

Western Australia

**Criminal Investigation (Exceptional Powers)
and Fortification Removal Act 2002**

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Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002

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Western Australia

Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002

An Act to facilitate the investigation of criminal activity in certain cases and to provide for the removal or modification of certain fortifications and other security measures and to amend the *Freedom of Information Act 1992*.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Criminal Investigation
(Exceptional Powers) and Fortification Removal Act 2002*.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Meanings of terms used in this Act

In this Act, unless the contrary intention appears —

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

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

“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;

“Schedule 1 offence” means an offence described in Schedule 1;

“section 4 offence” has the meaning given by section 4;

“special commissioner” means a person acting under this Act as a special commissioner;

“State Records Commission” means the commission established under section 57 of the *State Records Act 2000*.

4. Section 4 offences

A section 4 offence is a Schedule 1 offence committed in the course of organised crime.

5. Act not applicable to juveniles

- (1) None of the powers given by this Act can be exercised in respect of a juvenile.
- (2) In this section —

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“juvenile” means a person who has not reached 18 years of age.

6. 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 Act 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.

Part 2 — Special commissioners

7. Appointment of special commissioner

- (1) The Governor may appoint a person as a special commissioner for a period not exceeding 4 years specified in the appointment.
- (2) The person appointed must be a person who has held office as a Judge of the Supreme Court or the District Court or has held another equivalent judicial office prescribed by regulations.

8. Effect of appointment

- (1) A person appointed as a special commissioner has the functions given by this Act to a special commissioner.
- (2) A person may resign as a special commissioner by notice in writing given to the Governor, but the resignation does not have effect until it is accepted by the Governor.

Part 3 — Basis for, and control of, use of powers

9. Finding as to grounds for exercising Part 4 or 5 powers

- (1) On the application of the Commissioner of Police, a special commissioner may find whether or not the special commissioner is satisfied that —
 - (a) there are reasonable grounds for suspecting that a section 4 offence has been, or is being, committed;
 - (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 under Part 4 or 5; and
 - (c) there are reasonable grounds for believing that the use of powers given by Part 4 or 5 would be in the public interest having regard to —
 - (i) whether or not the suspected offence could be effectively investigated without using the powers;
 - (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 information or evidence 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 special commissioner is satisfied that the grounds described in subsection (1) exist, the finding is to be reduced to writing and a copy of it is to be given to the Commissioner of Police.

10. Special commissioner may limit exercise of powers

- (1) A special commissioner finding under section 9 that the special commissioner is satisfied that the grounds described in section

9(1) exist may give directions limiting the exercise of powers under Part 4 or 5.

- (2) A special commissioner may revoke or vary directions under this section or give further directions limiting the exercise of powers under Part 4 or 5.
- (3) Limitations may be expressed however the special commissioner considers appropriate and, without limiting other ways in which they may be expressed, they may operate by reference to —
 - (a) particular powers;
 - (b) particular circumstances;
 - (c) particular persons;
 - (d) particular places;
 - (e) particular articles; or
 - (f) particular times or periods of time.
- (4) A special commissioner giving, revoking, or varying a direction under this section is to do so in writing a copy of which is to be given to the Commissioner of Police.

11. Overseeing exercise of certain powers

- (1) A special commissioner may require the Commissioner of Police or any other person to give the special commissioner details of any exercise of a power under Part 4 or 5, including the identity of any person who has exercised the power.
- (2) The Commissioner of Police or any other person to whom a requirement under subsection (1) is made is to comply with the requirement and is to cause any person under the control of the Commissioner of Police to provide the special commissioner with any details sought by the special commissioner.

Part 4 — Examination before special commissioner

Division 1 — Preliminary matters

12. Scope of this Part

- (1) This Part is to facilitate the investigation of a section 4 offence.
- (2) The investigation of an offence includes the investigation of a suspicion that the offence has been, or is being, committed.
- (3) The powers of a special commissioner under this Part cannot be exercised unless the Commissioner of Police has satisfied a special commissioner that the grounds described in section 9(1) exist in respect of the section 4 offence concerned.
- (4) A power under this Part cannot be exercised contrary to a direction under section 10.

