direct the Public Sector Commissioner or an appropriate authority —

(a) not to commence investigation of a misconduct matter or, if an investigation of the matter has already commenced, to discontinue the investigation; and

(b) to take all reasonable steps to ensure that an investigation of a misconduct matter is not conducted by an officer of the Public Sector Commissioner or an officer of the appropriate authority.

(3) The Public Sector Commissioner or appropriate authority must comply with the direction.

(4) The notice absolves the Public Sector Commissioner and his or her officers or the appropriate authority and its officers from any duty with respect to the misconduct matter so far as it relates to investigation of the matter or to the bringing of an offender concerned before the courts to be dealt with according to law.

[(5) deleted]

(6) Subsection (2) does not prevent an investigation of the misconduct matter that is conducted in accordance with

arrangements made between the Commission and the Public Sector Commissioner or appropriate authority.

(7) Despite subsection (2), an investigation of the misconduct matter by the Public Sector Commissioner or appropriate authority may be commenced or resumed if the Commission notifies the Public Sector Commissioner or appropriate authority that the Commission has revoked the direction.

[Section 42 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 20.]

Division 5 — Recommendations

[Heading inserted: No. 78 of 2003 s. 17.]

43. Recommendations by Commission

(1) The Commission may —

(a) make recommendations as to whether consideration should or should not be given to —

(i) the prosecution of particular persons; and

(ii) the taking of disciplinary action against particular persons;

and

(b) make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject matter of its assessments or opinions or the results of its investigations.

(2) The Commission may make the recommendations on the basis of —

(a) its assessments, consultations, opinions, and investigations and other actions (either by itself or in cooperation with an independent agency or appropriate authority); or

(b) investigations or other action of the Police Royal Commission; or

(c) preliminary inquiry or further action by the A-CC; or

(d) investigations or other action of an independent agency or appropriate authority; or

(e) information included in any received matter or otherwise given to the Commission.

(3) Without limiting subsection (1), the Commission may —

(a) recommend that further inquiry or investigation into any matter be carried out by an Inquiry Panel appointed under the *Local Government Act 1995*, or in such other manner as the Commission may recommend; and

(b) recommend the terms of reference of any such inquiry or investigation.

(4) The Commission may give the recommendations to an independent agency or appropriate authority.

(5) If the Commission gives an independent agency a recommendation that consideration should be given to the prosecution of a particular person, the Commission must also give the independent agency all materials in the Commission's possession that would be required for the purposes of sections 61 and 95 of the *Criminal Procedure Act 2004* if that prosecution took place.

(6) A recommendation made by the Commission under this section is not a finding, and is not to be taken as a finding, that a person has committed or is guilty of a criminal offence or has engaged in conduct that constitutes or provides grounds on which that person's tenure of office, contract of employment, or agreement for the provision of services, is, or may be, terminated.

[Section 43 inserted: No. 78 of 2003 s. 17; amended: No. 59 of 2004 s. 141; No. 84 of 2004 s. 78.]

44. Other action for misconduct

Except as provided in section 42, nothing in this Part limits the action that may lawfully be taken to discipline or otherwise deal with a person for misconduct.

[Section 44 inserted: No. 78 of 2003 s. 17.]

Part 4A — Misconduct: role of Public Sector Commissioner

[Heading inserted: No. 35 of 2014 s. 21.]

Division 1 — Functions in relation to misconduct

[Heading inserted: No. 35 of 2014 s. 21.]

45A. Prevention and education function

(1) It is a function of the Public Sector Commissioner (the ***prevention and education function***) to help to prevent misconduct.

(2) Without limiting the ways the Public Sector Commissioner may perform the prevention and education function, the Public Sector Commissioner performs that function by doing the following —

(a) analysing the information the Public Sector Commissioner gathers in performing functions under this Act and any other Act, including the information gathered in support of inquiries conducted under Division 2;

(b) analysing systems used within public authorities to prevent misconduct;

(c) providing information to, consulting with, and making recommendations to, public authorities;

(d) providing information relevant to the prevention and education function to the general community;

(e) ensuring that, in performing functions under this Act and any other Act, the Public Sector Commissioner has regard to the prevention and education function;

(f) generally increasing the capacity of public authorities to prevent and combat misconduct by providing advice and

training to those authorities and, if asked, to other entities;

(g) reporting on ways to prevent and combat misconduct.

(3) In performing the prevention and education function, the Public Sector Commissioner may consult, cooperate, and exchange information, with the Commission.

(4) In performing the prevention and education function, the Public Sector Commissioner is to be supported by the Commission, other independent agencies and appropriate authorities.

[Section 45A inserted: No. 35 of 2014 s. 21.]

45B. Minor misconduct function

(1) It is a function of the Public Sector Commissioner (the ***minor misconduct function***) to ensure that an allegation about, or information or matter involving, minor misconduct is dealt with in an appropriate way.

(2) Without limiting the ways the Public Sector Commissioner may perform the minor misconduct function or any other function under this Act or any other Act, the Public Sector Commissioner performs the minor misconduct function by doing the following —

(a) receiving and initiating allegations of minor misconduct;

(b) considering whether action is needed in relation to allegations and matters related to minor misconduct;

(c) inquiring into or taking other action in relation to allegations and matters related to minor misconduct if it is appropriate to do so, or referring the allegations or matters to other independent agencies or appropriate authorities so that they can take action themselves or in cooperation with the Public Sector Commissioner;

(d) monitoring the way in which other independent agencies and appropriate authorities take action in relation to

allegations and matters that are referred to them by the Public Sector Commissioner;

(e) whether or not there has been an allegation of minor misconduct, inquiring into whether minor misconduct —

(i) has or may have occurred; or

(ii) is or may be occurring; or

(iii) is or may be about to occur; or

(iv) is likely to occur;

(f) making recommendations and furnishing reports on the outcome of inquiries;

(g) consulting, cooperating, and exchanging information, with the following —

(i) the Commission;

(ii) other independent agencies;

(iii) appropriate authorities;

(iv) the principal officers of notifying authorities;

(v) any person or body whose functions under a law of the Commonwealth, another State or a Territory correspond with those of the Public Sector Commissioner under this Part or under the *Public Sector Management Act 1994*;

(vi) any person, or any authority or body of this State, the Commonwealth, another State or a Territory, declared by the Minister to be a person, authority or body to which this paragraph applies;

(h) giving information to another independent agency or other authority that may provide evidence of the commission of a criminal offence under a written law or may otherwise be relevant to the functions of the agency or other authority.

(3) When the Public Sector Commissioner is deciding whether further action for the purposes of this Act in relation to an

allegation is warranted, the matters to which the Public Sector Commissioner may have regard include the following —

(a) the seriousness of the conduct or involvement to which the allegation relates;

(b) whether or not the allegation is frivolous or vexatious or is made in good faith;

(c) whether or not the conduct or involvement to which the allegation relates is or has been the subject of appropriate investigatory or other action otherwise than for the purposes of this Act;

(d) whether or not, in all the circumstances, the carrying out of further action for the purposes of this Act in relation to the allegation is justified or is in the public interest.

[Section 45B inserted: No. 35 of 2014 s. 21.]

Division 2 — Minor misconduct

[Heading inserted: No. 35 of 2014 s. 21.]

Subdivision 1 — Assessments and opinions

[Heading inserted: No. 35 of 2014 s. 21.]

45C. Assessments and opinions as to occurrence of minor misconduct

(1) Whether or not there has been an allegation of minor misconduct, the Public Sector Commissioner may make assessments and form opinions as to whether minor misconduct —

(a) has or may have occurred; or

(b) is or may be occurring; or

(c) is or may be about to occur; or

(d) is likely to occur.

(2) The Public Sector Commissioner may make the assessments and form the opinions on the basis of all or any of the following —

(a) consultations with the Commission, another independent agency or an appropriate authority;

(b) inquiries and other action, whether conducted or taken in cooperation with the Commission, another independent agency or an appropriate authority or otherwise;

(c) inquiries or other action conducted or taken by the Commission, another independent agency or an appropriate authority.

(3) If the Public Sector Commissioner makes an assessment or forms an opinion under subsection (1) concerning minor misconduct, the Public Sector Commissioner may —

(a) conduct a review in respect of part or all of the functions, management or operations of one or more notifying authorities in connection with the minor misconduct; or

(b) advise the Commission, another independent agency or an appropriate authority of the assessment or opinion and provide the Commission, agency or authority with the information on which the assessment or opinion is based.

(4) For the purpose of subsection (3)(a), the *Public Sector Management Act 1994* Part 3A Division 3 Subdivision 1 (except sections 24B(2) to (5) and 24G) applies (with the necessary changes) as if —

(a) a reference to a review were a reference to a review under subsection (3)(a); and

(b) a reference to a public sector body, or to the employing authority of a public sector body, were a reference to a notifying authority; and

(c) a reference to an employee were a reference to a public officer.

[Section 45C inserted: No. 35 of 2014 s. 21.]

Subdivision 2 — Allegations

[Heading inserted: No. 35 of 2014 s. 21.]

45D. Allegations of minor misconduct

(1) Subject to section 45G, the Public Sector Commissioner —

(a) is to receive allegations of minor misconduct by way of —

(i) reports under section 45E(1); and

(ii) matters notified under section 45H(2);

and

(b) may initiate allegations of minor misconduct by way of propositions under section 45F(1).

(2) Before assessing an allegation received by the Public Sector Commissioner, the Public Sector Commissioner may seek further information about the allegation from the person making the allegation in such form as the Public Sector Commissioner thinks fit.

[Section 45D inserted: No. 35 of 2014 s. 21.]

45E. Any person may report minor misconduct

(1) A public officer or any other person may report to the Public Sector Commissioner any matter which that person suspects on reasonable grounds concerns or may concern minor misconduct that —

(a) has or may have occurred; or

(b) is or may be occurring; or

(c) is or may be about to occur; or

(d) is likely to occur.

(2) A report may be made to the Public Sector Commissioner orally or in writing.

(3) This section has effect despite —

(a) the provisions of any other Act, whether enacted before or after this Act; and

(b) any obligation the person has to maintain confidentiality about a matter to which the allegation relates.

(4) A person who exercises the power conferred by subsection (1) does not commit an offence by reason of that exercise.

(5) A person who makes a report under this section and who does so —

(a) knowing that the content of the report is false or misleading in a material respect; or

(b) maliciously or recklessly,

is guilty of a crime.

Penalty: a fine of $60 000 and imprisonment for 3 years.

Summary conviction penalty: a fine of $10 000.

(6) A charge cannot be brought against a person under subsection (5) other than by the Director of Public Prosecutions.

(7) A publication by —

(a) a complainant; or

(b) a person who has relied upon information derived from a complainant; or

(c) a person who has no reliable source of knowledge (which is to be presumed in the absence of proof to the contrary),

that an allegation has been made about a person to the Public Sector Commissioner carries with it an inference that there were reasonable grounds for making the complaint.

[Section 45E inserted: No. 35 of 2014 s. 21.]

45F. Public Sector Commissioner may make proposition about minor misconduct

(1) The Public Sector Commissioner may make a proposition that minor misconduct —

(a) has or may have occurred; or

(b) is or may be occurring; or

(c) is or may be about to occur; or

(d) is likely to occur.

(2) A proposition under subsection (1) may be based on the Public Sector Commissioner's own experience and knowledge and made independently of any allegation referred to in section 45E(1).

[Section 45F inserted: No. 35 of 2014 s. 21.]

45G. Allegation about Commission, Public Sector Commissioner, Parliamentary Inspector or judicial officer not to be received or initiated

The Public Sector Commissioner must not receive or initiate an allegation about a person in the person's capacity as any of the following —

(a) the holder of the office of Commissioner, whether the person is appointed under section 9 or 14;

(b) an officer of the Commission;

(c) the Public Sector Commissioner;

(d) the Parliamentary Inspector;

(e) an officer of the Parliamentary Inspector;

(f) the holder of a judicial office as defined in *The Criminal Code* section 121.

[Section 45G inserted: No. 35 of 2014 s. 21.]

Subdivision 3 — Duty to notify

[Heading inserted: No. 35 of 2014 s. 21.]

45H. Certain officers obliged to notify minor misconduct

(1) This section applies to the following persons —

(a) the Parliamentary Commissioner;

(b) the Inspector of Custodial Services;

(c) the principal officer of a notifying authority;

(d) an officer who constitutes a notifying authority.

(2) Subject to subsections (4) and (5), a person to whom this section applies must notify the Public Sector Commissioner in writing of any matter —

(a) which that person suspects on reasonable grounds concerns or may concern minor misconduct; and

(b) which, in the case of a person referred to in subsection (1)(c) or (d), is of relevance or concern to that person in his or her official capacity.

(3) The Public Sector Commissioner must be notified under subsection (2) as soon as is reasonably practicable after the person becomes aware of the matter.

(4) A person to whom this section applies is not required to notify the Public Sector Commissioner of —

(a) a matter that —

(i) is being dealt with by that person, or the notifying authority of which that person is the principal officer, under section 45M(b); or

(ii) is referred to that person, or the notifying authority of which that person is the principal officer, by the Public Sector Commissioner under section 45M(c);

or

(b) a matter that —

(i) is referred to that person, or a notifying authority of which that person is the principal officer, by the Parliamentary Inspector under section 196(3)(f); and

(ii) relates to conduct by the holder of the office of Commissioner, whether the person is appointed under section 9 or 14, or by an officer of the Commission or an officer of the Parliamentary Inspector.

(5) The Director of Public Prosecutions is not required to notify the Public Sector Commissioner of a matter if the matter does not relate to conduct by —

(a) the Deputy Director as defined in the *Director of Public Prosecutions Act 1991* section 3; or

(b) a member of staff appointed or made available for the performance of the functions of the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991* section 30.

[Section 45H inserted: No. 35 of 2014 s. 21.]

45I. Duty to notify under s. 45H is paramount

(1) The duty of a person to make a notification under section 45H must be complied with despite —

(a) the provisions of any other Act, whether enacted before or after this Act; or

(b) any obligation the person has to maintain confidentiality about a matter to which the allegation relates,

and the person does not commit an offence by reason of that compliance.

(2) Subsection (1) does not affect an obligation under another written law to notify minor misconduct.

[Section 45I inserted: No. 35 of 2014 s. 21.]

45J. Public Sector Commissioner may issue guidelines about notifications

(1) The Public Sector Commissioner may issue guidelines about —

(a) what matters are or are not required to be notified to the Public Sector Commissioner under section 45H; and

(b) what reports are required with respect to such matters.

(2) If the Public Sector Commissioner issues guidelines to the effect that a matter is not required to be notified under section 45H but is required to be reported on in accordance with the guidelines, a person to whom the guidelines apply is not required to notify the Public Sector Commissioner of the matter under section 45H but is required to report on the matter in accordance with the guidelines.

(3) The Public Sector Commissioner may deal with a matter reported on under subsection (2) as if it were a matter notified under section 45H.

[Section 45J inserted: No. 35 of 2014 s. 21.]

45K. Public Sector Commissioner may report breach of duty to report or notify

If a person to whom section 45H or 45J applies does not comply with the duty to make a notification or report under that section, the Public Sector Commissioner may report that non-compliance —

(a) in the case of the principal officer referred to in paragraph (c) of the definition of ***principal officer of a notifying authority*** — to the CEO as defined in the *Court Security and Custodial Services Act 1999* section 3 or the ***chief executive officer*** as defined in the *Prisons Act 1981* section 3(1), as is relevant to the case; and

(b) in any other case — to a person or body that has the power to take disciplinary action against the person to whom section 45H or 45J applies.

[Section 45K inserted: No. 35 of 2014 s. 21.]

Subdivision 4 — Assessments, opinions and investigations

[Heading inserted: No. 35 of 2014 s. 21.]

45L. Dealing with allegations

(1) The Public Sector Commissioner is to deal with an allegation by —

(a) assessing the allegation and forming an opinion under section 45C; and

(b) making a decision under section 45M that the Public Sector Commissioner considers appropriate in the circumstances.

(2) For the purposes of subsection (1), the Public Sector Commissioner may conduct a preliminary inquiry into the allegation.

(3) The Public Sector Commissioner may consult about an allegation or other matter relating to minor misconduct the persons and bodies that the Public Sector Commissioner considers desirable and practicable to consult.

[Section 45L inserted: No. 35 of 2014 s. 21.]

45M. Decision on further action on allegation

Having made an assessment of an allegation, the Public Sector Commissioner may decide to do any of the following —

(a) inquire into or take other action in relation to the allegation without the involvement of the Commission, another independent agency or an appropriate authority;

(b) inquire into or take other action in relation to the allegation in cooperation with the Commission, another independent agency or an appropriate authority;

(c) refer the allegation to another independent agency or an appropriate authority for action in accordance with sections 45R(1) and 45S(1), and those sections apply accordingly;

(d) refer the allegation to the Commission in accordance with section 45T(1), and that section applies accordingly;

(e) take no action.

[Section 45M inserted: No. 35 of 2014 s. 21.]

45N. Matters to be considered in deciding who should take action

(1) Without limiting the matters to which the Public Sector Commissioner may have regard when deciding whether or not to make a decision under section 45M(a) or (b), the Public Sector Commissioner is to have regard to the nature of the minor misconduct that —

(a) has or may have occurred; or

(b) is or may be occurring; or

(c) is or may be about to occur; or

(d) is likely to occur.

(2) Without limiting the matters to which the Public Sector Commissioner may have regard when deciding whether or not to make a decision under section 45M(c), the Public Sector Commissioner is to have regard to the following —

(a) the seniority of any public officer to whom the allegation relates;

(b) the nature of the minor misconduct that —

(i) has or may have occurred; or

(ii) is or may be occurring; or

(iii) is or may be about to occur; or

(iv) is likely to occur;

(c) the need for any inquiry into the allegation to be conducted independently of a public authority with which any public officer to whom the allegation relates is connected by membership or employment or in any other respect.

[Section 45N inserted: No. 35 of 2014 s. 21.]

45O. Informant to be notified of decision not to take action

If —

(a) a person makes an allegation under section 45E(1) or 45H(2); or

(b) a complaint under the *Parliamentary Commissioner Act 1971* is referred to the Public Sector Commissioner,

and the Public Sector Commissioner decides to take no action, the Public Sector Commissioner must notify the person who made the allegation or complaint of the decision.

[Section 45O inserted: No. 35 of 2014 s. 21.]

45P. Person to whom allegation relates can be advised of outcome of inquiry

The Public Sector Commissioner may inform a person to whom an allegation relates as to the outcome of any inquiry conducted by the Public Sector Commissioner or an appropriate authority in relation to the allegation if —

(a) the person requests the information; or

(b) the Public Sector Commissioner considers that giving the information to the person is in the person's best interests,

and the Public Sector Commissioner considers that giving the information to the person is in the public interest.

[Section 45P inserted: No. 35 of 2014 s. 21.]

45Q. Action by Public Sector Commissioner: special inquiry or investigation

(1) If the Public Sector Commissioner decides to take action under section 45M(a) in relation to an allegation, the Public Sector Commissioner may —

(a) arrange for the holding of a special inquiry into the allegation; or

(b) investigate the allegation.

(2) For the purposes of subsection (1), the *Public Sector Management Act 1994* Part 3A Division 3 Subdivisions 2 and 3 (except sections 24H(2) to (6) and 24K(2)) apply (with the necessary changes) as if —

(a) a reference to a special inquiry or investigation were a reference to a special inquiry or investigation under subsection (1); and

(b) a reference to a public sector body were a reference to a notifying authority.

(3) This section does not limit the action that the Public Sector Commissioner may take under section 45M(a).

[Section 45Q inserted: No. 35 of 2014 s. 21.]

45R. Referring allegation to independent agency or appropriate authority under s. 45M(c)

(1) If the Public Sector Commissioner decides under section 45M(c) to refer an allegation to another independent agency or an appropriate authority, the Public Sector Commissioner is to refer the allegation as soon as is practicable after making that decision.

(2) The allegation may be accompanied by a report, which may include —

(a) a recommendation under section 45X; and

(b) such other recommendations as the Public Sector Commissioner thinks fit in respect of the action to be taken; and

(c) such information as the Public Sector Commissioner considers would assist the agency or authority to take the action.

(3) If the allegation is referred to an appropriate authority, the report may also include a recommendation as to the period within which the action should be taken.

[Section 45R inserted: No. 35 of 2014 s. 21.]

45S. Referring allegations to Parliamentary Commissioner or Auditor General under s. 45M(c)

(1) The Public Sector Commissioner is not to refer an allegation to the Parliamentary Commissioner or the Auditor General under section 45M(c) without having first consulted the Parliamentary Commissioner or the Auditor General.

(2) If an allegation is referred to the Parliamentary Commissioner, the allegation is to be treated by the Parliamentary Commissioner as if it were a complaint duly made under the *Parliamentary Commissioner Act 1971* section 17 and that Act applies to and in relation to the allegation accordingly.

(3) If an allegation is referred to the Auditor General, the Auditor General may investigate the allegation and the *Auditor General Act 2006* applies to the investigation as if it were an investigation under section 18(2) of that Act.

(4) The *Auditor General Act 2006* does not prevent the Auditor General or any person to whom section 46(2) of that Act applies from disclosing to —

(a) the Public Sector Commissioner; or

(b) a person who is authorised by the Public Sector Commissioner for the purposes of this paragraph,

information obtained in the course of an investigation under subsection (3).

[Section 45S inserted: No. 35 of 2014 s. 21.]

45T. Referring allegations to Corruption and Crime Commission under s. 45M(d)

(1) The Public Sector Commissioner may refer an allegation to the Commission under section 45M(d) if the Public Sector Commissioner considers —

(a) that serious misconduct —

(i) has or may have occurred; or

(ii) is or may be occurring; or

(iii) is or may be about to occur; or

(iv) is likely to occur;

or

(b) that it is otherwise appropriate to refer the allegation.

(2) The Commission may deal with an allegation referred under section 45M(d) as if it were a matter notified under section 28(2).

(3) This section does not affect the obligation of the Public Sector Commissioner under section 28(2) to notify the Commission of suspected serious misconduct of relevance or concern to the Public Sector Commissioner in his or her official capacity.

[Section 45T inserted: No. 35 of 2014 s. 21.]

45U. Public Sector Commissioner may decide to take other action

(1) Despite having made a decision to act under section 45M(a), (b) or (c), the Public Sector Commissioner may at any time decide to act under another of those paragraphs.

(2) The Public Sector Commissioner may make the decision whether or not he or she has acted under the first-mentioned decision.

(3) The Public Sector Commissioner is not to reconsider action taken in respect of a matter reported under section 45J(2) except on new information.

(4) If, as a result of the first-mentioned decision, an allegation was referred to the Parliamentary Commissioner, subsection (1) does not apply unless the action to be taken by the Public Sector Commissioner has been requested or agreed to by the Parliamentary Commissioner.

[Section 45U inserted: No. 35 of 2014 s. 21.]

45V. Monitoring of appropriate authorities

(1) If —

(a) an appropriate authority takes action in relation to an allegation in cooperation with the Public Sector Commissioner; or

(b) an allegation is referred to an appropriate authority by the Public Sector Commissioner,

unless the Public Sector Commissioner advises the appropriate authority in writing to the contrary, the appropriate authority must prepare a detailed report of the action the appropriate authority has taken in relation to the allegation.

(2) The report must be given to the Public Sector Commissioner in writing as soon as practicable after the action is taken.

(3) The Public Sector Commissioner may, by written notice, direct the appropriate authority to give the Public Sector Commissioner a detailed report on —

(a) action the appropriate authority has taken in relation to the allegation; and

(b) if action recommended by the Public Sector Commissioner under section 45R(2)(a) or (b) has not been taken, or any action has not been taken within the time recommended under section 45R(3) — the reasons for not so taking the action.

(4) The appropriate authority must comply with a direction given to it under subsection (3).

(5) A report referred to in this section must include details of any disciplinary action taken as a consequence of the recommendations.

[Section 45V inserted: No. 35 of 2014 s. 21.]

45W. Review of appropriate authority's handling of minor misconduct

(1) The Public Sector Commissioner may review the way an appropriate authority has dealt with minor misconduct, in relation to either a particular allegation, complaint, information or matter involving minor misconduct or in relation to a class of allegation, complaint, information or matter involving minor misconduct.

(2) The appropriate authority must give the Public Sector Commissioner all necessary help to undertake a review under subsection (1).

[Section 45W inserted: No. 35 of 2014 s. 21.]

Subdivision 5 — Recommendations

[Heading inserted: No. 35 of 2014 s. 21.]

45X. Recommendations by Public Sector Commissioner

(1) The Public Sector Commissioner may —

(a) make recommendations as to whether consideration should or should not be given to the taking of disciplinary action against particular persons; and

(b) make recommendations for the taking of other action that the Public Sector Commissioner considers should be taken in relation to the subject matter of his or her assessments or opinions or the results of his or her inquiries.

(2) The Public Sector Commissioner may make the recommendations on the basis of —

(a) his or her assessments, consultations and opinions; and

(b) inquiries and other action, whether conducted or taken in cooperation with the Commission, another independent agency or an appropriate authority or otherwise; and

(c) inquiries or other action conducted or taken by the Commission, another independent agency or an appropriate authority.

