Legislative Council—No 5
As introduced and read a first time, 12 May 2010

South Australia

Independent Commission Against Corruption Bill 2010

A BILL FOR

An Act to establish the Independent Commission Against Corruption; to define its functions and powers; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Independent Commission Against Corruption Act 2010*.

2—Commencement

This Act will come into operation 6 months after the day on which it is assented to by the Governor.

3—Objects of Act

The objects of this Act are—

(a) to promote the integrity and accountability of public administration by constituting an Independent Commission Against Corruption as an independent and accountable body—

(i) to investigate, expose and prevent corruption involving or affecting public authorities and public officers; and

(ii) to educate public authorities, public officers and members of the public about corruption and its detrimental effects on public administration and on the community; and

(b) to confer on the Commission special powers to inquire into allegations of corruption.

4—Interpretation

In this Act, unless the contrary intention appears—

appropriate officer of a House of Parliament means—

(a) the President of the Legislative Council or, if the office of President is vacant, the Clerk of the Legislative Council; or

(b) the Speaker of the House of Assembly or, if the office of Speaker is vacant, the Clerk of the House of Assembly;

assistant commissioner means an assistant commissioner appointed under Part 2;

Australian Parliament means—

(a) the Parliament of this State or any other State of the Commonwealth; or

(b) the Parliament of the Commonwealth; or

(c) a Legislative Assembly of a Territory of the Commonwealth;

Commission means the Independent Commission Against Corruption established under Part 2;

Commissioner means the Commissioner appointed under Part 2;

compulsory examination means a compulsory examination under this Act;

conduct includes omission;

corruption—see section 5;

Inspector means the Inspector of the Commission appointed under Part 4;

investigation means an investigation into a matter that the Commission is authorised to investigate under this Act;

Joint Committee means the Committee on the Independent Commission Against Corruption established under Part 5;

judicial body means a court or tribunal, body or person invested by law with judicial or quasi-judicial powers, or with authority to make an inquiry or to receive evidence;

judicial officer means a person who alone or with others constitutes a judicial body;

local government body means a council or other body constituted under the *Local Government Act 1999*;

officer of the Commission means the Commissioner, an assistant commissioner, a member of the staff of the Commission or a person engaged by, or whose services are being used by, the Commission under section 17;

officer of the Inspector means the Inspector, a member of the staff of the Inspector or a person engaged by, or whose services are being used by, the Inspector under section 81;

Parliamentary Code of Conduct means—

(a) a code of conduct for Ministers of the Crown declared by the regulations to be a Parliamentary Code of Conduct; or

(b) a code of conduct for members of Parliament adopted by a House of Parliament;

premises means land or a building, structure, aircraft, vehicle or vessel, or a part of any of those things;

public authority means—

(a) an agency or instrumentality of the Crown or a body (whether or not incorporated) that is established by or under an Act and—

(i) is comprised of persons, or has a governing body comprised of persons, a majority of whom are appointed by the Governor, a Minister or an agency or instrumentality of the Crown; or

(ii) is subject to control or direction by a Minister; or

(b) a statutory authority the accounts of which the Auditor-General is required by law to audit; or

(c) a local government body; or

(d) South Australia Police; or

(e) an authority declared by regulation to be a public authority for the purposes of this Act;

public inquiry means a public inquiry under this Act;

public officer means—

(a) the Governor; or

(b) a person appointed to public office by the Governor or by a Minister; or

(c) a judicial officer; or

(d) a member of Parliament; or

(e) a person employed in the Public Service of the State; or

(f) a police officer; or

(g) any other officer or employee of the Crown; or

(h) a person who constitutes or is a member of the governing body of a public authority; or

(i) an officer or employee of a public authority; or

(j) a person, or persons of a class, declared by regulation to be a public officer for the purposes of this Act;

task force means a group of persons to which a particular task has been or is to be assigned.

5—Meaning of corruption

(1) For the purposes of this Act, ***corruption*** encompasses corrupt conduct and conspiring or attempting to engage in corrupt conduct.

(2) For the purposes of this Act, conduct is ***corrupt conduct*** if—

(a) it is 1 of the following:

(i) conduct of a person that adversely affects, or could adversely affect, directly or indirectly the honest or impartial exercise of an official function by a public officer or public authority;

(ii) conduct of a public officer that constitutes or involves the dishonest or partial exercise of his or her official functions;

(iii) conduct of a public officer or former public officer that constitutes or involves a breach of public trust;

(iv) conduct of a public officer or former public officer that involves the misuse of information acquired in the course of his or her official functions (whether or not for his or her benefit or for the benefit of any other person);

(b) it constitutes or involves—

(i) a criminal offence; or

(ii) grounds for disciplinary action under any law; or

(iii) a substantial breach of a Parliamentary Code of Conduct; or

(iv) grounds under any law for removing a public officer from office,

whether or not proceedings for an offence, disciplinary action, breach of the Code or removal from office can still be taken.

(3) The application of this Act extends to—

(a) conduct that occurred before the commencement of this Act—

(i) whether or not any of the elements establishing corrupt conduct occurred before that commencement; and

(ii) whether or not a person involved in the conduct who was a public officer at the time of its occurrence is still a public officer after that commencement; and

(b) conduct that constitutes corrupt conduct only after the person engaged in it becomes a public officer; and

(c) conduct that occurs outside this State.

Part 2—Independent Commission Against Corruption

Division 1—Establishment

6—Establishment of Commission

(1) The *Independent Commission Against Corruption* is established.

(2) The Commission is to consist of the Commissioner and assistant commissioners.

Division 2—Functions

7—Functions of Commission

(1) The principal functions of the Commission are as follows:

(a) to investigate an allegation or complaint, or any circumstances which, in the Commission's opinion, imply that—

(i) corruption; or

(ii) conduct liable to allow, encourage or cause the occurrence of corruption; or

(iii) conduct connected with corruption,

may have occurred, may be occurring or may be about to occur;

(b) to investigate any matter referred to the Commission by either House of Parliament or by the Police Complaints Authority;

(c) subject to section 54—

(i) to make findings and form opinions, on the basis of the results of its investigations, in respect of conduct, circumstances or events with which its investigations are concerned, whether or not the findings or opinions relate to corruption, including (but not limited to)—

(A) findings that particular persons have engaged, are engaged or are about to engage in corruption; and

(B) opinions as to whether consideration should or should not be given to the prosecution or the taking of other action against particular persons; and

(C) findings of fact; and

(ii) to formulate recommendations for the taking of action that the Commission considers should be taken in relation to its findings or opinions or the results of its investigations;

(d) to communicate to appropriate authorities the results of its investigations;

(e) to examine the laws governing, and the practices and procedures of, public authorities and public officers, in order to facilitate the discovery of corruption and to secure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corruption;

(f) to instruct, advise and assist a public authority, public officer or any other person (on the request of the authority, officer or person) on ways in which corruption may be eliminated;

(g) to advise public authorities and public officers of changes in practices and procedures compatible with the effective exercise of their functions that the Commission thinks necessary to reduce the likelihood of the occurrence of corruption;

(h) to cooperate with public authorities and public officers in reviewing laws, practices and procedures with a view to reducing the likelihood of the occurrence of corruption;

(i) to educate and advise public authorities, public officers and the community on strategies to combat corruption;

(j) to educate and disseminate information to the public on the detrimental effects of corruption and on the importance of maintaining the integrity of public administration;

(k) to enlist and foster public support in combatting corruption;

(l) to develop, arrange, supervise, participate in or conduct educational or advisory programs as may be required by resolution of either House of Parliament;

(m) any function incidental or ancillary to the functions specified in the above paragraphs.

(2) In exercising its functions, the Commission—

(a) is to regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns; and

(b) is, as far as practicable, to direct its attention to serious and systemic corruption and is to take into account the responsibility and role other public authorities and public officers have in the prevention of corruption.

(3) The Commission must conduct its investigations with a view to determining—

(a) whether corruption or other conduct referred to in subsection (1)(a) has occurred, is occurring or is about to occur; and

(b) whether a law governing a public authority or public officer needs to be changed for the purpose of reducing the likelihood of the occurrence of corruption; and

(c) whether a method of work, practice or procedure of a public authority or public officer did or could allow, encourage or cause the occurrence of corruption.

(4) Subsection (3)(a) does not require the Commission to make a finding on the basis of any investigation.