13. Offences for which a person stands charged

A person cannot be examined under this Part 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 under this Part about those matters.

Division 2 — Proceedings before special commissioner

14. Summoning witnesses to attend and produce things

- (1) A special commissioner may, on the application of the Commissioner of Police, issue a signed summons and cause it to be served upon 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 special commissioner, at a time and place named in the summons, and then and there to —
 - (a) give evidence;

- (b) produce any document or other thing in the person's custody or control that is described in the summons; or
- (c) do both of those things.

15. Disclosure of summons may be prohibited

- (1) A summons under section 14 may include in it a notation to the effect that disclosure of information about the summons or about any official matter connected with it, is prohibited except in the circumstances, if any, specified in the notation.
- (2) The notation cannot be included unless subsection (3) requires it to be included or subsection (4) permits it to be included.
- (3) The notation is required to be included if the person issuing the summons is satisfied that failure to do so could reasonably be expected to prejudice —
 - (a) the safety or reputation of a person;
 - (b) the fair trial of a person who has been or may be charged with an offence; or
 - (c) the effectiveness of an investigation.
- (4) The notation may be included if the person issuing the summons is satisfied that failure to do so —
 - (a) might prejudice —
 - (i) the safety or reputation of a person;
 - (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.
- (5) If the notation is included, it must be accompanied by a written statement describing the effect of section 32.
- (6) The notation ceases to have effect if, after the conclusion of the investigation concerned —

- (a) no evidence of an offence has been obtained;
 - (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;
 - (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.
- (7) If a notation ceases to have effect because of subsection (6), the Commissioner of Police must serve a written notice of that fact on each person who was served with the summons containing the notation.
- (8) If a notation is inconsistent with permission given under section 33, the notation has no effect to the extent of the inconsistency.
- (9) In this section —
- “official matter”** means any of the following (whether past, present or contingent) —
- (a) the investigation for the purposes of which the summons was issued;
 - (b) a hearing before a special commissioner for the purposes of the investigation; or
 - (c) court proceedings.

16. Witness to attend while required

A person who has been served with a summons under section 14 is required, unless excused by a special commissioner, to attend as specified by the summons and report to the special commissioner from day to day until released from further attendance by a special commissioner.

17. Power to examine on oath

A special commissioner may —

- (a) require a witness who is to be examined to take an oath;
- (b) administer an oath to a person appearing as a witness before the special commissioner, whether the witness has been summoned or appears without being summoned.

18. Affirmation instead of oath

- (1) A witness who is to be examined before a special commissioner may make an affirmation that —
 - (a) the witness conscientiously objects to taking an oath; and
 - (b) the witness will, when answering questions, state the truth, the whole truth, and nothing but the truth.
- (2) An affirmation made under subsection (1) is of the same force and effect and entails the same liabilities as an oath.

19. Legal representation

- (1) In making an application under section 14 or participating in proceedings before a special commissioner, the Commissioner of Police is to be represented by a legal practitioner within the meaning of the *Legal Practitioners Act 1893* 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) The person being examined is entitled to legal representation at the examination.
- (3) If the special commissioner considers that in the circumstances it would not be in the public interest to postpone a person's examination to enable the person's legal representative to be present, a special commissioner may —
 - (a) despite subsection (2), allow the examination of the person to proceed without the person having legal representation; or
 - (b) arrange for the person to be legally represented at the examination.
- (4) A person may decline to be legally represented as arranged under subsection (3)(b) by the special commissioner, but the special commissioner is not obliged to arrange any other legal representation for the person.
- (5) The special commissioner may refuse to allow a person to be represented before the special commissioner by a person who is already involved in the proceedings or is involved or suspected to be involved in a matter being investigated.

