

Corruption and Crime Commission Bill 2003

EXPLANATORY MEMORANDUM

PART 1 - Preliminary

Clause 1 – Short Title

Provides for the Act to be cited as the Corruption and Crime Commission Act 2003.

Clause 2 – Commencement

Provides for the Act to come into effect on a day or different days to be fixed by proclamation.

Clause 3 – Meanings of terms used in this Act

This clause inserts definitions necessary for the operation the Act. The principal terms include:

“allegation” – means an allegation of misconduct made to the Commission by a person under clause 25, initiated by the Commission under clause 26 or notified by a person who is subject to clause 28, as well as a “received matter”. By definition a “received matter” is a matter referred to the Commission by the Police Royal Commission or Ombudsman or received at the end of the Royal Commission, or not finalised before the *Anti-Corruption Commission Act 1988* (“the ACC Act”) is repealed.

“appropriate authority” and **“independent agency”** have the same meaning as under the ACC Act.

“misconduct” is defined in clause 4.

“organised crime” is defined as being the activities of two or more persons who are associated together for the purpose of carrying out two or more Schedule 1 offences, each of which involves substantial planning and organisation. This is the same meaning as in the *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002* (“the Exceptional Powers Act”).

“public officer” is defined to mean the same as “public officer” in *The Criminal Code*; namely a person exercising authority under a written law, and includes police officers, Ministers, Parliamentary Secretaries, members of the Legislative Assembly and Council, public service officers or employees, and local government members and employees.

“Schedule 1 offence” refers to Schedule 1 of this Bill. The offences listed in Schedule 1 include serious offences contained in the *The Criminal Code*, the *Misuse of Drugs Act 1981*, the *Firearms Act 1973* and the *Criminal Property Confiscation Act 2000*.

This schedule replicates the offences listed in Schedule 1 of the *Exceptional Powers Act*.

Clause 4 – Misconduct

“Misconduct” is relevant to the Commission’s functions in clause 18. It includes the behaviour of a public officer previously under the jurisdiction of the Anti-Corruption Commission (see section 13(1)(a)-(d) of the *ACC Act*). In addition, in relation to a police officer or employee of the WA Police Service “misconduct” includes “reviewable police action”. This includes conduct that is illegal, unreasonable, unjust or taken for an improper purpose, incorporating conduct previously under the jurisdiction of the Ombudsman.

Clause 5 – Section 5 offences

A section 5 offence is a “Schedule 1 offence” committed in the course of “organised crime”, which will be investigated by police officers authorised under the Bill. “Organised crime” is defined in Clause 3.

Clause 6 – Application

The Crime and Corruption Commission may act in relation to conduct that occurred before or after the Act commences, including acting in relation to persons no longer public officers about their conduct while a public officer.

Clause 7 – Act to bind the Crown.

The Crown in right of Western Australia is bound and, to the extent of State constitutional power, the Act binds the Crown in right of the Commonwealth and other states.

PART 2 – The Corruption and Crime Commission

Division 1 – Office of Corruption and Crime Commission

Clause 8 – Corruption and Crime Commission

The Bill establishes the Corruption and Crime Commission (“the Commission”), which is a body corporate. It will not be an SES organisation as defined under section 3 of the *Public Sector Management Act 1994* (see clause 176).

Clause 9 – Corruption and Crime Commissioner

The functions of the Commission are to be performed by a Corruption and Crime Commissioner (“the Commissioner”). The appointment of the Commissioner is made by the Governor after consultation by the Premier with other Parliamentary Party leaders.

Clause 10 – Qualifications for appointment

The Commissioner must have specified legal qualifications, including at least 8 years legal experience, and cannot be or have been a police officer (as defined in clause 3).

Clause 11 – Terms and conditions of service

These are specified in Schedule 2, including a renewable four year full-time tenure, and provision for resignation and vacancy.

Clause 12 – Removal or suspension of Commissioner

Specifies the procedure (involving addresses from the Legislative Assembly and Council) and grounds (including incapacity, incompetence, bankruptcy or misconduct) for removal by the Governor.

Clause 13 – Declaration of inability to act

The Commissioner may declare himself or herself unable to act in a matter due to an actual or potential conflict of interest or having to perform other functions under this Act.

Clause 14 – Acting appointment

Enables the Governor to appoint an Acting Commissioner in specified circumstances and on terms included in the instrument of appointment. The Governor may terminate the appointment at any time.

Clause 15 – Oath or affirmation of office

Specifies the requirement to take, and terms of, the oath or affirmation of the Commissioner's office.

Division 2 – Functions of Corruption and Crime Commission

Clause 16 – Commission's general functions

The five main functions of the Commission under this Bill are:

- to help prevent misconduct (described in clause 17(2));
- dealing with matters involving “misconduct” (described in clause 18);
- dealing with matters involving the Police Royal Commission (described in clause 19(1));
- entering into arrangements with, and receiving the records of, the ACC (described in clause 20);
- authorising and overseeing use of exceptional powers and fortification removal in relation to organised crime described in Part 4 (clause 21).

In addition, any other written law may confer functions on the Commission.

Clause 17 – Commission’s prevention function

The Commission may provide information, make recommendations and report on ways to prevent misconduct.

Clause 18 - Commission’s misconduct function

The Commission can receive, initiate, investigate, report on, and provide information to and co-operate with other agencies and authorities (including assembling and handing over evidence which can be used in criminal prosecutions) about allegations and other matters relating to misconduct. Those agencies and other authorities include the Ombudsman, DPP, Commissioner for Public Sector Standards or suitable authorities (including an Attorney General) in other States, Territories, the Commonwealth and other countries.

Clause 19 – Commission’s functions in relation to Police Royal Commission

Enables the Commission to receive, assess and investigate matters dealt with or referred by the Police Royal Commission, and deal with the Royal Commission’s records.

Provides, for these purposes, the Commission with all of the functions of the Police Royal Commission.

Clause 20 – Commission’s function in relation to the A-CC

Enables the Commission to enter into arrangements with the ACC regarding cooperation in relation to functions, sharing of facilities and staff, and records transfers.

Clause 21 – Commission’s organised crime functions

Provides the Commission with the functions in Part 4 of the Bill.

PART 3 – Misconduct

Division 1 – Assessments and opinions

Clause 22 – Assessments and opinions

Enables the Commission to make an assessment and form an opinion, and advise an “independent agency” or “appropriate authority” of such an opinion or assessment, about the occurrence of misconduct, on the basis of the Commission’s consultations, investigations or other actions, or investigations by a body specified in clause 22(2).

Clause 23 – Commission must not decide as to commission of offence

Prevents the Commission making a finding or forming an opinion that a person:

- has committed a criminal or disciplinary offence; or
- is committing or is about to commit a criminal or disciplinary offence.

This clause does not preclude the Commission from making an opinion as to the occurrence of misconduct under clause 22.

Division 2 - Allegations

Clause 24 – Allegations

Requires the Commission to receive allegations of “misconduct” (defined in clause 4). Also enables the Commission to seek further information from the person making the allegation.

Clause 25 – Any person may report misconduct

Enables any person to report either orally or in writing to the Commission conduct which they suspect on reasonable grounds concerns or may concern misconduct. A person making such a report does not commit an offence and is not constrained by any other provision (enacted before or after this Act commences) requiring confidentiality.

Clause 26 – Proposition by Commission

Enables the Commission to initiate a misconduct allegation, based on its own experience and knowledge, in the absence of any reported allegation.

Clause 27 - Allegation about Commissioner, Parliamentary Inspector or judicial officer not be received or initiated

Prevents the Commission receiving allegations about the Commissioner or the Commission’s officers, Parliamentary Inspector and staff, or holders of judicial office, which includes arbitrators, members of boards or courts of conciliation or arbitration (unless the allegation relates to an offence of judicial corruption under s 21 of *The Criminal Code*). Allegations about the Commissioner, Commission officers, and the Parliamentary Inspector’s staff are dealt with under clause 192 of the Bill by the Parliamentary Inspector.

Division 3 – Duty to notify

Clause 28 – Notification of misconduct

Requires specified persons to notify the Commission as soon as practicable of matters that those persons suspect on reasonable grounds concern or may concern misconduct. A similar duty is in section 14 of the *ACC Act*.

Clause 29 – Duty to notify is paramount

The clause 28 duty to notify must be complied with despite other statutory provisions (enacted before or after the commencement of this Act) or confidentiality provisions. This duty does not remove any notification requirements under other Acts.

Clause 30 – Commission may issue guidelines on notifications

This clause replicates section 14(4) of the *ACC Act*.

Clause 31 – Commission may report failure to comply

The Commission may report failures to comply with clause 28. This is similar to section 14(7) of the *ACC Act*.

Division 4 – Assessments, opinions and investigations

Clause 32 – Dealing with allegations

Requires the Commission to deal with an allegation by assessing it, forming an opinion as to the occurrence of misconduct (see clause 22) and making a decision on further action under clause 33. For these purposes the Commission may conduct a preliminary investigation and consult any person.

Clause 33 – Decision on further action

After assessing an allegation the Commission may decide to investigate or take action on its own, or with the involvement of an independent agency or appropriate authority. It may also refer the allegation to such agency or authority, or take no action.

Clause 34 – Matters to be considered in deciding who should take action

Factors for the Commission to consider in deciding whether to refer an allegation to another authority include the seniority of the public officer to whom the allegation relates, the seriousness of the conduct concerned and the need for an independent investigation.

Clause 35 – Informant to be notified of decision not to take action

The Commission must notify a person who has reported an allegation of misconduct under clause 25 or 28(2) if the Commission decides to take no further action.