(3) Without limiting subsection (1), the Public Sector Commissioner may —

(a) recommend that further inquiry or investigation into any matter be carried out —

(i) by an Inquiry Panel appointed under the *Local Government Act 1995*; or

(ii) in such other manner as the Commissioner may recommend;

and

(b) recommend the terms of reference of any such inquiry or investigation.

(4) The Public Sector Commissioner may give the recommendations to another independent agency or an appropriate authority.

(5) A recommendation made by the Public Sector Commissioner under this section is not, and is not to be taken as, a finding that a particular person has engaged in conduct that constitutes or provides grounds on which that person's tenure of office,

contract of employment, or agreement for the provision of services is or may be terminated.

[Section 45X inserted: No. 35 of 2014 s. 21.]

45Y. Other action for minor misconduct not affected

This Part does not limit the action that may lawfully be taken to discipline or otherwise deal with a person for minor misconduct.

[Section 45Y inserted: No. 35 of 2014 s. 21.]

Division 3 — Reporting

[Heading inserted: No. 35 of 2014 s. 21.]

45ZA. Report to Parliament on inquiry or other action

(1) The Public Sector Commissioner may at any time prepare a report on any matter that has been the subject of an inquiry or other action in respect of minor misconduct, irrespective of whether the inquiry was conducted or other action was taken by —

(a) the Public Sector Commissioner alone; or

(b) the Public Sector Commissioner in cooperation with the Commission, another independent agency or an appropriate authority; or

(c) an appropriate authority alone.

(2) The Public Sector Commissioner may include in the report —

(a) statements as to any of the Public Sector Commissioner's assessments, opinions and recommendations; and

(b) statements as to any of the Public Sector Commissioner's reasons for the assessments, opinions and recommendations.

(3) The *Public Sector Management Act 1994* section 22F applies in relation to a report prepared under this section as if it were a report prepared under section 22E of that Act.

[Section 45ZA inserted: No. 35 of 2014 s. 21.]

45ZB. Report to Parliament on further action by appropriate authority

(1) After considering a report given to the Public Sector Commissioner by an appropriate authority under section 45V(2) or (4), the Public Sector Commissioner may prepare a report on the report of the authority.

(2) During or after the taking of action by an appropriate authority in respect of an allegation referred to the authority under section 45R(1), the Public Sector Commissioner may prepare a report if the Public Sector Commissioner considers that the action is not being, or has not been, taken properly, efficiently or expeditiously.

(3) The Public Sector Commissioner may include in a report prepared under this section —

(a) statements as to any of the Public Sector Commissioner's assessments, opinions and recommendations; and

(b) statements as to any of the Public Sector Commissioner's reasons for the assessments, opinions and recommendations.

(4) The *Public Sector Management Act 1994* section 22F applies in relation to a report prepared under this section as if it were a report prepared under section 22E of that Act.

[Section 45ZB inserted: No. 35 of 2014 s. 21.]

45ZC. Person subject to adverse report: entitlement of

Before reporting any matters adverse to a person or body in a report under section 45ZA or 45ZB, the Public Sector

Commissioner must give the person or body a reasonable opportunity to make representations to the Public Sector Commissioner concerning those matters.

[Section 45ZC inserted: No. 35 of 2014 s. 21.]

45ZD. Annual report under PSMA s. 22D: matters to be included

(1) The Public Sector Commissioner must include in the report prepared under the *Public Sector Management Act 1994* section 22D in respect of any year a report of the Public Sector Commissioner's general activities under this Part during that year.

(2) The report is to include the following —

(a) a description of the types of allegations received or initiated by the Public Sector Commissioner;

(b) a description of the types of inquiries conducted by the Public Sector Commissioner, whether alone or in cooperation with another person or body;

(c) an evaluation of the response of appropriate authorities to recommendations made by the Public Sector Commissioner;

(d) a description of the general nature and extent of any information furnished under this Part by the Public Sector Commissioner to other independent agencies;

(e) a description of the general nature and extent of referrals to the Commission under section 45M(d);

(f) a description of the extent to which inquiries conducted by the Public Sector Commissioner, whether alone or in cooperation with another person or body, have resulted in disciplinary action against public officers;

(g) a description of the Public Sector Commissioner's activities during that year in relation to the prevention and education function;

(h) any recommendations for changes in the laws of the State that the Public Sector Commissioner considers should be made as a result of the performance of functions under this Part.

(3) This section does not require the Public Sector Commissioner to include operational information in a report prepared under subsection (1).

[Section 45ZD inserted: No. 35 of 2014 s. 21.]

Part 4 — Organised crime: exceptional powers and fortification removal

[Heading inserted: No. 78 of 2003 s. 17.]

Division 1 — Basis for, and control of, use of exceptional powers

[Heading inserted: No. 78 of 2003 s. 17.]

45. Terms used

In this Part —

exceptional powers means the powers given under Divisions 2, 3, 4 and 5;

exceptional powers finding has the meaning given by section 46(2);

investigation means an investigation referred to in section 46(1).

[Section 45 inserted: No. 78 of 2003 s. 17.]

46. Exceptional powers finding, making of

(1) On the application of the Commissioner of Police, the Commission may find whether or not it is satisfied that —

(a) there are reasonable grounds for suspecting that a section 5 offence has been, or is being, committed; and

(b) there are reasonable grounds for suspecting that there might be evidence or other information relevant to the investigation of the offence that can be obtained using exceptional powers; and

(c) there are reasonable grounds for believing that the use of exceptional powers would be in the public interest having regard to —

(i) whether or not the suspected offence could be effectively investigated without using the powers; and

(ii) the extent to which the evidence or other information that it is suspected might be obtained would assist in the investigation, and the likelihood of obtaining it; and

(iii) the circumstances in which the evidence or information that it is suspected might be obtained is suspected to have come into the possession of any person from whom it might be obtained.

(2) If the Commission finds that it is satisfied that the grounds described in subsection (1) exist, the finding (an ***exceptional powers finding***) is to be reduced to writing and a copy of it is to be given to the Commissioner of Police.

[Section 46 inserted: No. 78 of 2003 s. 17.]

47. Purpose of Divisions 2 to 5

(1) The purpose of Divisions 2 to 5 is to facilitate the investigation of a section 5 offence.

(2) The investigation of an offence includes the investigation of a suspicion that the offence has been, or is being, committed.

(3) Divisions 2 to 5 apply if the Commission has made an exceptional powers finding in respect of the section 5 offence concerned.

[Section 47 inserted: No. 78 of 2003 s. 17.]

Division 2 — Examination before Commission

[Heading inserted: No. 78 of 2003 s. 17.]

48. Commission, on application of police, may summons witnesses

The Commission may, on the application of the Commissioner of Police for an organised crime summons, issue a signed summons under section 96 and cause it to be served under that section on the person to whom it is addressed.

[Section 48 inserted: No. 78 of 2003 s. 17.]

49. Examination of witnesses by Commissioner of Police

(1) In participating in an organised crime examination, the Commissioner of Police is to be represented by a legal practitioner instructed for that purpose, who may be assisted by others not so qualified but who are under the direct supervision of a legal practitioner.

(2) A person representing the Commissioner of Police may, so far as the Commission thinks proper, examine any witness summoned under an organised crime summons on any matter that the Commission considers relevant to the investigation.

(3) This section does not limit the operation of section 143.

[Section 49 inserted: No. 78 of 2003 s. 17.]

50. Examination of witness about offence with which witness charged

(1) A person summoned on an organised crime summons cannot be examined about matters that may be relevant to an offence with which the person stands charged, but this section does not prevent any other person from being examined about those matters.

(2) For the purposes of this section a person stands charged with an offence when —

(a) the person is informed by the person investigating the offence that he or she will be charged with the offence;

(b) the persons investigating the offence ought to have formed the view that the person should be charged with the offence,

whether or not at that time a prosecution notice in respect of the offence has been made or sworn; or

(c) a prosecution notice in respect of the offence is made or sworn,

whichever happens first.

[Section 50 inserted: No. 78 of 2003 s. 17; amended: No. 84 of 2004 s. 79.]

Division 3 — Entry, search and related matters

[Heading inserted: No. 78 of 2003 s. 17.]

51. Commission may limit exercise of certain exceptional powers

(1) The Commission may give directions limiting the exercise of an exceptional power under Divisions 3, 4 and 5.

(2) The Commission may revoke or vary directions under this section or give further directions limiting the exercise of the exceptional power.

(3) Limitations may be expressed however the Commission considers appropriate and, without limiting other ways in which they may be expressed, they may operate by reference to —

(a) particular powers; or

(b) particular circumstances; or

(c) particular persons; or

(d) particular places; or

(e) particular articles; or

(f) particular times or periods of time.

(4) The Commission is to give, revoke, or vary a direction under this section in writing a copy of which is to be given to the Commissioner of Police.

(5) A power under this Division cannot be exercised contrary to a direction under this section.

(6) The Commission may at any time revoke an exceptional powers finding by notice to the Commissioner of Police.

[Section 51 inserted: No. 78 of 2003 s. 17.]

52. Section 5 offences, enhanced police powers to enter, search etc. places

(1) A police officer may, for the purposes of investigating the section 5 offence, without a warrant —

(a) at any time enter any place where there are reasonable grounds for suspecting that the offence has been, or is being, committed; and

(b) demand the production of, and inspect, any articles or records kept there.

(2) A police officer who has entered a place under subsection (1) may —

(a) search the place and secure the place for the purposes of searching it; and

(b) stop, detain, and search anyone at the place; and

(c) photograph any person or thing, and make a copy of or seize any document that the police officer suspects on reasonable grounds will provide evidence or other information relevant to the investigation of the offence; and

(d) seize anything else that the police officer suspects on reasonable grounds will provide evidence or other information relevant to the investigation of the offence.

(3) A police officer may use any force that is reasonably necessary in exercising powers given by subsections (1) and (2).

[Section 52 inserted: No. 78 of 2003 s. 17.]

53. Section 5 offences, enhanced police powers to stop, search etc. people and conveyances

(1) This section does not apply unless there are reasonable grounds to suspect that a person is in possession of —

(a) anything used, or intended to be used, in connection with the commission of the section 5 offence; or

(b) anything else that may provide evidence of, or other information about, the offence.

(2) A police officer may without a warrant stop, detain, and search the person and any conveyance where the police officer reasonably suspects the person to be.

(3) The power to stop and detain a conveyance includes the power to detain anyone in or on the conveyance for as long as is reasonably necessary to search the conveyance even though, until the conveyance has been searched, the person may not be suspected of anything because of which the person can be detained under subsection (2).

(4) A police officer may without a warrant seize anything described in subsection (1).

(5) A police officer may use any force that is reasonably necessary, and may call on any assistance necessary, in order to perform a function under this section.

(6) In this section —

conveyance means anything used or capable of being used to transport people or goods by air, land, or water, and it does not matter how it is propelled or that it may ordinarily be stationary.

[Section 53 inserted: No. 78 of 2003 s. 17.]

54. Searches of people, conduct of

(1) In this section —

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

registered nurse means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession whose name is entered on Division 1 of the Register of Nurses kept under that Law as a registered nurse.

(2) A police officer cannot carry out a search of a person under this Division unless of the same sex as the person searched.

(3) If a police officer is uncertain as to the sex of a person to be searched —

(a) the police officer must ask the person to advise whether a male or female should carry out the search and must act in accordance with the answer; and

(b) in the absence of an answer, the person is to be treated as if of the sex that the person outwardly appears to the police officer to be.

(4) If a police officer of the same sex as the person to be searched is not immediately available to carry out the search, another police officer may —

(a) cause the search to be carried out, under the direction of a police officer, by another person of the same sex as the person to be searched; or

(b) detain the person for as long as is reasonably necessary for the person to be searched in accordance with this section; or

(c) convey or conduct the person to a place where the person can be searched in accordance with this section.

(5) Nothing in this Division authorises a search by way of an examination of the body cavities of a person unless it is carried

out under subsection (7) by a medical practitioner or a registered nurse.

(6) A police officer may arrange for a medical practitioner or registered nurse nominated by the police officer to examine the body cavities of the person to be searched and may —

(a) detain the person until the arrival of that medical practitioner or registered nurse; or

(b) convey or conduct the person to that medical practitioner or registered nurse.

(7) A medical practitioner or registered nurse may carry out an examination arranged by a police officer under subsection (6) and no action or proceeding, civil or criminal, lies against the medical practitioner or registered nurse in respect of anything reasonably done for the purposes of the examination.

(8) When performing a function under this section, a police officer or other person may —

(a) use any force that is reasonably necessary in the circumstances —

(i) to perform the function; and

(ii) to overcome any resistance to performing the function that is offered, or that the person exercising the power reasonably suspects will be offered, by any person;

and

(b) call on any assistance necessary in order to perform the function.

[Section 54 inserted: No. 78 of 2003 s. 17; amended: No. 50 of 2006 Sch. 3 cl. 4; No. 22 of 2008 Sch. 3 cl. 11; No. 35 of 2010 s. 48; No. 4 of 2018 s. 105.]

55. Power to search includes power to break open

The power given by this Division to search for any thing includes the power to break open anything it is suspected might contain it.

[Section 55 inserted: No. 78 of 2003 s. 17.]

*[**56.** Deleted: No. 59 of 2006 s. 9.]*

57. Offences

A person who wilfully —

(a) delays, obstructs, or otherwise hinders —

(i) the performance by a police officer or other person of a function under this Division; or

(ii) the rendering of assistance under this Division in the performance of a function;

or

(b) does not produce anything as demanded under section 52(1)(b),

commits an offence.

Penalty: Imprisonment for 3 years and a fine of $60 000.

[Section 57 inserted: No. 78 of 2003 s. 17.]

58. Police to report on use of powers under this Division

(1) A police officer who exercises an exceptional power under this Division is to submit to the Commissioner of Police a report in writing of each occasion on which that power was exercised, giving details of —

(a) what was done in the exercise of the powers; and

(b) the time and place at which the power was exercised; and

(c) any person or property affected by the exercise of the power.

(2) The report is to be submitted within 5 days after the power is exercised.

(3) The obligation of a police officer to submit a report under this section about a particular exercise of power within a particular time is sufficiently complied with if the police officer ensures that a report by another police officer who was present when the power was exercised is made within that time dealing with all of the details about which a report is required.

(4) The Commissioner of Police is to give a copy of the report to the Commission as soon as is reasonably practicable after the Commissioner of Police is given the report.

[Section 58 inserted: No. 78 of 2003 s. 17.]

59. Overseeing exercise of powers under this Division

(1) The Commission may by notice in writing direct the Commissioner of Police or any other person to give the Commission details of the exercise of an exceptional power under this Division, including the identity of any person who has exercised the power.

(2) The Commissioner of Police or any other person to whom a notice is given under subsection (1) is to comply with the direction in the notice as soon as is reasonably practicable.

[Section 59 inserted: No. 78 of 2003 s. 17.]

Division 4 — Assumed identities

[Heading inserted: No. 78 of 2003 s. 17.]

60. Approval for assumed identity

(1) The Commission may under section 103 grant an approval for the acquisition and use of an assumed identity by a police officer as if the police officer were an officer of the Commission.

(2) If under this section the Commission exercises the powers set out in section 103 in respect of a police officer —

(a) Part 6 Division 3 applies to and in respect of the exercise of that power, that police officer, the approval granted and the acquisition and use of an assumed identity under the approval granted as if the police officer were an officer of the Commission and with any other necessary modifications; and

(b) section 112 applies as if a reference in that section to the Commission were a reference to the Commissioner of Police.

[Section 60 inserted: No. 78 of 2003 s. 17.]

61. Police to report on activities undertaken under assumed identity approval

(1) A police officer to whom an assumed identity approval applies must —

(a) at least once every 6 months while the approval is in force; and

(b) as soon as is reasonably practicable after the approval is cancelled,

give a report to the Commissioner of Police setting out a general description of the activities undertaken by the police officer when using the assumed identity.

(2) The Commissioner of Police is to give a copy of the report to the Commission as soon as is reasonably practicable after the Commissioner of Police is given the report.

[Section 61 inserted: No. 78 of 2003 s. 17.]

62. Overseeing exercise of powers under this Division

(1) The Commission may by notice in writing direct the Commissioner of Police or any other person to give the Commission details of the acquisition and use of an assumed

identity under an approval given to a police officer, including the identity of any person who has exercised the power.

(2) The Commissioner of Police or any other person to whom a notice is given under subsection (1) is to comply with the direction in the notice as soon as is reasonably practicable.

[Section 62 inserted: No. 78 of 2003 s. 17.]

Division 5 — Controlled operations

[Heading inserted: No. 78 of 2003 s. 17.]

63. Terms used

In this Division —

authority has the meaning given by section 119;

controlled activity has the meaning given by section 119;

controlled operation means an operation that —

(a) involves the participation of police officers; and

(b) is conducted, or intended to be conducted, for the purpose of —

(i) obtaining or facilitating the obtaining of evidence of criminal activity; or

(ii) arresting any person involved in criminal activity; or

(iii) frustrating criminal activity; or

(iv) carrying out an activity that is reasonably necessary to facilitate the achievement of a purpose referred to in subparagraph (i), (ii) or (iii);

and

(c) involves or may involve a controlled activity;

criminal activity means any activity that involves the commission of a section 5 offence by one or more persons.

[Section 63 inserted: No. 78 of 2003 s. 17.]

64. Authority to conduct controlled operation and integrity testing

(1) The Commission may under section 121 grant an authority to conduct a controlled operation participated in by police officers as if the police officers were officers of the Commission.

(2) The Commission may under section 123 grant an authority for a police officer to conduct an integrity testing programme as if the police officer were an officer of the Commission.

(3) If under this section the Commission exercises the powers set out in section 121 or 123 in respect of a police officer —

(a) Part 6 Division 4 applies to and in respect of the exercise of that power, the police officers concerned, the authority granted and any conduct under the authority as if the police officers were officers of the Commission and with any other necessary modifications; and

(b) section 129 applies as if a reference in that section to the Commission were a reference to the Commissioner of Police.

[Section 64 inserted: No. 78 of 2003 s. 17.]

65. Police to report on controlled operation or integrity testing programme

(1) A police officer responsible for a controlled operation for which an authority has been given must —

(a) at least once every 6 months while the authority is in force; and

(b) as soon as is reasonably practicable after the authority is cancelled,

give a report to the Commissioner of Police setting out the particulars required by subsection (2).

(2) The report must include the following particulars —

(a) the nature of the criminal activities against which the controlled operation was directed;

(b) the nature of the controlled activities engaged in for the purposes of the controlled operation.

(3) A police officer to whom an authority to conduct an integrity testing programme has been given must —

(a) at least once every 6 months while the authority is in force; and

(b) as soon as is reasonably practicable after the authority is cancelled,

give a report to the Commissioner of Police setting out a general description of the activities undertaken by the police officer under the authority.

(4) The Commissioner of Police is to give a copy of the report to the Commission as soon as is reasonably practicable after the Commissioner of Police is given the report.

[Section 65 inserted: No. 78 of 2003 s. 17.]

66. Overseeing exercise of powers under this Division

(1) The Commission may by notice in writing direct the Commissioner of Police or any other person to give the Commission details of any controlled operation or integrity testing programme for which a police officer was responsible, including the identity of any person who participated in the operation or programme.

(2) The Commissioner of Police or any other person to whom a notice is given under subsection (1) is to comply with the direction in the notice as soon as is reasonably practicable.

[Section 66 inserted: No. 78 of 2003 s. 17.]

Division 6 — Fortifications

[Heading inserted: No. 78 of 2003 s. 17.]

67. Terms used

(1) In this Division —

fortification means any structure or device that, whether alone or as part of a system, is designed to prevent or impede, or to provide any other form of countermeasure against, uninvited entry to premises;

heavily fortified has the meaning given by subsection (2);

interested person means a person who —

(a) is a lessee of the premises, whether or not actually occupying the premises; or

(b) is actually occupying, or is entitled to the possession of, the premises;

owner means —

(a) if the premises are on land that is subject to the *Transfer of Land Act 1893* or the *Land Administration Act 1997*, a proprietor of the land within the meaning of the *Transfer of Land Act 1893*;

(b) if the premises are on land that is subject to the *Registration of Deeds Act 1856*, the holder of an estate or interest in the land that is registered by memorial under that Act;

submission means a submission made by an owner or interested person to the Commissioner of Police that a fortification removal notice should not be issued;

submission period has the meaning given by section 69(2)(b).

(2) Premises are heavily fortified if there are, at the premises, fortifications to an extent or of a nature that it would be reasonable to regard as excessive for premises of that kind.

[Section 67 inserted: No. 78 of 2003 s. 17; amended: No. 8 of 2009 s. 41(4).]

68. Fortification warning notice: issue of

(1) The Commissioner of Police may, without giving notice to any other person, apply to the Commission for the issue of a fortification warning notice.

(2) The Commission may issue a fortification warning notice if satisfied on the balance of probabilities that there are reasonable grounds for suspecting that the premises to which it relates are —

(a) heavily fortified; and

(b) habitually used as a place of resort by members of a class of people a significant number of whom may reasonably be suspected to be involved in organised crime.

(3) The Commission may be satisfied by a statement made by a police officer and verified by statutory declaration.

[Section 68 inserted: No. 78 of 2003 s. 17.]

69. Fortification warning notice: contents of

(1) A fortification warning notice is addressed to —

(a) the owner of the premises to which it relates, or each owner if there are 2 or more, by name; and

(b) any other interested persons, without naming them but with an explanation of the term interested person.

(2) The notice must contain —

(a) a brief summary of section 68(2), including an explanation of the terms fortification and heavily fortified, and a statement that the Commission is satisfied as to the matters mentioned in that provision; and

(b) a warning that unless, within the period of 14 days after the day on which a copy of the notice is given as described in section 70(1) (the ***submission period***), the Commissioner of Police is satisfied that —

(i) the premises are not heavily fortified; or

(ii) the premises are not habitually used as a place of resort by members of a class of people a significant number of whom may reasonably be suspected to be involved in organised crime,

a fortification removal notice may be issued; and

(c) an explanation of how a person who is an owner or interested person can make a submission to the Commissioner of Police that a fortification removal notice should not be issued.

[Section 69 inserted: No. 78 of 2003 s. 17.]

70. Giving fortification warning notice

(1) A copy of the fortification warning notice may be given —

(a) by giving it to any person —

(i) who is an owner; or

(ii) who is actually occupying the premises and appears to have reached 18 years of age,

in any way described in section 76 of the *Interpretation Act 1984*, registered post being used if it is given by post; or

(b) if it appears that any reasonable attempt to give it as described in paragraph (a) is unlikely to be successful, by affixing it to the front entrance or another part of the premises where it can be easily seen.

(2) Giving a copy of a notice as described in subsection (1)(b) is to be regarded as giving it to each person who is actually occupying the premises and appears to have reached 18 years of age.

(3) Although it is sufficient for the notice to be given as described in subsection (1), the Commissioner of Police is to make every reasonable attempt to give, as soon as practicable, a copy of the notice to every person who has not already been given a copy of it and who is an owner or interested person, indicating on that copy when the submission period ends.

(4) If the notice is not given as described in subsection (1) within 14 days after the Commission issues it, the notice lapses and cannot be given at all.

[Section 70 inserted: No. 78 of 2003 s. 17.]

71. Withdrawal notice

(1) If, before the end of the time within which a fortification removal notice can be issued, the Commissioner of Police decides not to issue a fortification removal notice, the Commissioner of Police is to give a withdrawal notice to each person who was given a fortification warning notice.

(2) The withdrawal notice must identify the premises, refer to the fortification warning notice, and state that the Commissioner of Police has decided not to issue a fortification removal notice.

(3) The withdrawal notice may be given in any way in which section 70 would enable a fortification warning notice to be given.

[Section 71 inserted: No. 78 of 2003 s. 17.]

72. Fortification removal notice: issue of

(1) If a fortification warning notice has been given as described in section 70(1) and the submission period has elapsed, the Commissioner of Police may issue a fortification removal notice relating to the premises concerned.

(2) The Commissioner of Police cannot issue the fortification removal notice unless, after considering each submission, if any,

made before the submission period elapsed, the Commissioner of Police reasonably believes that the premises are —

(a) heavily fortified; and

(b) habitually used as a place of resort by members of a class of people a significant number of whom may reasonably be suspected to be involved in organised crime.

(3) A fortification removal notice cannot be issued if —

(a) a period of more than 28 days has elapsed since the end of the submission period; or

(b) the Commissioner of Police has given any person a withdrawal notice referring to the fortification warning notice concerned.

[Section 72 inserted: No. 78 of 2003 s. 17.]

73. Fortification removal notice: contents of

(1) A fortification removal notice is addressed to each person to whom the fortification warning notice was addressed, and in the same way.

(2) The notice must contain —

(a) a statement to the effect that, within 7 days after the day on which the notice is given to the owner of the premises or any further time allowed by the Commissioner of Police, the fortifications at the premises must be removed or modified to the extent necessary to satisfy the Commissioner of Police that the premises are no longer heavily fortified; and

(b) a warning as to the effect of section 75; and

(c) an explanation of the right to apply to the Supreme Court for a review under section 76.

(3) The notice may, but need not, include details as to what would need to be done before the Commissioner of Police would be satisfied that the premises are no longer heavily fortified.

[Section 73 inserted: No. 78 of 2003 s. 17.]

74. Giving fortification removal notice

(1) The fortification removal notice is to be given to the owner of the premises and, if it is given by post, registered post is to be used.