20. Examination of witnesses

- (1) A person representing the Commissioner of Police may, so far as the special commissioner thinks proper, examine, cross-examine, or re-examine any witness on any matter that the special commissioner considers relevant to the investigation.
- (2) A person representing any witness before a special commissioner may, so far as the special commissioner thinks proper, examine, cross-examine, or re-examine that witness.
- (3) This section does not prevent the special commissioner from allowing any other examination, cross-examination, or re-examination of witnesses that the special commissioner considers appropriate.

21. Examination to be private

- (1) An examination under this Part is not open to the public.
- (2) The special commissioner may make an order as to who may be present during the whole or any part of the examination.

22. Conduct of proceedings

In proceedings before a special commissioner the rules of evidence do not apply and, except as otherwise stated in this Act, the special commissioner may determine how the proceedings are to be conducted.

23. Arrest of witness failing to appear

- (1) If a person who has been served with a summons under section 14 fails to attend as required by the summons and section 16, the special commissioner may, on proof by a statement verified by statutory declaration that the summons was served, issue a warrant for the apprehension of that person (in this section called “**the defaulter**”).
- (2) A warrant issued under subsection (1) authorises any person to whom it is addressed or a member of the Police Force of the State —
 - (a) to apprehend the defaulter at any time and bring the defaulter before the special commissioner; and
 - (b) for that purpose, to detain the defaulter in custody until released by order of the special commissioner or, on appeal, by order of the Full Court of the Supreme Court.
- (3) The person executing the warrant may break and enter any place, building, or vessel for the purpose of executing the warrant.
- (4) The apprehension of the defaulter under this section does not prevent the defaulter from being dealt with under section 30 for contempt.

24. Appeal against apprehension

An appeal lies to the Full Court of the Supreme Court in respect of an apprehension under section 23.

25. Power of special commissioner in relation to things produced

- (1) A special commissioner or a person authorised in writing by a special commissioner may inspect any document or other thing produced before the special commissioner, and may retain it for a reasonable period and may make images of anything relevant to the investigation or take extracts from any document.
- (2) A special commissioner may make an order about what is to be done with any document or other thing produced before the special commissioner, and it may be dealt with in accordance with that order.
- (3) A special commissioner may not order a document to be destroyed except in accord with the *State Records Act 2000*.

26. Records of investigation

- (1) A special commissioner is to cause records to be kept of the investigation, including transcripts of all proceedings before the special commissioner.
- (2) A special commissioner 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 the records are to be dealt with when the investigation is complete.
- (3) 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*.

- (4) For the purpose of the *State Records Act 2000* any records that are transferred to the custody of the Director of State Records as State archives, shall be treated by the Director as restricted access archives unless the Attorney General requests otherwise.

27. Witness protection arrangements

If it appears to a special commissioner that, because a person —

- (a) is to attend, is attending, or has attended, before a special commissioner to give evidence or to produce a document or thing; or
- (b) proposes to produce, or has produced, a document or thing to a special commissioner,

the safety of any person may be prejudiced or any person may be subjected to intimidation or harassment, the special commissioner may make any arrangements (including arrangements with the Minister or with members of the Police Force of the State) to avoid prejudice to the safety of any person, or to protect any person from intimidation or harassment.

28. Ancillary powers of special commissioner

The powers of a special commissioner include the power to do anything that is necessary or incidental to the performance of the special commissioner's functions under this Part.

Division 3 — Contraventions and offences

29. Proceedings for an offence

Proceedings for offences against this Part may be instituted by any person.

30. Penalty for failing to attend or produce anything

- (1) A person who has been served with a summons under section 14 and fails, without reasonable excuse, to —
- (a) attend as required by the summons and section 16; or
 - (b) produce any document or other thing as required by the summons,

may be dealt with on the motion of the Attorney General as if in contempt of the Supreme Court, and the Supreme Court has jurisdiction accordingly.

- (2) In this section —

“reasonable excuse” 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 —

- (a) as an excuse for failing to produce any document or other thing, that —
 - (i) 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
 - (ii) 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
- (b) an excuse based on legal professional privilege that is excluded by section 42.