(5) Other functions of the Commission are as follows:

(a) to assemble evidence that may be admissible in the prosecution of a person for a criminal offence against a law of this State in connection with corruption and to furnish that evidence to the Director of Public Prosecutions;

(b) to furnish to the Director of Public Prosecutions other evidence obtained in the course of its investigations (being evidence that may be admissible in the prosecution of a person for a criminal offence against a law of the Commonwealth or another State or a Territory of the Commonwealth) and to recommend the action that the Commission considers should be taken in relation to that evidence.

(6) If, in the course of its investigations, the Commission obtains information relating to the exercise of the functions of a public authority, the Commission may, if it considers it desirable to do so—

(a) furnish that information or a report on that information to the Minister responsible for the authority; and

(b) make to that Minister such recommendations (if any) relating to the exercise of the functions of the authority as the Commission considers appropriate.

(7) If the Commission furnishes evidence or information to a person under this section on the understanding that the information is confidential, the person is subject to the provisions of section 99 in relation to the information.

(8) The Commission has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the performance of its functions, and specific powers conferred on the Commission by this Act must not be taken to limit, by implication, the generality of this subsection.

8—Cooperation with other persons and agencies

(1) For the purposes of carrying out its principal functions, the Commission may—

(a) arrange for the establishment of task forces within the State; and

(b) seek the establishment of joint task forces with the authorities of the Commonwealth and other States and Territories; and

(c) cooperate with State task forces, Commonwealth task forces, joint task forces and other task forces; and

(d) coordinate or cooperate in coordinating any such task forces.

(2) In carrying out an investigation, the Commission—

(a) should, unless of the opinion that it is not appropriate to do so, work in cooperation with such of the following bodies as may be relevant:

(i) the Australian Federal Police;

(ii) a police force or police service of a State or a Territory of the Commonwealth;

(iii) the Auditor-General;

(iv) the Ombudsman;

(v) the Australian Crime Commission; and

(b) may work in cooperation with such other persons or bodies as the Commission thinks appropriate.

(3) In carrying out functions other than investigation, the Commission—

(a) should, unless of the opinion that it is not appropriate to do so, work in cooperation with such of the following bodies as may be relevant:

(i) the Auditor-General;

(ii) the Ombudsman;

(iii) educational institutions;

(iv) management consultants; and

(b) may work in co-operation with such other persons and bodies as the Commission thinks appropriate.

(4) The Commission may consult with and disseminate intelligence and information to the Australian Federal Police, a police force or police service of a State or Territory of the Commonwealth, the Australian Crime Commission, and other persons or bodies (including any task force and any member of a task force) as the Commission thinks appropriate.

(5) If the Commission disseminates information to a person or body under this section on the understanding that the information is confidential, the person or body is subject to the provisions of section 99 in relation to the information.

Division 3—Commissioner, assistant commissioners, staff etc

9—Commissioner and assistant commissioners

(1) The Governor may appoint—

(a) the Commissioner; and

(b) assistant commissioners with the concurrence of the Commissioner.

(2) The Commission will, for the purposes of performing its functions and exercising its powers, be constituted of the Commissioner or, at the direction of the Commissioner, an assistant commissioner.

(3) The Commissioner and assistant commissioners may perform functions and exercise powers contemporaneously.

10—Eligibility for appointment

(1) A person is not eligible for appointment as the Commissioner or an assistant commissioner unless—

(a) the person is eligible to be appointed as a Justice of the High Court of Australia, or a Judge of the Federal Court of Australia or the Supreme Court of a State or Territory of the Commonwealth; or

(b) the person is a former judge of a court referred to in paragraph (a) or any other court of a State or Territory of the Commonwealth.

(2) A person is not eligible for appointment as the Commissioner or an assistant commissioner if the person is a member of the judiciary or an Australian Parliament.

(3) A person is not eligible for appointment as the Commissioner unless—

(a) a proposal that the person be so appointed has been referred to the Joint Committee under section 90; and

(b) the period that the Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.

11—Terms and conditions of appointment

(1) The Commissioner and each assistant commissioner will be appointed for a term not exceeding 7 years and on conditions determined by the Governor.

(2) A person appointed to be the Commissioner or an assistant commissioner is, at the end of a term of appointment, eligible for reappointment but a person cannot hold office as the Commissioner or an assistant commissioner for consecutive terms that exceed 7 years in total.

(3) If a person appointed to be the Commissioner or an assistant commissioner holds a position as a public officer immediately prior to the appointment, the person is entitled to return to that position on the expiration of the term of office as Commissioner or assistant commissioner.

(4) The Governor may, on the address of both Houses of Parliament, remove the Commissioner from office.

(5) The Governor may remove an assistant commissioner from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for misconduct; or

(c) for failure or incapacity to carry out official duties satisfactorily.

(6) The office of Commissioner or assistant commissioner becomes vacant if the holder—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Governor; or

(d) is appointed to judicial office; or

(e) is nominated for election as a member of an Australian Parliament; or

(f) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(g) is convicted in this State of an offence that is punishable by imprisonment for a term of at least 12 months, or is convicted in a court of a place outside this State of an offence that, if committed in this State, would be an offence so punishable; or

(h) is removed from office by the Governor under subsection (4) or (5).

(7) On the office of the Commissioner or an assistant commissioner becoming vacant, a person may be appointed in accordance with this Act to fill the vacancy.

12—Remuneration

The Commissioner and each assistant commissioner is entitled to remuneration, allowances and expenses determined by the Governor.

13—Acting Commissioner or assistant commissioner

(1) If, for any reason—

(a) the Commissioner or an assistant commissioner is temporarily unable to perform official duties; or

(b) the office of Commissioner or assistant commissioner is temporarily vacant,

the Governor may—

(c) appoint a person who is eligible for appointment as Commissioner as Acting Commissioner; or

(d) appoint a person who is eligible for appointment as an assistant commissioner as an acting assistant commissioner.

(2) The Acting Commissioner has all the powers, functions, privileges and immunities of the Commissioner.

(3) An acting assistant commissioner has all the powers, functions, privileges and immunities of an assistant commissioner.

(4) Subject to this Act, the terms and conditions of appointment and employment (including the salary and allowances) of a person appointed under subsection (1) will be as determined from time to time by the Governor.

14—Commissioner etc not to engage in remunerative employment

A person holding or acting in the office of Commissioner or assistant commissioner must not, without the approval of the Minister, engage in any remunerative employment or undertaking outside official duties.

15—Supreme Court Judge appointed as Commissioner

(1) This section applies to a person—

(a) who was a Judge of the Supreme Court before being appointed as Commissioner (whether on a regular or an acting basis); and

(b) whose resignation as a Judge took effect immediately before the appointment as Commissioner took effect; and

(c) who, before the appointment as Commissioner took effect gave written consent to the application of this section.

(2) The person's commission as a Judge revives by force of this Act when the person ceases to hold office as Commissioner (and consequently the person becomes a Judge of the Supreme Court again as from that time).

(3) Subsection (2) does not apply in relation to any other judicial office held by the person.

(4) Subsection (2) ceases to apply to the person if—

(a) the person so requests in writing to the Minister; or

(b) the person is removed from office as Commissioner by the Governor on the address of both Houses of Parliament under this Act.

(5) For the purposes of this section, a reappointment of the person as Commissioner without a break is taken to be a continuation of the previous appointment as Commissioner.

(6) The regulations may modify the application of the *Judges' Pensions Act 1971* for the purposes of this section.

16—Counsel assisting Commission

The Commissioner may appoint a legal practitioner to assist the Commission as counsel, either generally or in relation to a particular matter.

17—Staff of Commission and other arrangements

(1) The Commissioner may employ staff to perform functions in connection with the operations or activities of the Commission on terms and conditions determined by the Commissioner.

(2) A person employed under this section will be taken to be employed by or on behalf of the Crown but will not be employed in the Public Service of the State.

(3) The Commissioner may—

(a) with the approval of the Minister administering an administrative unit of the Public Service, make use of the services, facilities or staff of that unit; or

(b) with the approval of the Minister, after consultation by the Minister with the Commissioner of Police, make use of the services of a police officer.

(4) The Commissioner may engage any of the following to provide the Commission with services, information or advice:

(a) with the approval of the relevant Minister of the Commonwealth or another State or a Territory of the Commonwealth—a member of the Australian Federal Police or a police force of that State or Territory;

(b) in accordance with arrangements prescribed by the regulations—a member of the police force of any country prescribed by the regulations;

(c) any other suitably qualified person.