(2) Although it is sufficient for the notice to be given to the owner, the Commissioner of Police is to make every reasonable attempt to give a copy of the notice, as soon as practicable, to every interested person.

(3) A copy of the notice may be given under subsection (2) in any way in which section 70 would enable a fortification warning notice to be given.

[Section 74 inserted: No. 78 of 2003 s. 17.]

75. Fortification removal notice: enforcing

(1) If the fortifications at the premises are not, within the time specified in the fortification removal notice or any further time allowed by the Commissioner of Police, removed or modified to the extent necessary to satisfy the Commissioner of Police that the premises are no longer heavily fortified, the Commissioner of Police may cause the fortifications to be removed or modified to the extent required by the fortification removal notice.

(2) The Commissioner of Police may extend the time allowed by the notice if, before the time allowed elapses, application is made to the Commissioner of Police for it to be extended.

(3) Subsection (1) authorises police officers and agents of the Commissioner of Police, without warrant or further notice, to enter the premises and secure them in order to do anything for

the purposes of that subsection, and to use any force and employ any equipment necessary.

(4) The Commissioner of Police may seize anything that can be salvaged in the course of removing or modifying fortifications under this section, and may sell or dispose of it as the Commissioner of Police considers appropriate.

(5) The proceeds of any sale under subsection (4) are forfeited to the State and, to the extent that they are insufficient to meet the costs incurred by the Commissioner of Police under this section, the Commissioner of Police may recover those costs as a debt due from the owner of the premises.

[Section 75 inserted: No. 78 of 2003 s. 17.]

76. Review of fortification removal notice

(1) If a fortification removal notice relating to premises has been issued, the owner or an interested person may, within 7 days after the day on which the notice is given to the owner of the premises, apply to the Supreme Court for a review of whether, having regard to the submissions, if any, made before the submission period elapsed and any other information that the Commissioner of Police took into consideration, the Commissioner of Police could have reasonably had the belief required by section 72(2) when issuing the notice.

(2) The Commissioner of Police may identify any information provided to the court for the purposes of the review as confidential if its disclosure might prejudice the operations of the Commissioner of Police, and information so identified is for the court's use only and is not to be disclosed to any other person, whether or not a party to the proceedings, or publicly disclosed in any way.

(3) An application for review under this section cannot be made if an application has previously been made by any person for the review of the same matter.

(4) When the application for review is made, the period within which fortifications can be removed or modified in accordance with the fortification removal notice is extended to the seventh day after the day on which the application for review is finally disposed of by the court.

(5) The court may decide whether or not the Commissioner of Police could have reasonably had the belief required by section 72(2) when issuing the notice.

(6) If the court decides that the Commissioner of Police could not have reasonably had the belief required by section 72(2) when issuing the notice, the notice ceases to have effect.

(7) The decision of the court on an application for review under this section is final but does not prevent the Commissioner of Police from issuing a further notice under this Division relating to the same premises where there is fresh evidence.

[Section 76 inserted: No. 78 of 2003 s. 17.]

77. Hindering removal or modification of fortifications

(1) A person who does anything intending to prevent, obstruct, or delay, the removal or modification of fortifications in accordance with a fortification removal notice commits a crime.

Penalty: Imprisonment for 5 years and a fine of $100 000.

(2) Subsection (1) applies to the removal or modification of fortifications by a person who —

(a) is, or is acting for or on the instructions of, the owner or an interested person; or

(b) is acting under section 75(3).

[Section 77 inserted: No. 78 of 2003 s. 17.]

78. Planning and other approval issues

(1) The powers given by this Division may be exercised without regard to whether any statutory or other approval had been given for the fortifications.

(2) No statutory or other approval is required for the removal or modification of fortifications in accordance with a fortification removal notice.

(3) Subsection (2) applies to the removal or modification of fortifications by a person who —

(a) is, or is acting for or on the instructions of, the owner or an interested person; or

(b) is acting under section 75(3).

[Section 78 inserted: No. 78 of 2003 s. 17.]

79. No compensation for removal or modification of fortifications

(1) No claim for compensation lies against a person for having approved any fortifications that are, or are required to be, removed or modified because of a notice under this Division.

(2) No other claim for compensation arises because of the exercise of powers under this Division.

(3) Subsection (2) does not extend to prevent claims in tort in relation to premises other than those in respect of which the fortification notice is given.

[Section 79 inserted: No. 78 of 2003 s. 17.]

80. Protection from liability for wrongdoing

(1) An action in tort does not lie against a person for damage to property at the premises that the person causes, in good faith, in the performance or purported performance of a function under this Division.

(2) The Crown is also relieved of any liability that it might otherwise have had for a person having caused damage as described in subsection (1).

(3) The protection given by this section applies even though the damage was caused in the course of doing something that would have been capable of being done whether or not this Division had been enacted.

[Section 80 inserted: No. 78 of 2003 s. 17.]

Division 7 — General matters

[Heading inserted: No. 78 of 2003 s. 17.]

81. Part not applicable to juveniles

(1) None of the powers given under this Part can be exercised in respect of a juvenile.

(2) In this section —

juvenile means a person who has not reached 18 years of age.

[Section 81 inserted: No. 78 of 2003 s. 17.]

82. Delegation by Commissioner of Police

(1) The Commissioner of Police may delegate any power or duty of the Commissioner of Police under another provision of this Part to a police officer whose rank is Assistant Commissioner or higher.

(2) The delegation must be in writing signed by the Commissioner of Police.

(3) A police officer exercising or performing a power or duty that has been delegated to the police officer under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(4) Nothing in this section limits the ability of the Commissioner of Police to perform a function through an officer or a person representing the Commissioner of Police.

[Section 82 inserted: No. 78 of 2003 s. 17.]

83. Judicial review excluded

(1) Except with the consent of the Parliamentary Inspector, a prerogative writ cannot be issued and an injunction or a declaratory judgment cannot be given in respect of the performance of a function for the purposes of this Part and proceedings cannot be brought seeking such a writ, injunction, or judgment.

(2) Subsection (1) does not apply after the completion of the investigation that it was being sought to facilitate by performing the function.

[Section 83 inserted: No. 78 of 2003 s. 17.]

Part 5 — Reporting

[Heading inserted: No. 78 of 2003 s. 17.]

Division 1 — Reports by Commission on specific matters

[Heading inserted: No. 78 of 2003 s. 17.]

84. Report to Parliament on investigation or received matter

(1) The Commission may at any time prepare a report on any matter that has been the subject of an investigation or other action in respect of serious misconduct, irrespective of whether the investigation or action was carried out by —

(a) the Commission alone; or

(b) the Commission in cooperation with an independent agency or appropriate authority; or

(c) an appropriate authority alone.

(2) The Commission may at any time prepare a report on any received matter, irrespective of whether the matter has been the subject of an investigation or other action under this Act or any other law.

(3) The Commission may include in a report under this section —

(a) statements as to any of the Commission's assessments, opinions and recommendations; and

(b) statements as to any of the Commission's reasons for the assessments, opinions and recommendations.

(4) The Commission may cause a report prepared under this section to be laid before each House of Parliament or dealt with under section 93.

[Section 84 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 31.]

85. Report to Parliament on further action by appropriate authority

(1) After considering a report given to the Commission by an appropriate authority under section 40(1) or (4), the Commission may prepare a report on the report of the authority.

(2) During or after the carrying out of action by an appropriate authority in respect of an allegation referred to the authority under section 37(1), the Commission may prepare a report if the Commission considers that the action is not being, or has not been, properly, efficiently or expeditiously carried out.

(3) The Commission may include in a report under this section —

(a) statements as to any of the Commission's assessments, opinions and recommendations; and

(b) statements as to any of the Commission's reasons for the assessments, opinions and recommendations.

(4) The Commission may cause a report prepared under this section to be laid before each House of Parliament or dealt with under section 93.

[Section 85 inserted: No. 78 of 2003 s. 17.]

86. Person subject to adverse report, entitlement of

Before reporting any matters adverse to a person or body in a report under section 84 or 85, the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.

[Section 86 inserted: No. 78 of 2003 s. 17.]

87. Disclosure of matters in report made under s. 84 or 85

(1) If a report under section 84 or 85 is laid before either House of Parliament, a matter included in that report may be disclosed despite section 151.

(2) If, following the making by the Commission of a report under section 84 or 85 to the Standing Committee or a Minister, the Standing Committee or Minister approves the disclosure of a matter included in the report, that matter may be disclosed despite section 151.

[Section 87 inserted: No. 78 of 2003 s. 17.]

88. Special reports to Parliament on policy matters

(1) The Commission may, at any time prepare a special report on any administrative or general policy matter relating to the functions of the Commission.

(2) The Commission may cause the special report to be laid before each House of Parliament or dealt with under section 93.

[Section 88 inserted: No. 78 of 2003 s. 17.]

89. Report under s. 84, 85 or 88 may be made to Minister or Standing Committee instead of to Parliament

A report of the kind mentioned in section 84, 85 or 88 may be made by the Commission to the Minister, or another Minister or the Standing Committee instead of being laid before each House of Parliament or dealt with under section 93 if, for any reason, the Commission considers it appropriate to do so.

[Section 89 inserted: No. 78 of 2003 s. 17.]

90. Reports about people proposed as police officers or CEOs

(1) Without limiting any other function under this Act, the Commission may prepare a report on information available to the Commission about a person proposed to be appointed as —

(a) Commissioner of Police; or

(b) a commissioned police officer, a non-commissioned police officer, a constable, a special constable or an Aboriginal police liaison officer under the *Police Act 1892*; or

(c) a chief executive officer.

(2) A report about a person must be given to the person.

(3) A report about a person proposed to be appointed as Commissioner of Police or a commissioned police officer may be given to —

(a) the Minister responsible for the administration of the *Police Act 1892*; and

(b) any other Minister that the Minister responsible for the administration of the *Police Act 1892* considers has a relevant interest in the report.

(4) A report about a person proposed to be appointed as a non-commissioned police officer or a constable may be given to —

(a) the Commissioner of Police or the Minister responsible for the administration of the *Police Act 1892* or both of those persons; and

(b) if the report is given to the Minister responsible for the administration of the *Police Act 1892*, any other Minister that that Minister considers has a relevant interest in the report.

(5) A report about a person proposed to be appointed as a special constable or an Aboriginal police liaison officer may be given to the Commissioner of Police.

(6) A report about a person proposed to be appointed as a chief executive officer may be given to —

(a) the Public Sector Commissioner; and

(b) any Minister that the Public Sector Commissioner considers has a relevant interest in the report.

(7) Except as provided in this section, the fact that the Commission has given a report under this section, and any details of a report given under this section, must not be disclosed.

[Section 90 inserted: No. 78 of 2003 s. 17; amended: No. 8 of 2008 s. 11(3) and (4); No. 39 of 2010 s. 74(3).]

Division 2 — General reports

[Heading inserted: No. 78 of 2003 s. 17.]

91. Annual report to Parliament

(1) The Commission is to prepare, within 3 months after 30 June of each year, a report as to its general activities during that year.

(2) The report is to include —

(a) a description of the types of allegations received or initiated by the Commission; and

(b) a description of the types of investigations carried out by the Commission; and

(c) an evaluation of the response of appropriate authorities to recommendations made by the Commission; and

(d) a description of the general nature and extent of any information furnished under the Act by the Commission to independent agencies; and

(e) a description of the extent to which investigations carried out by the Commission have resulted in prosecutions of public officers or other persons or disciplinary action against public officers; and

(f) the number of exceptional powers findings made under section 46; and

(g) the number of fortification warning notices issued by the Commission under section 68; and

(h) the number of notices to produce a statement of information issued under section 94; and

(i) the number of search warrants issued to the Commission under section 101; and

(j) the number of approvals for the acquisition and use of an assumed identity given by the Commission under section 103; and

(k) the number of authorities to conduct controlled operations granted by the Commission under section 121; and

(l) the number of authorities for integrity testing programmes granted by the Commission under section 123; and

(m) the number of warrants of apprehension issued by the Commission under section 148; and

(n) the number of warrants and emergency authorisations issued to officers of the Commission under the *Surveillance Devices Act 1998*; and

(o) the number of warrants issued to the Commission under the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth; and

(p) a description of the Commission's activities during that year in relation to its prevention and education function; and

(q) any recommendations for changes in the laws of the State that the Commission considers should be made as a result of the performance of its functions; and

(r) a description of the Commission's activities during that year in relation to its unexplained wealth functions.

(3) Nothing in this section requires the Commission to provide operational information in a report under subsection (1).

(4) The Commission is to cause a copy of a report prepared under this section to be laid before each House of Parliament, or dealt with under section 93, within 21 days of the preparation of the report.

(5) This section does not limit Part 5 of the *Financial Management Act 2006* and the report required under this section may be

prepared and dealt with in conjunction with the report required under that Part.

(6) The Commission must include in the report required under this section the number of findings made under the *Commonwealth Heads of Government Meeting (Special Powers) Act 2011* section 87(2) in the year to which the report relates.

(7) This subsection and subsection (6) expire at the end of 31 December 2012.

[Section 91 inserted: No. 78 of 2003 s. 17; amended: No. 77 of 2006 Sch. 1 cl. 35(5); No. 46 of 2009 s. 17; No. 2 of 2011 s. 12; No. 23 of 2011 s. 95; No. 55 of 2012 s. 112; No. 35 of 2014 s. 22; No. 10 of 2018 s. 9.]

92. Periodical report to Parliament

(1) Rules of Parliament may require the Commission to report to each House of Parliament or the Standing Committee, as and when prescribed in the Rules, as to the general activities of the Commission.

(2) The Rules of Parliament referred to in this section are rules that have been agreed upon by each House of Parliament in accordance with the Rules and Orders of those Houses.

(3) Rules of Parliament made under this section must be published in the *Gazette*.

(4) Section 42 of the *Interpretation Act 1984* does not apply to Rules of Parliament made under this section.

[Section 92 inserted: No. 78 of 2003 s. 17.]

Division 3 — General matters

[Heading inserted: No. 78 of 2003 s. 17.]

93. Laying documents before House of Parliament that is not sitting

(1) If a copy of a report of the kind mentioned in section 84, 85 or 88 may be laid before each House of Parliament and a House of Parliament is not sitting, the Commission may transmit a copy of the report to the Clerk of that House.

(2) If section 91 requires the Commission to cause a copy of a report to be laid before each House of Parliament, or dealt with under this section, within a period and —

(a) at the commencement of the period, a House of Parliament is not sitting; and

(b) the Commission is of the opinion that the House will not sit during that period,

the Commission is to transmit a copy of the report to the Clerk of that House.

(3) A copy of a report transmitted to the Clerk of a House is to be regarded as having been laid before that House.

(4) The laying of a copy of the text of a document that is regarded as having occurred under subsection (3) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

[Section 93 inserted: No. 78 of 2003 s. 17.]

Part 6 — Powers

[Heading inserted: No. 78 of 2003 s. 17.]

Division 1 — Particular powers to require information or attendance

[Heading inserted: No. 78 of 2003 s. 17.]

94. Power to obtain information from public authority or officer

(1) For the purposes of an investigation under Part 3, the Commission may, by written notice served on a public authority or public officer, require the authority or officer to produce a statement of information.

(1A) For the purposes of its functions under section 21AD, the Commission may, by written notice served on a person, require the person to produce a statement of information.

(2) A notice under this section must —

(a) specify or describe the information required; and

(b) fix a time and date by which the statement of information must be produced; and

(c) specify the person (being an officer of the Commission) to whom the production is to be made.

(3) The notice —

(a) may provide that the requirement may be satisfied by some other person acting on behalf of the public authority, public officer or other person served with the notice; and

(b) may specify the person or class of persons who may so act.

(4) The powers conferred by this section may be exercised despite —

(a) any rule of law which, in proceedings in a court, might justify an objection to the production of a statement of information on grounds of public interest; or

(b) any privilege of a public authority or public officer in that capacity which the authority or officer could have claimed in a court of law; or

(c) any duty of secrecy or other restriction on disclosure applying to a public authority, public officer or other person served with the notice.

(5) A statement of information produced by a person in compliance with a notice served under this section is not admissible in evidence against that person in any civil or criminal proceedings except —

(a) contempt proceedings; or

(b) proceedings for an offence against this Act; or

(c) disciplinary action; or

(d) under subsection (5A).

(5A) A statement of information produced in compliance with a notice served under subsection (1A) is admissible in evidence in any proceeding under the *Criminal Property Confiscation Act 2000*.

(6) Despite subsection (5), the witness may, in any civil or criminal proceedings, be asked about the statement under section 21 of the *Evidence Act 1906*.

[Section 94 inserted: No. 78 of 2003 s. 17; amended: No. 10 of 2018 s. 10.]

95. Power to obtain documents and other things

(1) The Commission may, by written notice served on a person, require the person —

(a) to attend, at a time and place specified in the notice, before the Commission or an officer of the Commission as specified in the notice; and

(b) to produce at that time and place to the person so specified a record or other thing specified in the notice.

(2) The notice —

(a) may provide that the requirement may be satisfied by some other person acting on behalf of the person on whom it was imposed; and

(b) may specify the person or class of persons who may so act.

[Section 95 inserted: No. 78 of 2003 s. 17.]

96. Power to summon witnesses to attend and produce things

(1) The Commission may issue a signed summons and cause it to be served on the person to whom it is addressed.

(2) Personal service of the summons is required.

(3) The summons may require the person to whom it is addressed to attend before the Commission at an examination, at a time and place specified in the summons, and then and there to —

(a) give evidence; or

(b) produce any record or other thing in the person's custody or control that is described in the summons; or

(c) do both of those things.

[Section 96 inserted: No. 78 of 2003 s. 17.]

97. Witnesses to attend until released

A person who has been served with a summons under section 96 is required, unless excused by the Commission, to attend as specified by the summons and report to the Commission from day to day until released from further attendance by the Commission.

[Section 97 inserted: No. 78 of 2003 s. 17.]

98. Powers in relation to things produced

(1) The Commission or a person authorised in writing by the Commission may —

(a) inspect any document or other thing produced before the Commission or an officer of the Commission; and

(b) retain the document or other thing for a reasonable period; and

(c) take photographs or copies of, or extracts or notes from, anything relevant to the investigation.

(2) The Commission may make an order about what is to be done with any document or other thing produced before the Commission or an officer of the Commission, and it may be dealt with in accordance with that order.

(3) The Commission may not order a document to be destroyed except in accord with the *State Records Act 2000*.

[Section 98 inserted: No. 78 of 2003 s. 17.]

99. Notation on notice or summons to restrict disclosure

(1) In this section —

official matter means any of the following (whether past, present or contingent) —

(a) the investigation for the purposes of which a notice or summons that includes a notation under this section was issued;

(b) an examination before the Commission for the purposes of the investigation;

(c) court proceedings.

(2) A notice under section 94 or 95 or a summons under section 96 may include a notation to the effect that disclosure of information about the notice or summons, or about any official

matter connected with it, is prohibited except in the circumstances, if any, specified in the notation.

(3) The notation cannot be included unless subsection (4) requires it to be included or subsection (5) permits it to be included.

(4) The notation is required to be included if the Commission is satisfied that failure to do so could reasonably be expected to prejudice —

(a) the safety or reputation of a person; or

(b) the fair trial of a person who has been or may be charged with an offence; or

(c) the effectiveness of an investigation.

(5) The notation may be included if the Commission is satisfied that failure to do so —

(a) might prejudice —

(i) the safety or reputation of a person; or

(ii) the fair trial of a person who has been or may be charged with an offence; or

(iii) the effectiveness of an investigation;

or

(b) might otherwise be contrary to the public interest.

(6) If the notation is included, it must be accompanied by a written statement describing the effect of section 167.

(7) The notation ceases to have effect if, after the conclusion of the investigation concerned —

(a) no evidence of an offence has been obtained; or

(b) although evidence of an offence or offences has been obtained, it has been decided not to initiate any criminal proceedings in which the evidence would be relevant; or

(c) evidence of an offence or offences committed by only one person has been obtained and criminal proceedings have been initiated against that person; or

(d) evidence of an offence or offences committed by 2 or more persons has been obtained and —

(i) criminal proceedings have been initiated against all those persons; or

(ii) criminal proceedings have been initiated against all those persons except any of them against whom it has been decided not to initiate criminal proceedings.

(8) If the notation ceases to have effect because of subsection (7), the Commission must serve a written notice of that fact on each person who was served with the summons or notice containing the notation.

(9) If the notation is inconsistent with a direction given under section 151(4)(a), the notation has no effect to the extent of the inconsistency.

[Section 99 inserted: No. 78 of 2003 s. 17.]

Division 2 — Entry, search and related matters

[Heading inserted: No. 78 of 2003 s. 17.]

100. Power to enter and search premises of public authority or officer

(1) An officer of the Commission authorised in writing by the Commission may, at any time without a warrant —

(a) enter and inspect any premises occupied or used by a public authority or public officer in that capacity; and

(b) inspect any document or other thing in or on the premises; and

(c) take copies of any document in or on the premises.

(2) The powers conferred by this section must not be exercised other than for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve serious misconduct.

(3) A public authority or public officer must make available to an officer authorised under subsection (1) such facilities as are necessary to enable the powers conferred by subsection (1) to be exercised.

(4) The powers conferred by this section may be exercised despite —

(a) any rule of law which, in proceedings in a court, might justify an objection to an inspection of the premises or to the production of a document or other thing on grounds of public interest; or

(b) any privilege of a public authority or public officer in that capacity which the authority or officer could have claimed in a court of law; or

(c) any duty of secrecy or other restriction on disclosure applying to a public authority or public officer.

[Section 100 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 31.]

101. Search warrants, issue and effect of

(1) In this section —

authorised person means —

(a) the named officer of the Commission or named officers of the Commission on whom authority is conferred by a warrant; or

(b) a person referred to in subsection (3);

relevant material means records or things that are or appear likely to be relevant to the investigation of suspected serious misconduct;

warrant means a warrant issued under subsection (2).

(2) If a judge of the Supreme Court is satisfied, on the application of the Commission, that there are reasonable grounds for suspecting that there may be relevant material in or on particular premises, the judge may issue a search warrant authorising a named officer of the Commission or named officers of the Commission —

(a) to enter and search the premises; and

(b) where the premises comprise a vehicle, vessel, aircraft or the like, to stop and detain and give directions as to the movement of the same.

(2a) An application for a warrant must be made in accordance with section 13 of the *Criminal Investigation Act 2006* which applies with any necessary changes.

(3) The person or persons on whom authority is conferred by a warrant may be accompanied by such other persons as are necessary for the effective exercise of the powers conferred by the warrant and this section.

(4) In addition to exercising the powers in subsection (2) an authorised person acting under a warrant may —

(a) break open and search any thing in or on the premises it is suspected might contain relevant material; and

(b) seize any relevant material and deliver it to the Commission; and

(c) secure any relevant material against interference; and

(d) request any person found in or on the premises to produce any relevant material which at the time of the request is in the possession, under the control, or at the order or disposition, of that person whether in or on the premises or elsewhere; and

(e) take photographs or copies of, or extracts or notes from, any relevant material.

(5) An authorised person acting under a warrant may use such reasonable force as is necessary.

(6) The Commission may —

(a) retain possession of any relevant material for such reasonable period as it thinks fit; and

(b) at any time release any relevant material, whether conditionally or unconditionally, to any person who appears to be entitled to possession of it.

[(7) deleted]

(8) Before an authorised person acting under a warrant uses force that may cause damage to any property in order to gain access or entry to a place or thing, the authorised person must, if reasonably practicable —

(a) give the occupier of the place a reasonable opportunity to allow the authorised person entry or access to the place; or

(b) give the person who has possession or control of the thing a reasonable opportunity to allow the authorised person to have access to the thing,

as the case requires, unless the authorised person suspects on reasonable grounds that to do so would frustrate the effectiveness of the search permitted by the warrant or would endanger any person.

[Section 101 inserted: No. 78 of 2003 s. 17; amended: No. 59 of 2006 s. 10.]

Division 3 — Assumed identities

[Heading inserted: No. 78 of 2003 s. 17.]

102. Terms used

In this Division —

chief officer, of an issuing agency, means the officer in charge (however described) of the issuing agency;

issuing agency means —

(a) a public authority; or

(b) a person, body or entity that is not a public authority;

officer, of an issuing agency, includes a person employed or engaged by the issuing agency;

register means a register kept under the *Births, Deaths and Marriages Registration Act 1998*;

Registrar means the Registrar of Births, Deaths and Marriages referred to in section 5 of the *Births, Deaths and Marriages Registration Act 1998*.

[Section 102 inserted: No. 78 of 2003 s. 17; amended: No. 8 of 2009 s. 41(5).]

103. Assumed identity approval, grant of

(1) The Commission may grant an approval (an ***assumed identity approval***) for the acquisition and use of an assumed identity by an officer of the Commission.

(2) The approval must be in writing signed by the Commission.

(3) A single approval may be given for one or more assumed identities.

(4) The approval —

(a) must specify —

(i) the date of the approval; and

(ii) the details of each assumed identity approved; and

(iii) the name of the officer of the Commission to whom the approval applies;

and

(b) may specify the evidence of each assumed identity that may be acquired under the approval.

(5) The approval may be granted subject to conditions specified in the approval.

(6) The Commission may, in writing, vary or cancel the approval.