31. Penalty for failing to be sworn or to give evidence

- (1) A person served with a summons under section 14 requiring the person to attend and give evidence who —

- (a) fails to be sworn or make an affirmation; or
- (b) fails to answer any question relevant to the investigation that a special commissioner requires the person to answer,

may be dealt with on the motion of the Attorney General as if in contempt of the Supreme Court, and the Supreme Court has jurisdiction accordingly.

- (2) A person required by a special commissioner 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.

32. Offences of disclosure contrary to notation on summons

- (1) A person who is served with a summons containing a notation made under section 15 must not disclose —
 - (a) the existence of the summons or any information about it; or
 - (b) the existence of any official matter connected with the summons or any information about that official matter.

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

- (2) Subsection (1) does not prevent the person from making a disclosure —
 - (a) in accordance with the circumstances, if any, specified in the notation;
 - (b) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons or matter;
 - (c) to a person to whom the disclosure is made for the purpose of obtaining legal aid relating to the summons or matter;

- (d) if the person is a body corporate — to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons; or
 - (e) if the person is a legal practitioner, for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client.
 - (3) If a disclosure is made to a person as permitted by subsection (2) or (4) —
 - (a) while the person is a person of a kind to whom one of those subsections permits a disclosure to be made, the person must not disclose the existence of, or any information about, the summons, or any official matter connected with it, except as permitted by subsection (4); and
 - (b) if the person is no longer a person of a kind to whom one of those subsections permits a disclosure to be made, the person must not, in any circumstances, make a record of, or disclose the existence of, or any information about, the summons or matter.
- Penalty: Imprisonment for 3 years and a fine of \$60 000.
- (4) A person to whom information has been disclosed, as permitted by subsection (2) or this subsection, may disclose that information —
 - (a) if the person is an officer or agent of a body corporate referred to in subsection (2)(d) —
 - (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons;
 - (ii) to a legal practitioner for the purpose of obtaining legal advice or representation relating to the summons or matter; or
 - (iii) to a person to whom the disclosure is made for the purpose of obtaining legal aid relating to the summons or matter;

- (b) if the person is a legal practitioner, for the purpose of giving legal advice, making representations, or obtaining legal aid, relating to the summons or matter; or
 - (c) if the disclosure is made to the person for the purpose of obtaining legal aid relating to the summons or matter, for the purpose of obtaining that legal advice or representation.
- (5) This section ceases to apply if —
 - (a) under section 15(6) the notation ceases to have effect; or
 - (b) a period of 5 years elapses after the issue of the summons.
- (6) 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.
- (7) In this section —
 - “official matter”** means any of the following (whether past, present or contingent) —
 - (a) the investigation for the purposes of which the summons was issued;
 - (b) a hearing before a special commissioner for the purposes of the investigation; or
 - (c) court proceedings.

33. Breaching privacy of proceedings

A person who, without the permission of a special commissioner, publishes —

- (a) all or any of the transcript of proceedings before a special commissioner;
- (b) any information obtained in the course of the proceedings; or
- (c) a report of the whole or any part of proceedings before a special commissioner,

commits an offence.

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

34. Giving false testimony

A witness before a special commissioner who knowingly gives false testimony touching any matter, material in the investigation, is guilty of a crime.

Penalty: Imprisonment for 5 years.

35. 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 a special commissioner will give false testimony or withhold true testimony;
- (b) attempts by any means to induce a person called or to be called as a witness before a special commissioner 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 a special commissioner will give false testimony or withhold true testimony,

is guilty of a crime.

Penalty: Imprisonment for 5 years.

36. 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 a special commissioner with intent to affect the testimony of that person as a witness, is guilty of a crime.

Penalty: Imprisonment for 3 years.

37. Destroying evidence

A person who, knowing that a document or other thing is or may be required in evidence before a special commissioner, 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 a crime.

Penalty: Imprisonment for 3 years.

38. 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 a special commissioner 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.

39. Injury 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 a special commissioner, or for or on account of any evidence given by the other person before a special commissioner, is guilty of a crime.

