

South Australia

Independent Commission Against Crime and Corruption Bill 2008

A BILL FOR

An Act to establish the Independent Commission Against Crime and 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 Crime and Corruption Act 2008*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

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

assistant commissioner means an assistant commissioner appointed under Part 2;

Commission means the *Independent Commission Against Crime and Corruption* established under Part 2;

Commissioner means the Commissioner appointed under Part 2;

conduct includes omission;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

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 Crime and Corruption* established under Part 6;

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*;

member of the Commission means the Commissioner or an assistant commissioner;

officer of the Commission means a member of the Commission, a member of the staff of the Commission or a person engaged by the Commission under section 16(2);

organised crime means a course of criminal conduct or series of criminal offences that—

(a) involves substantial planning and organisation; and

(b) is carried out principally for the profit of persons other than those who commit the offences;

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) the South Australia police; or

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

public officer means—

- (a) the Governor; or
5 (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
10 (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
15 (j) a person, or persons of a class, declared by regulation to be a public officer for the purposes of this Act;

search warrant means a search warrant issued under this Act;

spouse—a person is the spouse of another if they are legally married;

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

- 20 (2) For the purposes of this Act—

corrupt conduct means—

- (a) 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; or
25 (b) conduct of a public officer that constitutes or involves the dishonest or partial exercise of his or her official functions; or
(c) conduct of a public officer or former public officer that constitutes or involves a breach of public trust; or
30 (d) 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),

if that conduct constitutes or involves—

- (e) a criminal offence; or
(f) grounds for disciplinary action under any law; or
35 (g) grounds under any law for removing a public officer from office,

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

- (3) Conspiring or attempting to engage in conduct referred to in subsection (2) also constitutes corrupt conduct for the purposes of this Act.

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- (4) 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
 - 5 (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; or
 - (b) conduct that constitutes corrupt conduct only after the person engaged in it becomes a public officer; or
 - 10 (c) conduct that occurs outside this State.

4—Parliamentary privilege not affected

Nothing in this Act derogates from Parliamentary privilege.

Part 2—Independent Commission against Crime and Corruption

Division 1—Commission

5—Establishment of Commission

- (1) The *Independent Commission Against Crime and Corruption* is established.
- (2) The Commission—
 - (a) is a body corporate; and
 - 20 (b) has perpetual succession and a common seal; and
 - (c) is capable of suing and being sued in its corporate name; and
 - (d) has all the powers of a natural person that are capable of being exercised by a body corporate; and
 - (e) has the functions and powers assigned or conferred by or under this Act.
- 25 (3) If a document appears to bear the common seal of the Commission, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Commission.

6—Membership of Commission

The Commission consists of—

- 30 (a) a Commissioner appointed by the Governor on the address of both Houses of Parliament; and
- (b) such assistant commissioners (if any) as the Governor may, with the concurrence of the Commissioner, appoint.

7—Eligibility for appointment under this Part

- (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 to be appointed as the Commissioner or an assistant commissioner if—
- (a) the person is a member of the judiciary; or
 - (b) the person is a member of—
 - (i) the Parliament of this State or any other State of the Commonwealth; or
 - (ii) the Parliament of the Commonwealth; or
 - (iii) a Legislative Assembly of a Territory of the Commonwealth.

8—Terms and conditions of appointment

- (1) The Commissioner or an assistant commissioner will be appointed on conditions determined by the Governor and for a term, not exceeding 5 years, specified in the instrument of appointment.
- (2) A person appointed to be the Commissioner or an assistant commissioner is, on the expiration of his or her term of office, eligible for reappointment but a person cannot hold office as the Commissioner or an assistant commissioner for terms totalling more than 5 years.
- (3) The Governor may, on the address of both Houses of Parliament, remove the Commissioner from office.
- (4) 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.
- (5) 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—
 - (i) the Parliament of this State or any other State of the Commonwealth; or
 - (ii) the Parliament of the Commonwealth; or

- (iii) a Legislative Assembly of a Territory of the Commonwealth; or
- (f) becomes bankrupt; 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 (3) or (4).
- (6) On the office of Commissioner becoming vacant, a person must be appointed in accordance with this Act to fill the vacancy.
- (7) On the office of an assistant commissioner becoming vacant, a person may be appointed in accordance with this Act to fill the vacancy.

9—Remuneration

A member of the Commission is entitled to remuneration, allowances and expenses determined by the Governor.

10—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.

11—Members of Commission not to engage in remunerative employment

A member of the Commission must not, without the approval of the Minister, engage in any remunerative employment or undertaking outside official duties.

Division 2—Commission's functions

12—Functions of Commission

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

- 5
- (a) to investigate an allegation or complaint, or any circumstances which, in the Commission's opinion, imply that—
 - (i) corrupt conduct; or
 - (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct; or
 - (iii) conduct connected with corrupt conduct,may have occurred, may be occurring or may be about to occur;
 - (b) to investigate an allegation or complaint, or any circumstances which, in the Commission's opinion, imply that—
 - (i) organised crime; or
 - (ii) conduct liable to allow, encourage or cause the occurrence of
 - 15
 - (iii) conduct connected with organised crime,may have occurred, may be occurring or may be about to occur;
 - (c) to investigate any matter referred to the Commission by both Houses of Parliament;
 - 20
 - (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 corrupt conduct and organised crime and to secure the revision of methods of work or
 - 25
 - procedures which, in the opinion of the Commission, may be conducive to corrupt conduct or organised crime;
 - (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 corrupt conduct or organised crime may be eliminated;
 - (g) to advise public authorities and public officers of changes in practices and
 - 30
 - procedures compatible with the effective exercise of their functions that the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt conduct and organised crime;
 - (h) to co-operate with public authorities and public officers in reviewing laws,
 - 35
 - practices and procedures with a view to reducing the likelihood of the occurrence of corrupt conduct and organised crime;
 - (i) to educate and advise public authorities, public officers and the community on strategies to combat corrupt conduct and organised crime;
 - (j) to educate and disseminate information to the public on the detrimental
 - 40
 - effects of corrupt conduct and organised crime and on the importance of maintaining the integrity of public administration;