(7) Written notice of the variation or cancellation must be given to the officer to whom the approval applies.

(8) The variation or cancellation of an approval takes effect —

(a) on the day the written notice is given to the officer to whom the approval applies; or

(b) if a later date of effect is stated in the notice — on the day stated.

(9) The approval remains in force until it is cancelled.

[Section 103 inserted: No. 78 of 2003 s. 17.]

104. What assumed identity approval authorises

(1) An assumed identity approval authorises the officer of the Commission to whom it applies to acquire and use an assumed identity specified in the approval if the acquisition and use are —

(a) in the course of, or incidental to, duty; and

(b) in accordance with the assumed identity approval.

(2) The officer can use an assumed identity under the authority of an assumed identity approval without having actually acquired the identity.

(3) For the purposes of this Division —

(a) an officer acquires an assumed identity by obtaining evidence of the identity under the assumed identity, including by obtaining the making of an entry in any register or other record of information; and

(b) an officer uses an assumed identity by —

(i) representing it to be the officer's true identity; or

(ii) acting in a way that is consistent with such an identity rather than the officer's real identity.

(4) An assumed identity approval also authorises —

(a) the making (by the officer to whom the approval applies or by the Commission) of any false or misleading representation about the officer, for the purposes of or in connection with the acquisition or use of the assumed identity by the officer; and

(b) the use by the officer of the assumed identity to obtain evidence of the identity.

[Section 104 inserted: No. 78 of 2003 s. 17.]

105. Issuing evidence of assumed identity

(1) The Commission may request the chief officer of an issuing agency to —

(a) produce evidence of an assumed identity in accordance with an assumed identity approval; and

(b) give evidence of an assumed identity to the officer specified in the approval.

(2) The request must state a reasonable period for compliance with the request.

(3) The chief officer of a public authority who receives a request under subsection (1) is authorised and required to comply with the request.

(4) The chief officer of an issuing agency that is not a public authority who receives a request under subsection (1) is authorised to comply with the request, but does not have to do so.

(5) For the purpose of complying with a request under this section, the chief officer, and any other officer of the issuing agency acting in accordance with the directions of the officer in charge, are authorised to provide evidence of identity and make an appropriate entry in a register or other record of information in accordance with the request.

(6) In subsection (5) —

appropriate entry, in respect of an assumed identity, means a written or electronic entry that, either alone or with other entries, is not inconsistent with the assumed identity being a real identity.

[Section 105 inserted: No. 78 of 2003 s. 17.]

106. Court orders as to entries in register

(1) A judge of the Supreme Court may order the Registrar to make an entry in a register under the *Births, Deaths and Marriages Registration Act 1998* in relation to the acquisition of an assumed identity under an assumed identity approval.

(2) The judge may make the order —

(a) on application of the Commission; and

(b) if satisfied the order is justified having regard to the nature of the activities to be undertaken by the officer of the Commission under the assumed identity approval.

(3) The Registrar must give effect to the order —

(a) within the period stated in the order; or

(b) if no period is stated in the order — within 28 days after the day on which the order is made.

[Section 106 inserted: No. 78 of 2003 s. 17.]

107. Hearing of application under s. 106 or 109

(1) An application under section 106 or 109 is to be heard in closed court.

(2) A transcript of the proceedings on the application is not to be made.

(3) No record of the application or of an order in relation to the application is to be available for search by any person, except by direction of a judge.

(4) Nothing in this section prevents a person who was present at an application from giving oral evidence to a court about things that happened at the application.

[Section 107 inserted: No. 78 of 2003 s. 17.]

108. Cancellation of evidence of assumed identity

(1) The chief officer of an issuing agency who produces evidence of an assumed identity under this Division is to cancel the evidence if directed in writing to do so by the Commission.

(2) This section does not apply to an entry in a register because of an order under section 106.

(3) In this section —

cancel includes delete or alter an entry in a record of information.

[Section 108 inserted: No. 78 of 2003 s. 17.]

109. Cancellation of approval affecting entry in register

(1) This section applies if —

(a) the Commission cancels an approval for an assumed identity; and

(b) there is an entry in relation to that identity in a register because of an order under section 106.

(2) If this section applies, the Commission must apply for an order under section 110 within 28 days after the approval is cancelled.

[Section 109 inserted: No. 78 of 2003 s. 17.]

110. Court may order entries in register to be cancelled

(1) On application of the Commission, a judge of the Supreme Court may order the Registrar to cancel an entry that has been made in a register under an order under section 106.

(2) The Registrar must give effect to the order within 28 days after the day on which the order is made.

[Section 110 inserted: No. 78 of 2003 s. 17.]

111. Protection from liability

(1) The chief officer, or another officer, of an issuing agency who does something that, apart from this section, would be an offence, is not criminally responsible for the offence if the thing is done to comply with a request under section 105 or 108 or an order under section 106 or 110.

(2) If an officer of the Commission to whom an assumed identity approval applies does something that, apart from this section, would be an offence, the officer is not criminally responsible for the offence if —

(a) the thing is done in the course of acquiring or using an assumed identity in accordance with the approval; and

(b) the thing is done in the course of duty; and

(c) the thing would not be an offence if the assumed identity were the officer's real identity.

[Section 111 inserted: No. 78 of 2003 s. 17.]

112. Commission to indemnify agencies and officers

(1) The Commission must indemnify an issuing agency, or an officer of the agency, for any liability incurred by the agency or officer (including reasonable costs) if —

(a) the liability is incurred because of something done by the agency or officer to comply with a request under

section 105, a direction under section 108 or an order under section 106 or 110 and in the course of duty; and

(b) any requirements prescribed by the regulations have been met.

(2) The Commission must indemnify an officer of the Commission to whom an assumed identity approval applies for any liability incurred by the officer (including reasonable costs) because of something done by the officer if —

(a) the thing is done in the course of acquiring or using an assumed identity in accordance with the approval; and

(b) the thing is done in the course of the officer's duty; and

(c) any requirements prescribed under the regulations have been met.

[Section 112 inserted: No. 78 of 2003 s. 17.]

113. Operation of s. 111 and 112 limited in some cases

(1) Sections 111 and 112 do not apply to anything done by an officer of the Commission to whom an assumed identity approval applies if —

(a) a particular skill or qualification is needed to do the thing; and

(b) the officer does not have that skill or qualification.

(2) Subsection (1) applies whether or not the officer has acquired, as evidence of the assumed identity, a document that establishes that he or she has that skill or qualification.

[Section 113 inserted: No. 78 of 2003 s. 17.]

114. Identity of certain officers not to be disclosed in legal proceedings

(1) In this section —

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

(2) If, in proceedings before a court, the identity of an officer of the Commission in respect of whom an assumed identity approval is or was in force may be disclosed, the court must, unless it considers that the interests of justice otherwise require —

(a) ensure that such parts of the proceedings as relate to the real identity of the officer are held in private; and

(b) make such orders as to the suppression of evidence given before it as, in its opinion, will ensure that the identity of the officer is not disclosed.

(3) In particular, the court —

(a) may allow an officer in respect of whom an assumed identity approval was or is in force to appear before it under the assumed identity or under a code name or code number; and

(b) may make orders prohibiting the publication of any information (including information derived from evidence before it) that identifies, or might facilitate the identification of, any person who has been or is proposed to be called to give evidence.

(4) A person who discloses information in contravention of an order in force under this section is guilty of a crime.

Penalty: Imprisonment for 5 years and a fine of $100 000.

[Section 114 inserted: No. 78 of 2003 s. 17.]

115. Information about identity not to be disclosed

A person who, either directly or indirectly, makes a record of, or discloses, to another person, any information relating to the provision of evidence of identity or the making of an entry in a register or other record of information under this Division,

unless it is necessary to do so for the purposes of this Division, is guilty of a crime.

Penalty: Imprisonment for 5 years and a fine of $100 000.

[Section 115 inserted: No. 78 of 2003 s. 17.]

116. Misuse of assumed identity

(1) An officer of the Commission to whom an assumed identity approval applies must not misuse an assumed identity covered by the approval.

Penalty: Imprisonment for 3 years and a fine of $60 000.

(2) For the purposes of subsection (1), an officer of the Commission misuses an assumed identity covered by an approval if —

(a) the officer acquires evidence of, or uses, the assumed identity; and

(b) the acquisition or use is not —

(i) in accordance with the approval; and

(ii) in the course of duty.

[Section 116 inserted: No. 78 of 2003 s. 17.]

117. Admissibility of certain Commission documents

(1) A document purporting to be an approval granted by the Commission is admissible in any legal proceedings.

(2) A certificate signed by the Commission stating that —

(a) a person is authorised by this Division to prepare and provide a specified document or make a specified entry; or

(b) on a specified date, or during a specified period, a specified officer of the Commission was authorised to acquire and use a specified assumed identity in accordance with specified conditions,

is admissible in any legal proceedings and is conclusive evidence of the matters specified in the certificate.

[Section 117 inserted: No. 78 of 2003 s. 17.]

118. Assumed identity approvals to be reviewed periodically

The Commission must review each assumed identity approval at least once every 6 months while the approval is in force.

[Section 118 inserted: No. 78 of 2003 s. 17.]

Division 4 — Controlled operations and integrity testing programmes

[Heading inserted: No. 78 of 2003 s. 17.]

119. Terms used

In this Division —

authorised operation means a controlled operation or integrity testing programme for which an authority is in force;

authority means an authority in force under this Division, and includes any variation of such an authority;

civilian participant in an authorised operation means a participant in the operation who is not an officer of the Commission;

controlled activity means an activity for which a person would, but for section 128, be criminally responsible;

controlled operation means an operation that —

(a) is conducted, or intended to be conducted, for the purpose of obtaining or facilitating the obtaining of evidence for the purposes of an investigation; and

(b) involves or may involve a controlled activity;

formal authority has the meaning given by section 121(2);

integrity testing programme has the meaning given by section 123;

officer participant in an authorised operation means a participant in the operation who is an officer of the Commission;

participant in an authorised operation means a person who is authorised under this Division to engage in controlled activities for the purposes of the operation;

urgent authority has the meaning given by section 121(2).

[Section 119 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 23.]

120. Division does not limit certain court powers

The provisions of this Division are not intended to limit a discretion that a court has —

(a) to admit or exclude evidence in any proceedings; or

(b) to stay criminal proceedings in the interests of justice.

[Section 120 inserted: No. 78 of 2003 s. 17.]

121. Controlled operation, grant of authority to conduct

(1) The Commission may grant an authority to conduct a controlled operation.

(2) The authority may be granted —

(a) by means of a written document signed by the Commission (a ***formal authority***); or

(b) by such other means as are available, including (but not limited to) orally in person, by telephone or by 2-way radio (an ***urgent authority***).

(3) The authority must —

(a) specify the officer of the Commission responsible for the operation; and

(b) identify each person who may engage in controlled activities for the purposes of the operation; and

(c) identify the controlled operation; and

(d) specify —

(i) with respect to officer participants, the nature of the controlled activities that those officers may engage in; and

(ii) with respect to civilian participants, the nature of the controlled activities that each participant may engage in;

and

(e) specify a period, not exceeding 6 months, for which the authority is to remain in force; and

(f) specify the day on which and time when, the authority is given.

(4) A person is sufficiently identified for the purposes of subsection (3)(a) or (b) if the person is identified —

(a) by an assumed identity under which the person is operating; or

(b) by a code name or number,

so long as the assumed identity, code name or code number can be matched to the person's identity by reference to documentation kept by the Commission.

(5) For the purposes of subsection (3)(c) a controlled operation may be identified by reference to a plan of the controlled operation held by the Commission.

(6) The authority may be granted subject to conditions specified in the authority.

(7) If the Commission grants an urgent authority, the Commission must —

(a) ensure that written notes are kept of the following matters —

(i) the date and time when the authority was granted; and

(ii) the particulars referred to in subsections (3) and (6);

and

(b) as soon as practicable prepare a written document that complies with subsection (3) and includes any conditions subject to which the authority was granted.

(8) Unless it is sooner cancelled, an authority remains in force for the period specified in the authority.

[Section 121 inserted: No. 78 of 2003 s. 17.]

122. Limits as to what may be done in, granting authority for, or who may take part in, controlled operation

(1) A participant in a controlled operation must not —

(a) intentionally induce another person to engage in misconduct that there is no reason to suspect that person has previously engaged in; or

(b) engage in conduct that is likely to seriously endanger the health or safety of that or any other participant, or any other person, or to result in serious loss or damage to property.

(2) An authority to conduct a controlled operation in respect of a matter for which there is not an allegation of misconduct must not be granted unless each person to be investigated under the controlled operation is —

(a) a police officer; or

(b) a person of a class prescribed by the regulations.

(2A) Subsection (2) does not apply to an authority to conduct a controlled operation in respect of a matter relating to the Commission's functions under section 21AD.

(3) A person must not be authorised to participate in a controlled operation unless the Commission is satisfied that the person has the appropriate skills to participate in the operation.

(4) A person who is not an officer of the Commission —

(a) must not be authorised to participate in any aspect of a controlled operation unless the Commission is satisfied that it is wholly impracticable for an officer of the Commission to participate in that aspect of the operation; and

(b) must not be authorised to engage in a controlled activity unless it is wholly impracticable for the person to participate in the aspect of the controlled operation referred to in paragraph (a) without engaging in that activity.

[Section 122 inserted: No. 78 of 2003 s. 17; amended: No. 10 of 2018 s. 11.]

123. Integrity testing programme, grant of authority to conduct

(1) The Commission may grant an authority for an officer of the Commission or another person to conduct a programme (an ***integrity testing programme***) to test the integrity of any particular public officer or class of public officers.

(2) An integrity testing programme may involve an act or omission (by a person who is participating in the programme) that offers a public officer whose integrity is being tested the opportunity to engage in behaviour, whether lawful or unlawful, in contravention of the principles of integrity required of a public officer.

(3) The authority must be in writing signed by the Commission.

(4) The authority must —

(a) specify the officer of the Commission responsible for the programme; and

(b) specify the names of any persons who are authorised to participate in the programme; and

(c) identify the integrity testing programme; and

(d) specify the nature of the particular activities in which the persons specified in the authority are authorised to engage; and

(e) specify a period, not exceeding 6 months, for which the authority is given; and

(f) specify a date and time, being not earlier than its signing, when the authority comes into force.

(5) For the purposes of subsection (4)(c) an integrity testing programme may be identified by reference to a plan of the programme held by the Commission.

(6) A person is sufficiently identified for the purposes of subsection (4)(a) or (b) if the person is identified —

(a) by an assumed identity under which the person is operating; or

(b) by a code name or number,

so long as the assumed identity, code name or code number can be matched to the person's identity by reference to documentation kept by the Commission.

(7) The authority may be granted subject to conditions specified in the authority.

(8) An authority to conduct an integrity testing programme in respect of a matter for which there is not an allegation of misconduct must not be granted unless each person to be tested under the integrity testing programme is —

(a) a police officer; or

(b) a person of a class prescribed by the regulations.

(9) Unless it is sooner cancelled, an authority remains in force for the period specified in the authority.

[Section 123 inserted: No. 78 of 2003 s. 17.]

124. Varying authority

(1) The Commission may vary an authority.

(2) The variation must —

(a) identify the authorised operation for which the authority is in force; and

(b) specify the date and time when the variation of the authority is granted; and

(c) describe the variation.

(3) A variation of an authority to conduct a controlled operation may be granted —

(a) by means of a written document signed by the Commission (a ***formal variation of an authority***); or

(b) by such other means as are available, including (but not limited to) orally in person, by telephone or by 2-way radio (an ***urgent variation of an authority***).

(4) A variation of an authority to conduct an integrity testing programme must be granted by means of a written document signed by the Commission.

(5) If the Commission grants an urgent variation of an authority, the Commission must —

(a) ensure that written notes are kept of the date and time when the variation of authority was granted; and

(b) as soon as practicable prepare a written document that complies with subsection (2).

[Section 124 inserted: No. 78 of 2003 s. 17.]

125. Cancelling authority

(1) The Commission may, by order in writing, cancel an authority.

(2) Cancellation of an authority takes effect at the time the order is made or at such later time as may be specified in the order.

[Section 125 inserted: No. 78 of 2003 s. 17.]

126. Effect of authority

While it is in force, an authority for a controlled operation or an integrity testing programme —

(a) authorises each officer participant to engage in the controlled activities specified in the authority in respect of the officer participants; and

(b) authorises each civilian participant to engage in the particular controlled activities specified in the authority in respect of that participant.

[Section 126 inserted: No. 78 of 2003 s. 17.]

127. Defect in authority

Any authority or variation of authority is not invalidated by any defect, other than a defect that affects the authority or variation in a material particular.

[Section 127 inserted: No. 78 of 2003 s. 17.]

128. Protection from criminal responsibility for acts in authorised operation

Despite any written or other law, a participant who engages in an activity in an authorised operation in the course of, and for the purposes of the operation, is not, if engaging in that activity is an offence, criminally responsible for the offence, if —

(a) the activity is authorised by, and is engaged in accordance with, the authority for the operation; and

(b) in the case of a controlled operation, the activity meets the requirements of section 130.

[Section 128 inserted: No. 78 of 2003 s. 17.]

129. Indemnity against civil liability for officer participants

(1) The Commission must indemnify an officer of the Commission against any civil liability (including reasonable costs) the officer incurs because of conduct the officer engages in as an officer participant if —

(a) the officer engages in the conduct in the course of, and for the purposes of, an operation authorised by, and in accordance with, the authority for the operation; and

(b) in the case of a controlled operation, the conduct meets the requirements of section 130; and

(c) the requirements specified in the regulations have been met.

(2) The Commission must indemnify a person who is not an officer of the Commission against any civil liability (including reasonable costs) the person incurs because of conduct the person engages in as a civilian participant if —

(a) the person engages in the conduct in the course of, and for the purposes of, an operation authorised by, and in accordance with, the authority for the operation; and

(b) in the case of a controlled operation, the conduct meets the requirements of section 130; and

(c) the requirements specified in the regulations have been met.

[Section 129 inserted: No. 78 of 2003 s. 17.]

130. Requirements to be met to obtain protection from criminal responsibility or indemnity

An activity or conduct meets the requirements of this section if —

(a) the activity or conduct does not involve any participant in the operation intentionally inducing a person to engage in misconduct that there is no reason to suspect that person had previously engaged in; and

(b) the activity or conduct does not involve any participant in the operation engaging in any conduct that is likely to seriously endanger the health or safety of that or any other participant, or any other person, or to result in serious loss or damage to property.

[Section 130 inserted: No. 78 of 2003 s. 17.]

131. Effect of being unaware of variation or cancellation of authority

(1) If an authority is varied in a way that limits its scope, this Division continues to apply to any participant in the operation as if the authority had not been varied in that way, for so long as the participant —

(a) is unaware of the variation; and

(b) is not reckless about the existence of the variation.

(2) If an authority for a controlled operation is cancelled, this Division continues to apply to any participant in the operation as if the authority had not been cancelled in that way, for so long as the participant —

(a) is unaware of the cancellation; and

(b) is not reckless about the existence of the cancellation.

(3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an authority if —

(a) the person is aware of a substantial risk that the variation or cancellation has happened; and

(b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

[Section 131 inserted: No. 78 of 2003 s. 17.]

132. Protection from criminal responsibility for some ancillary activities

(1) This section applies to an activity such as aiding and abetting the commission of an offence or of conspiring to commit an

offence (an ***ancillary activity***) for which a person may be criminally responsible because it involves an activity for which the other person would (but for section 128) be criminally responsible (the ***related controlled activity***).

(2) Despite any other Act or law, a person who engages in an ancillary activity that is an offence (whether or not that person is a participant in an authorised operation) is not criminally responsible for the offence if at the time the person engaged in the ancillary activity he or she believed the related controlled activity was being engaged in, or would be engaged in, by a participant in an authorised operation.

[Section 132 inserted: No. 78 of 2003 s. 17.]

133. Admissibility of certain Commission documents

(1) A document purporting to be an authority granted by the Commissioner is admissible in any legal proceedings.

(2) A certificate signed by the Commission stating that, on a specified date or during a specified period, a specified person was authorised under this Division to participate in a controlled operation or integrity testing programme involving a specified act or omission is admissible in any legal proceedings and is conclusive evidence of the matters specified in the certificate.

[Section 133 inserted: No. 78 of 2003 s. 17.]

134. Identity of certain participants not to be disclosed in legal proceedings

(1) In this section —

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

(2) If, in proceedings before a court, the identity of a participant in an authorised operation is in issue or may be disclosed, the court must, unless it considers that the interests of justice otherwise require —

(a) ensure that such parts of the proceedings as relate to the real identity of the participant are held in private; and

(b) make such orders as to the suppression of evidence given before it as, in its opinion, will ensure that the identity of the participant is not disclosed.

(3) In particular, the court —

(a) may allow a participant in an authorised operation who has been authorised to participate in the operation under an assumed name to appear before it under the assumed identity or under a code name or code number; and

(b) may make orders prohibiting the publication of any information (including information derived from evidence before it) that identifies, or might facilitate the identification of, any person who has been or is proposed to be called to give evidence.

(4) A person who discloses information in contravention of an order in force under this section is guilty of a crime.

Penalty: Imprisonment for 5 years and a fine of $100 000.

[Section 134 inserted: No. 78 of 2003 s. 17.]

Division 5 — General

[Heading inserted: No. 78 of 2003 s. 17.]

135. Law of evidence, application to Commission

Except as otherwise stated in this Act, the Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it thinks fit.

[Section 135 inserted: No. 78 of 2003 s. 17.]

136. Ancillary powers of Commission

The powers of the Commission include the power to do anything that is necessary or incidental to the performance of the Commission's functions.

[Section 136 inserted: No. 78 of 2003 s. 17; amended: No. 10 of 2018 s. 12.]

Part 7 — Examinations and deciding claims of privilege and excuse

[Heading inserted: No. 78 of 2003 s. 17.]

Division 1 — Examinations

[Heading inserted: No. 78 of 2003 s. 17.]

137. Commission may conduct examinations

(1) The Commission may conduct an examination for the purposes of an investigation under this Act or for the purposes of an investigation in respect of which an exceptional powers finding has been made under section 46 and an organised crime summons has been issued.

(2) Except as specified in the *Criminal Property Confiscation Act 2000* section 60A, this Part does not apply to examinations conducted by the Commission under Part 5 Division 2 of that Act.

[Section 137 inserted: No. 78 of 2003 s. 17; amended: No. 10 of 2018 s. 13.]

138. Conduct of examinations

(1) Before the Commission conducts an examination for the purposes of an investigation under this Act, the Commission is to inform the witness of the general scope and purpose of the investigation.

(2) Subsection (1) does not apply if the Commission considers that in the circumstances it would be undesirable to so inform the witness.

(3) Except as otherwise stated in this Act, the Commission may regulate the conduct of examinations as the Commission thinks fit.

[Section 138 inserted: No. 78 of 2003 s. 17.]

139. Examination to be private unless otherwise ordered

(1) Except as provided in section 140, an examination is not open to the public.

(2) The Commission may make an order as to who may be present during the whole or any part of an examination that is not open to the public.

(3) Nothing in an order given under subsection (2) prevents the presence at an examination, of —

(a) a person representing a witness; or

(b) an officer of the Commission; or

(c) a person allowed to be present under section 142(5).

(4) A person must not be present at an examination, or part of an examination, that is not open to the public unless the person is entitled to be present by reason of an order under subsection (2) or by reason of subsection (3).

Penalty: Imprisonment for 3 years and a fine of $60 000.

[Section 139 inserted: No. 78 of 2003 s. 17.]

140. Public examination, when allowed

(1) This section does not apply to an organised crime examination.

(2) The Commission may open an examination to the public if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so.

(3) A decision to open an examination to the public may be made at any time before or during the examination.

(4) If the Commission decides to open an examination to the public, the Commission may close the examination for a particular purpose.

[Section 140 inserted: No. 78 of 2003 s. 17.]

141. Power to examine on oath or affirmation

(1) The Commission may require a witness to take an oath or to make an affirmation.

(2) The Commissioner may administer an oath or affirmation to a witness.

[Section 141 inserted: No. 78 of 2003 s. 17.]

142. Legal representation for witnesses and others

(1) When appearing at an examination a witness may be legally represented.

(2) If the Commission has notice that a witness will not have a legal representative present at an examination, the Commission may, if it considers that in the circumstances it would be in the public interest to do so, arrange for the person to be legally represented at the examination.

(3) A witness may decline to be legally represented as arranged under subsection (2) by the Commission, and in that case the Commission is not obliged to arrange any other legal representation for the witness.

(4) The Commission may refuse to allow a witness to be represented before the Commission by a person who is already involved in an examination or is involved or suspected to be involved in a matter being investigated.

(5) The Commission may allow another person to be legally represented at an examination while a witness is giving evidence and being examined if the Commission considers there are special circumstances.

(6) A lawyer, or any other person, appointed by the Commission to assist the Commission may appear before the Commission.

[Section 142 inserted: No. 78 of 2003 s. 17; amended: No. 21 of 2008 s. 654(3).]

143. Examination of witnesses

(1) When a witness is appearing at an examination a lawyer, or any other person, appointed by the Commission to assist the Commission may, so far as the Commission thinks proper, examine the witness on any matter that the Commission considers relevant.