(5) The following provisions apply in respect of a person engaged under subsection (4)(a) or (b):

(a) the person may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Act 1998* has and may exercise under a law of the State (including the common law and this Act and including functions conferred after the commencement of this subsection);

(b) the person has and may exercise those functions only when acting in the person's capacity as an officer of the Commission;

(c) this subsection does not operate to subject the person to the control and direction of the Commissioner of Police or any other police officer when acting in the person's capacity as an officer of the Commission;

(d) a complaint about the conduct of the person when exercising the functions of a police officer may not be made under the *Police (Complaints and Disciplinary Proceedings) Act 1985* but may be made to the Inspector.

18—Delegation

(1) The Commissioner or an assistant commissioner may delegate to a person (including a person for the time being holding or acting in a specified office or position) a function or power under this Act (except a prescribed function or power).

(2) A delegation—

(a) must be by instrument in writing; and

(b) may be absolute or conditional; and

(c) does not derogate from the power of the delegator to act in a matter; and

(d) is revocable at will.

(3) A delegated function or power may not be further delegated.

Part 3—Investigations by Commission

Division 1—Initiation

19—References by Parliament

(1) By resolution of either House of Parliament—

(a) a matter may be referred to the Commission for investigation; or

(b) the Commission may be required to develop, arrange, supervise, participate in or conduct specified educational or advisory programs; or

(c) a reference or requirement made by it under this section may be amended or withdrawn.

(2) It is the duty of the Commission—

(a) to fully investigate a matter referred to it for investigation by either House of Parliament; and

(b) to comply as fully as possible with any requirements imposed on it by either House of Parliament.

20—References by Police Complaints Authority

If the Police Complaints Authority forms the opinion that a complaint made under the *Police (Complaints and Disciplinary Proceedings) Act 1985* relates to corruption it must immediately refer the complaint to the Commission.

21—Duty to report corruption

(1) Despite any restriction on disclosure, a person to whom this section applies is under a duty to report to the Commission any matter that the person suspects on reasonable grounds concerns or may concern corruption.

(2) The Commission may issue guidelines as to what matters need or need not be reported.

(3) This section applies to the following persons:

(a) the Ombudsman;

(b) the Commissioner of Police;

(c) a person who constitutes a public authority;

(d) a principal officer of a public authority.

(4) In this section—

principal officer in relation to a public authority, means—

(a) the head of the authority;

(b) the most senior officer;

(c) the person normally entitled to preside at meetings of the authority.

22—Complaints

(1) A complaint about a matter that concerns or may concern corruption may be made by any person or body of persons to the Commission.

(2) If a prisoner informs the manager of the correctional institution that the prisoner wishes to make a complaint under this section, the manager of the correctional institution must take such steps as are necessary to facilitate the making of a complaint.

(3) A letter sent by a prisoner to the Commission or by the Commission to a prisoner must not be opened under the *Correctional Services Act 1982*.

(4) A person must not, in making a complaint under this section, wilfully make a false statement to, or mislead or attempt to mislead, the Commission or an officer of the Commission.

Maximum penalty: $2 500 or imprisonment for 6 months.

23—Initiation of investigation

(1) The Commission may conduct an investigation on the Commission's own initiative.

(2) The Commission may conduct an investigation even though no particular person has been implicated in a matter.

(3) The Commission need not conduct an investigation in response to a referral, report or complaint, or having commenced to investigate a matter, may discontinue the investigation, if, in the Commission's opinion—

(a) the matter is trivial; or

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

(c) having regard to all the circumstances of the case, the investigation of the matter is unnecessary or unjustifiable; or

(d) for reasons of resources or otherwise it is not viable to conduct or continue an investigation.

(4) If the Commission decides not to commence or continue an investigation of a complaint, report or referral made to it, the Commission must inform the complainant, officer or Authority who made the complaint, report or referral in writing of its decision and the reasons for it.

(5) Subsection (3) does not apply to a matter referred for investigation by resolution of either House of Parliament.

24—Preliminary investigation

(1) An investigation may be in the nature of a preliminary investigation.

(2) A preliminary investigation may be conducted, for example, for the purpose of assisting the Commission—

(a) to discover or identify conduct that might be made the subject of a more complete investigation under this Act; or

(b) to decide whether to make particular conduct the subject of a more complete investigation under this Act.

(3) Nothing in this section affects any other provision of this Act.

Division 2—General approach

25—Evidence and procedure

(1) The Commission is not bound by the rules of evidence and may inform itself on any matter in such manner as it considers appropriate.

(2) The Commission must exercise its functions with as little formality and technicality as is possible, and, in particular, the Commission should accept written submissions as far as is possible and compulsory examinations and public inquiries should be conducted with as little emphasis on an adversarial approach as is possible.

26—Avoidance of persons gaining political or other advantage

The Commission must give due consideration to the need to avoid persons using the fact that a particular complaint has been made to the Commission, or that the Commission is conducting a particular investigation, to gain political or other advantage.

Division 3—Compulsory examinations and public inquiries

27—Compulsory examinations

(1) For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a compulsory examination.

(2) A compulsory examination will be conducted by the Commissioner or an assistant commissioner, as determined by the Commissioner.

(3) A person required to attend a compulsory examination is entitled to be informed, before or at the commencement of the compulsory examination, of the nature of the allegation or complaint being investigated.

(4) A failure to comply with subsection (3) does not invalidate or otherwise affect the compulsory examination.

(5) A compulsory examination is to be conducted in private.

(6) The Commission may (but is not required to) advise a person required to attend a compulsory examination of any findings it has made or opinions it has formed as a result of the compulsory examination.

28—Public inquiries

(1) For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a public inquiry.

(2) Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission is to consider the following:

(a) the benefit of exposing to the public, and making it aware, of corruption;

(b) the seriousness of the allegation or complaint being investigated;

(c) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry);

(d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.

(3) A public inquiry is to be conducted by the Commissioner, or by an assistant commissioner, as determined by the Commissioner.

(4) At a public inquiry, the person conducting the inquiry must announce the general scope and purpose of the inquiry.

(5) A person required to attend a public inquiry is entitled to be informed of the general scope and purpose of the public inquiry and the nature of the allegation or complaint being investigated before or at the time the person is required to appear at the inquiry.

(6) A failure to comply with subsection (5) does not invalidate or otherwise affect the public inquiry.

(7) A public inquiry is to be held in public except that the Commission may—

(a) hear closing submissions in private; and

(b) hold any other part of the inquiry in private if it considers it to be in the public interest.

29—Right of appearance

A person who satisfies the Commission that the person is substantially and directly interested in a subject matter of a public inquiry is entitled to be authorised by the Commission to appear at the public inquiry or a part of the public inquiry.

30—Legal representation

(1) The Commission must give a reasonable opportunity for a person giving evidence or appearing at a compulsory examination or public inquiry to be legally represented.

(2) A legal practitioner appointed by the Commission to assist it may appear before the Commission.

31—Examination and cross-examination

(1) A legal practitioner appointed by the Commission to assist it, or a person authorised to appear at a compulsory examination or public inquiry (or the person's legal representative) may, with leave of the Commission, examine or cross-examine a witness on any matter that the Commission considers relevant.

(2) A witness so examined or cross-examined has the same protection and is subject to the same liabilities as if examined by the Commission.

32—Power to summon witnesses and take evidence

(1) The Commission may summon a person to appear before the Commission at a compulsory examination or public inquiry at a time and place specified in the summons to give evidence or to produce such documents or other things (if any) as are referred to in the summons, or both.

(2) The Commission may require a person appearing at the compulsory examination or public inquiry to produce a document or other thing.

(3) The Commission may, at a compulsory examination or public inquiry take evidence on oath or affirmation and for that purpose—

(a) may require a person appearing at the compulsory examination or public inquiry to give evidence either to take an oath or to make an affirmation in a form approved by the Commission; and

(b) the Commissioner, an assistant commissioner, or a person authorised for that purpose by the Commissioner or an assistant commissioner, may administer an oath or affirmation to a person so appearing at the compulsory examination or public inquiry.

(4) A person summoned to appear as a witness at a compulsory examination or public inquiry before the Commission must not, without reasonable excuse—

(a) fail to attend as required by the summons; or

(b) fail to attend from day to day unless excused, or released from further attendance, by the Commission.

Maximum penalty: $2 500 or imprisonment for 6 months.