- (k) to enlist and foster public support in combatting corrupt conduct and organised crime;
- (l) to develop, arrange, supervise, participate in or conduct educational or advisory programs as may be described in a reference made to the Commission by both Houses of Parliament;
- (m) subject to subsection (3)—
- (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 corrupt conduct or organised crime, including (but not limited to)—
- (A) findings that particular persons have engaged, are engaged or about to engage in corrupt conduct or organised crime; 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;
- (n) any function incidental or ancillary to the functions specified in the above paragraphs.
- (2) The Commission must conduct its investigations with a view to determining—
- (a) whether—
- (i) corrupt conduct or other conduct referred to in subsection (1)(a); or
- (ii) organised crime or other conduct referred to in subsection (1)(b),
- 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 corrupt conduct or organised crime; 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 corrupt conduct or organised crime.
- (3) The Commission must not make a finding, form an opinion or formulate a recommendation that section 72 prevents the Commission from including in a report.
- (4) 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 corrupt conduct or organised crime 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.

(5) 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.

(6) 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 96 in relation to the information.

(7) The protection of the public interest and the prevention of breaches of public trust must be treated by the Commission as of paramount importance in the exercise of its functions.

13—Task forces

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) co-operate with State task forces, Commonwealth task forces, joint task forces and other task forces; and

(d) co-ordinate or co-operate in co-ordinating any such task forces.

14—Co-operation with other law enforcement agencies

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

(a) should, unless of the opinion that it is not appropriate to do so, work in co-operation 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 co-operation with such other persons or bodies as the Commission thinks appropriate.

- (2) In carrying out its other functions the Commission—
- (a) should, unless of the opinion that it is not appropriate to do so, work in co-operation with such of the following bodies as may be relevant:
 - (i) the Auditor-General;
 - (ii) educational institutions;
 - (iii) management consultants; and
 - (b) may work in co-operation with such other persons and bodies as the Commission thinks appropriate.
- (3) 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.
- (4) 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 96 in relation to the information.

15—Incidental powers of Commission

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 section.

16—Staff of Commission

- (1) There will be such staff of the Commission as the Commission thinks necessary for the proper performance of its functions.
- (2) The Commission may engage any suitably qualified person to provide the Commission with services, information or advice.
- (3) The Commission 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 a police officer.
- (4) A member of the staff of the Commission is not a Public Service employee.
- (5) The Minister may, by notice in the Gazette, provide that specified provisions of the *Public Sector Management Act 1995* apply to members of staff of the Commission.
- (6) Subject to subsection (5), the terms and conditions of employment of a member of the staff of the Commission will, to the extent that they are not determined by or under any other law, be as determined by the Governor.

17—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.

18—Delegation

- (1) Subject to this section—
- (a) the Commission may, by instrument in writing, delegate its powers or functions under this Act to any person; and
 - (b) the Commissioner or an assistant commissioner may, by instrument in writing, delegate his or her powers or functions under this Act to any person.
- (2) Subject to subsection (3), the following powers and functions may be delegated to an assistant commissioner:
- (a) a power of delegation conferred by this section;
 - (b) a function or power of making a report under this Act;
 - (c) the power to require a public authority or public officer to produce a statement of information under section 22;
 - (d) the power to require a person to attend and produce a document or other thing under section 23;
 - (e) the power to authorise an officer of the Commission to enter premises under section 24;
 - (f) the making of an application for an injunction under section 28;
 - (g) the powers of the Commission or the Commissioner under Part 3 Division 2 at, or in connection with, a hearing;
 - (h) the power of the Commissioner to issue a warrant for the apprehension of a person under section 37 or 91;
 - (i) the power of the Commissioner to issue a search warrant under section 38;
 - (j) the powers of the Commission under Part 9 or in connection with a hearing.
- (3) The powers and functions referred to in subsection (2)(a), (b), (h) and (i) may only be delegated if the Commissioner is of the opinion—
- (a) that there may be a conflict of interest if the power or function is not delegated; or
 - (b) that it is in the interests of justice to delegate it.
- (4) A statement in the instrument of delegation of the Commissioner's opinion will be accepted as conclusive.
- (5) A delegation under this section may, by instrument in writing, be revoked at any time.
- (6) The exercise or performance of a power or function by a delegate under this section does not affect the exercise or performance of that power or function by the Commission or person who delegated it.

Part 3—Investigations and hearings

Division 1—Investigations

19—Initiation of investigation

- 5
- (1) The Commission may make an investigation on receipt of a complaint, on the Commission's own initiative or on a report or reference made to the Commission.
 - (2) The Commission may make an investigation even though no particular person has been implicated in a matter.