(2) A person representing a witness before the Commission may, so far as the Commission thinks proper, examine that witness on any matter that the Commission considers relevant.

(3) This section does not prevent the Commission from allowing any other examination that the Commission considers relevant.

[Section 143 inserted: No. 78 of 2003 s. 17; amended: No. 21 of 2008 s. 654(4).]

Division 2 — Claims of privilege and reasonable excuse

[Heading inserted: No. 78 of 2003 s. 17.]

144. Legal professional privilege

(1A) In this section —

unexplained wealth requirement means —

(a) a requirement under section 94(1A); or

(b) a requirement under section 95 made for the purposes of the Commission's functions under section 21AD.

(1) Subject to subsections (2) to (5), nothing in this Act prevents a person who is required under this Act to answer questions, give evidence, produce records, things or information or make facilities available from claiming legal professional privilege as a reason for not complying with that requirement.

(2) Subsection (1) does not apply to any privilege of a public authority or public officer in that capacity.

(3) A person is not entitled to contravene an unexplained wealth requirement in relation to any information, document or other thing on the basis that the information, document or thing is subject to legal professional privilege, or contains or is likely to contain information that would, apart from this subsection, be subject to legal professional privilege.

(4) Any information, document or other thing produced or obtained under an unexplained wealth requirement is not inadmissible in any proceedings under this Act or the *Criminal Property Confiscation Act 2000* only because the information, document or other thing would, apart from this subsection, be subject to legal professional privilege.

(5) Nothing in this section affects the operation of the *Criminal Property Confiscation Act 2000* section 139.

[Section 144 inserted: No. 78 of 2003 s. 17; amended: No. 10 of 2018 s. 14.]

145. Use of statements of witness against witness

(1) A statement or disclosure made by a witness in answer to a question that the Commission requires the witness to answer is not admissible in evidence against the person making the statement or disclosure in —

(a) any criminal proceedings other than proceedings for an offence under this Act; or

(b) proceedings for the imposition of a penalty other than —

(i) contempt proceedings; or

(ii) proceedings for an offence under this Act; or

(iii) disciplinary action.

(1A) Despite subsection (1), a statement or disclosure made by a witness in answer to a question that the Commission requires

the witness to answer is admissible in evidence against the person making the statement or disclosure —

(a) in any proceedings under the *Criminal Property Confiscation Act 2000*; and

(b) in any civil proceeding.

(2) Despite subsection (1), the witness may, in any civil or criminal proceedings, be asked about the statement or disclosure under section 21 of the *Evidence Act 1906*.

(3) For the purposes of this section, the transcript of an examination of a witness is admissible as evidence of a statement or disclosure made by the witness in answer to a question that the Commission requires the witness to answer.

[Section 145 inserted: No. 78 of 2003 s. 17; amended: No. 8 of 2009 s. 41(6); No. 10 of 2018 s. 15.]

Division 3 — General

[Heading inserted: No. 78 of 2003 s. 17.]

146. Witnesses' expenses

(1) A person appearing as a witness is entitled to be paid for the expenses of attendance.

(2) The amount of expenses payable is the amount certified by the Commission in accordance with a scale which may be prescribed or, if a scale is not prescribed, the sum the Commission certifies as reasonable.

(3) The expenses are payable by the Treasurer of the State.

(4) For the purposes of this section the Consolidated Account is, to the extent necessary, appropriated accordingly.

[Section 146 inserted: No. 78 of 2003 s. 17; amended: No. 77 of 2006 s. 4.]

147. Protection of Commission, legal representatives and witnesses

(1) The Commission has, in the performance of its functions at an examination, the same protection and immunity as a judge of the Supreme Court.

(2) A lawyer, or other person, when representing a person at an examination or assisting the Commission at an examination has the same protection and immunity as a lawyer appearing for a party in a proceeding in the Supreme Court and, if the person is a lawyer, is subject to the same liabilities as if appearing before that court.

(3) A person required to attend or appearing at an examination as a witness has the same protection as a witness in a proceeding in the Supreme Court, and is, in addition to the penalties provided by this Act, subject to the same liabilities in any civil or criminal proceeding, as a witness in any case tried in the Supreme Court.

[Section 147 inserted: No. 78 of 2003 s. 17; amended: No. 21 of 2008 s. 654(5).]

Part 8 — Arrest warrants

[Heading inserted: No. 78 of 2003 s. 17.]

148. Arrest warrants, issue and execution of

(1) Where an investigation relates to serious misconduct or a summons is issued pursuant to an application under section 48, if a person who has been served with a summons under section 96 fails to attend as required by the summons and section 97, the Commission may, on proof by a statement verified by statutory declaration that the summons was served, issue a warrant for the apprehension of that person.

(1A) If a person who has been served under the *Criminal Property Confiscation Act 2000* section 59 with a copy of an examination order made by the Commission fails to attend before the Commission as required under the examination order, the Commission may, on proof by a statement verified by statutory declaration that the examination order was served, issue a warrant for the apprehension of that person.

(2) The Commission may issue a warrant for the apprehension of a person whose evidence is desired and is necessary and relevant to the Commission's investigation if the Commission is satisfied by evidence on oath or affirmation that it is probable that the person —

(a) will not attend before the Commission to give evidence without being compelled to do so; or

(b) is about to or is making preparation to leave the State and the person's evidence will not be obtained by the Commission if the person departs.

(3) The powers conferred by subsection (2) must not be exercised unless the Commission is satisfied that the evidence of the person concerned is required for the purpose of investigating any conduct that constitutes or involves or may constitute or involve serious misconduct.

(4) A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.

(5) A warrant may be issued under subsection (2) after the issue of a summons to the person whose evidence is desired, even though the time specified in the summons for the person to attend has not yet passed.

(6) A warrant issued under this section authorises any person to whom it is addressed —

(a) to apprehend the person named in the warrant at any time and bring immediately the person before the Commission; and

(b) for that purpose, to detain the person named in the warrant in custody until released by order of the Commission or, on review, by order of the Supreme Court.

(7) The person executing the warrant may —

(a) break and enter any place, building, vessel or other thing for the purpose of executing the warrant; and

(b) use reasonable force and assistance to apprehend the person named in the warrant.

(8) Before the person acting under the warrant (the ***authorised person***) uses force that may cause damage to any property in order to gain access or entry to a place or thing, the authorised person must, if reasonably practicable —

(a) give the occupier of the place a reasonable opportunity to allow the authorised person entry or access to the place; or

(b) give the person who has possession or control of the thing a reasonable opportunity to allow the authorised person to have access to the thing,

as the case requires, unless the authorised person suspects on reasonable grounds that to do so would frustrate the effectiveness of the warrant or would endanger any person.

(9) The apprehension of a person under this section does not prevent the person from being dealt with under section 159 for contempt.

[Section 148 inserted: No. 78 of 2003 s. 17; amended: No. 35 of 2014 s. 31; No. 10 of 2018 s. 16.]

149. Conditional release of arrested person

(1) The release of a person by order of the Commission under section 148(6)(b) may be made subject to one or more of the following conditions —

(a) a condition that the person appear and report before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the Commission;

(b) conditions for the purpose of ensuring the further attendance of the person before the Commission (for example, the provision of sureties by the person, the surrender of any passport held by the person, a requirement as to where the person is to live and regular reporting by the person to the Commission);

(c) any other condition that the Commission thinks appropriate.

(2) The Commission may by order amend, revoke or add to those conditions.

(3) A person who without reasonable excuse fails to comply with a condition to which the release of the person under section 148(6)(b) is subject is guilty of an offence.

Penalty: Imprisonment for 3 years and a fine of $60 000.

[Section 149 inserted: No. 78 of 2003 s. 17.]

149A. Provision for overnight detention

If the person is required to be detained overnight, the Commission must arrange for the person to be provided with accommodation and meals to a standard comparable to that generally provided to jurors kept together overnight.

[Section 149A inserted: No. 78 of 2003 s. 17.]

150. Supreme Court may review detention of arrested person

(1) A person who has not been released by the Commission under section 148(6)(b) or whose release under that provision is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release the person or of the terms of one or more of those conditions.

(2) The Supreme Court may do any or all of the following —

(a) affirm or set aside a decision by the Commission not to release the person or any condition imposed by the Commission on the release of the person;

(b) make any order that the Commission may make in relation to the detention or release of the person;

(c) order the person be brought before the Supreme Court.

(3) The Supreme Court may also exercise its powers under subsection (2) where the Commission has not made a decision on the release of the person.

(4) An order under subsection (2) is taken to be an order of the Commission.

(5) The Commission shall facilitate the person's access to legal representation in order to make an application under subsection (1).

[Section 150 inserted: No. 78 of 2003 s. 17; amended: No. 8 of 2009 s. 41(7).]

Part 9 — Disclosure, secrecy and protection of witnesses

[Part 9 heading, formerly Part 3 heading, renumbered: No. 78 of 2003 s. 35(2).]

151. Disclosure of certain information restricted

(1) In this section —

restricted matter means any of the following —

(a) any evidence given before the Commission;

(b) the contents of any statement of information or document, or a description of any thing, produced to the Commission;

(c) the contents of any document, or a description of any thing, seized under this Act or by an authorised officer under the *Criminal Property Confiscation Act 2000*;

(d) any information that might enable a person who has been, or is about to be, examined before the Commission to be identified or located;

(e) the fact that any person has been or may be about to be examined before the Commission.

(2) Subject to subsections (3) and (4), a restricted matter must not be disclosed.

(3) Unless the Commission orders otherwise, a restricted matter may be disclosed if that matter has already been disclosed at a part of an examination that was open to the public.

(4) A restricted matter may be disclosed —

(a) in accordance with a direction of the Commission; or

(b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to a notice, summons or matter; or

(c) to a person for the purpose of obtaining legal aid relating to a notice, summons or matter; or

(d) to an officer or agent of a body corporate by the body corporate or another officer or agent of the body corporate for the purpose of ensuring compliance with a notice or summons; or

(e) by a legal practitioner for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client; or

(f) by a legal practitioner referred to in paragraph (b) for the purpose of giving legal advice, making representations, or obtaining legal aid, relating to the notice, summons or matter; or

(g) by a person referred to in paragraph (c) for the purpose of obtaining legal aid relating to the notice, summons or matter; or

(h) if that disclosure is otherwise authorised or required under this Act.

(5) This section does not apply to —

(a) the Commission or a relevant person as defined in section 152(1); or

(b) a relevant person as defined in section 208(1),

in relation to a restricted matter that is official information under section 152 or 208, as the case may be.

(6) This section does not apply to —

(a) an authority or person referred to in section 153 or 209; or

(b) any person or employee under the control of an authority or person referred to in section 153 or 209,

in relation to a restricted matter that is information to which section 153 or 209, as the case may be, applies.

(7) If a restricted matter is disclosed contrary to this section, any person who so discloses the matter, or causes the matter to be so disclosed, commits an offence.

Penalty: Imprisonment for 3 years and a fine of $60 000.

[Section 151, formerly section 18, amended: No. 78 of 2003 s. 35(13); renumbered as section 151: No. 78 of 2003 s. 35(1); No. 10 of 2018 s. 17.]

152. Disclosure by Commission or its officers

(1) In this section —

Commission lawyer means —

(a) a legal practitioner appointed to assist the Commission; and

(b) a person who assists, or performs services for or on behalf of a legal practitioner appointed to assist the Commission in the performance of the legal practitioner's duties assisting the Commission;

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

official information, in relation to a relevant person, means information acquired by the person by reason of, or in the course of, the performance of the person's functions under this Act;

produce includes permit access to;

relevant person means a person who is or was —

(a) an officer of the Commission; or

(b) a Commission lawyer.

(2) Subject to subsections (3), (4) and (6) a relevant person must not, either directly or indirectly —

(a) make a record of any official information; or

(b) disclose any official information.

Penalty: Imprisonment for 3 years and a fine of $60 000.

(3) Despite subsection (2), a relevant person may make a record of official information —

(a) under or for the purposes of this Act;

(b) otherwise in connection with the performance of the person's functions under this Act.

(4) Despite subsection (2), official information may be disclosed by a relevant person if it is disclosed —

(a) under or for the purposes of this Act; or

(b) for the purposes of a prosecution or disciplinary action instituted as a result of an investigation conducted by the Commission or the Parliamentary Inspector under this Act or any other prosecutions or disciplinary action in relation to misconduct; or

(c) when the Commission has certified that disclosure is necessary in the public interest; or

(d) to either House of Parliament or to the Standing Committee; or

(e) to any prescribed authority or person; or

(f) otherwise in connection with the performance of the person's functions under this Act.

(5) A relevant person is not authorised to disclose operational information under subsection (4)(d) or (e) unless the Commission has certified under subsection (4)(c) that disclosure is necessary in the public interest.

(6) Despite subsection (2), a relevant person may disclose the fact that an allegation has been received or initiated by the Commission or the details of an allegation.

(7) A relevant person cannot be required to produce or disclose any official information in or to any court except for the purposes of

a prosecution or disciplinary action instituted as a result of an investigation conducted by the Commission or the Parliamentary Inspector under this Act.

(8) This section also applies to the Commission as if references to official information were references to all information acquired by the Commission by reason of, or in the course of, the performance of the Commission's functions under this Act.

[Section 152, formerly section 19, amended: No. 78 of 2003 s. 14; renumbered as section 152: No. 78 of 2003 s. 35(1).]

153. Disclosure by other officials

(1) In this section —

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

produce includes permit access to.

(2) This section applies to information if, in circumstances referred to in section 152(4), it is disclosed to an authority or person for use in connection with the performance of a function of the authority or person under a written law.

(3) The authority or person, or any person or employee under the control of the authority or person —

(a) must not, either directly or indirectly —

(i) make a record of information to which this section applies; or

(ii) disclose any information to which this section applies,

except for the purpose for which it was disclosed to the authority or person; and

(b) cannot be required to produce or disclose the information in or to any court except for the purposes of a prosecution or disciplinary action instituted as a result

of an investigation conducted by the Commission or the Parliamentary Inspector under this Act.

Penalty, for a contravention of paragraph (a): Imprisonment for 3 years and a fine of $60 000.

(4) Subsection (3) does not prevent the disclosure of the fact that an allegation has been received or initiated by the Commission or the details of an allegation.

[Section 153, formerly section 20, amended: No. 78 of 2003 s. 35(13); renumbered as section 153: No. 78 of 2003 s. 35(1).]

154. Exclusion of other laws

Section 151(7), 152(2) and 153(3) apply despite any law or rule of law, written or otherwise, under which a person may be required to produce or disclose any matter of information.

[Section 154, formerly section 21, amended: No. 78 of 2003 s. 35(13); renumbered as section 154: No. 78 of 2003 s. 35(1).]

155. Application of *Telecommunications (Interception and Access) Western Australia Act 1996*

Section 22 of the *Telecommunications (Interception and Access) Western Australia Act 1996* does not apply to prevent the disclosure of any information or record for the purposes of any proceedings for an offence under this Act.

[Section 155, formerly section 22, renumbered as section 155: No. 78 of 2003 s. 35(1); amended: No. 2 of 2011 s. 13.]

156. Witness protection arrangements, Commission may make

(1) If it appears to the Commission that, because a person —

(a) is helping or has helped the Commission in the performance of its functions; or

(b) is to attend, is attending, or has attended, before the Commission or an officer of the Commission to give evidence or to produce a document or thing; or

(c) proposes to produce, or has produced, a document or thing to the Commission or an officer of the Commission,

the safety of any person may be prejudiced or any person may be subjected to intimidation or harassment, the Commission may make arrangements to avoid prejudice to the safety of any person, or to protect any person from intimidation or harassment.

(2) The Commission may make such arrangements as it thinks fit under subsection (1), including arrangements with —

(a) the Minister; and

(b) the Commissioner of Police; and

(c) the Commissioner (however designated) of the police force of another State or Territory; and

(d) the Commissioner of the Australian Federal Police; and

(e) any other person, body or authority the Commission thinks fit.

(3) Nothing in this section affects the *Witness Protection (Western Australia) Act 1996*.

[Section 156, formerly section 23, renumbered as section 156: No. 78 of 2003 s. 35(1).]

Part 10 — Contempt

[Heading inserted: No. 78 of 2003 s. 22.]

157. Term used: reasonable excuse

In this Part —

reasonable excuse, in relation to a failure to produce any document or other thing, means an excuse that would excuse a similar failure by a witness, or a person summoned as a witness, before the Supreme Court except that it does not include as an excuse for failing to produce any document or other thing, that —

(a) the production of the document or other thing might incriminate or tend to incriminate the person or render the person liable to a penalty; or

(b) the production of the document or other thing would be in breach of an obligation of the person not to disclose information, or not to disclose the existence or contents of a document, whether the obligation arose under an enactment or otherwise; or

(c) the production of the document or other thing might, but for section 144(3), be subject to legal professional privilege.

[Section 157 inserted: No. 78 of 2003 s. 22; amended: No. 10 of 2018 s. 18.]

158. Failing to comply with notice given under s. 94 or 95

A person who —

(a) fails, without reasonable excuse, to comply with a notice served on the person under section 94 or 95; or

(b) in purported compliance with a notice served on the person or some other person under section 94 or 95,

furnishes information knowing it to be false or misleading in a material particular,

is in contempt of the Commission.

[Section 158 inserted: No. 78 of 2003 s. 22; amended: No. 8 of 2009 s. 41(8).]

159. Failing to obey summons issued under s. 96

A person who has been served with a summons under section 96 and fails, without reasonable excuse, to —

(a) attend as required by the summons and section 97; or

(b) produce any document or other thing as required by the summons,

is in contempt of the Commission.

[Section 159 inserted: No. 78 of 2003 s. 22.]

160. Failing to be sworn or to give evidence when summonsed

(1) A person served with a summons under section 96 requiring the person to attend and give evidence who —

(a) refuses or fails to be sworn or make an affirmation; or

(b) fails to answer any question relevant to the investigation that the Commission requires the person to answer,

is in contempt of the Commission.

(2) Despite sections 147(3) and 163(6), a person required by the Commission to answer a question relevant to the investigation is not excused from the requirement to answer the question on the ground that the answer might incriminate or tend to incriminate the person or render the person liable to a penalty.

[Section 160 inserted: No. 78 of 2003 s. 22.]

160A. Contempts in relation to examination orders under the *Criminal Property Confiscation Act 2000*

(1) Subsection (2) applies to a person who has been served under the *Criminal Property Confiscation Act 2000* section 59 with an examination order made by the Commission.

(2) A person to whom this subsection applies is in contempt of the Commission if the person fails, without reasonable excuse, to —

(a) attend before the Commission as required under the examination order; or

(b) produce any document or other thing as required under the examination order.

(3) Subsection (4) applies to a person who has been served under the *Criminal Property Confiscation Act 2000* section 59 with an examination order made by the Commission requiring the person to attend before the Commission and give information.

(4) A person to whom this subsection applies is in contempt of the Commission if the person —

(a) refuses or fails to be sworn or make an affirmation; or

(b) fails to answer any question relevant to the examination that the Commission requires the person to answer.

[Section 160A inserted: No. 10 of 2018 s. 19.]

161. Hindering execution of search warrants

(1) In this section —

authorised person has the meaning given by section 101(1).

(2) A person who, without reasonable excuse —

(a) prevents or attempts to prevent an authorised person from exercising a power conferred by or under section 101; or

(b) hinders or obstructs an authorised person in the exercise of a power conferred by or under section 101; or

(c) fails to comply with a direction or request of an authorised person under section 101(2)(b) or (4)(d); or

(d) fails to comply with a condition imposed on the person under section 101(6)(b),

is in contempt of the Commission.

(3) A person who furnishes to an authorised person acting under a warrant issued under section 101 information that is false in a material particular is in contempt of the Commission.

[Section 161 inserted: No. 78 of 2003 s. 22.]

162. Other contempts of Commission

(1A) In this section —

examination includes an examination conducted by the Commission under the *Criminal Property Confiscation Act 2000*.

(1) A person who —

(a) insults the Commission while the Commission is conducting an examination; or

(b) deliberately interrupts an examination conducted by the Commission; or

(c) at an examination conducted by the Commission, contravenes a provision of this Act relating to the examination; or

(d) creates or continues or joins in creating or continuing, a disturbance in or near a place where the Commission is conducting an examination; or

(e) does anything else at an examination conducted by the Commission or otherwise that would be contempt of court if the Commission were a judge acting judicially,

is in contempt of the Commission.

(2) The Commission may order that a person who under subsection (1) is in contempt of the Commission at an examination be excluded from the place where the examination is being conducted.

(3) An officer of the Commission, acting under the Commission's order, may, using necessary and reasonable help and force, exclude the person from the place.

[Section 162 inserted: No. 78 of 2003 s. 22; amended: No. 10 of 2018 s. 20.]

163. Punishment of contempt of Commission

(1) Where a contempt of the Commission is alleged to have taken place, the Commission may present to the Supreme Court a certificate setting out the details of the act or omission that the Commission considers constitutes the alleged contempt.

(2) A certificate presented under subsection (1) is prima facie evidence of the matters certified in it.

(3) Where a certificate is presented under subsection (1), the Supreme Court has jurisdiction as if the contempt were a contempt of that Court.

(4) A person is not liable to be punished for contempt under this section in respect of failure to comply with a notice served under section 95 or a summons served under section 96 if, in the case of a failure without reasonable excuse to produce any document or other thing, the person proves that the document or other thing was not relevant to the investigation.

(5) Subsection (4) does not apply in respect of failure to comply with an examination summons served under section 96.

(6) Except as otherwise provided in this Act, a person required to comply with a notice served under section 94 or 95 or a summons served under section 96 has the same protection, and is subject to the same liabilities in any civil or criminal

proceedings, as a witness in any case tried in the Supreme Court.

[Section 163 inserted: No. 78 of 2003 s. 22; amended: No. 10 of 2018 s. 21.]

164. Conduct that is both a contempt and an offence

(1) An act may be punished as a contempt of the Commission even though it could be punished as an offence.

(2) An act may be punished as an offence even though it could be punished as a contempt of the Commission.

(3) If an act constitutes both an offence and a contempt of the Commission the offender is not liable to be punished twice.

[Section 164 inserted: No. 78 of 2003 s. 22.]

Part 11 — Offences

[Heading inserted: No. 78 of 2003 s. 22.]

165. Obstructing Commission, Parliamentary Inspector or their officers

A person who wilfully delays, obstructs or otherwise hinders the performance of a function by —

(a) the Commission; or

(b) an officer of the Commission; or

(c) the Parliamentary Inspector; or

(d) an officer of the Parliamentary Inspector,

commits an offence.

Penalty: Imprisonment for 3 years and a fine of $60 000.

[Section 165 inserted: No. 78 of 2003 s. 22.]

166. Malicious disclosure of false allegation of misconduct

A person who maliciously discloses that an allegation of misconduct has been or is or may be about to be made to the Commission or the Public Sector Commissioner, knowing the allegation to be false in a material particular, commits an offence.

Penalty: Imprisonment for 3 years and a fine of $60 000.

[Section 166 inserted: No. 78 of 2003 s. 22; amended: No. 35 of 2014 s. 24.]

167. Disclosure contrary to notation under s. 99

(1) In this section —

notation means a notation made under section 99 on a notice or summons;

notice or summons means a notice or summons containing a notation;

official matter has the meaning given to that term in section 99;

restricted matter means any of the following —

(a) the existence of a notice or summons or any information about it;

(b) the existence of any official matter connected with a notice or summons or any information about that official matter.

(2) This section applies to —

(a) a person who is served with a notice or summons; or

(b) a person to whom restricted matter is disclosed in circumstances referred to in subsection (4).

(3) Subject to subsection (4), a restricted matter must not be disclosed by a person to whom this section applies.

Penalty: Imprisonment for 3 years and a fine of $60 000.

(4) A restricted matter may be disclosed —

(a) in accordance with the circumstances, if any, specified in the notation; or

(b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the notice or summons; or

(c) to a person for the purpose of obtaining legal aid relating to the notice or summons; or

(d) to an officer or agent of a body corporate by the body corporate or another officer or agent of the body corporate for the purpose of ensuring compliance with the notice or summons; or

(e) by a legal practitioner for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client; or

(f) by a legal practitioner referred to in paragraph (b) for the purpose of giving legal advice, making representations,

or obtaining legal aid, relating to the notice, summons or matter; or

(g) by a person referred to in paragraph (c) for the purpose of obtaining legal aid relating to the notice, summons or matter.

(5) This section ceases to apply if —

(a) under section 99(7) the notation ceases to have effect; or

(b) a period of 5 years elapses after the issue of the notice or summons.

(6) Subsection (5) does not affect the operation of section 151 in relation to a restricted matter.

(7) A reference in this section to disclosing the existence of something includes disclosing information from which a person could reasonably be expected to infer its existence.

[Section 167 inserted: No. 78 of 2003 s. 22.]

168. Giving false testimony

A person who, at an examination before the Commission or an inquiry before the Parliamentary Inspector, gives evidence that the person knows is false or misleading in a material particular is guilty of a crime.

Penalty: Imprisonment for 5 years and a fine of $100 000.

[Section 168 inserted: No. 78 of 2003 s. 22.]