(5) A person appearing as a witness at a compulsory examination or public inquiry before the Commission must not, without reasonable excuse—

(a) when required under subsection (3) either to take an oath or make an affirmation—refuse or fail to comply with the requirement; or

(b) refuse or fail to answer a question that the person is required to answer by the Commission; or

(c) refuse or fail to produce a document or other thing in the person's custody or control that the person was required by the summons or the Commission to produce.

Maximum penalty: $5 000 or imprisonment for 1 year.

(6) It is a defence to a prosecution for an offence against subsection (5)(c) for the defendant to show that the document or other thing was not relevant to an investigation.

(7) A person summoned to attend a compulsory examination or public inquiry or appearing before the Commission at a compulsory examination or public inquiry is not entitled to refuse to answer a question or produce a document or other thing on the ground of privilege (other than legal professional privilege) but, if the person objects to answering the question or producing the document or thing, any such answer given or document or other thing produced will not be admissible in evidence against the person in proceedings for an offence other than proceedings in respect of the making of a false or misleading statement or declaration.

33—Declarations as to objections by witness

The Commission may declare that all or any classes of answers given, or documents or other things produced, by a witness will be regarded as having been given or produced on objection by the witness and, on the Commission so declaring, the witness need not make an objection in respect of each such answer, document or other thing.

34—Attendance of prisoner before Commission

If the attendance at a compulsory examination or public inquiry before the Commission of a prisoner is required, the Commission may, by order in writing served on the manager of the correctional institution in whose custody the prisoner is, direct the manager to produce the prisoner or have the prisoner produced, at the time and place specified in the order.

35—Arrest of witness

(1) If a person served with a summons to attend the Commission as a witness fails to attend in answer to the summons, the Commissioner may, on proof by statutory declaration of service of the summons, apply to a magistrate for a warrant for the apprehension of the person.

(2) If the Commissioner is satisfied, by evidence on oath or affirmation, that it is probable that a person whose evidence is desired and is necessary and relevant to an investigation under this Act—

(a) will not attend before the Commission to give evidence without being compelled to do so; or

(b) is about to, or is preparing to, leave the State and the person's evidence will not be obtained if the person departs,

the Commissioner may apply to a magistrate for a warrant for the apprehension of the person.

(3) The Commissioner is authorised to administer an oath or affirmation for the purposes of subsection (2).

(4) A warrant may be issued without or before the issue of a summons to the person whose evidence is desired.

(5) A warrant may be issued 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 under this section authorises—

(a) the arrest of the witness; and

(b) the bringing of the witness promptly before the Commission; and

(c) the detention of the witness in custody for that purpose until released by order of the Commissioner.

(7) A warrant under this section may be executed by an officer of the Commission who is or has the powers of a police officer, or a person named in the warrant, and the person executing it may use such force as is reasonably necessary in entering premises and executing the warrant.

(8) The issue of a warrant or the arrest of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with a summons.

36—Conditional release of witness

(1) The release of a witness by order of the Commissioner under section 35(6) may be made subject to 1 or more of the following conditions:

(a) that the witness appear before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the person presiding at the relevant compulsory examination or public inquiry;

(b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example, the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission);

(c) any other conditions the Commissioner thinks fit.

(2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

37—Review by Supreme Court

(1) A witness who has not been released by the Commissioner under section 35(6) or whose release under that section is subject to conditions may apply to the Supreme Court for a review of the decision not to release, the failure to release the witness or the terms of those conditions.

(2) On a review, the Supreme Court may—

(a) affirm or set aside the decision or any condition imposed by the Commissioner; or

(b) make an order that the Commissioner could have made in relation to the detention or release of the witness.

Division 4—Referral to another authority for investigation or other action

38—Interpretation

In this Division—

relevant authority means the person or body to whom a matter is referred by the Commission under this Division.

39—Referral of matter

(1) The Commission may, before or after investigating a matter (whether or not the investigation is completed, and whether or not the Commission has made any findings) refer the matter for investigation or other action to a person or body considered by the Commission to be appropriate in the circumstances.

(2) The Commission may, when referring a matter, recommend the action that should be taken by the relevant authority and the time within which it should be taken.

(3) The Commission may communicate to the relevant authority information that the Commission has obtained during its investigation of the matter.

(4) The Commission may not refer a matter to a person or body except after appropriate consultation with the person or body and after taking into consideration the views of the person or body.

(5) If the Commission communicates information to a person or body under this section on the understanding that the information is confidential, the person or body is subject to the provisions of section 99 in relation to the information.

40—Report back to Commission

(1) The Commission may, when referring a matter under this Division, require the relevant authority to submit to the Commission a report or reports on the action taken by the relevant authority in relation to the matter.

(2) A report under this section—

(a) must be of such a nature as the Commission directs; and

(b) must be submitted to the Commission within such reasonable time as the Commission directs.

41—Further action by Commission

(1) If the Commission is not satisfied that a relevant authority has duly and properly taken action in relation to a matter referred under this Division, the Commission must inform the relevant authority of the grounds of the Commission's dissatisfaction and give the authority an opportunity to comment within a specified time.

(2) If, after considering any comments received from the relevant authority within the specified time, the Commission is still not satisfied, the Commission may submit a report to the Minister responsible for the relevant authority setting out any recommendation that was given as to the action that should be taken and the grounds of dissatisfaction, together with any comments from the relevant authority and the Commission.

(3) If, after considering any comments received from the Minister responsible for the authority within 21 days after the report was submitted to that Minister under subsection (2), the Commission is still of the opinion that its recommendation should be adopted, the Commission may furnish to the appropriate officer of each House of Parliament a report setting out the recommendation and the reasons for its opinion.

42—Responsibility of relevant authority

It is the duty of a relevant authority to comply with a requirement of the Commission under this Division.

43—Revocation of referral, recommendation, etc

The Commission may—

(a) revoke a referral under this Division; or

(b) revoke or vary a recommendation or requirement under this Division; or

(c) vary the time within which a requirement under this Division is to be complied with.

Division 5—Other powers for gathering information

44—Power to make application under *Listening and Surveillance Devices Act 1972*

For the purposes of an investigation, the Commission may make an application for a warrant under section 6(1) of the *Listening and Surveillance Devices Act 1972* and that Act applies accordingly.

45—Power to obtain information

(1) For the purposes of an investigation, the Commission may, by notice in writing served on a public authority or public officer, require the authority or officer to produce a statement of information.

(2) A notice under this section—

(a) must specify—

(i) the information to be stated; and

(ii) the period within which the statement must be produced; and

(iii) the officer of the Commission to whom the statement is to be produced; and

(b) may permit the statement to be made by a person acting on behalf of the public authority or public officer but need not specify the person or class of persons who may so act.

(3) A person must not—

(a) without reasonable excuse, fail or refuse to comply with a notice under this section; or

(b) in purported compliance with a notice under this section, knowingly furnish information that is false or misleading.

Maximum penalty: $2 500 or imprisonment for 6 months.

46—Power to obtain documents or other things

(1) For the purposes of an investigation, the Commission may, by notice in writing served on a person, require the person to produce a document or other thing.

(2) A notice under this section—

(a) must specify—

(i) the document or thing to be produced; and

(ii) the time and place at which it is to be produced; and

(iii) the officer of the Commission to whom it is to be produced; and

(b) may permit the requirements of the notice to be satisfied by a person acting on behalf of the person on whom it was served but need not specify the person or class of persons who may so act.

(3) A person must not, without reasonable excuse, fail or refuse to comply with a notice under this section.

Maximum penalty: $2 500 or imprisonment for 6 months.

47—Privilege as regards information, documents, etc

(1) The Commission must withdraw a requirement made by it under section 45 or 46 if it appears to the Commission—

(a) that a person has a ground of privilege whereby, in proceedings before a court, the person might resist the requirement; and

(b) that the person does not intend to comply with the requirement.

(2) A person is not entitled to refuse to comply with a requirement made under section 45 or 46 by reason of—

(a) a rule that, in proceedings before a court, might justify an objection to compliance with a requirement of the same kind as that made under section 45 or 46 on grounds of public interest; or

(b) a privilege of a public authority or public officer in that capacity that the authority or officer could have claimed in a court; or

(c) a restriction on disclosure applying to a public authority or public officer.

48—Power to enter premises of a public authority or officer

(1) For the purposes of an investigation, an officer of the Commission authorised in writing by the Commission may, at any time—

(a) enter and inspect 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) A public authority or public officer must make available such facilities as are necessary to enable the powers conferred by this section to be exercised.