20—Persons who may make complaints

- 10
- (1) A complaint about a matter that concerns or may concern corrupt conduct or organised crime may be made by any person or body of persons.
 - (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.
 - 15 (3) Section 33(7) of the *Correctional Services Act 1982* applies in relation to a letter sent by a prisoner to the Commission.
 - (4) Section 33(8) of the *Correctional Services Act 1982* applies in relation to a letter sent to a prisoner by the Commission.
 - 20 (5) Subject to this Act, the Commission may investigate a complaint or decide that a complaint need not be investigated.
 - (6) Subject to this Act, the Commission may discontinue an investigation of a complaint.
 - (7) Before deciding whether to investigate or discontinue an investigation of a complaint, the Commission should, unless of the opinion that the subject matter of the complaint is so sensitive that it would be inappropriate to do so, consult the Operations Review
25 Committee in relation to the matter.
 - (8) 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.

30 21—Certain matters need not be entertained

The Commission may refuse to investigate a complaint, or having commenced to investigate a matter, may discontinue an investigation (other than in relation to a matter referred to it by either House of Parliament) if, in the Commission's opinion—

- 35
- (a) in the case of a complaint—
 - (i) the matter raised in the complaint is trivial; or
 - (ii) the complaint is frivolous or vexatious or is not made in good faith;
or
 - (b) in the case of an investigation—

- (i) the subject matter of the investigation is trivial; or
- (ii) having regard to all the circumstances of the case, the investigation or the continuance of the investigation of the matter is unnecessary or unjustifiable.

5 **22—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 official to produce a statement of information.

(2) A notice under this section—

10 (a) must specify—

- (i) the information to be stated; and
- (ii) the period (from the time that the notice is served) within which the statement must be produced; and
- (iii) the person (being the Commissioner, an assistant commissioner or
15 any other 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.

20 (3) A person must not—

- (a) without reasonable excuse, fail to comply with a notice served on him or her under this section; or
- (b) in purported compliance with a notice served on him or her under this section, knowingly furnish information that is false or misleading.

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

23—Power to obtain documents

(1) For the purposes of an investigation, the Commission may, by notice in writing served on a person, require the person—

- (a) to attend, at a time and place specified in the notice, before a person (being
30 the Commissioner, an assistant commissioner or any other officer of the Commission) specified in the notice; and
- (b) to produce at that time and place to the person so specified a document or other thing specified in the notice.

(2) A notice under this section 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.

24—Power to enter public premises

- (1) For the purposes of an investigation, the Commissioner or a person 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.

25—Privilege as regards information, documents, etc

- (1) The Commission must withdraw a requirement made by it under section 22 or 23 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 22 or 23 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 22 or 23 on grounds of public interest; or
 - (b) a privilege of a public authority or public officer in that capacity that the authority or official could have claimed in a court; or
 - (c) a duty of secrecy or other restriction on disclosure applying to a public authority or public officer.

26—Privilege as regards entry of public premises

- (1) The powers conferred by section 24 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 24 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 official could have claimed in a court; or
 - (c) a duty of secrecy or other restriction on disclosure applying to a public authority or public officer.

27—Self-incrimination

- (1) A statement of information, document or other thing produced under section 22 or 23, that tends to incriminate the person producing it, will not be admissible in proceedings against the person except in proceedings for an offence against this Act.
- 5 (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.

28—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.
- 10 (2) The Supreme Court must not grant an injunction under this section unless it is satisfied—
- 15 (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.

29—Powers exercisable whether or not hearings being held

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

Division 2—Hearings

30—Hearings

- 25 (1) The Commission may, for the purposes of an investigation, hold hearings.
- (2) A hearing will be conducted by the Commissioner or an assistant commissioner, as determined by the Commissioner.
- (3) At a hearing the presiding member of the Commission will announce the general scope and purpose of the hearing.
- 30 (4) A person appearing before the Commission at a hearing is entitled to be informed of the general scope and purpose of the hearing.

31—Public and private hearings

- (1) A hearing must be held in public unless the Commission directs that the hearing, or part of the hearing, is to be held in private.
- 35 (2) If the Commission directs that a hearing or part of a hearing is to be held in private, the Commission may give directions as to the persons who may be present during the hearing or part of the hearing.

(3) The Commission may not give a direction under subsection (1) unless it is satisfied that it is desirable to do so in the public interest for reasons connected with the subject matter of an investigation or the nature of the evidence to be given.

(4) A person who is present at a hearing of the Commission in contravention of a direction given under this section is guilty of an offence.

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

32—Rights of appearance and representation

(1) At a hearing before it the Commission may—

(a) authorise a person who, in the Commission's opinion, is substantially and directly interested in the subject matter of the hearing, to appear at, or be represented by a legal practitioner at, the hearing or a specified part of the hearing; or

(b) authorise a person giving evidence at the hearing to be represented by a legal practitioner at the hearing or a specified part of the hearing.

(2) The Commission must give a reasonable opportunity for a person giving evidence at a hearing to be legally represented.

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

33—Examination and cross-examination

(1) A legal practitioner appointed by the Commission to assist it, or a person or a person's legal practitioner authorised to appear at a hearing 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 a member of the Commission.

34—Power to summon witnesses and take evidence

(1) The Commissioner may summon a person to appear before the Commission at a hearing at a time and place specified in the summons—

(a) to give evidence; or

(b) to produce such documents or other things (if any) as are referred to in the summons,

or both.