Penalty: Imprisonment for 5 years and a fine of \$100 000.

40. Dismissal by employers 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 a special commissioner, or for or on account of the employee having given evidence before a special commissioner, 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.

Division 4 — Other matters

41. Judicial supervision excluded

- (1) A prerogative writ cannot be issued and an injunction or a declaratory judgment cannot be given in respect of the performance of a function under 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.

42. Legal professional privilege

- (1) Legal professional privilege does not prevent a summons under section 14 from requiring a person to produce a document that would otherwise be subject to that privilege.
- (2) Unless it is claimed and allowed in accordance with this section legal professional privilege does not provide a reasonable excuse for failure to produce a document as required by a summons under section 14.
- (3) A person who wishes to claim that a document is subject to legal professional privilege (which claim is permitted by subsection (4)) shall —
 - (a) attend and produce that document in accordance with the summons, sealed up and identified as subject to a claim of legal professional privilege; and
 - (b) at the same time provide to the special commissioner a statement detailing the name and address of the person entitled to waive the privilege with regard to each document.

- (4) A claim of legal professional privilege may only be made in relation to the following —
- (a) proofs of evidence taken from clients and possible witnesses;
 - (b) notes of instruction taken from clients or possible witnesses with regard to events that have already occurred;
 - (c) documents created for the purposes of preparing —
 - (i) a defence to any existing or possible charges; or
 - (ii) for an appearance or reasonably anticipated appearance before a special commissioner,arising out of events which have already occurred such as but not limited to—
 - (iii) notes, letters and opinions which set out legal advice to a client;
 - (iv) internal memoranda or letters;
 - (v) a solicitor's letter to a private investigator; or
 - (vi) a solicitor's letter to potential expert witnesses;
 - (d) correspondence between a solicitor and prosecuting authorities or police written in order to negotiate the possibility of a client giving a statement or testimony; and
 - (e) correspondence between a solicitor and prosecuting authorities or police written in order to negotiate a plea of guilty.
- (5) Legal professional privilege is not to attach to any document by reason of this section unless that privilege would attach by law.
- (6) The special commissioner shall determine with respect to each document for which a claim of legal professional privilege has been made whether that claim is valid.
- (7) The special commissioner shall return any document, which the special commissioner has determined is subject to a valid claim

of legal professional privilege, to the person who produced it without allowing the Commissioner of Police access.

- (8) Until such time as a special commissioner has determined that a document is not subject to a valid claim of legal professional privilege a person other than the special commissioner may not unseal the document or have access to it.

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

- (9) In this section “**document**” includes any other thing.

43. Use of statements obtained

- (1) A statement made by a witness in answer to a question that a special commissioner requires the witness to answer is not admissible in evidence against the person making the statement in —
- (a) any criminal proceedings; or
 - (b) proceedings for the imposition of a penalty other than contempt proceedings or proceedings for an offence against this Part.
- (2) Despite subsection (1), the witness may, in any proceedings referred to in that subsection, be asked about the statement under the *Evidence Act 1906* section 21.

44. Protection to special commissioner and others

- (1) A special commissioner has, in performing functions as special commissioner, the same protection and immunity as a Supreme Court Judge performing functions as a Judge.
- (2) Except as otherwise stated in this Part, a witness summoned to attend or appearing before a special commissioner has the same protection, and is, in addition to the penalties provided by this Part, subject to the same liabilities in any civil or criminal proceeding, as a witness in any case tried in the Supreme Court.
- (3) A person representing a person before a special commissioner has the same protection and immunity as a barrister has in

appearing for a party in proceedings in the Supreme Court and, if the person is a barrister or solicitor, is subject to the same liabilities as if appearing before that court.

45. 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 proceedings of a special commissioner.

46. Privilege, protection or immunity not limited or abridged

Sections 44 and 45 do not limit or abridge any privilege, protection, or immunity existing apart from those sections.

47. Facilitating proof of certain things

(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 or persons to be a special commissioner; 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 a special commissioner,

is evidence that the Governor has appointed any person described in that document as a special commissioner.