49—Privilege as regards entry of premises

(1) The powers conferred by section 48 must not be exercised if it appears to the Commissioner or the person authorised under that section—

(a) that a person has a ground of privilege whereby, in proceedings before a court, the person might resist inspection of the premises or production of the document or other thing; and

(b) that the person does not consent to the inspection or production.

(2) The powers conferred by section 48 may be exercised despite—

(a) a rule that, in proceedings before a court, might justify an objection to an inspection of the premises or to production of the document or other thing on grounds of public interest; or

(b) a privilege of a public authority or public officer in that capacity that the authority or officer could have claimed in a court; or

(c) a restriction on disclosure applying to a public authority or public officer.

50—Search warrants authorising use of force

(1) If there are reasonable grounds for doing so, a magistrate may issue a search warrant, on the application of an officer of the Commission, if the officer has reasonable grounds for believing—

(a) that there is on particular premises, a document or other thing connected with a matter being investigated under this Act; or

(b) that such a document or other thing may, within the next 72 hours, be brought onto the premises.

(2) An application for a search warrant must be made in the manner prescribed by the regulations.

(3) A search warrant authorises an officer of the Commission who is or has the powers of a police officer or is named in the warrant—

(a) to enter the premises; and

(b) to search the premises for documents or other things connected with any matter that is being investigated under this Act; and

(c) to search a person found on the premises whom he or she reasonably suspects of having a document or other thing specified in the warrant; and

(d) to seize any such documents or other things that are found and deliver them to the Commission.

(4) A person authorised to enter premises under a search warrant may—

(a) use such force as is reasonably necessary for the purpose of entering the premises or searching a person; and

(b) if it is reasonably necessary to do so, break open any receptacle on the premises for the purposes of the search.

(5) A person executing a search warrant may be assisted by such persons as he or she considers desirable or necessary in the circumstances.

(6) A search warrant may be executed by day, but must not be executed by night unless the terms of the warrant authorise its execution by night.

(7) A person executing a search warrant must produce the warrant for inspection by an occupier of the premises if requested to do so by the occupier.

(8) A search warrant ceases to have effect—

(a) 1 month after its issue; or

(b) if it is withdrawn by the person who issued it; or

(c) when it is executed,

whichever first occurs.

(9) If a document or other thing is seized under a search warrant, the Commission may retain the document or other thing if, and for so long as, its retention by the Commission is reasonably necessary for the purposes of an investigation to which it is relevant.

(10) If the retention of the document or other thing by the Commission is not, or ceases to be, reasonably necessary for those purposes, the Commission must cause it to be delivered to—

(a) the person who appears to the Commission to be entitled to possession of the document or other thing; or

(b) the Attorney-General with a recommendation as to the action that should be taken in relation to the document or other thing.

(11) In this section—

by day means during the period between 6 am and 9 pm on any day; and

by night means during the period between 9 pm on any day and 6 am on the following day.

51—Self-incrimination

(1) A statement of information, document or other thing produced under section 45 or 46, that tends to incriminate the person producing it, will not, if the person objects to production at the time, be admissible in evidence against the person in proceedings for an offence other than proceedings in respect of the making of a false or misleading statement or declaration.

(2) This section does not prevent the use of such a statement, document or other thing for the purposes of an investigation under this Act.

52—Injunctions

(1) Subject to this section, the Supreme Court may, on application made by the Commission, grant an injunction restraining a person from engaging in conduct that is the subject of, or affects the subject matter of, an investigation or proposed investigation by the Commission.

(2) The Supreme Court must not grant an injunction under this section unless it is satisfied—

(a) that the conduct sought to be restrained is likely to impede the investigation or proposed investigation; or

(b) that it is necessary in the public interest to do so.

(3) The Supreme Court cannot require the Commission to give an undertaking as to damages as a condition of the granting of an injunction under this section.

53—Powers exercisable whether or not compulsory examination or public inquiry being held

The powers conferred by this Division are exercisable in relation to an investigation whether or not a compulsory examination or public inquiry is being held before the Commission for the purposes of the investigation.

Division 6—Reports

54—Reports on investigations

(1) The Commission may prepare reports in relation to a matter that has been or is the subject of an investigation.

(2) The Commission must prepare reports in relation to a matter referred to the Commission by either House of Parliament, as directed by the House referring the matter.

(3) The Commission must furnish reports prepared under this section to the appropriate officer of each House of Parliament as soon as practicable after the Commission has concluded its involvement in the matter.

(4) The Commission may defer making a report under this section if it is satisfied that it is desirable to do so in the public interest, except in relation to a matter referred to the Commission by either House of Parliament.

(5) A report under this section—

(a) must, in respect of each affected person, include a statement as to whether or not, in all the circumstances, the Commission is of the opinion that consideration should be given to—

(i) obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence; and

(ii) the taking of disciplinary action under any law against the person; and

(iii) the taking of action against the person as a public officer on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public officer; and

(b) must not include—

(i) a finding or opinion that a specified person is guilty of or has committed, is committing or is about to commit a criminal offence (whether or not a specified offence) or has, is or is about to engage in conduct constituting or involving grounds for disciplinary action under any law (whether or not a specified law) against the person; or

(ii) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence (whether or not a specified offence) or that disciplinary action under any law (whether or not a specified law) should be taken against the person; and

(c) may include, in respect of a public authority established under an Act, a statement that consideration should be given to taking action against the authority as contemplated by that Act; and

(d) may include—

(i) statements as to any of the Commission's findings, opinions and recommendations; and

(ii) statements as to the Commission's reasons for any of its findings, opinions and recommendations.

(6) A reference in subsection (5)(a) to an ***affected person*** is a reference to a person described as such in a reference made by either House of Parliament or against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.

(7) For the purposes of subsection (5), a finding or opinion that a person has engaged, is engaging or is about to engage—

(a) in corruption; or

(b) in specified conduct that constitutes or involves, or could constitute or involve, corruption,

is not a finding or opinion that the person is guilty or has committed, is committing or is about to commit, a criminal offence or has engaged, is engaging or is about to engage, in conduct constituting or involving grounds for disciplinary action under a law against the person.

55—Special reports

The Commission may, at any time, make a special report to the appropriate officer of each House of Parliament on any administrative or general policy matter relating to the functions of the Commission.

Division 7—Offences

56—False or misleading evidence

A person who, at a compulsory examination or public inquiry before the Commission, gives evidence that is, to the knowledge of the person, false or misleading in a material particular is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 4 years.

57—Offences relating to documents or other things

(1) A person who, knowing that a document or other thing is or may be required in connection with an investigation—

(a) wilfully destroys it or renders it incapable of identification; or

(b) in the case of a document, renders it illegible, indecipherable or unusable, with intent to prevent it from being used in connection with the investigation,

is guilty of an offence.

Maximum penalty: $10 000 or imprisonment for 2 years.

(2) A person who, with intent to delay or obstruct the carrying out by the Commission of an investigation—

(a) destroys or alters a document or other thing relating to the subject matter of the investigation; or

(b) sends or attempts to send, or conspires with another person to send, out of the State any such document or other thing, or any property of any description belonging to or in the disposition of or under the control of any person whose affairs are the subject matter of the investigation,

is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 4 years.

(3) A person who—

(a) with intent to delay or obstruct the carrying out by the Commission of an investigation; or

(b) with intent to mislead the Commission,

fabricates a document or other thing is guilty of an offence, if the document or other thing is produced in evidence to the Commission or is produced in purported compliance with a requirement under this Act.

Maximum penalty: $20 000 or imprisonment for 4 years.

(4) If in a prosecution for an offence against subsection (2) it is proved that the defendant has destroyed or altered a document or other thing, or has sent or attempted to send, or conspired to send, out of the State any such document or other thing, the onus of proving that in so doing he or she has not acted in contravention of this section is on the defendant.

58—Fraud on witness

A person who practises a fraud or deceit on, or knowingly makes or exhibits a false statement, representation or writing to, a person—

(a) called or to be called as a witness before the Commission with intent to affect the testimony of that person as a witness; or

(b) required to comply with a notice under section 45 or 46 with intent to affect that person's compliance with the notice,

is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 4 years.

59—Preventing witness from attending

(1) A person who wilfully prevents or endeavours to prevent a person who has been summoned to attend as a witness before the Commission—

(a) from attending as a witness; or

(b) from producing anything in evidence pursuant to a summons to attend,

is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 4 years.

(2) A person who wilfully prevents or endeavours to prevent a person from complying with a requirement under section 45 or 46 is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 4 years.