(2) The member presiding at a hearing before the Commission may require a person appearing at the hearing to produce a document or other thing.

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

(a) the presiding member may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member; and

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Part 3—Investigations and hearings

Division 2—Hearings

(b) the presiding member, or a person authorised for that purpose by the presiding member, may administer an oath or affirmation to a person so appearing at the hearing.

5 (4) A person summoned to appear as a witness at a hearing 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 presiding member.

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

10 (5) A person appearing as a witness at a hearing 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

15 (b) refuse or fail to answer a question that the person is required to answer by the Commissioner or the presiding member; 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 presiding member to produce.

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

20 (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.

25 (7) Subject to subsection (8), a person summoned to attend a hearing or appearing before the Commission at a hearing is not entitled to refuse to answer a question or produce a document or other thing on the ground of privilege but any such answer given or document or other thing produced will not be admissible—

(a) except in civil proceedings against the person; or

(b) except in proceedings against the person for an offence against this section; or

30 (c) unless the person does not object to giving the answer or producing the document or other thing.

(8) If—

(a) a legal practitioner or other person is required to answer a question or produce a document or other thing at a hearing before the Commission; and

35 (b) the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between a legal practitioner (in his or her capacity as a legal practitioner) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a hearing before the Commission,

40 the legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so.

35—Declarations as to objections by witness

The Commissioner or presiding member 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 Commissioner or presiding member so declaring, the witness need not make an objection in respect of each such answer, document or other thing.

36—Attendance of prisoner before Commission

If the attendance at a hearing before the Commission of a prisoner is required, the Commissioner may, by order in writing served personally 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.

37—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 justice 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 justice 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 under subsection (2) without or before the issue of a summons to the person whose evidence is desired.
- (5) A warrant may be issued under subsection (2) after the issue of a summons to the person whose evidence is desired, even though the time specified in the summons for the person to attend has not yet passed.
- (6) A warrant under this section authorises the arrest of the witness and the bringing of the witness promptly before the Commission and being detained in custody for that purpose until released by order of the Commissioner.
- (7) A warrant issued under this section may be executed by a police officer, or by any person to whom it is addressed, and the person executing it may use such force as is reasonably necessary in entering premises for the purpose of executing it.
- (8) The issue of a warrant or the arrest of a witness does not relieve the witness from any liability incurred by him or her for non-compliance with a summons.

Division 3—Search warrants

38—Search warrants

- 5 (1) If there are reasonable grounds for doing so, a justice or the Commissioner 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.
- 10 (2) An application for a search warrant is to be made to a justice.

39—Authority conferred by warrant

- 15 (1) A search warrant authorises a police officer, or other person 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 seize any such documents or other things found on the premises and deliver them to the Commission.
- 20 (2) A police officer executing a search warrant may search a person found on the premises whom he or she reasonably suspects of having a document or other thing specified in the warrant.

40—Duty to show warrant

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.

41—Use of force

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

42—Assistance in executing warrant

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

43—Execution of warrant by day or night

- 35 (1) 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.
- (2) 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.

44—Expiry of warrant

A search warrant ceases to have effect—

- 5 (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.

45—Seizure under warrant

- 10 (1) If, in the course of searching, in accordance with the terms of a search warrant, for documents or other things—

- 15 (a) the person executing the warrant finds a document or other thing that the person believes on reasonable grounds to be evidence that would be admissible in proceedings for an indictable offence against the law of the Commonwealth or of a State or Territory of the Commonwealth; and

- (b) the person believes on reasonable grounds that it is necessary to seize the document or other thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence,

20 the person executing the warrant may seize the document or other thing and, if it is so seized, it will be taken, for the purposes of this Act, to have been seized under the warrant.

- (2) If a document or other thing is seized under a search warrant—

- 25 (a) 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; and

- (b) 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—

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

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

Division 4—Miscellaneous

46—Protection of witnesses

35 If it appears to the Commissioner that, because a person—

- (a) has appeared, is appearing or is to appear at a hearing 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 otherwise than at a hearing before the Commission; or

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

5 the safety of the person or any other person may be prejudiced or the person or any other person may be subjected to intimidation or harassment, the Commissioner may make such arrangements as are necessary to avoid prejudice to the safety of any such person or to protect any such person from intimidation or harassment.

47—Reimbursement of expenses of witnesses

10 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.

48—Legal and financial assistance

15 (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—

20 (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,

25 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.

Part 4—Referral of matters by Commission

49—Interpretation

In this Part—

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

50—Referral of matter

35 (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 (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 96 in relation to the information.

51—Report to Commission

- 10 (1) The Commission may, when referring a matter under this Part, 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 time as the Commission directs.

52—Further action by Commission

- 15 (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 Part, 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.
- 20 (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
- 25 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 make a report as referred to in section 75.

53—Responsibility of relevant authority

30 It is the duty of a relevant authority to comply with a requirement or direction of the Commission under this Part.

54—Revocation of referral, recommendation, etc

The Commission may—

- 35 (a) revoke a referral under this Part; or
- (b) revoke or vary a recommendation, requirement or direction under this Part; or
- (c) vary the time within which a requirement under this Part is to be complied with.

Part 5—The Operations Review Committee

55—Interpretation

In this Part—

appointed member means an appointed member of the Committee;

5 *Committee* means the *Operations Review Committee* established under this Part.