169. Bribery of witness

A person who —

(a) gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for, any person, upon any agreement or understanding that any person called or to be called as a witness before the

Commission or the Parliamentary Inspector will give false testimony or withhold true testimony; or

(b) attempts by any means to induce a person called or to be called as a witness before the Commission or Parliamentary Inspector to give false testimony, or to withhold true testimony; or

(c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for that or any other person, upon any agreement or understanding that a witness before the Commission or Parliamentary Inspector will give false testimony or withhold true testimony,

is guilty of a crime.

Penalty: Imprisonment for 5 years and a fine of $100 000.

[Section 169 inserted: No. 78 of 2003 s. 22.]

170. Fraud on witness

A person who practises any fraud or deceit on, or knowingly makes or exhibits any false statement, representation, token, or writing to, a person called or to be called as a witness before the Commission or the Parliamentary Inspector with intent to affect the testimony of that person as a witness, is guilty of an offence.

Penalty: Imprisonment for 3 years and a fine of $60 000.

[Section 170 inserted: No. 78 of 2003 s. 22.]

171. Destroying evidence

A person who, knowing that a document or other thing is or may be required by the Commission or Parliamentary Inspector, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with the intention of preventing it from being effectively used in evidence, is guilty of an offence.

Penalty: Imprisonment for 3 years and a fine of $60 000.

[Section 171 inserted: No. 78 of 2003 s. 22.]

172. Preventing witness from attending

A person who wilfully prevents, or wilfully endeavours to prevent, a person who has been summoned to attend as a witness before the Commission or Parliamentary Inspector from attending as a witness, or from producing anything in evidence, as required by the summons is guilty of a crime.

Penalty: Imprisonment for 5 years and a fine of $100 000.

[Section 172 inserted: No. 78 of 2003 s. 22.]

173. Injury or detriment to witness

A person who uses, causes, inflicts, or procures, any violence, punishment, damage, loss, or disadvantage to any other person for or on account of the other person having appeared as a witness before the Commission or Parliamentary Inspector, or for or on account of any evidence given by the other person before the Commission or Parliamentary Inspector, is guilty of a crime.

Penalty: Imprisonment for 5 years and a fine of $100 000.

[Section 173 inserted: No. 78 of 2003 s. 22.]

174. Dismissal by employer of witness

(1) An employer who dismisses an employee from employment, or prejudices an employee in employment, for or on account of the employee having appeared as a witness before the Commission or Parliamentary Inspector, or for or on account of the employee having given evidence before the Commission or Parliamentary Inspector, is guilty of a crime.

Penalty: Imprisonment for 5 years and a fine of $100 000.

(2) In a proceeding for an offence against subsection (1) it lies upon the employer to prove that the employee shown to have been dismissed or prejudiced was dismissed or prejudiced for a reason other than a reason mentioned in that subsection.

[Section 174 inserted: No. 78 of 2003 s. 22.]

175. Victimisation

A person must not —

(a) threaten to prejudice the safety or career of any person; or

(b) intimidate or harass, or threaten to intimidate or harass, any person; or

(c) do an act that is, or is likely to be, to the detriment of any person,

because the person mentioned in paragraph (a), (b) or (c), or someone else, gave evidence to, or helped, the Commission, the Public Sector Commissioner or the Parliamentary Inspector in the performance of functions under this Act.

Penalty: Imprisonment for 3 years and a fine of $60 000.

[Section 175 inserted: No. 78 of 2003 s. 22; amended: No. 35 of 2014 s. 25.]

176. Pretending to be officer

A person must not pretend to be an officer of the Commission or an officer of the Parliamentary Inspector.

Penalty: Imprisonment for 3 years and a fine of $60 000.

[Section 176 inserted: No. 78 of 2003 s. 22.]

177. Summary conviction of crimes

(1) Despite an offence against this Act being a crime, a court of summary jurisdiction may hear and determine proceedings in respect of the offence if the court is satisfied that it is proper to do so and the accused and the prosecutor consent.

(2) Where, in accordance with subsection (1), a court of summary jurisdiction convicts a person of an offence, the penalty that the court may impose is imprisonment for a period not exceeding 3 years and a fine not exceeding $60 000.

[Section 177 inserted: No. 78 of 2003 s. 22; amended: No. 84 of 2004 s. 82.]

177A. Limitation period for prosecution of simple offences

A prosecution of a simple offence under this Act must be commenced within 36 months after the date on which the offence was allegedly committed and, with the consent of the Attorney General, may be commenced at any time after that period.

[Section 177A inserted: No. 59 of 2004 s. 141.]

Part 12 — Administration

[Part 12 heading, formerly Part 4 heading, renumbered: No. 78 of 2003 s. 35(3).]

Division 1 — Staff

178. Commission not SES organisation

The Commission is not, and is not to become, an SES organisation under the *Public Sector Management Act 1994*.

[Section 178, formerly section 24, renumbered as section 178: No. 78 of 2003 s. 35(1).]

179. Staff of Commission

(1) The Commission may appoint members of staff.

(2) A member of staff is not to be appointed for a term exceeding 5 years and is eligible for reappointment.

(3) The staff are not to be employed under Part 3 of the *Public Sector Management Act 1994*.

(4) The power conferred by subsection (1) includes powers to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate the employment of staff.

(5) The remuneration of and other terms and conditions of employment of staff are not to be less favourable than is provided for in —

(a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or

(b) the *Minimum Conditions of Employment Act 1993*.

[Section 179, formerly section 25, renumbered as section 179: No. 78 of 2003 s. 35(1).]

180. Entitlements of public service officers

(1) If a public service officer is appointed to the staff of the Commission under section 179, that person is entitled to retain all his or her accruing and existing rights, including any rights under the *Superannuation and Family Benefits Act 1938* [2], as if service as an officer of the Commission were a continuation of service as a public service officer.

(2) If a person ceases to be an officer of the Commission and becomes a public service officer the service as an officer of the Commission is to be regarded as service in the Public Service for the purpose of determining that person's rights as a public service officer and, if applicable, for the purposes of the *Superannuation and Family Benefits Act 1938* [2].

(3) If —

(a) an officer of the Commission was immediately before his or her appointment under section 179 a permanent officer under Part 3 of the *Public Sector Management Act 1994*; and

(b) that person ceases to be an officer of the Commission for a reason other than dismissal for substandard performance, breach of discipline or misconduct,

that person is entitled to be appointed to an office under Part 3 of the *Public Sector Management Act 1994* of at least the equivalent level of classification as the office that person occupied immediately prior to appointment under section 179.

[Section 180, formerly section 26, amended: No. 78 of 2003 s. 35(13); renumbered as section 180: No. 78 of 2003 s. 35(1).]

181. Secondment of staff and use of facilities

(1) The Commission may arrange for any officer or employee —

(a) in the Public Service; or

(b) in a State agency; or

(c) otherwise in the service of the State,

to be seconded or otherwise engaged to assist the Commission.

(2) The Commission may arrange for —

(a) an officer or employee of a body or authority of another State, a Territory or the Commonwealth or otherwise in the service of another State, a Territory or the Commonwealth; or

(b) a member of the Australian Federal Police Force; or

(c) a member of the Police Force of another State or Territory; or

(d) a member of the Police Force of another country,

to be seconded or otherwise engaged to assist the Commission.

(3) A person seconded or engaged under subsection (1) or (2) is subject to the control and direction of the Commission and is not subject to the control and direction of any other employing authority.

(4) The Commission may by arrangement make use of the facilities of a department of the Public Service or a State agency.

(5) The Commission may by arrangement make use of the facilities of a body or authority of another State, a Territory or the Commonwealth.

(6) An arrangement under subsection (1) or (4) (other than an arrangement in relation to staff or facilities of the Police Force) is to be made with the relevant employing authority on terms agreed by the parties.

(7) An arrangement under subsection (1) or (4) in relation to staff or facilities of the Police Force is to be made with the Commissioner of Police on terms agreed by the parties.

(8) An arrangement under subsection (2) or (5) is to be made with the relevant body or authority on terms agreed by the parties.

[Section 181, formerly section 27, renumbered as section 181: No. 78 of 2003 s. 35(1).]

182. Engagement of service providers

(1) The Commission may engage suitably qualified persons to provide the Commission with services, information or advice.

(2) A person engaged under subsection (1) is engaged on the terms and conditions decided by the Commission.

[Section 182, formerly section 28, renumbered as section 182: No. 78 of 2003 s. 35(1).]

183. Oath of secrecy for officers

(1) Before commencing duties as an officer of the Commission, the officer must take an oath or affirmation that, except in accordance with this Act, the officer will not disclose any information received by the officer under this Act.

(2) The oath or affirmation is to be administered by the Commissioner.

[Section 183, formerly section 29, renumbered as section 183: No. 78 of 2003 s. 35(1).]

184. Authorised officers, appointment and functions of

(1) In this section —

authorised officer means —

(a) the Commissioner; and

(b) an officer of the Commission appointed under subsection (2).

(2) The Commission may appoint an officer of the Commission as an authorised officer.

(3) For the purposes of the *Criminal Investigation Act 2006* —

(a) the office of authorised officer is prescribed to be a public officer; and

(b) a holder of that office may exercise all of the powers of a public officer in that Act; and

(c) the Commissioner is prescribed to be a senior officer in relation to the authorised officer for the purposes of sections 44, 47, 97, 133 and 140 of that Act.

(3a) In addition to the powers conferred by subsection (3), an authorised officer may exercise the powers of a police officer in section 40 of the *Criminal Investigation Act 2006*.

(3b) For the purposes of the *Criminal Investigation (Identifying People) Act 2002* —

(a) the office of authorised officer is prescribed to be a public officer; and

(b) a holder of that office may exercise all of the powers of a public officer in that Act; and

(c) the Commissioner is prescribed to be a senior officer in relation to the authorised officer.

(3BA) For the purposes of the *Criminal Property Confiscation Act 2000*, an authorised officer has the powers that are specified in that Act as powers of an authorised CCC officer.

(3c) An authorised officer has and may perform all of the functions that a police officer has and may perform under any law of the State, other than the Acts referred to in subsections (3) to (3BA).

(4) An authorised officer has and may perform the functions referred to in subsections (3) to (3c) only when acting in his or her capacity as an officer of the Commission.

(5) Section 8(1)(d)(i) of the *Firearms Act 1973* applies to an authorised officer when acting in his or her capacity as an

officer of the Commission as if the authorised officer were a member of the Police Force.

(6) This section does not operate to subject an authorised officer to the control and direction of the Commissioner of Police or any other police officer when the authorised officer is acting in his or her capacity as an officer of the Commission.

[Section 184, formerly section 30, renumbered as section 184: No. 78 of 2003 s. 35(1); amended: No. 59 of 2006 s. 11; No. 5 of 2008 s. 128; No. 10 of 2018 s. 22.]

185. Delegation by Commission

(1) Subject to subsection (2), the Commission may delegate to an officer of the Commission any power or duty of the Commission under another provision of this Act.

(2) The Commission cannot delegate the following powers and duties —

(a) the power to initiate a proposition under section 26;

(b) the power to conduct examinations on oath;

(c) the power to summons a person to attend and produce things;

(d) the power to issue a warrant for the apprehension of a person under section 148;

(e) the power to make a direction as to publication under section 151;

(f) the power to require production of a statement of information under section 94;

(g) the power to make an exceptional powers finding under section 46;

(h) the power to approve an assumed identity under section 103;

(i) the duty to review assumed identity approvals under section 118;

(j) the power to authorise the conduct of a controlled operation under section 121;

(k) the power to authorise an integrity testing programme under section 123;

(l) the power to issue a fortification warning notice under section 68;

(m) the power to certify an alleged contempt;

(n) the power to make recommendations;

(o) the duty of making a report under this Act;

(p) the powers of the Commission under the *Surveillance Devices Act 1998*.

(3) The delegation must be in writing executed by the Commission.

(4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

(5) A person exercising or performing a power or duty that has been delegated to the person under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(6) Nothing in this section limits the ability of the Commission to perform a function through an officer or agent.

[Section 185 inserted: No. 78 of 2003 s. 23.]

Division 2 — Financial provisions

186. Funds of Commission

(1) The funds available for the purpose of enabling the Commission to perform its functions consist of —

(a) moneys from time to time appropriated by Parliament and paid to the Commission; and

(b) any moneys, other than moneys referred to in paragraph (a), lawfully received by, made available to or payable to the Commission.

(2) An agency special purpose account called the Corruption and Crime Commission Account is established under section 16 of the *Financial Management Act 2006* to which the funds referred to in subsection (1) are to be credited.

(3) The funds recorded as standing to the credit of the Account are to be applied to —

(a) the remuneration and allowances payable to officers of the Commission; and

(b) moneys payable under an arrangement referred to in section 181; and

(c) expenditure incurred by the Commission in the performance of its functions; and

(d) all expenditure, other than expenditure referred to in paragraphs (a), (b) and (c), lawfully incurred by the Commission for the purposes of, or in meeting the costs and expenses of the administration of, this Act.

[Section 186, formerly section 31, amended: No. 78 of 2003 s. 35(13); renumbered as section 186: No. 78 of 2003 s. 35(1); amended: No. 77 of 2006 Sch. 1 cl. 35(6) and (7).]

187. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

Subject to section 186, the provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

[Section 187, formerly section 32, amended: No. 78 of 2003 s. 35(13); renumbered as section 187: No. 78 of 2003 s. 35(1); amended: No. 77 of 2006 Sch. 1 cl. 35(8).]

Part 13 — Parliamentary Inspector of the Corruption and Crime Commission

[Part 13 heading, formerly Part 5 heading, renumbered: No. 78 of 2003 s. 35(4).]

Division 1 — Office of Parliamentary Inspector of the Corruption and Crime Commission

188. Parliamentary Inspector of Corruption and Crime Commission, office established

(1) An office called the Parliamentary Inspector of the Corruption and Crime Commission is established.

(2) The office is not an office in the Public Service.

(3) The office is not, and is not to become, an SES organisation under the *Public Sector Management Act 1994*.

(4) The Parliamentary Inspector is an officer of Parliament and is responsible for assisting the Standing Committee in the performance of its functions.

[Section 188, formerly section 33, amended: No. 78 of 2003 s. 24; renumbered as section 188: No. 78 of 2003 s. 35(1).]

189. Parliamentary Inspector, appointment of

(1) The Parliamentary Inspector is to be appointed on the recommendation of the Premier by the Governor by commission under the Public Seal of the State.

(2) Except in the case of the first appointment, the Premier is to recommend the appointment of a person —

(a) whose name is on a list of 3 persons eligible for appointment that is submitted to the Premier by the nominating committee; and

(b) who, if there is a Standing Committee, has the support of the majority of the Standing Committee and bipartisan support.

(3) The Parliamentary Inspector is to hold office in accordance with this Act.

[Section 189, formerly section 34, amended: No. 78 of 2003 s. 25; renumbered as section 189: No. 78 of 2003 s. 35(1).]

190. Qualifications for appointment as Parliamentary Inspector

(1) In subsection (2) —

legal experience means —

(a) standing and practice as a legal practitioner; or

[(b) deleted]

(c) judicial services (including service as a judge of a court, a magistrate or other judicial officer) in the State or elsewhere in a common law jurisdiction; or

(d) a combination of both kinds of legal experience defined in this section.

(2) A person is eligible for appointment as Parliamentary Inspector if the person is a lawyer and has had not less than 8 years' legal experience.

[Section 190, formerly section 35, renumbered as section 190: No. 78 of 2003 s. 35(1); amended: No. 21 of 2008 s. 654(6) and (7).]

191. Terms and conditions of service of Parliamentary Inspector

Schedule 3 has effect with respect to the tenure, remuneration and conditions of service of the Parliamentary Inspector and the other matters provided for in that Schedule.

[Section 191, formerly section 36; amended: No. 78 of 2003 s. 35(13); renumbered as section 191: No. 78 of 2003 s. 35(1).]

192. Removal or suspension of Parliamentary Inspector

(1) The Parliamentary Inspector may, at any time, be suspended or removed from office by the Governor on addresses from both Houses of Parliament.

(2) If the Governor is satisfied that the Parliamentary Inspector —

(a) is incapable of properly performing the duties of office; or

(b) has shown himself or herself incompetent properly to perform, or has neglected, those duties; or

(c) has been guilty of misconduct,

the Governor may suspend the Parliamentary Inspector from office.

(3) If the Parliamentary Inspector has been suspended from office under subsection (2) the Parliamentary Inspector is to be restored to office unless —

(a) a statement of the grounds of the suspension is laid before each House of Parliament during the first 7 sitting days of that House following the suspension; and

(b) each House of Parliament, during the session in which the statement is so laid, and within 30 sitting days of that statement being so laid, passes an address praying for the removal of the Parliamentary Inspector from office.

[Section 192, formerly section 37, renumbered as section 192: No. 78 of 2003 s. 35(1).]

193. Acting Parliamentary Inspector

(1) The Governor may appoint a person who is eligible for appointment as Parliamentary Inspector to act in the office of Parliamentary Inspector —

(a) during a vacancy in that office; or

(b) during any period or during all periods when the person holding the office of Parliamentary Inspector, or a person appointed under this subsection, is unable to

perform the functions of that office or is absent from the State; or

(c) in relation to any matter in respect of which the person holding the office of Parliamentary Inspector, or a person appointed under this subsection, has under section 195(3) declared himself or herself unable to act.

(2) An appointment under this section —

(a) may be made at any time and may be terminated at any time by the Governor; and

(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(2a) The process for nomination and consultation with regard to the appointment of a person to act in the office of Parliamentary Inspector shall be the same as that for the appointment of the Parliamentary Inspector except that —

(a) the process may be carried out prospectively even though the necessity for an appointment has not arisen; and

(b) it may be carried out with respect to a number of persons each of whom is eligible to be appointed should the necessity arise; and

(c) any bipartisan support for a person lapses on the expiration of 12 months from the date of the resolution.

(3) Subject to this Act, the terms and conditions of appointment, including remuneration and other entitlements, of a person acting under this section are to be as determined from time to time by the Governor.

(4) A person acting under this section for the reason mentioned in subsection (1)(c) may perform functions of the Parliamentary Inspector in relation to the matter for which he or she is

appointed even though the Parliamentary Inspector is at the same time performing other functions of the office.

(5) If a person is acting under this section for the reason mentioned in subsection (1)(c), a reference to the Parliamentary Inspector in a provision of this Act that is relevant to the performance by that person of a function of the Parliamentary Inspector in relation to the matter for which that person is appointed includes a reference to that person.

(6) The validity of anything done by or in relation to a person purporting to act under this section is not to be called into question on the ground that —

(a) the occasion for an appointment under this section had not arisen; or

(b) there is a defect or irregularity in the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

[Section 193, formerly section 38, amended: No. 78 of 2003 s. 26 and 35(13); renumbered as section 193: No. 78 of 2003 s. 35(1).]

194. Oath or affirmation of office

(1) Before beginning to perform the functions of the office of Parliamentary Inspector a person is to take an oath or make an affirmation that he or she —

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

(b) will not, except in accordance with this Act, disclose any information received under this Act.

(2) The oath or affirmation is to be administered by a judge.

[Section 194, formerly section 39, renumbered as section 194: No. 78 of 2003 s. 35(1).]

Division 2 — Functions of the Parliamentary Inspector

195. Functions

(1) The Parliamentary Inspector has the following functions —

(aa) to audit the operation of the Act;

(a) to audit the operations of the Commission for the purpose of monitoring compliance with the laws of the State;

(b) to deal with matters of misconduct on the part of the Commission, officers of the Commission and officers of the Parliamentary Inspector;

(cc) to audit any operation carried out pursuant to the powers conferred or made available by this Act;

(c) to assess the effectiveness and appropriateness of the Commission's procedures;

(d) to make recommendations to the Commission, independent agencies and appropriate authorities;

(e) to report and make recommendations to either House of Parliament and the Standing Committee;

(f) to perform any other function given to the Parliamentary Inspector under this or another Act.

(2) The functions of the Parliamentary Inspector may be performed —

(a) on the Parliamentary Inspector's own initiative; or

(b) at the request of the Minister; or

(c) in response to a matter reported to the Parliamentary Inspector; or

(d) in response to a reference by either House of Parliament, the Standing Committee or the Commission.

(3) The Parliamentary Inspector may declare himself or herself unable to act in respect of a particular matter by reason of an actual or potential conflict of interest.

(4) The Commission is not to exercise any of its powers in relation to the Parliamentary Inspector.

[Section 195, formerly section 40, amended: No. 78 of 2003 s. 18 and 27; renumbered as section 195: No. 78 of 2003 s. 35(1).]

196. Powers

(1) In this section —

officers means —

(a) officers of the Commission; or

(b) officers of the Parliamentary Inspector.

(2) The Parliamentary Inspector has power to do all things necessary or convenient for the performance of the Parliamentary Inspector's functions.

(3) Without limiting subsection (2), the Parliamentary Inspector —

(a) may investigate any aspect of the Commission's operations or any conduct of officers; and

(b) is entitled to full access to the records of the Commission and to take or have copies made of any of them; and

(c) may require officers to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or the conduct of officers; and

(d) may require officers to attend before the Parliamentary Inspector to answer questions or produce documents or other things relating to the Commission's operations or the conduct of officers; and

(e) may consult, cooperate and exchange information with independent agencies, appropriate authorities and —

(i) the Commissioner of the Australian Federal Police;

(ii) the Commissioner of a Police Force of another State or Territory;

(iii) the CEO of the Australian Crime Commission established by the *Australian Crime Commission Act 2002* of the Commonwealth;

(iv) the Commissioner of Taxation holding office under the *Taxation Administration Act 1953* of the Commonwealth;

(v) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth;

(vi) the Director of the Australian Transaction Reports and Analysis Centre under the *Financial Transaction Reports Act 1988* of the Commonwealth;

(vii) any person, or authority or body of this State, the Commonwealth, another State or a Territory that is declared by the Minister to be a person, authority or body to which this paragraph applies;

and

(f) may refer matters relating to the Commission or officers to other agencies for consideration or action; and

(g) may recommend that consideration be given to disciplinary action against, or criminal prosecution of, officers.

(4) The Commission is to notify the Parliamentary Inspector whenever it receives an allegation that concerns, or may concern, an officer of the Commission and at any time the Parliamentary Inspector may review the Commission's acts and proceedings with respect to its consideration of such an allegation.

(5) Upon a review under subsection (4), the Parliamentary Inspector may notify the Commission that the matter is to be removed to the Parliamentary Inspector for consideration and determination.

(6) On receipt of a notice under subsection (5), the Commission is to comply with its terms.

(7) Upon a removal under subsection (5), the Parliamentary Inspector may —

(a) annul the Commission's determination and substitute another; or

(b) make any decision the Parliamentary Inspector might otherwise have made had the Parliamentary Inspector exercised an original jurisdiction; or

(c) make any ancillary order, whether final or provisional, that is remedial or compensatory.

(8) Where the Parliamentary Inspector proposes to act under subsection (7)(a), the Commission must be given a reasonable opportunity to show cause why its determination should not be annulled.

(9) The Parliamentary Inspector must not undertake a review of a matter that arises from, or can be dealt with under, a jurisdiction created by, or that is subject to, the *Industrial Relations Act 1979*.

[Section 196 inserted: No. 78 of 2003 s. 28.]

197. Inquiries

(1) For the purpose of the Parliamentary Inspector's functions, the Parliamentary Inspector may make or hold an inquiry.

(2) For the purposes of an inquiry under this section —

(a) the Parliamentary Inspector has the powers, protections and immunities of a Royal Commission and the Chairman of a Royal Commission under the *Royal Commissions Act 1968*; and

(b) the *Royal Commissions Act 1968* applies to any person summoned by or appearing before the Parliamentary Inspector in the same way as it applies to a person summoned by or appearing before a Commissioner under that Act.

(3) Sections 7, 9 to 17, 18(2) to (11), 19(1), 19A to 22, 31(3), 32 and 33 of the *Royal Commissions Act 1968* have effect as if they were enacted in this Act with such modifications as are required and in terms made applicable to an inquiry under this section.

(4) An inquiry held by the Parliamentary Inspector must not be open to the public.

(5) Despite subsections (2) and (3), a public authority or public officer who is required under this section to answer questions, give evidence, produce records, things or information or make facilities available is not entitled to claim legal professional privilege as a reason for not complying with that requirement.

[Section 197 inserted: No. 78 of 2003 s. 28.]

198. Parliamentary Inspector not to interfere with Commission's operations

The Parliamentary Inspector is not to interfere with, obstruct, hinder or delay any lawful operation of the Commission.

[Section 198 inserted: No. 78 of 2003 s. 28.]

Division 3 — Reporting

[Heading inserted: No. 78 of 2003 s. 28.]

199. Report to Parliament may be given at any time

(1) The Parliamentary Inspector may at any time prepare a report as to any of the following matters —

(a) any matters affecting the Commission, including the operational effectiveness and requirements of the Commission;

(b) any administrative or general policy matter relating to the functions of the Parliamentary Inspector.

(2) The Parliamentary Inspector may cause a report prepared under this section to be laid before each House of Parliament or dealt with under section 206.

[Section 199 inserted: No. 78 of 2003 s. 28.]

200. Person subject to adverse report, entitlement of

Before reporting any matters adverse to a person or body in a report under section 199, the Parliamentary Inspector must give the person or body a reasonable opportunity to make representations to the Parliamentary Inspector concerning those matters.

[Section 200 inserted: No. 78 of 2003 s. 28.]