(3) A reference in subsection (1) to a person who has been summoned to attend as a witness before the Commission includes a reference to a person who is in detention under a warrant under section 35(6) or who, having been released under that subsection on condition that the person appear and report himself or herself before the Commission, is still subject to that condition.

60—Injury to witness or person assisting Commission

(1) A person who uses, causes, inflicts or procures, or threatens to use, cause, inflict or procure, any violence, punishment, damage, loss or disadvantage to another for or on account of—

(a) his or her assisting the Commission; or

(b) evidence given by him or her before the Commission,

is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 4 years.

(2) In this section, a reference to a person assisting the Commission is a reference to a person who—

(a) has appeared, is appearing or is to appear as a witness before the Commission; or

(b) has complied with, or proposes to comply with, a requirement under section 45 or 46; or

(c) has assisted, is assisting or is to assist the Commission in some other manner.

61—Dismissal of witness, or person assisting Commission, by employer

(1) An employer who dismisses an employee from his or her employment, or prejudices an employee in his or her employment, for or on account of the employee assisting the Commission, is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 4 years.

(2) In this section, a reference to a person assisting the Commission is a reference to a person who—

(a) has appeared, is appearing or is to appear as a witness before the Commission; or

(b) has complied with, or proposes to comply with, a requirement under section 45 or 46; or

(c) has assisted, is assisting or is to assist the Commission in some other manner.

(3) In proceedings for an offence against this section the onus is on the employer to prove that an employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (1).

62—Procuring false testimony by witness

A person who procures or causes or attempts or conspires to procure or cause—

(a) the giving of false testimony at a compulsory examination or public inquiry before the Commission; or

(b) in purported compliance with a notice served on a person under section 45, the furnishing of information that is, to the knowledge of the person so served, false or misleading in a material particular,

is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 4 years.

63—Bribery of witness

A person who—

(a) gives, confers or procures, or promises to give or confer, or to procure or attempt to procure, property or a benefit of any kind to, on or for a person, on an agreement or understanding that a person called or to be called as a witness before the Commission will give false testimony or withhold true testimony; or

(b) attempts by any means to induce a person called or to be called before the Commission to give false testimony, or to withhold true testimony; or

(c) asks, receives or obtains, or agrees or attempts to receive or obtain, property or a benefit of any kind for himself or herself, or for another person, on an agreement or understanding that a person will as a witness before the Commission give false testimony or withhold true testimony,

is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 4 years.

64—Impersonation of officer of Commission

(1) A person must not directly or indirectly represent that he or she is an officer of the Commission, or is of a particular class of officer, unless the person is such an officer, or is of that class.

Maximum penalty: $5 000 or imprisonment for 1 year.

(2) For the purposes of subsection (1), a person represents that a state of affairs exists if the person does or says anything, or causes, permits or suffers anything to be done or said, by virtue of which it is represented, or a belief may be induced, that the state of affairs exists.

65—Obstruction of Commission

A person must not—

(a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten—

(i) the Commission or an officer of the Commission, or the Inspector or an officer of the Inspector, in the exercise of powers or functions under this Act; or

(ii) a legal practitioner appointed by the Commission to assist the Commission as counsel in the exercise of functions as such counsel; or

(iii) a legal practitioner or other person authorised to appear before the Commission in relation to that appearance;

(b) without reasonable excuse, refuse or wilfully fail to comply with a lawful requirement of the Commission or an officer of the Commission, or the Inspector or an officer of the Inspector, under this Act; or

(c) wilfully make a false statement to or mislead, or attempt to mislead, the Commission or an officer of the Commission, or the Inspector or an officer of the Inspector, in the exercise of powers or functions under this Act; or

(d) disrupt a compulsory examination or public inquiry before the Commission.

Maximum penalty: $5 000 or imprisonment for 1 year.

66—Publication of information identifying subject of investigation

A person must not, except in such manner and to such persons as the Commission specifies, publish, or cause to be published, in printed or electronic form or by public announcement (such as by radio, television or the Internet) information tending to suggest that a particular person is, has been or may be or may have been, the subject of a complaint or an investigation under this Act.

Maximum penalty: $5 000 or imprisonment for 1 year.

67—Disclosures prejudicing investigations

(1) A person who is required—

(a) by a notice under section 45 or 46 to produce a statement of information or to produce a document or other thing; or

(b) by a summons under section 32 to give evidence or to produce a document or other thing,

must not disclose information about the notice or summons that is likely to prejudice the investigation to which it relates.

Maximum penalty: $5 000 or imprisonment for 1 year.

(2) Subsection (1) does not apply to a notice or summons unless it specifies that information about the notice or summons must not be disclosed.

(3) A person does not contravene this section if—

(a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter; or

(b) the disclosure is made to obtain legal advice or representation in relation to the notice or summons; or

(c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

(4) A reference in this section to the disclosure of information about a notice or summons includes a reference to—

(a) a disclosure about the existence or nature of the notice or summons or of the investigation to which it relates; and

(b) a disclosure of information to a person from which the person could reasonably be expected to infer the existence or nature of the notice or summons or of the investigation to which it relates.

68—Publication of evidence, etc

(1) The Commission may, where it considers it desirable in the interests of the administration of justice to do so, direct that—

(a) evidence given before it; or

(b) the contents of a document, or a description of a thing produced to the Commission or seized under a search warrant issued under this Act; or

(c) information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or

(d) the fact that a person has given or may be about to give evidence at a compulsory examination or public inquiry,

must not be published or must not be published except in such manner, and to such persons, as the Commission specifies.

(2) The Commission is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.

(3) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: $5 000 or imprisonment for 1 year.

Division 8—Miscellaneous

69—Court proceedings

(1) The Commission may—

(a) commence, continue, discontinue or complete an investigation; or

(b) furnish reports in connection with an investigation; or

(c) do all such acts and things as are necessary or expedient for those purposes,

despite any proceedings that may be in or before a court, tribunal, royal commission, warden, coroner, magistrate, justice or other person.

(2) If the Commission does any of the things mentioned in subsection (1)—

(a) the Commission must, as far as practicable, ensure that a hearing or other action relating to the investigation is conducted in private during the currency of the proceedings (so far as the hearing or other action relates to or affects the subject matter of the proceedings); and

(b) the Commission must, as far as practicable, give such directions (having effect during the currency of the proceedings) under section 68 as will avoid prejudice to any person affected by the proceedings; and

(c) the Commission must defer making a report to Parliament in relation to the investigation during the currency of the proceedings.

(3) This section has effect whether or not the proceedings commenced before or after the relevant investigation commenced and whether or not the Commission or an officer of the Commission is a party to the proceedings.

70—Indemnity from prosecution

(1) The Commission may recommend to the Director of Public Prosecutions—

(a) that a person be granted an indemnity from prosecution; or

(b) that a person be given an undertaking that—

(i) an answer, statement or disclosure in proceedings before the Commission; or

(ii) the fact of a disclosure, or production of a document in proceedings before the Commission,

will not be used in evidence against the person.

(2) A reference in this section to proceedings before the Commission includes a reference to a compulsory examination or public inquiry conducted by the Commission or any other investigative activity involving the Commission or an officer of the Commission.

71—Protection of witnesses and persons assisting Commission

(1) If it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary—

(a) to protect the safety of any such person; or

(b) to protect any such person from intimidation or harassment.

(2) In this section, a reference to a person who is assisting the Commission is a reference to a person who—

(a) has appeared, is appearing or is to appear before the Commission to give evidence or to produce a document or other thing; or

(b) has produced or proposes to produce a document or other thing to the Commission under this Act; or

(c) has assisted, is assisting or is to assist the Commission in some other manner.

(3) Any such arrangements may (but need not) involve the Commissioner directing the Commissioner of Police or a prescribed public authority or prescribed public officer—

(a) to provide any protection referred to in subsection (1); or

(b) to provide personnel or facilities or both to assist in providing that protection; or

(c) to otherwise assist in the provision of that protection.

(4) The Commissioner of Police, or such a public authority or public officer, is under a duty to comply with any such direction as far as reasonably possible.

(5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment.

(6) An order under subsection (5) is not limited to directions of a kind referred to in subsection (3).

(7) A person who contravenes an order applying to the person under subsection (5) without reasonable excuse is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 4 years.

(8) Nothing in this section affects the *Witness Protection Act 1996*.