- (2) A transcript of the proceedings before a special commissioner that has been certified by the special commissioner 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 section 30(1) or 31(1), a certificate of a special commissioner stating any fact relevant to those proceedings is sufficient evidence of the fact stated.

Part 5 — Entry, search, and related matters

48. When this Part applies

This Part applies if the Commissioner of Police has satisfied a special commissioner that the grounds described in section 9(1) exist in respect of the section 4 offence concerned but a power under this Part cannot be exercised contrary to a direction under section 10.

49. Enhanced power to enter, search, and detain

- (1) A police officer may, for the purposes of investigating a section 4 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;
 - (b) stop, detain, and search anyone at the place;
 - (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).

50. Enhanced power to stop, detain, and search

- (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 a section 4 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.

51. Provisions about searching a person

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

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- (2) 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;
 - (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.
- (3) Nothing in this Part authorises a search by way of an examination of the body cavities of a person unless it is carried out under subsection (5) by a medical practitioner or a registered nurse.
- (4) 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.
- (5) A medical practitioner or registered nurse may carry out an examination arranged by a police officer under subsection (4) and no action lies against the medical practitioner or registered nurse in respect of anything reasonably done for the purposes of the examination.
- (6) A police officer may use any force that is reasonably necessary, and may be accompanied by any assistance necessary, in order to perform a function under this section.

(7) In this section —

“**medical practitioner**” means an individual who is registered as a medical practitioner under the *Medical Act 1894*;

“**registered nurse**” means a person registered under Part 3 of the *Nurses Act 1992*.

52. Extension of power to search

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

53. Things that have been seized

The Criminal Code section 714 applies to anything seized under this Part as if it had been seized under *The Criminal Code*.

54. Offences under this Part

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 Part; or

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

or

(b) does not produce anything as demanded under section 49(1)(b),

commits an offence.

Penalty: Imprisonment for 2 years and a fine of \$40 000.

55. Report on use of powers under this Part

(1) A police officer who exercises powers under this Part is required to submit to the Commissioner of Police a report in writing of each occasion on which any of those powers were exercised, giving details of —

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- (a) what was done in the exercise of those powers;
 - (b) the time and place at which the powers were exercised;
and
 - (c) any person or property affected by the exercise of the
powers.
- (2) The report is to be submitted within 3 days after the powers are
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
powers were exercised is made within that time dealing with all
of the details about which a report is required.

Part 6 — Surveillance devices

56. Enhanced powers concerning surveillance devices

- (1) This Part has effect if a police officer applies under the *Surveillance Devices Act 1998* section 15 or 16 for a warrant and the offence concerned is a section 4 offence.
- (2) The effects of this Part are that —
 - (a) instead of the court having to be satisfied that there are reasonable grounds for believing anything described in the *Surveillance Devices Act 1998* section 13(1)(a) or 17(1)(a), it is sufficient that the court be satisfied that there are reasonable grounds for suspecting it;
 - (b) the court to which the application is made is to regard the fact that the offence concerned is a section 4 offence as justifying investigative powers in addition to those that it might otherwise regard as being in the public interest; and
 - (c) anything that the warrant may authorise to be done if there is a reasonable belief as to any matter may be authorised by the warrant to be done also if there is a reasonable suspicion as to the matter.

Part 7 — Fortifications

57. Meaning of terms used in this Part

(1) In this Part —

“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;

“the submission period” has the meaning given by section 59(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.

58. Issuing fortification warning notice

- (1) The Commissioner of Police may, without giving notice to any other person, apply to a special commissioner for the issue of a fortification warning notice.
- (2) The special commissioner 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 special commissioner may be satisfied by a statement made by the applicant and verified by statutory declaration.

59. Contents of fortification warning notice

- (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 58(2), including an explanation of the terms “fortification” and “heavily fortified”, and a statement that a special commissioner is satisfied as to the matters mentioned in that provision;
 - (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 60(1) (“**the submission period**”), the Commissioner of Police is satisfied that —
 - (i) the premises are not heavily fortified; or

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- (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.