201. Report under s. 199 may be made to Standing Committee instead of Parliament

A report of the kind mentioned in section 199 may be made by the Parliamentary Inspector to the Standing Committee instead of being laid before each House of Parliament or dealt with under section 206 if, for any reason, the Parliamentary Inspector considers it appropriate to do so.

[Section 201 inserted: No. 78 of 2003 s. 28.]

202. Disclosure of matters in report

(1) If a report under section 199 is laid before either House of Parliament, a matter included in that report may be disclosed despite sections 151 and 207.

(2) If, following the making by the Parliamentary Inspector of a report under section 199 to the Standing Committee, the Standing Committee approves the disclosure of a matter included in the report, that matter may be disclosed despite sections 151 and 207.

[Section 202 inserted: No. 78 of 2003 s. 28.]

203. Annual report to Parliament

(1) The Parliamentary Inspector is to prepare, within 3 months after 30 June of each year, a report as to his or her general activities during that year.

(2) The Parliamentary Inspector is to cause a copy of a report prepared under this section to be laid before each House of Parliament, or dealt with under section 206, within 21 days of the preparation of the report.

(3) This section does not limit Part 5 of the *Financial Management Act 2006* and the report required under this section may be prepared and dealt with in conjunction with the report required under that Part.

[Section 203 inserted: No. 78 of 2003 s. 28; amended: No. 77 of 2006 Sch. 1 cl. 35(9); No. 46 of 2009 s. 17.]

204. Periodical report to Parliament

(1) Rules of Parliament may require the Parliamentary Inspector to report to each House of Parliament or the Standing Committee, as and when prescribed in the Rules, as to the general activities of the Parliamentary Inspector.

(2) The Rules of Parliament referred to in this section are rules that have been agreed upon by each House of Parliament in accordance with the Rules and Orders of those Houses.

(3) Rules of Parliament made under this section must be published in the *Gazette*.

(4) Section 42 of the *Interpretation Act 1984* does not apply to Rules of Parliament made under this section.

[Section 204 inserted: No. 78 of 2003 s. 28.]

205. Reports not to include certain information

Without limiting section 208, a report by the Parliamentary Inspector under this Division must not include —

(a) information that may reveal the identity of a person who has been, is, or is reasonably likely to be investigated by the Commission or has been, is, or is likely to be a witness at an examination or a person who makes an allegation to or provides information to, the Commission; or

(b) information that may indicate that a particular investigation has been, is, or is reasonably likely to be, undertaken by the Commission; or

(c) information that may reveal the identity of a person who has been, is, or is reasonably likely to be investigated by the Police Force or has been, is, or is reasonably likely to be a person who makes an allegation to, or an informant of, the Police Force; or

(d) information that may indicate that a particular investigation has been, is, or is reasonably likely to be, undertaken by the Police Force.

[Section 205 inserted: No. 78 of 2003 s. 28.]

206. Laying documents before House of Parliament that is not sitting

(1) If a copy of a report of the kind mentioned in section 199 may be laid before each House of Parliament and a House of Parliament is not sitting, the Parliamentary Inspector may transmit a copy of the report to the Clerk of that House.

(2) If section 203 requires the Parliamentary Inspector to cause a copy of a report to be laid before each House of Parliament, or dealt with under this section, within a period and —

(a) at the commencement of the period, a House of Parliament is not sitting; and

(b) the Parliamentary Inspector is of the opinion that the House will not sit during that period,

the Parliamentary Inspector is to transmit a copy of the report to the Clerk of that House.

(3) A copy of a report transmitted to the Clerk of a House is to be regarded as having been laid before that House.

(4) The laying of a copy of the text of a document that is regarded as having occurred under subsection (3) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk received the copy.

[Section 206 inserted: No. 78 of 2003 s. 28.]

Division 4 — Disclosure

[Division 4 heading, formerly Division 3 heading, renumbered: No. 78 of 2003 s. 35(5).]

207. Restriction on disclosure generally

Section 151 applies to any matters relating to the Parliamentary Inspector as if a reference in that section to the Commission were a reference to the Parliamentary Inspector.

[Section 207, formerly section 41, amended: No. 78 of 2003 s. 35(13); renumbered as section 207: No. 78 of 2003 s. 35(1).]

208. Disclosure by Parliamentary Inspector or officer

(1) In this section —

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

official information, in relation to a relevant person, means information acquired by the person by reason of, or in the course of, the performance of the person's functions under this Act;

produce includes permit access to;

relevant person means a person who is or was —

(a) the Parliamentary Inspector; or

(b) an officer of the Parliamentary Inspector.

(2) Subject to subsections (3), (4) and (6) a relevant person must not, either directly or indirectly —

(a) make a record of official information; or

(b) disclose any official information.

Penalty: Imprisonment for 3 years and a fine of $60 000.

(3) Despite subsection (2), a relevant person may make a record of official information —

(a) under or for the purposes of this Act;

(b) otherwise in connection with the performance of the person's functions under this Act.

(4) Despite subsection (2), official information may be disclosed by a relevant person if it is disclosed —

(a) under or for the purposes of this Act; or

(b) for the purposes of a prosecution or disciplinary action instituted as a result of an investigation conducted by the Commission or the Parliamentary Inspector under this Act or any other prosecution or disciplinary action in relation to misconduct; or

(c) to either House of Parliament or to the Standing Committee; or

(d) to any prescribed authority or person; or

(e) otherwise in connection with the performance of the person's functions under this Act.

(5) A relevant person is not authorised to disclose operational information under subsection (4)(c) or (d) unless —

(a) that operational information arises from a matter relating to misconduct reported, notified or referred to the Parliamentary Inspector; and

(b) the Parliamentary Inspector has certified that disclosure is necessary in the public interest.

(6) Despite subsection (2), a relevant person may disclose —

(a) the fact that an allegation has been received or initiated by the Commission or the details of an allegation; or

(b) the fact that a matter relating to misconduct has been reported, notified or referred to the Parliamentary Inspector or the details of the matter.

(7) A relevant person cannot be required to produce or disclose any official information in or to any court except for the purposes of a prosecution or disciplinary action instituted as a result of an investigation conducted by the Commission or the Parliamentary Inspector under this Act.

[Section 208, formerly section 42, amended: No. 78 of 2003 s. 19; renumbered as section 208: No. 78 of 2003 s. 35(1).]

209. Disclosure by other officials

(1) In this section —

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

produce includes permit access to.

(2) This section applies to information if, in circumstances referred to in section 208(4), it is disclosed to an authority or person for use in connection with the performance of a function of the authority or person under a written law.

(3) The authority or person, or any person or employee under the control of the authority or person —

(a) must not, either directly or indirectly —

(i) make a record of information to which this section applies; or

(ii) disclose any information to which this section applies,

except for the purpose for which it was disclosed to the authority or person; and

(b) cannot be required to produce or disclose the information in or to any court except for the purposes of a prosecution or disciplinary action instituted as a result of an investigation conducted by the Commission or the Parliamentary Inspector under this Act.

Penalty, for a contravention of paragraph (a): Imprisonment for 3 years and a fine of $60 000.

(4) Subsection (3) does not prevent the disclosure of —

(a) the fact that an allegation has been received or initiated by the Commission or the details of an allegation; or

(b) the fact that a matter relating to misconduct has been reported, notified or referred to the Parliamentary Inspector or the details of the matter.

[Section 209, formerly section 43, amended: No. 78 of 2003 s. 20 and 35(13); renumbered as section 209: No. 78 of 2003 s. 35(1).]

Division 5 — Staff

[Division 5 heading, formerly Division 4 heading, renumbered: No. 78 of 2003 s. 35(6).]

210. Staff of Parliamentary Inspector

(1) The Parliamentary Inspector may appoint members of staff.

(2) A member of staff is not to be appointed for a term exceeding 5 years and is eligible for reappointment.

(3) The staff are not to be employed under Part 3 of the *Public Sector Management Act 1994*.

(4) The power conferred by subsection (1) includes powers to determine remuneration and other terms and conditions of service of staff, to remove, suspend and discipline staff and to terminate the employment of staff.

(5) The remuneration of and other terms and conditions of employment of staff are not to be less favourable than is provided for in —

(a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or

(b) the *Minimum Conditions of Employment Act 1993*.

[Section 210, formerly section 44, renumbered as section 210: No. 78 of 2003 s. 35(1).]

211. Entitlements of public service officers

(1) If a public service officer is appointed to the staff of the Parliamentary Inspector under section 210, that person is entitled to retain all his or her accruing and existing rights, including any rights under the *Superannuation and Family Benefits Act 1938* [2], as if service as an officer of the Parliamentary Inspector were a continuation of service as a public service officer.

(2) If a person ceases to be an officer of the Parliamentary Inspector and becomes a public service officer the service as an officer of the Parliamentary Inspector is to be regarded as service in the Public Service for the purpose of determining that person's rights as a public service officer and, if applicable, for the purposes of the *Superannuation and Family Benefits Act 1938* [2].

(3) If —

(a) an officer of the Parliamentary Inspector was immediately before his or her appointment under

section 210 a permanent officer under Part 3 of the *Public Sector Management Act 1994*; and

(b) that person ceases to be an officer of the Parliamentary Inspector for a reason other than dismissal for substandard performance, breach of discipline or misconduct,

that person is entitled to be appointed to an office under Part 3 of the *Public Sector Management Act 1994* of at least the equivalent level of classification as the office that person occupied immediately prior to appointment under section 210.

[Section 211, formerly section 45, amended: No. 78 of 2003 s. 35(13); renumbered as section 211: No. 78 of 2003 s. 35(1).]

212. Secondment of staff and use of facilities

(1) The Parliamentary Inspector may arrange for any officer or employee —

(a) in the Public Service; or

(b) in a State agency; or

(c) otherwise in the service of the State,

to be seconded or otherwise engaged to assist the Parliamentary Inspector.

(2) The Parliamentary Inspector may arrange for —

(a) a member of the Australian Federal Police Force; or

(b) a member of the Police Force of another State or Territory; or

(c) a member of the Police Force of another country,

to be seconded or otherwise engaged to assist the Parliamentary Inspector.

(3) A person seconded or engaged under subsection (1) or (2) is subject to the control and direction of the Parliamentary

Inspector and is not subject to the control and direction of any other employing authority.

(4) The Parliamentary Inspector may by arrangement make use of the facilities of a department of the Public Service or a State agency.

(5) An arrangement under subsection (1) or (4) (other than an arrangement in relation to staff or facilities of the Police Force) is to be made with the relevant employing authority on terms agreed by the parties.

(6) An arrangement under subsection (1) or (4) in relation to staff or facilities of the Police Force is to be made with the Commissioner of Police on terms agreed by the parties.

(7) An arrangement under subsection (2) is to be made with the relevant authority on terms agreed by the parties.

[Section 212, formerly section 46, renumbered as section 212: No. 78 of 2003 s. 35(1).]

213. Engagement of service providers

(1) The Parliamentary Inspector may engage suitably qualified persons to provide the Parliamentary Inspector with services, information or advice.

(2) A person engaged under subsection (1) is engaged on the terms and conditions decided by the Parliamentary Inspector.

[Section 213, formerly section 47, renumbered as section 213: No. 78 of 2003 s. 35(1).]

214. Oath of secrecy for officers

(1) Before commencing duties as an officer of the Parliamentary Inspector, the officer must take an oath or affirmation that, except in accordance with this Act, the officer will not disclose any information received by the officer under this Act.

(2) The oath or affirmation is to be administered by the Parliamentary Inspector.

[Section 214, formerly section 48, renumbered as section 214: No. 78 of 2003 s. 35(1).]

Division 6 — Financial provisions

[Division 6 heading, formerly Division 5 heading, renumbered: No. 78 of 2003 s. 35(7).]

215. Funds of Parliamentary Inspector

(1) The funds available for the purpose of enabling the Parliamentary Inspector to perform his or her functions consist of —

(a) moneys from time to time appropriated by Parliament and paid to the Parliamentary Inspector; and

(b) any moneys, other than moneys referred to in paragraph (a), lawfully received by, made available to or payable to the Parliamentary Inspector.

(2) An agency special purpose account called the Parliamentary Inspector of the Corruption and Crime Commission Account is established under section 16 of the *Financial Management Act 2006* to which the funds referred to in subsection (1) are to be credited.

(3) The funds recorded as standing to the credit of the Account are to be applied to —

(a) the remuneration and allowances payable to officers of the Parliamentary Inspector; and

(b) moneys payable under an arrangement referred to in section 212; and

(c) expenditure incurred by the Parliamentary Inspector in the performance of his or her functions; and

(d) all expenditure, other than expenditure referred to in paragraphs (a), (b) and (c), lawfully incurred by the

Parliamentary Inspector for the purposes of, or in meeting the costs and expenses of the administration of, this Part.

[Section 215, formerly section 49, amended: No. 78 of 2003 s. 35(13); renumbered as section 215: No. 78 of 2003 s. 35(1); amended: No. 77 of 2006 Sch. 1 cl. 35(10) and (11).]

216. Application of *Financial Management Act 2006* and *Auditor General Act 2006*

Subject to section 215, the provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Parliamentary Inspector and his or her operations.

[Section 216, formerly section 50, amended: No. 78 of 2003 s. 35(13); renumbered as section 216: No. 78 of 2003 s. 35(1); amended: No. 77 of 2006 Sch. 1 cl. 35(12).]

Part 13A — Standing Committee

[Heading inserted: No. 78 of 2003 s. 29.]

216A. Standing committee of Houses of Parliament

(1) The Houses of Parliament are to establish a joint standing committee comprising an equal number of members appointed by each House.

(2) The functions and powers of the Standing Committee are determined by agreement between the Houses and are not justiciable.

(3) The committee established under the name of the Joint Standing Committee on the Anti-Corruption Commission shall —

(a) carry on the functions conferred on the Standing Committee under this Act; and

(b) have the same powers with respect to the Commission and the Parliamentary Inspector as it has with respect to the Anti-Corruption Commission,

until such time as the Houses appoint the Standing Committee.

[Section 216A inserted: No. 78 of 2003 s. 29.]

Part 14 — Other matters

[Part 14 heading, formerly Part 6 heading, renumbered: No. 78 of 2003 s. 35(8).]

217A. Findings and opinions of Commission or Public Sector Commissioner

(1) This section applies in relation to a finding made, or an opinion formed or expressed, by the Commission or the Public Sector Commissioner in the course of performing a function under this Act.

(2) The Commission or the Public Sector Commissioner must not publish or report a finding or opinion that a particular person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.

(3) A finding or opinion that misconduct has occurred, is occurring or is about to occur is not, and is not to be taken as, a finding or opinion that a particular person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.

[Section 217A inserted: No. 35 of 2014 s. 26.]

217. Facilitating proof of certain documents

(1) In all legal proceedings the production of —

(a) a document purporting to be signed by the Governor and to be sealed with the Public Seal of the State and purporting to appoint a person to be the Commissioner or the Parliamentary Inspector; or

(b) a document purporting to be a copy of a document described in paragraph (a) and certified in writing to be a true copy of it by a person purporting to be a person named in the document as the Commissioner or the Parliamentary Inspector,

is evidence that the Governor has appointed any person described in that document as the Commissioner or the Parliamentary Inspector, as the case requires.

(2) A transcript of proceedings before the Commission or the Parliamentary Inspector that has been certified by the Commission or the Parliamentary Inspector, as the case requires, to be a correct transcript is sufficient evidence of the proceedings and any statement or disclosure made in those proceedings.

(3) In contempt proceedings under Part 10, a certificate of the Commission stating any fact relevant to those proceedings is sufficient evidence of the fact stated.

(4) In any proceeding under this or any other Act, or application for an order or declaration under the *Criminal Property Confiscation Act 2000*, a document signed by the Commission and stating that an examination order has been made by the Commission under the *Criminal Property Confiscation Act 2000* section 58(1) is evidence of the matter stated.

[Section 217, formerly section 51, amended: No. 78 of 2003 s. 30; renumbered as section 217: No. 78 of 2003 s. 35(1); No. 10 of 2018 s. 23.]

218. Disclosure of material personal interests

(1) A person who is an officer of the Commission and who has a material personal interest in a matter in respect of which the Commission is performing its functions must, as soon as possible after the relevant facts have come to the knowledge of the person, disclose the nature of the interest to the Commission.

Penalty: Imprisonment for 3 years and a fine of $60 000.

(2) The Commission is to ensure that a person who has disclosed an interest in a matter under subsection (1) is not involved in considering, inquiring into or investigating that matter unless the Commission is satisfied that the involvement of the person

would not prejudice the consideration, inquiry or investigation of the matter.

(3) A person who is an officer of the Parliamentary Inspector and who has a material personal interest in a matter in respect of which the Parliamentary Inspector is performing his or her functions must, as soon as possible after the relevant facts have come to the knowledge of the person, disclose the nature of the interest to the Parliamentary Inspector.

Penalty: Imprisonment for 3 years and a fine of $60 000.

(4) The Parliamentary Inspector is to ensure that a person who has disclosed an interest in a matter under subsection (3) is not involved in considering, inquiring into or investigating that matter unless the Parliamentary Inspector is satisfied that the involvement of the person would not prejudice the consideration, inquiry or investigation of the matter.

[Section 218, formerly section 52, renumbered as section 218: No. 78 of 2003 s. 35(1).]

219. Protection from liability

(1) In this section —

official means —

(a) the Commission; or

(b) any person acting on behalf of, or with the authority of, the Commission; or

(c) the Public Sector Commissioner; or

(d) any person acting on behalf of, or with the authority of, the Public Sector Commissioner; or

(e) the Parliamentary Inspector; or

(f) any person acting on behalf of, or with the authority of, the Parliamentary Inspector.

(2) No action or claim for damages lies against an official for or on account of anything done or omitted, or ordered or authorised to be done or omitted —

(a) under, or apparently under, this Act; or

(b) for the purpose, or apparently for the purpose, of giving effect to this Act.

(3) Subsection (2) does not apply if it is proved that the thing was done or omitted, or ordered or authorised to be done or omitted, maliciously and without reasonable and probable cause.

[Section 219 inserted: No. 35 of 2014 s. 27.]

220. Protection of persons making allegations and certain disclosures and giving information

(1) In this section —

allegation includes any matter reported, notified or referred to the Parliamentary Inspector.

(2) If an allegation has been made to the Commission, the Public Sector Commissioner or the Parliamentary Inspector or any information has been given to the Commission, the Public Sector Commissioner or the Parliamentary Inspector no civil or criminal liability, other than liability under this Act, attaches to a person by reason that the allegation was made or the information was given.

(3) If a Minister or an independent agency discloses, in good faith —

(a) the fact that the Commission or the Public Sector Commissioner has received or initiated an allegation or the details of an allegation; or

(b) the fact that the Parliamentary Inspector has received an allegation or the details of an allegation received by the Parliamentary Inspector,

no civil or criminal liability attaches to the State, a Minister or an independent agency by reason of that disclosure.

(4) If —

(a) the principal officer of a notifying authority; or

(b) the officer constituting a notifying authority,

discloses, in good faith, the fact that the officer has made an allegation to the Commission or the Public Sector Commissioner or the details of an allegation that the officer has made to the Commission or the Public Sector Commissioner, no civil or criminal liability attaches to the State, a Minister, the notifying authority or the principal officer or officer by reason of that disclosure.

[Section 220, formerly section 54, renumbered as section 220: No. 78 of 2003 s. 35(1); amended: No. 35 of 2014 s. 28.]

221. Protection for compliance with this Act

(1) No civil or criminal liability, other than liability under this Act, attaches to a person for compliance, or purported compliance in good faith, with a requirement made under this Act.

(2) In particular, if a person produced a document or thing under a notice or summons under this Act, no civil liability attaches to the person for producing the document or thing, whether the liability would arise under a contract or otherwise.

[Section 221, formerly section 55, renumbered as section 221: No. 78 of 2003 s. 35(1).]

222. Proceedings for defamation not to lie

No action or proceeding, civil or criminal, lies against the State, against a Minister, or against a person employed or engaged by the State, in respect of the printing or publishing of a transcript of an examination or inquiry or a report of, or a recommendation made by, the Commission, the Public Sector Commissioner or the Parliamentary Inspector.

[Section 222, formerly section 56, renumbered as section 222: No. 78 of 2003 s. 35(1); amended: No. 35 of 2014 s. 29.]

223. Privilege, protection or immunity not limited or abridged

Sections 147 and 219 to 222 do not limit or abridge any privilege, protection or immunity existing apart from those sections.

[Section 223, formerly section 57, amended: No. 78 of 2003 s. 31; renumbered as section 223: No. 78 of 2003 s. 35(1).]

223A. Disposal of things seized under this Act

(1) The *Criminal and Found Property Disposal Act 2006* applies to and in respect of —

(a) anything seized under this Act, other than a thing seized under section 75(4); and

(b) anything seized by an authorised officer under the *Criminal Property Confiscation Act 2000*.

(2) For the purposes of the *Criminal and Found Property Disposal Act 2006* —

(a) the Commission is a prescribed agency; and

(b) the Commissioner is the chief officer of the Commission.

[Section 223A inserted: No. 59 of 2006 s. 12; amended: No. 10 of 2018 s. 24.]

224. Records of Commission

(1) The Commission is to cause records to be kept of any investigation, including transcripts of all examinations before the Commission.

(2) The Commission is to keep any records and other things of the Police Royal Commission, the A-CC or the Parliamentary Commissioner that are transferred to the Commission by that body or person or under this Act.

(3) The Commission may make any order considered to be appropriate, in accordance with the *State Records Act 2000*, as to —

(a) who can have a copy of any of the records and on what conditions;

(b) how records are to be dealt with when an investigation is complete.

(4) If, after the completion of an investigation, any question arises as to how any records should be dealt with, the question is to be referred to the State Records Commission which may order that any record be dealt with as the State Records Commission considers appropriate in accordance with the *State Records Act 2000*.

(5) For the purposes of the *State Records Act 2000* any records that are transferred to the custody of the Director of State Records as State archives, are to be treated by the Director as restricted access archives unless the Attorney General requests otherwise.

[Section 224, formerly section 58, renumbered as section 224: No. 78 of 2003 s. 35(1).]

225. Execution of documents by Commission

(1) The Commission is to have a common seal.

(2) A document is duly executed by the Commission if —

(a) the common seal of the Commission is affixed to it in accordance with subsections (3) and (4); or

(b) it is signed on behalf of the Commission by a person or persons authorised to do so under subsection (5).

(3) The common seal of the Commission is not to be affixed to any document except as authorised by the Commission.

(4) The common seal of the Commission is to be affixed to a document in the presence of the Commissioner, who is to sign the document to attest that the common seal was so affixed.

(5) The Commission may, by writing under its common seal, authorise an officer of the Commission to sign documents on behalf of the Commission, either generally or subject to conditions or restrictions specified in the authorisation.

(6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.

(7) When a document is produced bearing a seal purporting to be the common seal of the Commission, it is to be presumed that the seal is the common seal of the Commission unless the contrary is shown.

[Section 225, formerly section 59, renumbered as section 225: No. 78 of 2003 s. 35(1).]

226. Review of Act

(1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 3 years after its commencement.

(1a) In addition to any matters that the Minister may determine, the Minister shall also have regard to whether the Act should be amended to include —

(a) a multi person Commission; and

(b) the appointment of up to 2 Assistant Commissioners; and

(c) jurisdiction over private entities executing public functions; and

(d) the Commission having an investigative crime function; and

(e) a public interest monitor; and

(f) the Commission performing a witness protection function; and

(g) the Commission taking over the confiscation of proceeds of crime from the Director of Public Prosecutions; and

(h) provision for witness and interpreter fees; and

(i) the adoption of the legislative scheme of the *Crime and Misconduct Act 2001* (Qld).

(2) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament within 4 years after the commencement of this Act.

[Section 226, formerly section 60, amended: No. 78 of 2003 s. 21; renumbered as section 226: No. 78 of 2003 s. 35(1).]

226A. Review of 2018 amendments to Act

(1) The Minister must carry out a review of the operation and effectiveness of the amendments made to this Act by the *Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Act 2018* as soon as is practicable after every 5th anniversary of the date on which the *Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Act 2018* section 8 comes into operation.

(2) The Minister must prepare a report based on each review and cause it to be laid before each House of Parliament —

(a) as soon as practicable after the review is completed; but

(b) not later than 1 year after each 5 year anniversary.

[Section 226A inserted: No. 10 of 2018 s. 25.]

227. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

[Section 227, formerly section 61, renumbered as section 227: No. 78 of 2003 s. 35(1).]

Part 15 — Transitional matters

[Heading inserted: No. 35 of 2014 s. 30.]

228. Transitional provision for *Corruption and Crime Commission Amendment (Misconduct) Act 2014*

An allegation of misconduct that was received or initiated by the Commission before the day on which the *Corruption and Crime Commission Amendment (Misconduct) Act 2014* Part 2 comes into operation [1] must continue to be dealt with under this Act as if that Part had not been enacted.

[Section 228 inserted: No. 35 of 2014 s. 30.]