72—Reimbursement of expenses of witnesses

A witness appearing before the Commission will be paid in respect of attendance before the Commission an amount ascertained in accordance with the prescribed scale or, if there is no prescribed scale, such amount as the Commission determines.

73—Legal and financial assistance

(1) A witness who is appearing or is about to appear before the Commission may make an application to the Attorney-General for the provision of assistance under this section in respect of the witness's appearance.

(2) If an application is made by a person under this section, the Attorney-General may, if satisfied that—

(a) the person would suffer substantial hardship if the application were refused; or

(b) the circumstances of the case are of such a special nature that the application should be granted,

authorise the provision to that person (either unconditionally or subject to conditions) of such legal or financial assistance in respect of the appearance of that person before the Commission as the Attorney-General determines.

(3) The Attorney-General may delegate 1 or more of his or her functions under this section to the Chief Executive of the Attorney-General’s Department.

74—Annual report

(1) The Commission must, within 3 months after each 30 June, prepare a report of its operations during the year ended on that 30 June and furnish the report to the Minister.

(2) A report by the Commission under this section in relation to a year must include the following:

(a) a description of the matters that were referred to the Commission;

(b) a description of the matters investigated by the Commission;

(c) the following details with respect to matters investigated by the Commission on complaints:

(i) the time interval between the lodging of each complaint and the Commission deciding to investigate the complaint;

(ii) the number of complaints commenced to be investigated but not finally dealt with during the year;

(iii) the average time taken to deal with complaints and the actual time taken to investigate any matter in respect of which a report is made;

(d) the following details with respect to compulsory examinations and public inquiries:

(i) the total number of compulsory examinations and public inquiries conducted during the year;

(ii) the number of days spent during the year in conducting public inquiries;

(iii) the time interval between the completion of each public inquiry conducted during the year and the furnishing of a report on the matter;

(e) recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made or taken as a result of the exercise of its functions;

(f) the general nature and extent of information furnished under this Act by the Commission during the year to a law enforcement agency;

(g) the extent to which its investigations have resulted in prosecutions or disciplinary action in that year;

(h) the number of search warrants issued by magistrates and the Commissioner respectively under this Act in that year;

(i) a description of its activities during that year in relation to its educational and advisory functions.

(3) The Minister must, within 12 sitting days after receipt of a report, cause copies of the report to be laid before both Houses of Parliament.

Part 4—Inspector of Commission

75—Appointment of Inspector

The Governor may appoint a person to be the Inspector of the Independent Commission against Corruption.

76—Eligibility for appointment

(1) A person is not eligible to be appointed as Inspector if the person is a member of an Australian Parliament.

(2) A person is not eligible to be appointed as Inspector unless—

(a) a proposal that the person be so appointed has been referred to the Joint Committee under section 90; and

(b) the period that the committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.

77—Terms and conditions of appointment

(1) The Inspector will be appointed for a term not exceeding 5 years and on conditions determined by the Governor.

(2) The Inspector is, at the end of a term of appointment, eligible for reappointment but a person cannot hold office as Inspector for consecutive terms that exceed 5 years in total.

(3) The Governor may, on the address of both Houses of Parliament, remove the Inspector from office.

(4) The office of Inspector becomes vacant if the holder—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Governor; or

(d) is nominated for election as a member of an Australian Parliament; or

(e) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(f) is convicted in this State of an offence that is punishable by imprisonment for a term of at least 12 months, or is convicted in a court of a place outside this State of an offence that, if committed in this State, would be an offence so punishable; or

(g) is removed from office by the Governor under subsection (3).

(5) On the office of Inspector becoming vacant, a person may be appointed in accordance with this Act to fill the vacancy.

78—Remuneration

The Inspector is entitled to remuneration, allowances and expenses determined by the Governor.

79—Acting Inspector

(1) If, for any reason—

(a) the Inspector is temporarily unable to perform official duties; or

(b) the office of Inspector is temporarily vacant,

the Governor may appoint a person who is eligible for appointment as Inspector as Acting Inspector.

(2) The Acting Inspector has all the powers, functions, privileges and immunities of the Inspector.

(3) Subject to this Act, the terms and conditions of appointment and employment (including the salary and allowances) of a person appointed under subsection (1) will be as determined from time to time by the Governor.

80—Judge holding office of Inspector or Acting Inspector

(1) The appointment of a person who is the holder of a judicial office as Inspector or Acting Inspector does not affect—

(a) the person's tenure of that judicial office; or

(b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.

(2) The person's service as Inspector is, for all purposes, taken to be service as the holder of that judicial office.

(3) In this section—

judicial office means an office of Judge of a court of South Australia.

81—Staff of Inspector

(1) The Inspector may employ staff to perform functions in connection with the operations or activities of the Inspector on terms and conditions determined by the Inspector.

(2) A person employed under this section will be taken to be employed by or on behalf of the Crown but will not be employed in the Public Service of the State.

(3) The Inspector may, with the approval of the Minister administering an administrative unit of the Public Service, make use of the services, facilities or staff of that unit.

(4) The Inspector may engage any suitably qualified person to provide the Inspector with services, information or advice.

82—Functions of Inspector

(1) The functions of the Inspector are as follows:

(a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State;

(b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers or former officers of the Commission;

(c) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers or former officers of the Commission;

(d) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

(2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Joint Committee or any public authority or public officer.

(3) The Inspector is not subject to the Commission in any respect.

(4) For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is—

(a) contrary to law; or

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

(c) based wholly or partly on improper motives.

83—Powers of Inspector

(1) The Inspector—

(a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission; 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 of the Commission 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 any conduct of officers of the Commission; and

(d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission; and

(e) may investigate and assess complaints about the Commission or officers of the Commission; and

(f) may refer matters relating to the Commission or officers of the Commission to other public authorities or public officers for consideration or action; and

(g) may recommend disciplinary action or criminal prosecution against officers of the Commission.

(2) The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector's functions and any specific powers conferred on the Inspector by this Act are not taken to limit by implication the generality of this subsection.

(3) In this section—

officer includes former officer.

84—Inquiries and powers of royal commission

(1) For the purposes of the Inspector's functions, the Inspector may make or hold inquiries.

(2) For the purposes of an inquiry under this section, the Inspector has the powers, authorities, protections and immunities conferred on a commissioner by the *Royal Commissions Act 1917* and that Act applies to any witness summoned by or appearing before the Inspector in the same way as it applies to a witness summoned by or appearing before a commissioner.

85—Special reports

The Inspector may, at any time, make a special report to the appropriate officer of each House of Parliament on—

(a) any matters affecting the Commission, including, for example, its operational effectiveness or needs; and

(b) any administrative or general policy matter relating to the functions of the Inspector.

86—Annual report

(1) The Inspector is required to prepare, within the period of 3 months after each 30 June, a report of the Inspector's operations during the year ended on that 30 June and furnish the report to the Minister.

(2) The Minister must, within 12 sitting days after receipt of a report, cause copies of the report to be laid before both Houses of Parliament.

Part 5—Parliamentary Joint Committee

87—Establishment of Committee

As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the *Committee on the Independent Commission Against Corruption*, must be appointed.

88—Membership of Committee

(1) The Joint Committee will consist of 11 members, of whom—

(a) 3 must be members of, and appointed by, the Legislative Council; and

(b) 8 must be members of, and appointed by, the House of Assembly.

(2) The appointment of members of the Joint Committee must, as far as practicable, be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.

(3) A Minister of the Crown is not eligible for appointment as a member of the Joint Committee.

89—Functions of Committee

(1) The functions of the Joint Committee are as follows:

(a) to monitor and to review the exercise by the Commission and the Inspector of the Commission's and Inspector's functions;

(b) to refer an aspect of the Commission's operations to the Inspector for consideration;

(c) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter relating to the Commission or the Inspector or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;

(d) to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing in, or arising out of, a report;

(e) to examine trends and changes in corruption, and practices and methods relating to corruption, and report to both Houses of Parliament on any change that the Joint Committee thinks should be made to the functions, structure or procedures of the Commission or the Inspector;

(f) to inquire into any question in connection with its functions referred to it by a House of Parliament, and report to that House on that question.

(2) Nothing in this part authorises the Joint Committee—

(a) to investigate a matter relating to particular conduct; or

(b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or

(c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.

90—Power to veto proposed appointment of Commissioner or Inspector

(1) The Minister is to refer a proposal to appoint a person as Commissioner or Inspector to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section.

(2) The Minister may withdraw a referral at any time.