60. 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 the *Interpretation Act 1984* section 76, 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 required 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 special commissioner issues it, the notice lapses and cannot be given at all.

61. 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 required 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 60 would enable a fortification warning notice to be given.

62. Issuing fortification removal notice

- (1) If a fortification warning notice has been given as described in section 60(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.

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- (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.

63. Contents of fortification removal notice

- (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;
 - (b) a warning as to the effect of section 65; and
 - (c) an explanation of the right to apply to the Supreme Court for a review under section 66.
- (3) The notice may, but is not required to, 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.

64. Giving fortification removal notice

- (1) The fortification removal notice is required 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 required 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 60 would enable a fortification warning notice to be given.

65. Enforcing fortification removal notice

- (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.

66. 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 62(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 the information is not to be disclosed to any other person, whether or not a party to the proceedings.
Penalty: Imprisonment for 3 years and a fine of \$60 000.
- (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 62(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 62(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 Part relating to the same premises.

67. 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 65(3).

68. Planning and other approval issues

- (1) The powers given by this Part 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 65(3).

69. No compensation

- (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 Part.

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- (2) No other claim for compensation arises because of the exercise of powers under this Part.

70. 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 Part.
- (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 Part had been enacted.

71. Regulations

- (1) 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.
- (2) Without limiting subsection (1), regulations may be made affecting how a special commissioner may decide for the purposes of section 19 that it would not be in the public interest to postpone a person's examination to enable the person's legal representative to be present.
- (3) Regulations under this Act are made on the recommendation of the Attorney General whether or not the Attorney General is the Minister to whom responsibility for the administration of this Act has been allocated by the Governor.

Part 8 — Other provisions

72. *Freedom of Information Act 1992* amended

The *Freedom of Information Act 1992* Schedule 2 is amended by inserting after the item relating to a Royal Commission the following item —

“

A special commissioner under the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*.

”.

73. 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.
- (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.

74. Parliamentary Supervisory Committee

- (1) Despite anything contained in this Act a special commissioner may report to a Standing Committee on any matter which has come before the special commissioner and shall where the special commissioner forms the view that to do so would assist the Standing Committee in understanding the operation of this Act.
- (2) Nothing in this section requires a special commissioner to provide detailed operational information in a report under subsection (1).
- (3) A report made by a special commissioner to a Standing Committee is not to be disclosed or published, in whole or in part, without prior order of the Standing Committee in

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accordance with the rules and orders of the House that govern its proceedings.

- (4) If either House orders, the public disclosure of facts disclosed in a report is permitted whether by publication in any medium or otherwise.
- (5) In this section, the word “**Standing Committee**” means a Standing Committee of either House or a Joint Standing Committee of both Houses of Parliament appointed to monitor or review the performance of the functions of special commissioners and may be a committee appointed for a similar purpose under the *Anti-Corruption Commission Act 1988*.

Offences that may be relevant for this Act Schedule 1

Schedule 1 — Offences that may be relevant for this Act

[s. 3]

1. An offence under any of the following enactments:

The Criminal Code

- s. 145
- s. 147
- s. 278
- s. 279
- s. 283 (except if the circumstances of the attempted or intended killing
are such that, if it were carried out, the crime committed would
be infanticide)
- s. 292
- s. 293
- s. 294
- s. 296
- s. 296A
- s. 298
- s. 332
- s. 393 (except in circumstances in which the maximum penalty that can
be imposed is imprisonment for 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)

Schedule 1 Offences that may be relevant for this Act

2. An offence against regulations made under the *Firearms Act 1973* s. 6(1) 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 the *Police Act 1892* s. 65(4aa).
3. An offence referred to in the *Misuse of Drugs Act 1981* s. 32A(1)(b).

Notes

- ¹ This is a compilation of the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*. The following table contains information about that Act.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002</i>	21 of 2002	15 Jul 2002	15 Jul 2002 (see s. 2)