Clause 36 – Referral by Commission

Enables the Commission to provide a report (which may recommend action to be taken) when referring an allegation to another authority under clause 33.

Clause 37 – Referrals to Parliamentary Commissioner or Auditor General

Requires the Commission to consult with the Ombudsman or Auditor General before referring an allegation to them and requires those authorities to apply their legislation in dealing with the allegation.

Clause 38 – Commission may decide to take other action

Allows the Commission to at any time decide to take a different course of action available to it, from that which it originally took under clause 33.

Clause 39 – Commission’s monitoring role

Requires an appropriate authority to report in writing to the Commission on action taken following receipt of a referral from the Commission and enables the Commission to direct that authority to elaborate on specific matters in a further report.

Clause 40 – Commission may review dealings with misconduct

Enables the Commission to review the way in which an appropriate authority has dealt with a misconduct allegation and requires that authority to give the Commission reasonable assistance in undertaking that review.

Clause 41 – Commission may direct authority not to take action

Enables the Commission to direct an appropriate authority not to investigate, or discontinue an investigation of, specified misconduct.

Division 5 – Recommendations

Clause 42 – Recommendations by Commission

Enables the Commission, on the basis of its own assessments, consultation and investigations, or the actions of other specified bodies, to recommend that consideration be given to prosecutions or disciplinary actions, including recommending investigations under the *Local Government Act 1995*. The Commission cannot recommend or form an opinion that an individual should be prosecuted.

Clause 43 – Independent agency must notify person of recommendation

Requires an independent agency that decides to prosecute a person, after a recommendation that consideration be given to such is received from the Commission, to notify the person concerned of that recommendation before they are charged.

Clause 44 – Other action for misconduct

Subject to any clause 41 direction to an appropriate authority (which does not include the DPP) not to investigate, the Bill does not preclude lawful disciplinary or other action being taken by other authorities in regard to misconduct by a person.

PART 4 – Organised crime: exceptional powers and fortification removal

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

Clause 45 – Terms used in this Part

Provides meanings for the terms “exceptional powers”, “exceptional powers finding” and “investigations” as those terms are used in Part 4.

Clause 46 – Finding as to grounds for exercising exceptional powers

On application from the Commissioner of Police, the Commission must be satisfied that there are reasonable grounds for suspecting the criteria for an exceptional powers finding specified in clause 46(1).

Replicates the criteria in section 9 of the *Exceptional Powers Act*.

Clause 47 – Scope of Divisions 2 to 5

Confirms that the powers in Divisions 2 to 5 are to facilitate the investigation of a section 5 offence (listed in Schedule 1), or suspected section 5 offence, and are available where the Commission has made an “exceptional powers finding” under clause 46.

Division 2 – Examination before the Commission

Clause 48 – Summoning witnesses to attend and produce things on application of Commissioner of Police

Provides the Commission with power to issue, on application from the Commissioner of Police, a summons under clause 96 of the Bill for a witness to be examined before the Commission and to produce things.

Replicates the power under section 14 of the *Exceptional Powers Act*.

Clause 49 – Examination of witnesses by Commissioner of Police

Witnesses may be examined by a person representing the Commissioner of Police and their lawyer to the extent that the Commission considers such examination as proper and relevant to the investigation. Examination of witnesses by a person representing the Commission or the witness is dealt with in clause 142. These provisions replicate section 20 of the *Exceptional Powers Act*.

Clause 50 – Offences for which a person stands charged

Limits the use of the power to examine a person under Division 2 where a person is charged with an offence, so that this person cannot be examined concerning matters relevant to the charge. However, other persons can be examined about such matters. A person becomes “charged with an offence” when the investigating officer informs them they will be charged or a complaint is sworn, whichever occurs first.

Replicates section 13 of the *Exceptional Powers Act*.

Division 3 – Entry, search and related matters

Clause 51 – Commission may limit exercise of powers

Enables the Commission to limit the exercise of an exceptional power under this Division, such as by reference to particular powers, circumstances, persons, places or periods of time.

Replicates section 10 of the *Exceptional Powers Act*.

Clause 52 – Enhanced power to enter, search and detain

Enables police without a warrant to enter and search premises where there are reasonable grounds to suspect a section 5 offence and stop and detain persons and seize documents. The clause also provides that the police officer may use such force as is reasonably necessary.

Replicates section 49 of the *Exceptional Powers Act*.

Clause 53 – Enhanced power to stop, detain and search

Enables police without a warrant to stop, detain and search a person or any conveyance if they reasonably suspect the person or conveyance is in possession of anything that may be used to commit a section 5 offence or anything that may provide evidence.

Replicates section 50 of the *Exceptional Powers Act*.

Clause 54 – Provisions about searching a person

Requires searches under this Division to be conducted by a police officer of the same sex as the person to be searched and makes provision for where the officer is uncertain of the person’s sex or an officer of the same sex is not immediately available. Body cavity searches are to be conducted by a medical practitioner or registered nurse.

Clause 55 – Extension of power to search

Provides that the power to search for anything under Division 3 includes power to break anything suspected to contain that thing.

Clause 56 – Things that have been seized

Applies section 714 of *The Criminal Code* to anything seized under this Division as if it had been seized under *The Criminal Code* and requires the person seizing the thing to take it before the Commission. The Commission may order that the property be preserved pending the conclusion of any investigation or trial, returned to the person from whom it was taken if no trial occurs, or destroy it if the person who had possessed it is without lawful authority or excuse.

Clause 57 – Offences under this Division

Creates offences relating to delaying, obstructing, hindering a police officer in the performance of functions under this Bill and non-production of something demanded, with a penalty of three years and a \$40 000 fine.

Replicates section 54 of the *Exceptional Powers Act*.

Clause 58 – Report on use of powers

Requires a police officer to whom an exceptional power has been issued to report within 5 days of the exercise of the power to the Commissioner of Police, who is to forward the report as soon as is reasonably practicable to the Commission. The report is to detail matters as what was done in the exercise of the power and the time and place it was exercised.

Replicates section 55 of the *Exceptional Powers Act*.

Clause 59 – Overseeing exercise of certain powers

Enables the Commission to obtain details of any exercise of an exceptional power from the Commissioner of Police.

Replicates section 11 of the *Exceptional Powers Act*.

Division 4 – Assumed Identities

Clause 60 – Approval for assumed identity

Enables the Commission, under clause 103, to approve police acquiring and using an assumed identity as if an officer of the Commission. Also applies Division 3 of Part 6 (“Assumed Identities”) in relation to the use of such approvals.

Clause 61 – Report about assumed identity approval

Requires police officers using assumed identities to give periodic reports to the Commissioner of Police and the Commission, setting out a description of activities undertaken when using the assumed identity.

Clause 62 – Overseeing exercise of certain powers

Enables the Commission to require the Commissioner of Police or other persons to give details of the use of an assumed identity.

Division 5 – Controlled operations

Clause 63 – Terms used in this Division

Defines the terms (including ‘controlled operation’) used in this Division. A “controlled operation” is conducted by police officers for the purpose of obtaining evidence of, arresting a person involved in, or frustrating the commission of a section 5 offence, and involves a “controlled activity” for which a person would otherwise be criminally responsible.

Clause 64 – Authority to conduct controlled operation and integrity testing

Enables the Commission, under clauses 121 and 123, to authorise police officers to conduct controlled operations and integrity testing programmes as if they were Commission officers. Also, Division 4 of Part 6 (“Controlled operations and integrity testing programmes”) applies to powers exercised under this clause.

Clause 65 – Report about controlled operation or integrity testing programme

Requires police officers to periodically report to the Commissioner of Police about the conduct of controlled operations and integrity testing programmes. The Commissioner of Police must give a copy of those reports to the Commission.

Clause 66 – Overseeing exercise of certain powers

Enables the Commission to obtain from the Commissioner of Police or any other person information about controlled operations or integrity testing programmes.

Division 6 – Fortifications

Provisions in this Division (clauses 67 – 80) are similar to the provisions in Part 7 (sections 57-70) of the *Exceptional Powers Act*.

Clause 67 – Terms used in this Division

Defines the terms used in Division 6 of Part 4. Premises are “heavily fortified” if they have structures or devices designed to prevent or impede uninvited entry to an extent that is excessive for premises of that kind.

Clause 68 – Issuing fortification warning notice

The Commissioner of Police may apply to the Commission for a fortification warning notice.

Sets out criteria to be proved, to the civil standard of the balance of probabilities, before the Commission can issue a fortification warning notice. Those criteria are that the premises are “heavily fortified” and used as a resort by people who the Commissioner of Police suspects are involved in organised crime.

The Commission may be satisfied on the basis of a statement of a police officer verified by statutory declaration.

Clause 69 – Contents of fortification warning notice

To ensure that all relevant persons will receive a fortification warning notice, this clause requires such a warning notice to be addressed to the owner(s) of premises and to interested persons (defined in clause 67 as including lessees and persons occupying or in possession of premises).

The notice must indicate that the Commission can issue a notice if there are reasonable grounds for suspecting the premises are heavily fortified and are used as a resort by people who the Commissioner of Police suspects are involved in organised crime, and that the Commission is satisfied in this regard.

To assist persons who receive a fortification warning notice, that notice must provide information about four essential matters:

- that the Commissioner of Police can within 14 days issue a fortification removal notice;
- the matters (for example “heavily fortified”) about which the owner, lessee or occupier must satisfy the Commissioner of Police to prevent the issuing of a fortification removal notice;
- how a person who receives a fortification warning notice can make a submission to the Commissioner of Police about, for example, the premises being “heavily fortified”; and
- an explanation of the relevant matters (for example, “heavily fortified”) about which the Commissioner of Police must be satisfied.