56—Establishment of Committee

The *Operations Review Committee* is established.

57—Membership of Committee

The Committee consists of 7 members, being—

- 10 (a) the Commissioner; and
- (b) an assistant commissioner, nominated by the Commission; and
- (c) 5 persons, appointed by the Governor on the recommendation of the
 Attorney-General with the concurrence of the Commissioner, of whom 4 will
 be appointed to represent community views.

15 58—Acting appointed member

- (1) If there is a vacancy in the office of an appointed member, the Governor may appoint
a person to act in that office.
- (2) While a person is acting as an appointed member, the person has all the powers and
functions of the member.

20 59—Eligibility for appointment

A Minister of the Crown is not eligible to be appointed as a member of the
Committee.

60—Terms and conditions of appointment

- 25 (1) Subject to this Part, an appointed member will be appointed on conditions determined
by the Governor and for a term, not exceeding 2 years, specified in the instrument of
appointment.
- (2) An appointed member is, on the expiration of his or her term of office, eligible for
reappointment.
- 30 (3) The Governor may, on the recommendation of the Attorney-General with the
concurrence of the Commissioner, remove an appointed member from office at any
time.
- (4) The office of an appointed member becomes vacant if the member—
- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- 35 (c) resigns by written notice addressed to the Minister; or
- (d) becomes a Minister of the Crown; or

(e) is absent, except on leave granted by the Minister, from 4 consecutive meetings of the Committee reasonable notice of which has been given to the member personally or by post, unless, before the expiration of 4 weeks after the last of those meetings, the member's absence is excused by the Minister;
or

(f) becomes bankrupt; or

(g) becomes a patient within the meaning of the *Mental Health Act 1993*; or

(h) 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

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

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

61—Remuneration

An appointed member is entitled to remuneration, allowances and expenses determined by the Governor.

62—Effect of other Acts

(1) If, by or under any other Act, provision is made—

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding both that office and the office of appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

(2) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

63—Functions of Committee

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

(a) at the request of the Commission, to advise the Commission as to whether the Commission should investigate or discontinue an investigation of a complaint made under this Act;

(b) to advise the Commission on other matters as the Commission may from time to time refer to the Committee.

(2) The Commissioner must consult with the Committee on a regular basis at least once every 3 months.

64—Procedure at meetings

(1) The Commissioner will call the first meeting of the Committee in such manner as he or she thinks fit.

- (2) A meeting of the Committee will be chaired by the Commissioner or, in his or her absence, by an assistant commissioner.
- (3) A quorum of the Committee consists of 5 members of the Committee, of whom 1 must be the Commissioner or an assistant commissioner, and no business may be transacted at a meeting of the Committee unless a quorum is present.
- (4) Each member present at a meeting of the Committee is, subject to section 65, entitled to 1 vote on a matter arising for decision at the meeting but the person presiding at the meeting has, in the event of an equality of votes, a casting vote as well as a deliberative vote.
- (5) A decision carried by a majority of the votes cast by the members present and voting at a meeting is a decision of the Committee.
- (6) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings will, subject to this Act, be as determined by the Committee.

65—Conflict of interest

- (1) A member of the Committee who has an interest in a matter before the Committee must disclose the existence of that interest to the Committee.
Maximum penalty: \$5 000 or imprisonment for 1 year.
- (2) A member of the Committee has an interest in a matter before the Board if—
- (a) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, receive or have a reasonable expectation of receiving a direct or indirect pecuniary benefit or suffer or have a reasonable expectation of suffering a direct or indirect pecuniary detriment; or
- (b) the member or a person with whom the member is closely associated would, if the matter were decided in a particular manner, obtain or have a reasonable expectation of obtaining a non-pecuniary benefit or suffer or have a reasonable expectation of suffering a non-pecuniary detriment,
(not being a benefit or detriment that would be enjoyed or suffered by the member or his or her associate in common with a substantial class or group of persons).
- (3) A person is closely associated with a member of the Committee if that person is—
- (a) a body corporate of which the member is a director or a member of the governing body; or
- (b) a proprietary company in which the member is a shareholder; or
- (c) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee; or
- (d) a party to a partnership or share-farming agreement to which the member is also a party; or
- (e) an employer or an employee of the member; or
- (f) the spouse, domestic partner, parent or child of the member.
- (4) A disclosure under subsection (1) must be recorded in the minutes of the Committee.

- (5) A member of the Committee who has an interest in a matter before the Committee—
- (a) must not, except on the request of the Committee, take part in any discussion by the Committee relating to that matter; and
 - (b) must not vote in relation to that matter; and
 - (c) must, unless the Committee permits otherwise, be absent from the meeting room when any such discussion or voting is taking place.

Maximum penalty: \$5000 or imprisonment for 1 year.

- (6) It is a defence to a charge of an offence against this section for the defendant to prove that, at the time of the alleged offence, the defendant was unaware of his or her interest in the matter.
- (7) The fact that a member has failed to comply with this section in relation to a matter does not, of itself, invalidate a resolution or decision on that matter, but, where it appears that the non-compliance may have had a decisive influence on the passing of the resolution or the making of the decision, the Supreme Court may, on the application of the Committee, the Minister or any person affected by the resolution or decision, annul the resolution or decision and make such ancillary orders as it thinks fit.

Part 6—Parliamentary Joint Committee

66—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 Crime and Corruption*, must be appointed.