(3) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.

(4) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.

(5) A referral or notification under this section is to be in writing.

91—Application of *Parliamentary Committees Act 1991*

The *Parliamentary Committees Act 1991* applies to the Joint Committee as if it were a Committee established under that Act.

Part 6—Parliamentary ethical standards

Division 1—Legislative Council

92—Interpretation

In this Division—

designated committee means the committee of the Legislative Council that is for the time being designated under section 93.

93—Designation of committee

(1) As soon as practicable after the commencement of this Division and the commencement of the first session of each parliament, a committee of the Legislative Council is to be designated by resolution of the Legislative Council as the designated committee for the purposes of this Division.

(2) Another committee of the Legislative Council may be designated by such a resolution from time to time in place of any previously designated.

(3) The designation of a committee under this section does not affect the functions that the committee has apart from this Division.

94—Functions of committee

(1) The designated committee has the following functions:

(a) to prepare for consideration by the Legislative Council draft codes of conduct for members of the Legislative Council and draft amendments to codes of conduct already adopted;

(b) to carry out educative work relating to ethical standards applying to members of the Legislative Council;

(c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Council, but not in relation to actual or alleged conduct of any particular person.

(2) The designated committee may seek comments from the public in relation to any of its functions under this section.

(3) Before presenting a draft code of conduct for consideration by the Legislative Council, the designated committee must—

(a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public; and

(b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice; and

(c) specify, in the notice, the period during which submissions may be made to the committee.

(4) Any person may, during the period referred to in subsection (3)(c), make submissions in writing to the designated committee with respect to the provisions of the draft code of conduct and the committee must take any such submissions into consideration.

(5) The designated committee is to review a code of conduct adopted by the Legislative Council at least once every 4 years.

Division 2—House of Assembly

95—Interpretation

In this Division—

designated committee means the committee of the House of Assembly that is for the time being designated under section 96.

96—Designation of committee

(1) As soon as practicable after the commencement of this section and the commencement of the first session of each Parliament, a committee of the House of Assembly is to be designated by resolution of the House of Assembly as the designated committee for the purposes of this Division.

(2) Another committee of the House of Assembly may be designated by such a resolution from time to time in place of any previously designated.

(3) The designation of a committee under this section does not affect the functions that the committee has apart from this Division.

97—Functions of committee

(1) The designated committee has the following functions:

(a) to prepare for consideration by the House of Assembly draft codes of conduct for members of the House of Assembly and draft amendments to codes of conduct already adopted;

(b) to carry out educative work relating to ethical standards applying to members of the House of Assembly;

(c) to give advice in relation to such ethical standards in response to requests for advice by the House of Assembly, but not in relation to actual or alleged conduct of any particular person.

(2) The designated committee may appoint any member of the public for the purposes of assisting the committee to carry out any of its functions under this section in relation to a code of conduct.

(3) The designated committee may seek comments from the public in relation to any of its functions under this section.

(4) Before presenting a draft code of conduct for consideration by the House of Assembly, the designated committee must—

(a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public; and

(b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice; and

(c) specify, in the notice, the period during which submissions may be made to the committee.

(5) Any person may, during the period referred to in subsection (4)(c), make submissions in writing to the designated committee with respect to the provisions of the draft code of conduct and the committee must take any such submissions into consideration.

(6) The designated committee is to review a code of conduct adopted by the House of Assembly at least once every 4 years.

Part 7—Miscellaneous

98—Publication of report furnished to appropriate officer

(1) A copy of a report furnished to the appropriate officer of a House of Parliament under this Act must be laid before that House within 12 sitting days of that House after it is received by the appropriate officer.

(2) The Commission or Inspector may include in a report a recommendation that the report be made public as soon as practicable.

(3) If a report includes a recommendation by the Commission or Inspector that the report be made public as soon as practicable, an appropriate officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.

(4) If a report is made public by the appropriate officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.

(5) An appropriate officer need not inquire whether all or any conditions precedent have been satisfied in relation to a report purporting to have been made and furnished in accordance with this Act.

99—Secrecy

(1) A person to whom this section applies must not, directly or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's powers or functions under this Act—

(a) make a record of information; or

(b) divulge or communicate to a person information,

being information acquired by the person by reason of, or in the course of, the exercise of the person's powers or functions under this Act.

Maximum penalty: $5 000 or imprisonment for 1 year.

(2) A person to whom this section applies cannot be required—

(a) to produce in a court a document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's powers or functions under this Act; or

(b) to divulge or communicate to a court any matter or thing that has come to the person's notice in the exercise of the person's powers or functions under this Act,

except for the purposes of a prosecution or disciplinary proceedings instituted as a result of an investigation conducted by the Commission in the exercise of its powers or functions.

(3) Nothing in this section prevents a person to whom this section applies from divulging such information—

(a) for the purposes of and in accordance with this Act; or

(b) for the purposes of a prosecution or disciplinary proceedings instituted as a result of an investigation conducted by the Commission in the exercise of its powers or functions; or

(c) in accordance with a direction of the Commissioner or Inspector, if the Commissioner or Inspector certifies that it is necessary to do so in the public interest; or

(d) to any prescribed authority or person.

(4) An authority or person to whom information is divulged under subsection (3)(d), and any person or employee under the control of that authority or person is, in respect of that information, subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) as if he or she were a person to whom this section applies and had acquired the information in the exercise of functions under this Act.

(5) 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.

(6) This section applies to—

(a) a person who is or was an officer of the Commission; and

(b) a person who is or was a legal practitioner appointed to assist the Commission or who is or was a person who assists, or performs services for or on behalf of, such a legal practitioner in the exercise of the legal practitioner's functions as council to the Commission; and

(c) a person who is or was an officer of the Inspector; and

(d) a person or body referred to in section 7(7), section 8(5) or section 39(5).

100—Evidence in criminal proceedings

(1) If—

(a) a person has been charged with an offence before a court of the State; and

(b) the court considers that it is desirable in the interests of justice that particular evidence given before the Commission (being evidence in relation to which the Commission has given a direction under section 68) be made available to the person or to a legal practitioner representing the person or to the prosecutor,

the court may give to the Commission a direction to that effect.

(2) The Commissioner may appear before the court for the purpose of making representations concerning the giving of such a direction.

(3) On such a direction being given, the Commission must make the evidence or information available to the court.

(4) The court may make the evidence or information available to the person charged with the offence concerned, to a legal practitioner representing the person charged or to the prosecutor, if the court has examined the evidence or information and is satisfied that the interests of justice so require.

(5) Nothing in section 68 prevents the evidence or information being made available under this section.

(6) Nothing in section 99 prevents a person to whom that section applies from producing a document or other thing, or divulging or communicating a matter or thing, to the extent necessary to give effect to this section.

101—Relationship with Ombudsman

Conduct of an officer or former officer of the Commission cannot be made the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1972*, except in relation to matters referred to the Ombudsman by the Inspector.

102—Parliament

Nothing in this Act affects the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.

103—Service

(1) A notice or other document required to be given or sent to, or served on, a person for the purposes of this Act may—

(a) be given to the person personally; or

(b) be posted in an envelope addressed to the person at the person's last known residential or (in the case of a corporation) registered address; or

(c) be left for the person at the person's last known residential or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or

(d) be transmitted by fax or email to a fax number or email address (in which case the notice or document will be taken to have been given or served at the time of transmission).

(2) Without limiting the effect of subsection (1), a notice or other document required to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

104—Regulations

(1) The Governor may make such regulations as are contemplated by, or as are necessary or desirable for the purposes of, this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) provide for and regulate the appointment, conditions of employment, discipline, conduct and termination of employment of staff of the Commission; and

(b) provide for security checks of officers of the Commission and applicants for appointment or engagement as officers of the Commission; and

(c) provide for service of a notice on an occupier whose premises are entered under a search warrant; and

(d) provide for the issue of identity cards to officers of the Commission and regulate their use; and

(e) prescribe forms for the purposes of this Act; and

(f) provide for the disclosure by officers of the Commission of pecuniary interests or other matters and provide for the verification by statutory declaration or otherwise of any such disclosure; and

(g) provide for the compilation and maintenance of registers of pecuniary interests or other matters by officers of the Commission and the inspection and publication of any such register; and

(h) prescribe fines (not exceeding $2 500) for offences against the regulations.

(3) Regulations (other than regulations with respect to matters referred to in subsection (2)(f) or (g)) may only be made on the recommendation of the Commissioner.