The notice shall contain a warning that unless the Commissioner of Police is satisfied that the premises are not fortified or are not used by persons involved in organised crime, a fortification removal notice may be issued.

Clause 70 – Giving fortification warning notice

Sets out how a fortification warning notice may be served. Section 76 of the *Interpretation Act 1984* provides that the service of a document is deemed to have been done if either personally served or posted or, if the person’s address is unknown, leaving the document at that person’s last known address or in the case of a corporation, by leaving the document at the principal place of business. If service is not executed within 14 days, the notice lapses.

Clause 71 – Withdrawal notice

The Commissioner of Police has discretion whether or not to issue a removal notice. If the Commissioner decides not to issue a fortification removal notice, the Commissioner must issue a withdrawal notice to all persons who received a fortification warning notice.

To assist the recipient of a fortification withdrawal notice, that notice must contain information:

- identifying the premises;
- referring to the fortification warning notice; and
- state that the Commissioner of Police has decided not to issue a fortification removal notice.

The requirements for serving a fortification withdrawal notice are the same as those in clause 70 relating to the giving of a fortification warning notice.

Clause 72 – Issuing fortification removal notice

The Commissioner of Police has discretion to issue a fortification removal notice 14 days after a person has received a fortification warning notice under clause 70.

Before issuing a fortification removal notice, the Police Commissioner must:

- consider every submission that a fortification removal notice not be issued received within 14 days of the service of a fortification warning notice; and
- reasonably believe that the criteria of heavily fortified and habitual usage exist in relation to the specified premises.

Stipulates two situations where a fortification removal notice cannot be issued.

Clause 73 – Contents of fortification removal notice

Requires the removal notice to be addressed to each of the persons to whom warning notices were addressed.

The removal notice must indicate that the offending fortifications must be removed or modified within 7 days to the satisfaction of the Commissioner of Police. Clause 75 enables the Commissioner of Police, if not satisfied that the notice has been complied with, to have the fortifications removed or modified.

Clause 76 enables the owner of a fortified premises to apply to the Supreme Court within 7 days for a review of the Commissioner of Police's decision to issue a removal notice.

Removal notices can include what is required to be done before the Commissioner of Police is satisfied that the premises are no longer heavily fortified.

Clause 74 – Giving fortification removal notice

Requires a fortification removal notice to be given to the owner of premises and indicates how this requirement can be satisfied.

Clause 75 – Enforcing fortification removal notice

Enables the Commissioner of Police, if not satisfied that the fortification removal notice has been complied with, to have the fortifications removed or modified.

Enables police officers to enter and secure premises and the Commissioner of Police to seize, sell or dispose of anything salvaged while removing or modifying fortifications. Proceeds of any sale are forfeited to the State and the Commissioner's costs may be recovered from the premises' owner.

Clause 76 – Review of fortification removal notice

The owner of fortified premises may apply to the Supreme Court within 7 days for a review of the Commissioner of Police's decision to issue a removal notice.

The Commissioner of Police may request that information supplied to the court be kept confidential and not disclosed to the other parties. Only one application can be made for a review.

The period of time to comply with removal notice is extended to cover the period of time the review is being considered by the court.

Clause 77 – Hindering removal or modification of fortifications

Creates an offence of preventing, obstructing, or delaying the removal or modification of fortifications with a maximum penalty of 5 years and a \$100 000 fine.

Clause 78 – Planning and other approval issues

Enables the powers given in Division 6 of Part 4 to be exercised without complying with or obtaining statutory or other approvals.

Clause 79 – No compensation

Precludes compensation claims in relation to approvals given for fortifications or the exercise of powers under Division 6 of Part 4.

Clause 80 – Protection from liability for wrongdoing

Precludes a tort action for damage to property against persons performing functions under Division 6 in good faith and exempts the State from liability.

Applies the protection of this clause to damages even if such damage could have been done if Division 6 was not enacted.

Division 7 – General matters

Clause 81 – Part not applicable to juveniles

Part 4 powers cannot be exercised in respect of a person under 18 years of age.

Clause 82 – Delegation by Commissioner of Police

The Commissioner of Police may, by writing delegate powers under Part 4 to an Assistant Commissioner or higher police officer.

Clause 83 – Judicial supervision excluded

Precludes a prerogative writ, injunction or declaration being applied for or issued in respect of performance of functions under Part 4 other than after the completion of the investigation.

PART 5 – Reporting

Division 1 – Reports by Commission on specific matters

Clause 84 – Report to Parliament on investigation or received matter

Enables the Commission to prepare reports (including the Commission's assessments, opinions and recommendations) on matters that have been subject of an investigation and to table reports in the Legislative Assembly and Council or (in accordance with clause 93) transmit it to the Clerk of the Assembly or Council.

Clause 85 – Report to Parliament on further action by appropriate authority

Enables the Commission to prepare a report (including the Commission's assessments, opinions and recommendations) about matters in a clause 39 report from an appropriate authority or about the action or non-action of an appropriate authority in regard to a misconduct allegation referred to that authority by the Commission. The Commission may table its report in the Legislative Assembly and Council or (in accordance with clause 93) transmit it to the Clerk of the Assembly or Council.

Clause 86 – Contents of reports

Requires the Commission to give a person or body reasonable opportunity to make a representation to the Commission concerning the facts in a clause 84 or 85 Commission report that are adverse to that person or body.

Clause 87 – Disclosure of matters in report

Enables the disclosure of matters contained in a Commission report tabled in Parliament, unless a presiding officer withholds the report in whole or part from the public.

Also enables (despite clause 151- restriction on publication) disclosure of facts in a clause 84 or 85 report, if the Standing Committee or Minister to whom it is provided under clause 89 approves the public disclosure of those facts.

Clause 88 – Special reports

Enables the Commission to prepare and table a special report on administrative or general policy matters relating to the Commission's functions.

Clause 89 – Report to the Minister, other Ministers or a Standing Committee

Enables the Commission to provide to a Minister or Standing Committee a clause 84, 85 or 88 report (instead of tabling the report).

Clause 90 – Reports concerning police officers and chief executive officers

Enables the Commission to prepare a report about persons proposed to be appointed as Commissioner of Police, a commissioned or non-commissioned police officer, a constable, an aboriginal aide or a chief executive officer. Reports concerning the appointment of these officers can be provided either to the Commissioner of Police or Ministers as specified in the Bill.

Division 2 – General reports

Clause 91 – Annual report to Parliament

Requires the Commission to prepare by 30 September an annual report of its general activities. Operational information is not required to be included in this report.

Clause 92 – Periodical report to Parliament

Provides that Rules of Parliament may require the Commission to report to Parliament or a Standing Committee as to its general activities, but not operational information.

Division 3 – General matters

Clause 93 – Laying documents before House of Parliament that is not sitting

Enables reports to be transmitted to the Clerk of the relevant House when the Legislative Assembly and/or Council is not sitting.

PART 6 – Powers

Division 1 – Particular powers to require information or attendance

Clause 94 – Power to obtain statement of information

Enables the Commission to require a public authority or public officer (as defined in clause 3) to produce a statement of information and sets out the procedure to be followed. This power may be exercised despite:

- any rule of law which may justify an objection on grounds of public interest;
- any privilege which the authority or officer could have claimed in a court of law; or
- any duty of secrecy or other restriction on disclosure.

Nothing in this section affects the operation of the *Parliamentary Privileges Act 1891*.

A statement of information produced by a person under this clause is not admissible in evidence against that person except in contempt proceedings, proceedings for an offence under this Act, or proceedings or action under section 8 or section 23 of the *Police Act 1892*.

Clause 95 – Power to obtain documents and other things

Confers power on the Commission to require a person to attend before the Commission or an officer of the Commission (as defined in clause 3) and produce a document or other thing specified in the notice to attend. The procedure to be followed is set out.

Clause 96 – Power to summon witnesses to attend and produce things

Enables the Commission to issue a summons on a person to attend before the Commission at an examination and give evidence, produce any record or other thing, or both. Personal service of the summons is required.

Clause 97 – Witnesses to attend while required

Any person served with a summons under clause 96 is required to continue to report to the Commission from day to day until released from further attendance.

Clause 98 – Power of Commission in relation to things produced

Any document or other thing produced to the Commission may be inspected, retained for a reasonable period, and have images taken of it or extracts taken from it by the Commission. The Commission may also make an order about what is to be done with a document or other thing produced to it, however it cannot be destroyed except in accordance with the *State Records Act 2000*.

Clause 99 – Notation on notice or summons to restrict disclosure

The Commission, on a notice under clause 94 or 95 or summons under clause 96, may stipulate that disclosure of information about the notice or summons is restricted to specified circumstances.

Such a notation can or will only be used if the Commission is satisfied that failure to have such a notation might or will prejudice the safety and reputation of a person, the fair trial of a person who may be charged, the effectiveness of an investigation, or is otherwise contrary to the public interest.

The notice ceases to have effect after the conclusion of the investigation if the circumstances described in sub clause (7) occur.

Division 2 – Entry, search and related matters

Clause 100 – Power to enter and search public premises

This clause replicates section 7 of the *Royal Commission (Police) Act 2002*.

Confers powers on the Commission to authorise entry and inspection of premises of a public authority or public officer, inspection of any document or thing in or on the premises, and taking copies of any document found there.

A public authority or public officer must facilitate exercise of these powers.