67—Membership of Committee

- (1) The Joint Committee will consist of 6 members, of whom—
- (a) 3 must be members of, and appointed by, the Legislative Council; and
 - (b) 3 must be members of, and appointed by, the House of Assembly.
- (2) A Minister of the Crown is not eligible for appointment as a member of the Joint Committee.
- (3) The Committee must from time to time appoint 1 of its Legislative Council members to be the Presiding Member of the Committee but if the members are at any time unable to come to a decision on who is to be the Presiding Member, or on who is to preside at a meeting of the Committee in the absence of the Presiding Member, the matter is referred by force of this subsection to the Legislative Council and that House will determine the matter.

68—Functions of Committee

- (1) The functions of the Joint Committee are as follows:
- (a) to monitor and to review the exercise by the Commission of its functions;

- (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter relating to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- 5 (c) to examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, a report;
- (d) to examine trends and changes in corrupt conduct or organised crime, and practices and methods relating to corrupt conduct or organised crime, 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;
- 10 (e) to inquire into any question in connection with the Commission's functions referred to it by a House of Parliament, and report to that House on that question.
- 15 (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
- 20 (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.

69—Application of *Parliamentary Committees Act 1991*

The *Parliamentary Committees Act 1991* applies to the *Committee on the Independent Commission Against Crime and Corruption* as if it were a Committee established under that Act.

25

Part 7—References by and reports to Parliament

70—Interpretation

In this Part—

appropriate officer means—

- 30 (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.

71—References by Parliament

- 35 (1) Either House of Parliament may, by resolution—
- (a) refer to the Commission any matter as referred to in section 12(1); or
- (b) amend or revoke a reference made under this section.
- (2) It is the duty of the Commission—
- (a) to fully investigate a matter so referred to it for investigation; and

- (b) to comply as fully as possible with any directions contained in a reference of a matter referred to in section 12(1).

72—Reports on referred matters

- 5 (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 a House of Parliament, as directed by that House.
- 10 (3) The Commission must prepare reports in relation to matters as to which the Commission has conducted a public hearing, unless a House of Parliament has given different directions under subsection (2).
- (4) The Commission must furnish reports prepared under this section to the appropriate officer of the House of Parliament by which matters have been referred.
- (5) A report required under this section must be furnished as soon as practicable after the Commission has concluded its involvement in the matter.
- 15 (6) 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 a House of Parliament.
- (7) A report under this section—
- 20 (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) the prosecution of the person for a specified criminal offence; and
- (ii) the taking of disciplinary action under any law against the person; and
- 25 (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—
- 30 (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
- 35 (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—
- 40 (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.

5 (8) A reference in subsection (7) to an affected person is a reference to a person described as such in a reference made by both Houses 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.

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

10 (a) in corrupt conduct (whether or not specified corrupt conduct); or

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

15 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.

73—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.

74—Annual report

20 (1) The Commission must, within 4 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 appropriate officer of each House of Parliament.

25 (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;

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

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

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

35 (f) the number of search warrants issued by justices and the Commissioner respectively under this Act in that year;

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

75—Report relating to authorities

- (1) The Commission may furnish to the appropriate officer of each House of Parliament a report setting out a recommendation referred to in section 52 that the Commission is of the opinion should be adopted and the reasons for its opinion.
- 5 (2) A report may not be furnished until after the period of 21 days referred to in section 52(3) has passed.

76—Provisions relating to reports

- 10 (1) A copy of a report furnished to the appropriate officer of a House of Parliament under this Part must be laid before that House within 12 sitting days of that House after it is received by the appropriate officer.
- (2) The Commission may include in a report a recommendation that the report be made public forthwith.
- 15 (3) If a report includes a recommendation by the Commission that the report be made public forthwith, 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.
- 20 (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.

Part 8—Offences

77—False or misleading evidence

- 25 A person who, at a hearing 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.

78—Offences relating to documents or other things

- 30 (1) A person who, knowing or reasonably suspecting 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, or alters the meaning of the document, with intent to prevent it from being used
- 35 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 section 22 or 23.

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.

79—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 22 or 23 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.

80—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 22 or 23 is guilty of an offence.

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

81—Injury to witness

5 A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to another for or on account of the other person—

- (a) having appeared as a witness before the Commission, or given any particular evidence before the Commission; or
- (b) having complied with a requirement under section 22 or 23,

10 is guilty of an offence.

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

82—Dismissal of witness 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—

15 (a) having appeared as a witness before the Commission, or given any particular evidence before the Commission; or

- (b) having complied with a requirement under section 22 or 23,

is guilty of an offence.

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

- 20 (2) 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).

83—Impersonation of officer of Commission

- 25 (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.

- 30 (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.

84—Procuring false testimony by witness

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

- 35 (a) the giving of false testimony at a hearing before the Commission; or

- (b) in purported compliance with a notice served on a person under section 22, 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: \$35 000 or imprisonment for 7 years.

85—Bribery of witness

A person who—

- 5 (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
- 10 (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
- 15 Commission give false testimony or withhold true testimony,

is guilty of an offence.

Maximum penalty: \$35 000 or imprisonment for 7 years.

86—Bribery of officer of Commission

- 20 (1) An officer of the Commission must not corruptly ask for, receive or obtain, or agree to receive or obtain, money, property or a benefit of any kind for himself or herself, or for another person—
- (a) to forgo or neglect his or her duty, or influence him or her, in the exercise of his or her functions as an officer of the Commission; or
- 25 (b) on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him or her in the exercise of those functions; or
- (c) to use, or take advantage of, his or her position as an officer of the Commission in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, another person.