Schedule 1 — Offences that may be relevant for Part 4

[s. 3, 5]

1. An offence under any of the following enactments —

The Criminal Code

s. 143
s. 145
s. 147
s. 279
s. 283
s. 292
s. 293
s. 294
s. 304 Acts or omissions causing bodily harm or danger
s. 305 Setting dangerous things for people
s. 332
s. 393 (except in circumstances in which the maximum penalty that can be imposed is imprisonment for 10 years or 14 years)
s. 398 (in circumstances in which the maximum penalty that can be imposed is imprisonment for 20 years)
s. 451A(1)
s. 454
s. 557
s. 563A

Criminal Property Confiscation Act 2000

s. 50(1)

2. An offence against regulations made under s. 6(1) of the *Firearms Act 1973* that —

(a) is committed in respect of 2 or more firearms; or

(b) is committed in respect of a firearm and in association with the commission, by the same or any other person, of an offence against s. 557I of *The Criminal Code*.

3. An offence referred to in s. 32A(1)(b) of the *Misuse of Drugs Act 1981*.

[Schedule 1 inserted: No. 78 of 2003 s. 33; amended: No. 4 of 2004 s. 24; No. 70 of 2004 s. 82; No. 29 of 2008 s. 26; No. 8 of 2009 s. 41(9).]

Schedule 2 — Terms and conditions of service of Commissioner

[s. 11]

[Heading, formerly Schedule 1, renumbered as Schedule 2: No. 78 of 2003 s. 35(10).]

1. Tenure of office

Subject to this Act, the Commissioner holds office for a period of 5 years and is eligible for reappointment once.

[Clause 1 inserted: No. 78 of 2003 s. 32(a).]

2. Terms of appointment

(1) The Commissioner is to be appointed on a full-time basis.

(2) The Commissioner must not, except in so far as authorised to do so by the Governor, hold any office of profit or trust (other than office as Commissioner) or engage in any occupation for reward outside the duties of the office of Commissioner.

(3) Section 52 of the *Interpretation Act 1984* does not apply to the office of Commissioner.

3. Remuneration, leave and entitlements

(1) The Commissioner is entitled to be paid remuneration and to receive allowances or reimbursements at the same rate as a puisne judge of the Supreme Court.

(2) The Commissioner is entitled to the same conditions in respect of leave of absence as a judge of the Supreme Court.

(3) The provisions of the *Judges' Salaries and Pensions Act 1950* that relate to pensions apply, with such modifications as circumstances require, to and in relation to —

(a) the Commissioner; and

(b) after the Commissioner's death, the Commissioner's spouse or de facto partner and children,

as they apply to and in relation to a judge of the Supreme Court appointed after the commencement of that Act and to and in relation to the spouse or de facto partner and children of a judge of the Supreme Court after that judge's death, and for that purpose judge in that Act includes the Commissioner.

(4) Subclause (1) has effect subject to clause 4.

[(5) deleted]

(6) The remuneration payable to the holder of the office of Commissioner is to be charged to the Consolidated Account which, to the necessary extent, is by this clause appropriated accordingly.

[Clause 3 amended: No. 77 of 2006 s. 4; No. 35 of 2014 s. 32.]

4. Provisions where Commissioner was judge

(1) If a person who, immediately before appointment to the office of Commissioner, was a judge of the Supreme Court, is appointed as Commissioner, that person is to be paid the same remuneration and have the same other rights or privileges as if the person had continued to be the holder of that judicial office.

(2) For the purposes of the *Judges' Salaries and Pensions Act 1950*, the service as Commissioner of a former judge is taken to be service as the holder of the same judicial office as the office that person held before appointment as Commissioner.

(3) The person's service as Commissioner is, for all purposes, taken to be service as the holder of that judicial office.

[(4), (5) deleted]

(6) In this clause —

former judge means a person who, immediately before appointment to the office of Commissioner, was a judge of the Supreme Court or the District Court.

[Clause 4 amended: No. 78 of 2003 s. 32(b).]

5. Provisions where Commissioner was public service officer

(1) If a public service officer is appointed as Commissioner, that person is entitled to retain all his or her accruing and existing rights, including

any rights under the *Superannuation and Family Benefits Act 1938*[2], as if service as Commissioner were a continuation of service as a public service officer.

(2) If a person ceases to be Commissioner and becomes a public service officer, the service as Commissioner is to be regarded as service in the Public Service for the purposes of determining that person's rights as a public service officer and, if applicable, for the purposes of the *Superannuation and Family Benefits Act 1938*[2].

(3) If —

(a) the Commissioner immediately before his or her appointment as Commissioner occupied an office under Part 3 of the *Public Sector Management Act 1994*; and

(b) his or her term of office expires by effluxion of time and he or she is not reappointed as Commissioner,

that person is entitled to be appointed to an office under Part 3 of the *Public Sector Management Act 1994* of at least the equivalent level of classification as the office that person occupied immediately prior to appointment as Commissioner.

6. Resignation

The Commissioner may, at any time, by instrument in writing addressed to the Governor, resign the office of Commissioner, and on receipt of the resignation by the Governor, the Commissioner is to vacate the office of Commissioner.

7. Vacancy

The office of Commissioner becomes vacant if the Commissioner —

(a) dies; or

(b) resigns the office under clause 6; or

(c) becomes a police officer; or

(d) becomes, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

(e) is removed from office under section 12.

[Clause 7 amended: No. 78 of 2003 s. 35(13); No. 18 of 2009 s. 23(2).]

Schedule 3 — Terms and conditions of service of Parliamentary Inspector

[s. 191]

[Heading, formerly Schedule 2, renumbered as Schedule 3: No. 78 of 2003 s. 35(11).]

1. Tenure of office

Subject to this Act, the Parliamentary Inspector holds office for a period of 5 years and is eligible for reappointment once.

[Clause 1 inserted: No. 78 of 2003 s. 34.]

2. Terms of appointment

(1) The Parliamentary Inspector may be appointed on either a full-time or part-time basis.

(2) If the Parliamentary Inspector is appointed on a full-time basis, the Parliamentary Inspector must not, except in so far as authorised to do so by the Governor, hold any office of profit or trust (other than office as Parliamentary Inspector) or engage in any occupation for reward outside the duties of the office of Parliamentary Inspector.

(3) Section 52 of the *Interpretation Act 1984* does not apply to the office of Parliamentary Inspector.

3. Remuneration, leave and entitlements

(1) The Parliamentary Inspector is to be paid remuneration at such rate as the Governor may determine.

(2) Subclause (1) has effect subject to —

(a) subclause (4) and clause 4; and

(b) the *Salaries and Allowances Act 1975*.

(3) The rate of remuneration of the Parliamentary Inspector is not to be reduced during the term of office of the Parliamentary Inspector without the consent of the Parliamentary Inspector.

(4) If the Parliamentary Inspector is receiving a non-contributory pension under the *Judges' Salaries and Pensions Act 1950* or any other Act, or

under a law of the Commonwealth or of another State or Territory, the Parliamentary Inspector is to be paid the difference between that pension and the remuneration payable under subclause (1), in lieu of the full amount of that remuneration.

(5) The remuneration payable to the holder of the office of Parliamentary Inspector is to be charged to the Consolidated Account which, to the necessary extent, is by this clause appropriated accordingly.

(6) The Parliamentary Inspector is entitled to such leave of absence and other entitlements as the Governor determines.

[Clause 3 amended: No. 77 of 2006 s. 4.]

4. Provisions where Parliamentary Inspector was judge

(1) If a person who, immediately before appointment to the office of Parliamentary Inspector, was a judge of the Supreme Court or the District Court, is appointed as Parliamentary Inspector, that person is to be paid the same remuneration and have the same other rights or privileges as if the person had continued to be the holder of that judicial office.

(2) For the purposes of the *Judges' Salaries and Pensions Act 1950*, the service as Parliamentary Inspector of a person referred to in subclause (1) is taken to be service as the holder of the same judicial office as the office that person held before appointment as Parliamentary Inspector.

(3) The person's service as Parliamentary Inspector is, for all purposes, taken to be service as the holder of that judicial office.

(4) If the term of office of a person referred to in subclause (1) who was a judge of the Supreme Court expires by effluxion of time and he or she is not reappointed as Parliamentary Inspector, that person is entitled to be appointed as a judge of the Supreme Court.

(5) If the term of office of a person referred to in subclause (1) who was a judge of the District Court expires by effluxion of time and he or she is not reappointed as Parliamentary Inspector, that person is entitled to be appointed as a judge of the District Court.

5. Provisions where Parliamentary Inspector was public service officer

(1) If a public service officer is appointed to the office of Parliamentary Inspector, that person is entitled to retain all his or her accruing and existing rights, including any rights under the *Superannuation and Family Benefits Act 1938* [2], as if service in the office of Parliamentary Inspector were a continuation of service as a public service officer.

(2) If a person ceases to hold the office of Parliamentary Inspector and becomes a public service officer, the service as Parliamentary Inspector is to be regarded as service in the Public Service for the purposes of determining that person's rights as a public service officer and, if applicable, for the purposes of the *Superannuation and Family Benefits Act 1938* [2].

(3) If —

(a) the Parliamentary Inspector immediately before his or her appointment to the office of Parliamentary Inspector occupied an office under Part 3 of the *Public Sector Management Act 1994*; and

(b) his or her term of office expires by effluxion of time and he or she is not reappointed as Parliamentary Inspector,

that person is entitled to be appointed to an office under Part 3 of the *Public Sector Management Act 1994* of at least the equivalent level of classification as the office that person occupied immediately prior to appointment as Parliamentary Inspector.

6. Resignation

The Parliamentary Inspector may, at any time, by instrument in writing addressed to the Governor, resign the office of Parliamentary Inspector and, on receipt of the resignation by the Governor, the Parliamentary Inspector is to vacate the office of Parliamentary Inspector.

7. Vacancy

The office of Parliamentary Inspector becomes vacant if the Parliamentary Inspector —

(a) dies; or

(b) resigns the office under clause 6; or

(c) becomes, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

(d) is removed from office under section 192.

[Clause 7 amended: No. 78 of 2003 s. 35(13); No. 18 of 2009 s. 23(3).]

[Schedule 4 omitted under the Reprints Act 1984 s. 7(4)(e).]

Notes

This is a compilation of the *Corruption, Crime and Misconduct Act 2003* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Corruption and Crime Commission Act 2003 [3]	48 of 2003	3 Jul 2003	s. 1 and 2: 3 Jul 2003; Act other than s. 1 and 2: 1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5723)
Corruption and Crime Commission Amendment and Repeal Act 2003 Pt. 2 [1, 4, 5]	78 of 2003	22 Dec 2003	1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5723)
Reprint 1: The *Corruption and Crime Commission Act 2003* as at 5 Jan 2004 (includes amendments listed above)			
Criminal Code Amendment Act 2004 s. 24	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
Courts Legislation Amendment and Repeal Act 2004 s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128)
Criminal Law Amendment (Simple Offences) Act 2004 s. 82	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and *Gazette* 14 Jan 2005 p. 163)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78, 79 and 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction by *Gazette* 7 Jan 2005 p. 53))
Reprint 2: The *Corruption and Crime Commission Act 2003* as at 7 Jul 2006 (includes amendments listed above)			
Nurses and Midwives Act 2006 Sch. 3 cl. 4	50 of 2006	6 Oct 2006	19 Sep 2007 (see s. 2 and *Gazette* 18 Sep 2007 p. 4711)
Criminal Investigation (Consequential Provisions) Act 2006 Pt. 3	59 of 2006	16 Nov 2006	1 Jul 2007 (see s. 2 and *Gazette* 22 Jun 2007 p. 2838)

Short title	Number and year	Assent	Commencement
Financial Legislation Amendment and Repeal Act 2006 s. 4 and Sch. 1 cl. 35	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137)
Acts Amendment (Justice) Act 2008 s. 128	5 of 2008	31 Mar 2008	30 Sep 2008 (see s. 2(d) and *Gazette* 11 Jul 2008 p. 3253)
Police Amendment Act 2008 s. 11 and 23(1)	8 of 2008	31 Mar 2008	s. 11: 1 Apr 2008 (see s. 2(1)); s. 23(1): 21 Jun 2008 (see s. 2(2) and *Gazette* 20 Jun 2008 p. 2706)
Legal Profession Act 2008 s. 654	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and *Gazette* 27 Feb 2009 p. 511)
Medical Practitioners Act 2008 Sch. 3 cl. 11	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and *Gazette* 25 Nov 2008 p. 4989)
Criminal Law Amendment (Homicide) Act 2008 s. 26	29 of 2008	27 Jun 2008	1 Aug 2008 (see s. 2(d) and *Gazette* 22 Jul 2008 p. 3353)
Reprint 3: The *Corruption and Crime Commission Act 2003* as at 10 Oct 2008 (includes amendments listed above except those in the *Medical Practitioners Act 2008* and the *Legal Profession Act 2008*)			
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 41	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
Acts Amendment (Bankruptcy) Act 2009 s. 23	18 of 2009	16 Sep 2009	17 Sep 2009 (see s. 2(b))
Statutes (Repeals and Minor Amendments) Act 2009 s. 17	46 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(b))
Reprint 4: The *Corruption and Crime Commission Act 2003* as at 2 Jul 2010 (includes amendments listed above)			
Health Practitioner Regulation National Law (WA) Act 2010 Pt. 5 Div. 12	35 of 2010	30 Aug 2010	18 Oct 2010 (see s. 2(b) and *Gazette* 1 Oct 2010 p. 5075-6)
Public Sector Reform Act 2010 s. 74	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and *Gazette* 5 Nov 2010 p. 5563)

Short title	Number and year	Assent	Commencement
Telecommunications (Interception) Western Australia Amendment Act 2011 Pt. 3	2 of 2011	1 Mar 2011	2 Jul 2011 (see s. 2(b) and *Gazette* 1 Jul 2011 p. 2713)
Commonwealth Heads of Government Meeting (Special Powers) Act 2011 Pt. 9	23 of 2011	11 Jul 2011	12 Jul 2011 (see s. 2(b))
Criminal Investigation (Covert Powers) Act 2012 Pt. 7	55 of 2012	3 Dec 2012	1 Mar 2013 (see s. 2(b) and *Gazette* 25 Jan 2013 p. 271)
Reprint 5: The *Corruption and Crime Commission Act 2003* as at 18 Oct 2013 (includes amendments listed above)			
Corruption and Crime Commission Amendment (Misconduct) Act 2014 Pt. 2 (s. 3-32)	35 of 2014	9 Dec 2014	s. 32: 30 Dec 2014 (see s. 2(b) and *Gazette* 30 Dec 2014 p. 5497); Pt. 2 (other than s. 32): 1 Jul 2015 (see s. 2(b) and *Gazette* 26 Jun 2015 p. 2235)
Declared Places (Mentally Impaired Accused) Act 2015 s. 84	4 of 2015	3 Mar 2015	17 Jun 2015 (see s. 2(b) and *Gazette* 16 Jun 2015 p. 2071)
Reprint 6: The *Corruption, Crime and Misconduct Act 2003* as at 31 Jul 2015 (includes amendments listed above)			
Local Government Legislation Amendment Act 2016 Pt. 3 Div. 11	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and *Gazette* 20 Jan 2017 p. 648)
Health Practitioner Regulation National Law (WA) Amendment Act 2018 s. 105	4 of 2018	19 Apr 2018	1 Dec 2018 (see s. 2(d) and *Gazette* 13 Nov 2018 p. 4427-8)
Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Act 2018 Pt. 2	10 of 2018	13 Jul 2018	1 Sep 2018 (see s. 2(b) and *Gazette* 17 Aug 2018 p. 2894)
Corruption and Crime Commission Amendment and Repeal Act 2003 Pt. 2 [1, 4, 5]	78 of 2003	22 Dec 2003	1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5723)

Short title	Number and year	Assent	Commencement
Reprint 7: The *Corruption, Crime and Misconduct Act 2003* as at 24 May 2019 (includes amendments listed above)			
Corruption, Crime and Misconduct Amendment Act 2021	7 of 2021	25 Jun 2021	s. 1 and 2: 25 Jun 2021 (see s. 2(a)); Act other than s. 1 and 2: 26 Jun 2021 (see s. 2(b))
Legal Profession Uniform Law Application Act 2022 s. 424	9 of 2022	14 Apr 2022	1 Jul 2022 (see s. 2(c) and SL 2022/113 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Criminal Law (Mental Impairment) Act 2023 s. 410	10 of 2023	13 Apr 2023	To be proclaimed (see s. 2(b))

Other notes

[1] The *Anti-Corruption Commission Act 1988* was repealed by the *Corruption and Crime Commission Amendment and Repeal Act 2003.*

[2] The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39, but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26.

[3] Now known as the *Corruption, Crime and Misconduct Act 2003*; short title changed (see note under s. 1).

[4] The *Corruption and Crime Commission Amendment and Repeal Act 2003* Pt. 3 Div. 3 Subdiv. 2 reads as follows:

Part 3 — Repeals, transitional and savings provisions, and consequential amendments

Division 3 — *Anti-Corruption Commission Act 1988*

Subdivision 2 — Repeal of the *Anti-Corruption Commission Act 1988* and transitional and savings provisions

53. Meaning of terms used in this Division

In this Division —

commencement means the day on which section 54 comes into operation;

A-CC Act means the *Anti-Corruption Commission Act 1988*.

54. *Anti-Corruption Commission Act 1988* repealed

The *Anti-Corruption Commission Act 1988* is repealed.

55. References to repealed Act and former titles

In any written law or document, a reference to the A-CC Act may, if the context permits, be taken as a reference to the *Corruption and Crime Commission Act 2003*.

56. Transfer of assets and liabilities to Commission

On and after the commencement —

(a) the assets and rights of the A-CC vest in the CCC by force of this section;

(b) the liabilities of the A-CC become, by force of this section, the liabilities of the CCC;

(c) any agreement or instrument relating to the assets, rights and liabilities referred to in paragraphs (a), and (b) has effect, by force of this section, as if the CCC were substituted for the A-CC in the agreement or instrument;

(d) the CCC is a party to any proceedings by or against the A-CC commenced before the commencement;

(e) any proceeding or remedy that might have been commenced by or available against or to the A-CC in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) may be commenced by or is available, by or against or to the CCC; and

(f) any act, matter or thing done or omitted to be done in relation to the assets, rights and liabilities referred to in paragraphs (a) and (b) before the commencement by, to or in respect of the A-CC (to the extent that that act, matter or thing has any force or effect) is to be taken to have been done or omitted by, to or in respect of the CCC.

57. Notices and requests

A notice or request issued under the A-CC Act and in force immediately before the commencement is taken to be a notice or request validly issued under the *Corruption and Crime Commission Act 2003* and continues in force, with necessary changes.

58. Proceedings

A proceeding that could have been started or continued by, or against the A-CC may be started or continued by, or against the CCC.

59. Continuation of allegations

(1) This section applies if an allegation made to the A-CC under the A-CC Act before the commencement has not been finally dealt with under that Act on the commencement.

(2) The allegation must be dealt with as if it had been made under the *Corruption and Crime Commission Act 2003*.

(3) If the allegation was made by a person under section 13(1)(a), (b) or (c) of the A-CC Act, section 35 of the *Corruption and Crime Commission Act 2003* applies as if the allegation were made under section 25 or 28(2), as the case requires, of that Act.

60. Offences

(1) Proceedings for an offence against the A-CC Act may be continued, or started, despite the A-CC Act having been repealed and section 11 of *The Criminal Code* and for the purposes of section 10 of the *Sentencing Act 1995*, the statutory penalty for the offence immediately before the commencement continues to have effect.

(2) Despite section 54, sections 52 to 54 of the A-CC Act continue to have effect, with any necessary modifications, as if they had not been repealed.

61. Completion of things done

Anything commenced to be done by the A-CC under the A-CC Act before the commencement may be continued by the CCC so far as the doing of that thing is within the functions of the CCC after the commencement.

62. Continuing effect of things done

Any act, matter or thing done or omitted to be done before the commencement by, to or in respect of the A-CC, to the extent that that act, matter or thing has any force is to be taken to have been

done or omitted by, to or in respect of the CCC so far as the act, matter or thing is relevant to the CCC.

63. Warrants and emergency authorisations continued in force

(1) Any warrant issued under section 13, 14 or 17 of the *Surveillance Devices Act 1998* to an Anti-Corruption Commission officer and in force immediately before the commencement continues in force, subject to any condition or limitation on its issue and with necessary changes, as if it were issued to an officer of the CCC.

(2) Any emergency authorisation issued under section 21 of the *Surveillance Devices Act 1998* to an Anti-Corruption Commission officer and in force immediately before the commencement continues in force, subject to any condition or limitation on its issue and with necessary changes, as if it were issued to an officer of the CCC.

64. Transfer of records

(1) On the commencement all records in the possession of the A-CC immediately before the commencement are to be transferred to the possession of the CCC, become the records of the CCC and may be dealt with accordingly.

(2) In this section —

records includes —

(a) evidence in any form;

(b) information and other things.

65. A-CC officers

(1) In this section —

A-CC officer means a person who, immediately before becoming an officer of the Commission within the meaning of the *Corruption and Crime Commission Act 2003*, was an officer of the Commission as that term is defined in the A-CC Act;

officer of the Commission has the meaning given to that term by the *Corruption and Crime Commission Act 2003*;

officer of the Parliamentary Inspector has the meaning given to that term by the *Corruption and Crime Commission Act 2003*.

(2) If, on or before the commencement, an A-CC officer becomes an officer of the Commission or an officer of the Parliamentary Inspector, that person is entitled to retain all his or her existing and accruing rights as an A-CC officer, including any rights under the *Superannuation and Family Benefits Act 1938* and any rights that had been retained under section 6(4) of the A-CC Act, as if his or her service as an officer of the Commission or an officer of the

Parliamentary Inspector were a continuation of his or her service as an A-CC officer.

(3) Despite the repeal of the A-CC Act under section 54, section 6(6), (7), (8) and (9) of the A-CC Act continue to apply to and in relation to a person —

(a) who was, immediately before the commencement, an officer of the Commission as that term is defined in the A-CC Act;

(b) who is a former public employee as that term is defined in section 6(5) of the A-CC Act; and

(c) who —

(i) on the commencement is not employed or engaged as an officer of the Commission or an officer of the Parliamentary Inspector; or

(ii) having become an officer of the Commission or an officer of the Parliamentary Inspector, subsequently ceases to be such an officer otherwise than in circumstances described in section 6(7) of the A-CC Act.

(4) Nothing in this Act precludes the CCC from exercising its discretion to employ or engage as an officer of the Commission a person who before the commencement was —

(a) an officer of the Commission;

(b) a seconded officer;

(c) a service provider; or

(d) a special investigator,

as those terms are defined in the A-CC Act.

66. Financial reporting

(1) In this section —

FAA Act means the *Financial Administration and Audit Act 1985*;

final period means the period starting at the beginning of 1 July last preceding the commencement;

reporting officer means the person appointed under section 65A(2) of the FAA Act as applied by subsection (2).

(2) Section 65A of the FAA Act applies in relation to the preparation and submission of a final report in respect of the A-CC as if —

(a) references in that section to a department were references to the A-CC; and

(b) references in that section to provisions of sections 62 to 65 of the FAA Act were references to the equivalent provisions of sections 66 to 70 of the FAA Act,

except that the period to which the final report is to relate is the final period and the references in sections 66(1), 68 and 70(1) to the end of the financial year are to be read as references to the end of the final period.

(3) If at the commencement, any duty imposed by Part II Division 14 of the FAA Act on the accountable authority of the A-CC has not been complied with in relation to the A-CC for any financial year that expired before the commencement, that duty subsists and is to be performed by the reporting officer as if the reporting officer were the accountable authority.

(4) The time within which the reporting officer is to perform a duty referred to in subsection (3) is extended until the end of the day that is 2 months after the day on which the reporting officer is appointed, but this subsection does not prevent the time from being extended again under section 70 of the FAA Act.

(5) The CCC is to give the reporting officer access to the records referred to in section 64 for the purposes of this section.

[5] The *Corruption and Crime Commission Amendment and Repeal Act 2003* Pt. 3 Div. 7 reads as follows:

Part 3 — Repeals, transitional and savings provisions, and consequential amendments

Division 7 — General

75. Further transitional provisions may be made

(1) In this section —

commencement day means the day on which this section comes into operation;

specified means specified or described in the regulations;

transitional matter means a matter that needs to be dealt with for the purpose of —

(a) effecting the transition from the provisions of an Act repealed by this Act to the provisions of the *Corruption and Crime Commission Act 2003*;

(b) effecting the transition from the provisions of an Act amended by this Act as in force before this Act comes

into operation to the provisions of that Act as in force after this Act comes into operation; or

(c) effecting the transition from the provisions of an Act amended by the *Corruption and Crime Commission Act 2003* as in force before this Act comes into operation to the provisions of that Act as in force after the *Corruption and Crime Commission Act 2003* comes into operation,

and includes a saving or application matter.

(2) If there is no sufficient provision in this Part for dealing with a transitional matter, regulations under the *Corruption and Crime Commission Act 2003* may include any provision that is required, or that is necessary or convenient, for dealing with the transitional matter.

(3) Regulations made under subsection (2) may provide that specified provisions of this Act or the *Corruption and Crime Commission Act 2003* or an Act amended by this Act —

(a) do not apply; or

(b) apply with specified modifications,

to or in relation to any matter.

(4) If regulations made under subsection (2) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement day, the regulations have effect according to their terms.

(5) Regulations referred to in subsection (2) cannot be made more than 12 months after the commencement day.

(6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as to —

(a) affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication of those regulations; or

(b) impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication of those regulations.