Again, nothing in this section affects the operation of the *Parliamentary Privileges Act 1891*.

Clause 101 – Search warrants

A Commission officer, in accordance with a warrant issued by a Judge of the Supreme Court, may:

- enter and search premises,
- where the premises comprise a vehicle, vessel, aircraft or the like, stop and detain and give directions as to its movement;
- break open and search any package or receptacle in or on the premises;
- seize, secure, request the production of, or copy records or things that are, or appear to be, relevant to the investigation of misconduct.

The clause also provides that the authorised person may use such force as is reasonably necessary and enables the Commission to retain possession of or release relevant records or things as it thinks fit.

Division 3 – Assumed identities

Clause 102 – Terms used in this Division

Inserts definitions necessary for the operation of this Division.

An “issuing agency” in this Part can be a public authority or a person, body or entity that is not a public authority.

Clause 103 – Approval for assumed identity

This clause is similar to section 22 of the *Royal Commission (Police) Act 2002*.

Confers on the Commission the power to approve the acquisition and use of an assumed identity or identities by an officer of the Commission. Sets out the

procedures and conditions that apply to the granting, variation or cancellation of such an approval.

Clause 104 – What an approval authorises

This clause is similar to section 23 of the *Royal Commission (Police) Act 2002*.

Sets out what an assumed identity approval authorises the officer to whom it applies to do. This includes acquisition and use of the assumed identity or identities specified in the approval, the making of false representations by the officer (or the Commission) in connection with the false identity or identities, and the obtaining of evidence in support of the identity or identities.

Clause 105 – Issuing evidence of assumed identity

Enables the Commission to request an issuing agency to produce evidence of an assumed identity and give it to the officer specified in the approval.

An issuing agency that is a public authority must comply with a Commission request, however an issuing agency that is not a public authority does not have to comply.

Clause 106 – Court orders as to entries in register

On application of the Commission, a Judge of the Supreme Court may order the Registrar to make an entry in the Register of Births, Deaths and Marriages in relation to an assumed identity.

Clause 107 – Hearing of application

An application under clause 106 (or subsequent cancellation in clause 109) is to be heard in closed court, no details of the application are to be made available (except by direction of a Judge), and no transcript of proceedings is to be made.

Clause 108 – Cancellation of evidence of assumed identity

An issuing agency must cancel evidence of an assumed identity if directed to do so in writing by the Commission. The term “cancel” includes delete or alter an entry in a record of information.

Clause 109 – Cancellation of approval affecting entry in register of births, deaths and marriages

If the Commission cancels approval for an assumed identity and there is an entry in a Register in relation to that assumed identity because of an order under clause 106, the Commission must apply to have an order to cancel under clause 110 within 28 days after the approval is cancelled.

Clause 110 – Cancelling entries in register of births, deaths and marriages

On application of the Commission, a Judge of the Supreme Court may order the Register to cancel an entry originally made under clause 106 in the Register of Births, Deaths and Marriages.

Clause 111 – Protection from liability

This clause is similar to section 26 of the *Royal Commission (Police) Act 2002*.

An officer of an issuing agency who acts in compliance with a Commission request under clause 105 or 108 is not criminally responsible for actions that, apart from this clause, would be an offence.

An officer of the Commission who does something:

- in the course of acquiring or using an assumed identity;
- in the course of duty; and
- that would not be an offence if the assumed identity were the officer's real identity

is not criminally responsible for doing that thing that, apart from this clause, would be an offence.

Clause 112 – Indemnity

The Commission must indemnify an issuing agency or an officer of the Commission using an assumed identity for any liability incurred (including reasonable costs) for actions taken in compliance with Commission requirements.

Clause 113 - Particular skills or qualifications

Clauses 111 and 112 do not apply to anything done by an officer of the Commission using an assumed identity if a particular skill or qualification is need to do the thing and the officer does not have that skill or qualification.

Clause 114 – Identify of certain officers not be disclosed in legal proceedings

This clause is similar to section 25 of the *Royal Commission (Police) Act 2002*.

Requires that the identify of an officer in respect of whom an assumed identity approval is or was in force, must not be disclosed in legal proceedings unless the court considers that the interests of justice require it.

A person who discloses information in contravention of an order in force under this clause is liable to 5 years imprisonment and a fine of \$100,000.

Clause 115 – Information not to be disclosed

A person who makes a record of, discloses, or communicates information relating to the provision of evidence of identity (unless is necessary to do so under this Division) is guilty of a crime.

A person who contravenes this clause is liable to 5 years imprisonment and a fine of \$100,000.

Clause 116 – Misuse of assumed identity

An officer of the Commission using an assumed identity commits an offence if the officer acquires evidence or uses an assumed identity and the acquisition or use is not in accordance with Commission approval or not in the course of duty.

An officer who contravenes this clause is liable to 3 years imprisonment and a fine of \$60,000.

Clause 117 – Evidence

A certificate signed by the Commission is admissible in any legal proceedings and is conclusive evidence of the matters relating to the provision or use of an assumed identity specified in the certificate.

Clause 118 – Review

The Commission must review each assumed identity approval in force at least once every 6 months.

Division 4 – Controlled operations and integrity testing programmes

Clause 119 – Terms used in this Division

This clause inserts definitions necessary for the operation of the Division. Principal terms include:

“authorised operation” means a controlled operation or integrity testing programme for which an authority is in force.

“controlled activity” means an activity for which a person would, but for clause 128, be criminally responsible.

“controlled operation” means an operation that is conducted for the purpose of obtaining or facilitating the obtaining of evidence of misconduct and involves or may involve an activity for which a person would, but for clause 128, be criminally responsible.

“integrity testing programme” has the meaning given by clause 123.

Clause 120 – Provisions are not to affect certain matters

This Division is not to limit a court’s discretion to admit or exclude evidence in any proceedings or to stay criminal proceedings in the interests of justice.

Clause 121 – Authority to conduct controlled operation

Enables the Commission to grant an authority to conduct a controlled operation.

Sets out how the authorisation is to be made and the information required to be specified in the authorisation, including the responsible officer of the Commission, the names of those authorised to engage in controlled activities, the nature of the controlled activities, the period that the authorisation remains in force and when the authorisation is given.

Clause 122 – Certain matters not to be authorised

An authority in clause 121 must not be granted in relation to an operation that involves any participant:

- intentionally inducing a person to engage in misconduct that they would not otherwise have intended to engage in; or
- engaging in conduct that is likely to seriously endanger the health or safety of that or any other participant, or any other person, or result in serious property loss or damage.

An authority for a controlled operation where there is not an “allegation” of misconduct (as defined in clause 3) must not be granted unless each person to be investigated under the operation is a police officer or a person of a prescribed class.

A person must not be authorised to participate in a controlled operation unless the Commission is satisfied that the person has the appropriate skills to participate.

Persons other than Commission officers must not be authorised to:

- participate in any aspect of a controlled operation unless it is wholly impractical for a Commission officer to participate in that aspect of the operation; or
- engage in a controlled activity unless it is wholly impractical for a Commission officer to engage in that activity.

Clause 123 – Authority to conduct integrity testing programme

Confers on the Commission the power to authorise an officer of the Commission or another person to conduct a programme to test the integrity of any particular public officer or class of public officers.

Such a programme may involve an act or omission by an authorised participant that provides the public officer whose integrity is being tested the opportunity to engage in lawful or unlawful behaviour which contravenes the principles of integrity required of a public officer.

The manner in which the authorisation is to be made and the information required to be specified in the authorisation are similar to those for a controlled operation.

An authority for an integrity testing programme where there is not an “allegation” of misconduct (as defined in clause 3) must not be granted unless each person to be tested under the integrity testing programme is a police officer or a person of a prescribed class.

Clause 124 – Variation of authority

Enables the Commission to vary an authority to conduct a controlled operation or integrity testing programme and stipulates the manner in which the authorisation is to be varied, and the information required to be specified.

Clause 125 – Cancellation of authority

Enables the Commission to cancel an authority to conduct a controlled operation or integrity testing programme, and specifies when the cancellation takes effect.

Clause 126 – Effect of authority

Specifies what each Commission officer or civilian who has been authorised to participate in a controlled operation or integrity testing programme is permitted to do.

Clause 127 – Defect in authority

Any authorisation or variation is not invalidated by any defect, other than a material defect in the authorisation or variation.

Clause 128 – Protection from criminal responsibility

A participant in a controlled operation or integrity testing programme is not criminally responsible for engaging in activity that is an offence if that activity is in accordance with the authority for the operation and does not involve:

- intentionally inducing a person to engage in misconduct that they would not otherwise have intended to engage in; or
- engaging in conduct that that is likely to seriously endanger the health or safety of that or any other participant, or any other person, or result in serious property loss or damage.

Clause 129 – Indemnification of participants against civil liability

The Commission must indemnify an officer of the Commission, or a person who is not an officer of the Commission, participating in a controlled operation or integrity testing programme for any liability incurred (including reasonable costs) for actions taken in compliance with Commission requirements, if their conduct during the operation does not involve:

- intentionally inducing a person to engage in misconduct that they would not otherwise have intended to engage in; or
- engaging in conduct that that is likely to seriously endanger the health or safety of that or any other participant, or any other person, or result in serious property loss or damage.

Clause 130 – Requirements that must be met to obtain protection from criminal responsibility or indemnity

Stipulates the requirements for activity or conduct that meets the tests for protection from criminal responsibility or indemnification in clauses in 128 and 129, which is if the activity or conduct does not involve:

- intentionally inducing a person to engage in misconduct that they would not otherwise have intended to engage in; or
- engaging in conduct that that is likely to seriously endanger the health or safety of that or any other participant, or any other person, or result in serious property loss or damage.