30 Maximum penalty: \$35 000 or imprisonment for 7 years.

(2) A person must not—

- (a) corruptly give to, confer upon, procure for; or
- (b) promise or offer to give to, confer upon, or procure for; or
- (c) attempt to procure for,
- 35 an officer of the Commission, or another person, money, property or a benefit of any kind—
- (d) for that officer, or another officer of the Commission, to forgo or neglect his or her duty, or to influence him or her in the exercise of his or her functions as an officer of the Commission; or
- 40 (e) on account of anything already done, or omitted to be done, by him or her in the exercise of those functions; or

- (f) for the officer to use or take advantage of his or her position in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, the person first referred to in this subsection.

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

5 **87—Obstruction of Commission**

A person must not—

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten the Commission or an officer of the Commission in the exercise of powers or functions under this Act; or
- 10 (b) without reasonable excuse, refuse or wilfully fail to comply with a lawful requirement of the Commission or an officer of the Commission 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 in the exercise of powers or
- 15 functions under this Act; or
- (d) disrupt a hearing before the Commission.

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

Part 9—Contempt of Commission

88—Interpretation

20 In this Part—

offender means a person guilty or alleged to be guilty of contempt of the Commission.

89—Contempt

A person who, without reasonable excuse—

- 25 (a) having been served with a summons to attend before the Commission as a witness, fails to attend in obedience to the summons; or
- (b) having been served with a summons to attend before the Commission, fails to produce a document or other thing in the person's custody or control that the person is required by the summons to produce; or
- 30 (c) being called or examined as a witness before the Commission, refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer a question put to the person by the Commissioner or an assistant commissioner; or
- (d) wilfully threatens or insults—
- 35 (i) the Commissioner, an assistant commissioner or an officer of the Commission; or
- (ii) a legal practitioner appointed to assist the Commission as counsel; or
- (iii) a witness or person summoned to attend before the Commission; or
- (iv) a legal practitioner or other person authorised to appear before the Commission; or

- (e) misbehaves himself or herself before the Commission; or
- (f) interrupts the proceedings of the Commission; or
- (g) obstructs or attempts to obstruct the Commission, the Commissioner, an assistant commissioner or a person acting under the authority of the Commission or the Commissioner in the exercise of any lawful power or function; or
- (h) does any other thing that, if the Commission were a court of law having power to commit for contempt, would be contempt of that court; or
- (i) publishes, or permits or allows to be published, evidence given before the Commission or any of the contents of a document produced at a hearing that the Commission has ordered not to be published,

is guilty of contempt of the Commission.

90—Punishment of contempt

- (1) A contempt of the Commission under section 89 may be punished in accordance with this section.
- (2) The Commissioner may certify the contempt in writing to the Supreme Court.
- (3) If the Commissioner certifies the contempt of a person to the Supreme Court—
- (a) the Supreme Court must inquire into the alleged contempt; and
- (b) after hearing any witnesses called to give evidence against or on behalf of the person charged with the contempt, and any statement offered in defence, the Supreme Court (if satisfied that the person is guilty of the contempt) may punish or take steps for the punishment of the person in the same manner and to the same extent as if the person had committed that contempt in or in relation to proceedings in the Supreme Court (and the provisions of the *Supreme Court Act 1935*, and the rules of court made under the Act, with any necessary adaptations, apply and extend accordingly).
- (4) A certificate purporting to be given by the Commissioner under this section is, in the absence of proof to the contrary, proof of the matters so certified.
- (5) Neither liability to be punished nor punishment under this section for a contempt referred to in section 89(a) excuses the offender from attending before the Commission in obedience to the summons, and the Commissioner may enforce attendance by warrant issued by a justice.

91—General provisions regarding contempt

- (1) In the case of an alleged contempt of the Commission, the Commissioner may summon the offender to appear before the Commission at a time and place specified in the summons to show cause why he or she should not be dealt with under section 90 for the contempt.

- 5 (2) If the offender fails to attend before the Commission in obedience to the summons, and no reasonable excuse to the satisfaction of the Commissioner is offered for the failure, the Commissioner may, on proof of the service of the summons, apply to a justice for a warrant to apprehend the offender and bring the offender before the Commissioner to show cause why he or she should not be dealt with under section 90 for the contempt.
- 10 (3) If a contempt of the Commission is committed in the face, or at a hearing, of the Commission, no summons need be issued against the offender, but the offender may be taken into custody then and there by a police officer and called on to show cause why he or she should not be dealt with under section 90 for the contempt.
- (4) The Commissioner may apply to a justice for a warrant to apprehend the offender while the offender (whether or not already in custody under this section) is before the Commission and to bring the offender forthwith before the Supreme Court.
- 15 (5) A warrant under this section is sufficient authority to detain the offender in a prison or elsewhere, pending the offender being brought before the Supreme Court.
- (6) The warrant must be accompanied by—
- (a) the instrument by which the Commissioner certifies the contempt to the Supreme Court; or
 - (b) a written statement setting out the details of the alleged contempt.
- 20 (7) A justice may, on the application of the Commissioner, revoke the warrant at any time before the offender is brought before the Supreme Court.
- (8) When the offender is brought before the Supreme Court, the Court may, pending determination of the matter, direct—
- (a) that the offender be kept in such custody as the Court may determine; or
 - 25 (b) that the offender be released.