Clause 131 – Effect of being unaware of variation or cancellation of authority

If there is a variation or cancellation of authority for a controlled operation or integrity testing programme, this Division continues to apply to a participant if the participant is unaware of the variation or cancellation and is not reckless about the existence of the variation or cancellation.

A person is reckless about the existence of the variation or cancellation if the person is aware of the substantial risk that the variation or cancellation has happened and it is unjustifiable to take that risk.

Clause 132 – Protection from criminal responsibility for certain ancillary activities

A person who engages in an activity such as aiding and abetting a controlled activity as defined in clause 119 (termed an “ancillary activity” for purposes of this clause) is not criminally responsible if that person believed that that the controlled activity was being engaged in by a participant in a controlled operation or integrity testing programme.

Clause 133 – Evidence

A document purporting to be an authority for a controlled operation or integrity testing programme is admissible in any legal proceedings.

A certificate signed by the Commission is admissible in any legal proceedings and is conclusive evidence of the matters relating to the controlled operation or integrity testing programme specified in the certificate.

Clause 134 – Identity of certain participants not to be disclosed in legal proceedings

Requires that if the identify of an officer in respect of a controlled operation or integrity testing programme is in issue or may be disclosed in court proceedings, the court must take steps to protect the real identity of the participant unless it considers that it is in the interests of justice to disclose the identity.

A person who discloses information in contravention of an order in force under this clause is liable to 5 years imprisonment and a fine of \$100,000.

Division 5 – General

Clause 135 – Evidence

Subject to the Bill, the Commission is not bound by the rules or practice of evidence and can inform itself on any matter as it sees fit.

Clause 136 – Ancillary powers

The Commission’s powers include the power to do anything necessary or incidental to its functions under this Part.

PART 7 – Examinations and deciding claims of privilege and excuse

Division 1 – Examinations

Clause 137 – Commission may conduct examinations

Enables the Commission to conduct “examinations”, as described in this Part, in the course of an investigation.

Clause 138 – Conduct

Enables the Commission to regulate the conduct of examinations.

Clause 139 – Examination to be private unless otherwise ordered

Subject to clause 140, examinations are to be private and the Commission may make an order as to who may be present.

Provides a penalty of up to 3 years imprisonment and \$60 000 fine for unauthorised presence at an examination.

Clause 140 – Public examination

The Commission may open an examination, apart from an organised crime examination, to the public if it considers it to be in the public interest.

Clause 141 – Power to examine on oath or affirmation

The Commission may require a witness to take an oath or affirmation, to be administered by the Commissioner.

Clause 142 – Legal representation

Witnesses may have legal representation at an examination and the Commission may arrange such representation where it considers it to be in the public interest. The Commission may be assisted by a legal practitioner at an examination.

Clause 143 – Examination

A legal practitioner assisting the Commission, or representing a witness, at an examination may, so far as the Commission considers proper, examine the witness on any matter the Commission considers relevant.

Division 2 – Claims of privilege and reasonable excuse

Clause 144 – Legal professional privilege

Apart from public authorities and officers, a witness may claim legal professional privilege as a reason for not giving evidence or producing things before the Commission.

Replicates section 47 of the ACC Act.

Clause 145 – Use of statements obtained

Statements made by witnesses are not admissible in evidence against the person in any criminal proceedings, proceedings for the imposition of a penalty or, subject to specified exceptions including contempt proceedings and proceedings for an offence against this Bill. A witness may, however, be asked about a statement under section 219 of the *Evidence Act 1906*.

Division 3 – General

Clause 146 – Allowances for witnesses

Enables payment of appearance expenses to witnesses in accordance with a prescribed scale, to be appropriated accordingly from the Consolidated Fund.

Clause 147 – Protection of Commission, legal representatives and witnesses

Provides the Commission with the same protection and immunity as a Judge of the Supreme Court. A legal practitioner representing a witness before the Commission has the same protection and is subject to the same liabilities as a practitioner appearing for a party in proceedings in the Supreme Court, and the witness has the same protections and liabilities (in addition to those penalties provided elsewhere in the Bill) as a witness in a Supreme Court proceeding.

PART 8 – Arrest warrants

Clause 148 – Arrest

The Commission may, on verified proof of service, issue a warrant to apprehend and detain a person failing to attend as required by a summons. In limited circumstances the Commission may issue a warrant in the absence of the issue of a summons. The person executing the warrant may use reasonable force to apprehend the person.

Clause 149 – Conditional release from custody

A person detained under warrant issued by the Commission may be released subject to such conditions, including conditions to ensure the attendance of the person before the Commission, as the Commission considers appropriate.

Clause 150 – Review by Supreme Court

Provides a right for a person subject to detention or conditional release under a warrant issued by the Commission to apply to the Supreme Court for review. The Supreme Court may affirm or vary the Commission's decision that they be detained or conditionally released.

PART 9 – Disclosure, secrecy and protection of witnesses

Clause 151 – Disclosure generally

Precludes the publication of information in relation to evidence before, and other information received by, and persons appearing before the Commission (unless already disclosed at a public hearing of the Commission or published in accordance with a direction of the Commission), so as not to jeopardise the operations of the Commission.

This clause does not apply to the Commission and will not preclude the exchange of otherwise restricted information to a legal practitioner for the purpose of obtaining legal advice or from a body corporate to an officer of the body corporate so that a summons may be complied with.

Persons not complying with this clause are liable to 3 years imprisonment and a \$60 000 fine.

Clause 152 – Disclosure by the Commission or officers of the Commission

Imposes an obligation on all Commission officers, and other persons to whom information is provided by the Commission on a confidential basis, not to divulge or communicate any information obtained in the course of the performance of their functions, save for identified circumstances, such as prosecution or disciplinary action resulting from the Commission's investigation, or where the Commission has certified that disclosure is in the public interest. Imposes a penalty of 3 years imprisonment and a \$60 000 fine.

Clause 153 – Disclosure by other officials

If information is disclosed under clause 152(4) to another authority or person for use in connection with the performance of its functions, that authority or person must not divulge or communicate any information received, except for the purpose for which it was disclosed. Provides for a maximum penalty of 3 years imprisonment and \$60 000 fine.

Clause 154 – Application of *Telecommunications (Interception) Western Australia Act 1996*

Allows the disclosure of information obtained by telecommunications interception which would otherwise be prevented by section 22 of the above Act.

Clause 155 – Witness protection arrangements

The Commission may make arrangements, including with the Commissioner of Police of this State, or any other State or Territory or the Commissioner of the Federal Police, to protect the safety of any person assisting the Commission in the performance of its functions.

This clause does not affect the *Witness Protection (Western Australia) Act 1996*.

PART 10 – Contempt

Clause 156 – Meaning of “reasonable excuse”

Sets out the “reasonable excuse” that may be available to persons otherwise liable to a penalty for failure to produce a thing to the Commission under summons. Such “reasonable excuse” means an excuse that would excuse a similar failure by a witness summonsed as witness before the Supreme Court. However, it is not a reasonable excuse to claim that the production would incriminate the person or be a breach of an obligation.

Clause 157 – Penalty for failing to comply with notice

Provides that a person who fails, without a “reasonable excuse”, to comply with a notice to provide information under clause 94 or produce documents under clause 95 is in contempt of the Commission.

Clause 158 – Penalty for failing to attend or produce anything

Provides that a person who fails, without a “reasonable excuse”, to attend before the Commission and produce things in accordance with a summons issued under clause 96, or continue to attend in relation to a summons under clause 97, is in contempt of the Commission.

Clause 159 – Penalty for failing to be sworn or to give evidence

A person who refuses to swear an oath or make an affirmation before, or answer any question required by, the Commission is in contempt of the Commission.

Clause 160 – Penalties in relation to search warrants

Provides that a person who, without reasonable excuse, fails to comply with a search warrant issued under clause 101, or otherwise attempts to prevent the exercise of powers granted by that warrant is in contempt of the Commission.

Clause 161 – Other contempt of Commission

Additional grounds for contempt of the Commission include deliberately interrupting, or creating a disturbance at an examination by the Commission, and any other act that would constitute contempt of court.

Provides the Commission with power to order that a person who is in such contempt of the Commission to be removed from the premises, for which an officer of the Commission may use reasonable force.

Clause 162 – Punishment of contempt

The Supreme Court has jurisdiction in respect of an alleged contempt of the Commission as if it were a contempt of that Court.

Clause 163 – Conduct that is contempt and offence

A person may not be punished twice in respect of conduct that constitutes both contempt of the Commission and an offence.

PART 11 – Offences

Clause 164 – Obstructing or hindering the Commission, the Parliamentary Inspector or an officer

Creates the offence of delaying, obstructing or otherwise hindering the Commission, an officer of the Commission, the Parliamentary Inspector or an officer of the Parliamentary Inspector. Provides a maximum penalty of 3 years imprisonment and \$60 000 fine.

Clause 165 – Disclosure contrary to notation on summons

Creates an offence punishable by 3 years imprisonment and \$60 000 fine for disclosing information about a summons issued under clause 99 which contains a notation prohibiting the disclosure of that information. Disclosure is authorized where it is in accordance with any circumstances specified in the notation, for the purpose of obtaining legal advice, or to an officer of a body corporate for the purpose of ensuring compliance with the notice or summons.

Clause 166 – Giving false testimony

Creates the crime of knowingly giving false or misleading evidence at an examination before the Commission or Parliamentary Inspector. Provides a maximum penalty of 5 years imprisonment and a \$100 000 fine.

Clause 167 – Bribery of witness

Creates the crime of (or attempting to) bribing or inducing a person called or to be called as a witness before the Commission or Parliamentary Inspector to give false testimony or withhold true testimony. Includes attempting to obtain any benefit for the witness or any other person. Provides a maximum penalty of 5 years imprisonment and a \$100 000 fine.

Clause 168 – Fraud on witness

Creates the offence of committing any fraud, deceit or knowingly making a false representation to a person called or to be called as a witness before the Commission or Parliamentary Inspector, with intent to affect the witness's testimony. Provides a maximum penalty of 3 years imprisonment and \$60 000 fine.

Clause 169 – Destroying evidence

Creates the offence of wilfully destroying evidence that the person knew may be required by the Commission or Parliamentary Inspector, with the intention of preventing it being used in evidence. Provides a maximum penalty of 3 years and a \$60 000 fine.

Clause 170 – Preventing witnesses from attending

Creates the crime of wilfully preventing, or attempting to prevent, a witness summonsed by the Commission or Parliamentary Inspector from attending. Provides a maximum penalty of 5 years and \$100 000 fine.

Clause 171 – Injury or detriment to witness

Creates the crime of causing any violence or detriment to any person for appearing as a witness before the Commission or Parliamentary Inspector. Provides a maximum penalty of 5 years and \$100 000 fine.

Clause 172 – Dismissal by employer of witness

Creates the crime of an employer dismissing or prejudicing an employee for the employee having appeared as a witness, or providing evidence before the Commission or Parliamentary Inspector. Provides a maximum penalty of 5 years and \$100 000 fine.

Clause 173 – Victimisation

Creates the offence of victimising a person in relation to assisting or giving evidence to the Commission or Parliamentary Inspector. Provides a maximum penalty of 3 years and \$60 000 fine.

Clause 174 – Pretending to be officer

Creates the offence of pretending to be an officer of the Commission or Parliamentary Inspector. Provides a maximum penalty of 3 years and \$60 000 fine.

Clause 175 – Summary conviction of crimes

Allows for a court of summary jurisdiction to hear proceedings in respect of an offence against this Act, if the court is satisfied that it is proper to do so and both parties consent. The penalty for any offence heard in such a court cannot exceed 3 years imprisonment and a \$60 000 fine.

PART 12 – Administration

Division 1 – Staff

Clause 176 – Commission is not an SES organisation

The Commission is not, and must not become, an SES organisation under the *Public Sector Management Act 1994*.

Clause 177 – Staff of the Commission

Enables the Commission to employ staff and determine terms and conditions of service. The Commission's staff are not employed under Part 3 of the *Public Sector Management Act 1994*. Staff terms and conditions of service cannot be less favourable than is provided for in an applicable award or the *Minimum Conditions of Employment Act 1993*.

Clause 178 – Service as public service officer

Where an employee transfers between the public service and the Commission they will continue to accrue rights as if they were a public service officer, for the period they are employed by the Commission. If they were a permanent officer under the *Public Sector Management Act 1994* prior to being appointed to the Commission, they will be entitled to be reinstated as a public service officer to at least that same level of classification previously held, if they cease to be employed by the Commission.

This entitlement to reinstatement will not apply where the officer ceases to be an officer of the Commission due to substandard performance, breach of discipline or misconduct.

Clause 179 – Secondment of staff and use of facilities

Enables the Commission to second any person employed by the State and any police officer from services both within and outside Australia. During secondment, staff are subject to the control and direction of the Commission and not their original employing authority. Further, the Commission may use the facilities of a State agency, upon arrangement with the relevant employing authority, except arrangements with the State Police Force, which are to be made with the Commissioner of Police.

Clause 180 – Engagement of service providers

Enables the Commission to engage persons to provide the services, information or advice, on the terms and conditions decided by the Commission.

Clause 181 – Oath or affirmation

Commission officers must take an oath that they will not divulge any information received under this Act, except where required by the Act. The Commissioner administers the oath.

Clause 182 – Authorised officers

Enables the Commission to appoint authorised officers who may perform all of the functions that a special constable appointed under section 35A of the *Police Act 1892* has or may perform, when acting in the capacity as an officer of the Commission. Authorised officers are not subject to the control and direction of the Commissioner of Police or any other police officer.

Clause 183 – Delegation

Enables the Commission to delegate any power or duty conferred by this Act to an officer of the Commission, except for specified powers, including the power to conduct examinations on oath, issue summonses, make an exceptional powers findings, and approve an assumed identity, conduct of a controlled operation, or integrity testing programme.

The delegation must be in writing and the person to whom the power or duty was delegated cannot further delegate the power.

Division 2 – Financial provisions

Clause 184 – Funds of Commission

Funds available to the Commission to perform its functions consist of funds appropriated by Parliament, any interest on those funds and any other moneys lawfully available or payable to the Commission. The funds will be held as part of the Trust Fund under section 9 of the *Financial Administration and Audit Act 1985* in a Corruption and Crime Commission Fund. The Commission's funds shall be applied to staff remuneration and allowances, payment for facilities, expenditure incurred in

the performance of the Commission's functions and any other expenditure lawfully incurred to meet the costs of administering this Act.

Clause 185 – Application of *Financial Administration and Audit Act 1985*

Subject to clause 184, the *Financial Administration and Audit Act 1985* applies to the Commission.

PART 13 – Parliamentary Inspector of the Corruption and Crime Commissioner

Division 1 – Office of Parliamentary Inspector of the Corruption and Crime Commission

Clause 186 – Parliamentary Inspector of the Corruption and Crime Commission

Establishes the office of the Parliamentary Inspector of the Corruption and Crime Commissioner. This is not an office of the Public Service and is not, and is not to become, an SES organisation as defined in section 3 of the *Public Sector Management Act 1994*.

Clause 187 – Appointment of Parliamentary Inspector

Provides for appointment of a Parliamentary Inspector (“the Inspector”) by the Governor, following consultation by the Premier with the Parliamentary leader of each party in the Parliament.

Clause 188 – Terms and conditions of service

The Inspector is to have the tenure, remuneration and other conditions of service set out in Schedule 3.

Clause 189 – Removal or suspension of Parliamentary Inspector

Specifies the procedure (involving addresses from the Legislative Assembly and Council) and grounds (including incapacity, incompetence, bankruptcy or misconduct) for removal of the Inspector by the Governor.

Clause 190 – Acting appointment

Enables the Governor to appoint an Acting Inspector in specified circumstances and on terms included in the instrument of appointment. The Governor may terminate the appointment at any time.

Clause 191 – Oath or affirmation of office

Specifies the requirement to take, and terms of, the oath or affirmation of the Inspector's office.

Division 2 – Functions of the Parliamentary Inspector

Clause 192 – Functions

Provides that the functions of the Inspector include auditing the operations of the Commission, investigating and reporting allegations of misconduct by the Commission or its officers and officers of the Parliamentary Inspector; and reporting and making recommendations to the Commission, Parliament and Standing Committees. These may be performed on the Inspector's own initiative, at the request of the Minister or in response to a complaint made to the Inspector.

Clause 193 – Powers

Provides the Inspector with power to do all things necessary or convenient for the exercise of their powers, such as investigating any aspect of the Commission's operations, accessing its records, and requiring its officers to provide information or attend before the Inspector.

Clause 194 – Inquiries

Provides the Inspector with power to hold inquiries and to that end provides the Inspector with the same powers, protections and immunities as a Royal Commission, including the power to summons witnesses.

Inquiries held by the Inspector are not to be open to the public.

Clause 195 – Parliamentary Inspector not to interfere with Commission's operations

Precludes the Inspector from interfering with or obstructing the Commission's lawful operations.

Division 3 – Reporting

Clause 196 – Report to Parliament

Provides that the Inspector may report on any matter affecting the Commission and any administrative or general policy matter relating to the Inspector's functions, and table that report in each House of Parliament.

Clause 197 – Contents of report

Requires the Inspector to give any person or body against whom an adverse report is to be made a reasonable opportunity to make representations to the Inspector before the Inspector makes such a report.

Clause 198 – Report to a Standing Committee

Enables the Inspector to make a report to a Standing Committee rather than laying it before each House of Parliament.

Clause 199 – Disclosure of matters in report

The contents of a report of the Inspector may be publicly disclosed even though it may contain “restricted matter” under clause 151, unless a presiding officer withholds the report, or part of it, from the public.

Clause 200 – Annual report to Parliament

Requires the Inspector to prepare and table in each House of Parliament an annual report on their activities during that year.

Clause 201– Periodical report to Parliament

Provides that Rules of Parliament may require the Inspector to report on their general activities (excluding operational information) to Parliament or a Standing Committee, at the time or times prescribed in the Rules.

Clause 202 – Reports not to include certain information

Information which cannot be included in a report from the Inspector includes that which would identify a person likely to be investigated by the Commission or the Police Force or appear as a witness before the Commission, or indicate that a particular investigation has been conducted by or is likely to be conducted by the Commission or the Police Force.

Clause 203 – Laying documents before House of Parliament that is not sitting

Provides that a report of the Inspector under clause 196 may be transmitted to the Clerk of the House where a House of Parliament is not sitting, which is deemed to have been regarded as having been laid in that House.

Clause 204 – Protection and immunity

Provides the Inspector with the same immunity and protections as the Commission under clause 147.

Division 4 – Disclosure

Clause 205 – Restriction on disclosure generally

Precludes the publication of information in relation to allegations and other information received by, and persons appearing before, the Inspector (unless already disclosed at a public hearing or published in accordance with a direction of the Inspector), so as not to jeopardise the operations of the Inspector.