92—Act or omission that is both an offence and contempt

- (1) An act or omission may be punished—
- (a) as a contempt of the Commission even though it is punishable as an offence; or
 - 30 (b) as an offence even though it is punishable as a contempt of the Commission.
- (2) An offender is not liable to be punished twice for an act or omission that constitutes both an offence and a contempt of the Commission.

Part 10—Miscellaneous

93—Evidence and procedure

- 35 (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 hearings should be conducted with as little emphasis on an
- 40 adversarial approach as is possible.

94—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 98 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.

95—Immunity from liability

- (1) No liability (apart from this Act) attaches to—
- (a) a member of the Commission; or
 - (b) a person acting under the direction of the Commission or the Commissioner; or
 - (c) any other person engaged in the administration of this Act,
- for an honest act or omission in the exercise or purported exercise of a power or function under this Act.
- (2) A liability that would, but for subsection (1), lie against a person referred to in that subsection lies instead against the Crown.
- (3) A legal practitioner assisting the Commission or representing a person before the Commission has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.

96—Secrecy

- (1) 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 counsel to the Commission; and

(c) a person who is or was a member of the Operations Review Committee; and

(d) the Attorney-General and any other person involved in prosecutions for offences.

(2) A person to whom this section applies must not, directly or indirectly, except 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.

(3) 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 instituted as a result of an investigation conducted by the Commission in the exercise of its powers or functions.

(4) 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 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, if the Commissioner certifies that it is necessary to do so in the public interest; or

(d) to any prescribed authority or person.

(5) An authority or person to whom information is divulged under subsection (4)(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 (3) and (4) 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.

(6) 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.

97—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 evidence before the Commission to be identified; or

5 (d) the fact that a person has given or may be about to give evidence at a hearing, must not be published or must not be published except in such manner, and to such persons, as the Commission specifies.

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

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

98—Evidence in criminal proceedings

(1) If—

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

15 (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 97) 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.

20 (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.

25 (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.

30 (5) Nothing in section 96 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.

(6) Nothing in section 97 prevents the evidence or information being made available under this section.

99—Disclosures prejudicing investigations

(1) A person who is required—

35 (a) by a notice under section 22 or 23 to produce a statement of information or to attend and produce a document or other thing; or

(b) by a summons under section 34 to give evidence or to produce a document or other thing,

40 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.

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- (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—
- 5 (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
- 10 (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—
- 15 (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.

100—Duty to report corrupt conduct

- 20 (1) Despite a duty of secrecy or other 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 corrupt conduct or organised crime.
- 25 (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 principal officer of a public authority;
- 30 (d) a person who constitutes 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;
- 35 (c) the person normally entitled to preside at meetings of the authority.

101—Indemnity from prosecution

The Commission may recommend to the Attorney-General—

- (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,

5 will not be used in evidence against the person.

102—Service of documents

For the purposes of this Act, service of a document on a person may be effected—

- (a) on a natural person—
 - (i) by delivering it to the person personally; or
 - 10 (ii) by leaving it at, or by sending it by registered post or facsimile to the last known address of the place of residence or usual place of business of the person; or
 - (iii) by sending it electronically to that person; or

- (b) on a body corporate—
 - 15 (i) by leaving it at the registered office or usual place of business of the body corporate with an officer of the body corporate; or
 - (ii) by sending it by registered post or facsimile to its registered office or its usual place of business; or
 - 20 (iii) by sending it electronically to that body corporate or an officer of the body corporate.

103—Penalties for offences committed by corporations

The maximum penalty applicable to a body corporate convicted of an offence against this Act is double the pecuniary penalty otherwise applying to the offence.

104—Regulations

- 25 (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or desirable for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - 30 (a) provide for and regulate the appointment, conditions of employment, discipline, code of 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
 - 35 (d) provide for the issue of identity cards to officers of the Commission and regulate their use; and
 - (e) provide for the use and custody of the seal of the Commission; and
 - (f) prescribe forms for the purposes of this Act; and

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- (g) provide for the disclosure by officers of the Commission of all or any of the following pecuniary interests or other matters:
- (i) real or personal property;
 - (ii) income;
 - 5 (iii) gifts;
 - (iv) financial or other contributions to any travel;
 - (v) shareholdings or other beneficial interests in bodies corporate;
 - (vi) partnerships;
 - (vii) trusts;
 - 10 (viii) positions (whether remunerated or not) held in, or membership of, bodies corporate, trade unions, professional associations or other organisations or associations;
 - (ix) occupations, trades, professions or vocations;
 - (x) debts;
 - 15 (xi) payments of money or transfers of property to relatives or other persons by, or under arrangements made by, officers of the Commission;
 - (xii) any other direct or indirect benefits, advantages or liabilities, whether pecuniary or not, of a prescribed kind; and
- (h) prescribe the manner in which, and the times at which, pecuniary interests or other matters must be disclosed and provide for the verification by statutory declaration or otherwise of any such disclosure; and
- (i) 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
- 25 (j) prescribe fines not exceeding \$2 500 for contravention of or failure to comply with a regulation.
- (3) Regulations (other than regulations with respect to matters referred to in subsection (2)(g), (h), or (i)) may only be made on the recommendation of the
- 30 Commissioner.