This clause does not preclude the exchange of otherwise restricted information to a legal practitioner for the purpose of obtaining legal advice or from a body corporate to an officer of the body corporate so that a summons may be complied with.

Persons not complying with this clause are liable to 3 years imprisonment and a \$60 000 fine.

Clause 206 – Disclosure by Parliamentary Inspector or officer

Imposes an obligation on all officers of the Parliamentary Inspector, and other persons to whom information is provided by the Parliamentary Inspector on a confidential basis, not to divulge or communicate any information obtained in the course of the performance of their functions. Imposes a penalty of 3 years imprisonment and a \$60 000 fine.

Provides exceptions for the disclosure of information, for the purposes of prosecution or disciplinary action, to Parliament or a Standing Committee, and for disclosure by the Inspector or an officer of the fact that an allegation has been received or initiated by the Inspector or details of the allegation.

Clause 207 – Disclosure by other officials

Where information is disclosed under clause 206(4) to another authority or person, that authority or person must not divulge or communicate any information, except for the purpose for which it was disclosed to them. Provides for a maximum penalty of 3 years imprisonment and \$60 000 fine.

Division 5 – Staff

Clause 208 – Staff of the Parliamentary Inspector

Enables the Inspector to employ staff, who are not employees under Part 3 of the *Public Sector Management Act 1994*, and determine their remuneration and other terms and conditions of service.

Clause 209 – Service as a public service officer

Ensures that public service officers seconded to the office of the Inspector continue to retain and accrue all entitlements, including a right of return to the public service at a classification at least equivalent to that which they previously occupied in the public service.

Clause 210 – Secondment of staff and use of facilities

Enables the Inspector to second or engage any officer in the service of the State, or a member of the Police Force of the Commonwealth or any other State, Territory or country.

The Inspector may also enter arrangements, including with the Commissioner of Police in respect of the Police Force, to make use of facilities of a State agency.

Clause 211 – Engagement of service providers

Enables the Inspector to engage persons to provide services, information or advice, on terms and conditions determined by the Inspector.

Clause 212 – Oath or affirmation

“Officers of the Parliamentary Inspector”, whether employed, seconded or engaged, are required to take an oath or affirmation, administered by the Inspector, that they will not divulge information other than in accordance with this Act.

PART 14 – Other matters

Clause 213 – Financial Provisions

The Inspector is to be funded by monies appropriated by Parliament, interest and other lawful monies, and credited to an identified account in the Trust Fund under section 9 of the *Financial Administration and Audit Act 1985*. Those monies are to be applied to the remuneration payable to the Inspector and staff and all other lawful expenditure of the Inspector in administering this Part of the Bill.

Clause 214 – Application of *Financial Administration and Audit Act 1985*

Provides that, subject to clause 213, the provisions of the *Financial Administration and Audit Act 1985* apply to the operations of the Inspector.

Clause 215 – Facilitating proof of certain things

Proof of the appointment of the Commissioner is by a document signed by the Governor and sealed with the Public Seal of the State, or by a certified copy of that document.

Proof of a transcript of proceedings of the Commission is provided by certification from the Commission that the transcript is a correct transcript.

In Part 10 contempt proceedings, a certificate of the Commission stating any fact relevant to those proceedings is sufficient evidence of the fact stated.

Clause 216 – Disclosure of interests

Creates an offence where officers of the Commission or Parliamentary Inspector do not promptly disclose the nature of any material personal interest in any matter in respect of which the Commission or Parliamentary Inspector is involved. Provides a maximum penalty of 3 years imprisonment and \$60 000 fine. Requires that the Commission or Parliamentary Inspector ensure that a person who has made a disclosure is not involved in investigating a matter unless the Commission or Parliamentary Inspector are satisfied that the person’s involvement would not prejudice the investigation of the matter.

Clause 217 – Protection against liability

No action in tort lies against the State, a Minister, the Commission (or officials), the Parliamentary Inspector (or officials), for anything done, or omitted to be done, in good faith in the performance of a function under this Act or any other written law.

Clause 218 – Protections as to allegations and information

No civil or criminal liability, other than liability under this Act, attaches to a person for providing information or making an allegation to the Commission or the Parliamentary Inspector.

No civil or criminal liability attaches to the State, a Minister or an independent agency for disclosing, in good faith, the fact that the Commission or Parliamentary Inspector has received or initiated an allegation or the details of an allegation.

No civil or criminal liability attaches to the State, a Minister, the notifying authority, and an officer of the notifying authority for disclosing, in good faith, the fact that the officer has made an allegation to the Commission or the details of the allegation.

Clause 219 – Protection for compliance with this Act

No civil or criminal liability, other than liability under this Act, attaches to a person for compliance, or purported compliance in good faith with a requirement made under this Act. For example, the production of a document which is required to be produced under a summons or notice.

Clause 220 – Proceedings for defamation not to lie

No civil or criminal actions lie against the State, a Minister or a person employed by the State, in respect of printing or publishing a transcript of an examination, report or recommendation made by the Commission or Parliamentary Inspector.

Clause 221 – Privilege, protection or immunity not limited or abridged

Clauses 147, 217 and 220 do not limit any privilege, protection or immunity existing apart from those clauses.

Clause 222 – Records

Requires that the Commission keep records of all investigations and transcripts of all examinations, as well as any records transferred to it by the Police Royal Commission, the ACC or the Parliamentary Commissioner. Allows the Commission to make any appropriate order, in accordance with the *State Records Act 2000 (WA)*, regarding who can have a copy of the records and how records are dealt with after an investigation.

The State Records Commission may also make orders under the *State Records Act 2000* as to how records are to be dealt with following completion of an investigation. Any records transferred to the custody of the Director of State Records as State

archives are to be treated as restricted access archives, unless the Attorney General requests otherwise.

Clause 223 – Execution of documents by Commission

Documents may be executed by the Commission under common seal of the Commission or signature of a duly authorised person. A document purporting to be executed in accordance with this clause is presumed to be properly executed unless the contrary is shown.

Clause 224 – Review of Act

The Minister is to review the operation and effectiveness of this Act within 5 years after the commencement and report to Parliament within 6 years after the commencement of the Act.

Clause 225 – Regulations

Enables the Governor to make regulations that are required, permitted or convenient to give effect to the purposes of this Act.

PART 15 – Repeals, transitional and savings provisions, and consequential amendments

Division 1 – General

Clause 226 – *Interpretation Act 1984* applies

Confirms the operation of the *Interpretation Act 1984* in relation to the matters effected by the Bill.

Division 2 – *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*

Clause 227 – Meaning of terms used in this Division

Provides that references to “repealed Act” in this Part are to the *Criminal Investigations (Exceptional Powers) and Fortification Removal Act 2002*.

Clause 228 – *Criminal Investigation (Exceptional Powers) and Fortification Removal Act 2002*

Repeals the *Criminal Investigations (Exceptional Powers) and Fortification Removal Act 2002*.

Clause 229 – Continuing protection of witnesses

Provides that any witness protection arrangement entered by a Special Commissioner under the repealed Act continues to have effect following the repeal of that Act and the Commission may vary or revoke the arrangement.

Division 3 – *Anti-Corruption Commission Act 1988*

Clause 230 – Meaning of terms used in this Division

Provides that references to “commencement” in this Division are to the date of commencement of the Division and references to “ACC Act” are to the *Anti-Corruption Commission Act 1988*.

Clause 231 – *Anti-Corruption Commission Act 1988* repealed

Repeals the ACC Act.

Clause 232 – References to repealed Act and former titles

Provides that, where the context allows, a reference in any other law or document to the ACC Act is to be taken as a reference to this Act.

Clause 233 – Transfer of assets and liabilities to Commission

Upon the commencement date, the assets, rights and liabilities of the ACC vest in the Commission. In addition, the Commission becomes a party to any proceedings that the ACC had been a party to and the Commission may commence any proceedings in relation to assets, rights and liabilities of the ACC that might have been available to the ACC.

Clause 234 – Notices and requests

Provides that any notice issued by the ACC prior to the commencement date is taken to be a notice validly issued under this Act and continues in force.

Clause 235 – Proceedings

Provides that any proceeding that may have been commenced by or against the ACC prior to the commencement date may be commenced or continued by or against the Commission.

Clause 236 – Continuation of allegations

Provides that an allegation made to the ACC that had not been finalised on the commencement date is to be dealt with as if it had been made under this Act.

Clause 237 – Offences

Provides that proceedings for an offence against the ACC Act may be started or continued despite the repeal of the Act and the same statutory penalty applicable before the repeal of the ACC Act continues to have effect. In addition, the restrictions on publication of information applicable under the ACC Act continue to have effect as if they had not been repealed.

Clause 238 – Completion of things done

Provides that, so long as it is within its functions, the Commission may continue anything commenced by the ACC prior to the commencement date.

Clause 239 – Continuing effect of things done

Provides that anything done or omitted to be done by or in respect of the ACC prior to the commencement date is taken to have been done or omitted by or in respect of the Commission, so far as the act, matter or thing is relevant to the Commission.

Clause 240 – Warrants and emergency authorisations continued in force

Provides that any warrant issued to an ACC officer under sections 13, 14 or 17, or an emergency authorisation issued under section 21, of the *Surveillance Devices Act 1998*, subject to any condition on its issue and with any necessary changes, continues in force as if it were issued to an officer of the Commission.

Clause 241 – Transfer of records

Provides that on the commencement date, all records (including evidence and other information) in the possession of the ACC will be transferred to, and become the records of, the Commission.

Clause 242 – A-CC officers

Provides that there is nothing in the Bill which precludes the Commission from employing or engaging as an officer of the Commission any person who was an officer, special investigator, seconded officer or service provider of the ACC. If an ACC officer is so engaged, they retain all rights and entitlements accrued whilst an ACC officer.

Persons who were permanent public servants prior to appointment to the ACC and who are not engaged by the Commission or Inspector are entitled to return to the Public Service department they were previously employed in, at the same level of classification held prior to appointment to the ACC, and their service at the ACC is to be regarded as service in the Public Service.

Clause 243 – Financial reporting

Applies section 65A of the *Financial Administration and Audit Act 1985* (“the FAAA”), to require a “reporting officer” to be appointed by the Treasurer following the commencement date, to submit a final report for the ACC in respect of the period starting from 1 July preceding the commencement date. Any other remaining duty imposed under Part II Division 14 of the FAAA not complied with by the ACC by the commencement date is also to be performed by the reporting officer as if they were the accountable authority of the ACC.

Division 4 – *Royal Commission (Police) Act 2002*

Clause 244 – Powers of Commissioner regarding matters related to Police Royal Commission

Provides that the Commission may perform any of its other functions in relation to anything done by or in relation to the Police Royal Commission, including the completion of investigations not completed by the Police Royal Commission.

Clause 245 – Warrants and emergency authorisations continued in force

Provides that any warrant issued to an officer of the Royal Commission under section 13, 14 or 17, or an emergency authorisation issued under section 21, of the *Surveillance Devices Act 1998 (WA)* remains in force following the commencement of this Division, with any necessary modifications, as if it were issued to an officer of the Commission.

Clause 246 – Assumed identity approvals continue in force

Provides for the continuation of assumed identities in use immediately before the end of the Police Royal Commission as if they were granted to an officer of the Commission under Part 6 Division 3 of this Bill.

Division 5 – *Parliamentary Commissioner Act 1971*

Clause 247 – *Parliamentary Commissioner Act 1971* amended

The amendments to the *Parliamentary Commissioner Act 1971* set out in Schedule 4 Division 1 of this Bill are to have effect.

Clause 248 – Parliamentary Commissioner must refer certain investigations to Commissioner

Requires the Parliamentary Commissioner to cease any investigation in relation to a member of the Police Force commenced under section 14(1a) of the *Parliamentary Commissioner Act 1971* and refer that investigation, together with any relevant records, to the Commission. Any such records, including evidence and other information become the records of the Commission.

Division 6 – Consequential amendments to other Acts

Clause 249 – Other Acts amended

Provides for amendments to a number of other Acts as set out in Schedule 4 Division 2 of the Bill.

Division 7 – General

Clause 250 – Further transitional provisions may be made

Enables Regulations to be made to deal with a transitional matter where there is not sufficient provision for that matter in this Part of the Bill. This includes the making, within 12 months of the commencement of this clause, of retrospective transitional Regulations, so long as they do not prejudice the rights of any person existing prior to the publication of those Regulations, or impose any additional obligation on them.

SCHEDULE 1 – Offences that may be relevant for Part 4

The following offences constitute a “section 5” offence, if committed in the course of organised crime.

The Criminal Code

- s 143 Attempting to pervert justice
- s.145 Aiding prisoners to escape
- s.147 Permitting escape
- s. 278 Wilful murder
- s. 279 Murder
- s. 283 Attempt to murder (except if the circumstances of the attempt or the intended killing are such that, if it were carried out, the crime committed would be infanticide).
- s. 292 Disabling in order to commit indictable offence, etc.
- s. 293 Stupefying in order to commit indictable offence.
- s. 294 Acts intended to cause grievous bodily harm or prevent arrest
- s. 296 Intentionally endangering safety of persons travelling by railway
- s. 296A Intentionally endangering safety of persons travelling by aircraft
- s. 298 Causing explosion likely to endanger life
- s. 332 Kidnapping
- s. 393 Robbery (except in circumstances in which the maximum penalty that can be imposed is imprisonment for 14 years)
- s. 398 Attempts at extortion by threats
- s. 451 Obstructing and injuring Railways
- s. 451A Endangering the safe use of an aircraft
- s. 454 Causing explosion likely to do serious injury to property
- s. 557 Making or possessing of explosives under suspicious circumstances
- s. 563A Property laundering

Criminal Property Confiscation Act 2000

- s. 50(1) Prohibited dealings

Firearms Act 1973

Offence under regulations made under s. 6(1) that –

- (a) is committed in respect of two or more firearms;

- (b) or is committed in respect of a firearm and in association with the commission, by the same or any other person, of an offence against the *Police Act 1892* s. 65(4aa).

Misuse of Drugs Act 1981

- s. 32A(1)(b) Drug Trafficking in respect of a serious drug offence.

SCHEDULE 2 – Terms and conditions of service of Commissioner

1. Tenure of Office

The Commissioner's term of office is up to 4 years and is eligible for reappointment.

2. Terms of Appointment

The Commissioner is to be appointed on a full-time basis and they must not, unless approved by the Governor, hold any other office of profit or trust or be otherwise engaged for reward.

3. Remuneration, leave and entitlements

The Commissioner's remuneration is to be determined by the Governor, and the Consolidated Fund is appropriated accordingly for this purpose. If the Commissioner is receiving a pension under the *Judges' Salaries and Pensions Act 1950* or any other Act, that amount is to be deducted from the amount they are otherwise eligible to. Leave of absence is to be approved by the Governor.

4. Provisions where Commissioner was Judge

A person who was a Judge of the Supreme or District Court immediately prior to being appointed as Commissioner is to be paid the same remuneration and have the same privileges as if they continued to hold that judicial office and their service as Commissioner is to be regarded as judicial service for the purpose of the *Judges' Salaries and Pensions Act 1950*.

5. Provisions where Commissioner was public service officer

If a public service officer is appointed as Commissioner they are entitled to retain all their rights, service as Commissioner is to be regarded as service in the Public Service and they have a right of return to an office at a level at least equivalent to that they occupied prior to appointment as Commissioner.

6. Resignation

The Commissioner may resign by writing addressed to the Governor.

7. Vacancy

The office of Commissioner becomes vacant include where the Commissioner dies, resigns, becomes a police officer, becomes bankrupt or is removed under clause 12.

SCHEDULE 3 - Terms and conditions of service of Parliamentary Inspector

1. Tenure of Office

The Inspector's term of office is up to 2 years and they are eligible for reappointment.

2. Terms of Appointment

The Inspector may be appointed on either a full-time or part-time basis. If it is a full-time appointment they must not, unless authorised by the Governor, hold any other office of profit or trust or be otherwise engaged for reward.

3. Remuneration, leave and entitlements

The Commissioner's remuneration is to be determined by the Governor, to be charged to the Consolidated Fund. If the Commissioner is receiving a pension under the *Judges' Salaries and Pensions Act 1950* or any other Act, that amount is to be deducted from the amount they are otherwise eligible to. Leave of absence is to be approved by the Governor.

4. Provisions where Parliamentary Inspector was Judge

A person who was a Judge of the Supreme or District Court immediately prior to being appointed as Inspector is to be paid the same remuneration and have the same privileges as if they continued to hold that judicial office and their service as Inspector is to be regarded as judicial service for the purpose of the *Judges' Salaries and Pensions Act 1950*.

5. Provisions where Parliamentary Inspector was public service officer

If a public service officer is appointed as Inspector they are entitled to retain all their rights, service as Inspector is to be regarded as service in the Public Service and they have a right of return to an office at a level at least equivalent to that they occupied prior to appointment as Commissioner.

6. Resignation

The Inspector may resign by writing addressed to the Governor.

7. Vacancy

The office of Inspector becomes vacant include where the Commissioner dies, resigns, becomes a police officer, becomes bankrupt or is removed under clause 189.

SCHEDULE 4 – Amendments to other Acts

Division 1 – *Parliamentary Commissioner Act 1971*

Amends the *Parliamentary Commissioner Act 1971* to repeal the Ombudsman's jurisdiction in respect of members of the Police Force and to insert references to the Commission and the Corruption and Crime Commission Act in relevant sections, such as section 22B (to enable information to be disclosed to the Commission).

Division 2 – Amendments to other Acts

- 1. *Constitution Acts Amendment Act 1899* amended**
- 2. *Court Security and Custodial Services Act 1999* amended**
- 3. *The Criminal Code* amended**
- 4. *Financial Administration and Audit Act 1985* amended**
- 5. *Freedom of Information Act 1992* amended**
- 6. *Juries Act 1957* amended**
- 7. *Prisons Act 1981* amended**
- 8. *Salaries and Allowances Act 1988* amended**
- 9. *Spent Convictions Act 1988* amended**
- 10. *Surveillance Devices Act 1998* amended**
- 11. *Telecommunications (Interception) Western Australia Act 1996* amended**

Amends the above Acts to replace references to the ACC and ACC Act with references to the Commission and the Corruption and Crime Commission Act, and make other necessary provisions in respect of the Commission. For example:

- Schedule V of the *Constitution Acts Amendment Act 1899* is amended to provide that a person in the office of Commissioner or Inspector is elected to the Legislature, they must vacate that office; and
- Section 570B of *The Criminal Code* is amended to allow the Commission and Inspector to have access to videotapes of interviews conducted by police officers.

SCHEDULE 5 – Amendments to other Acts as a consequence of the repeal of the *Anti-Corruption Commission Act 1988*

Amends the *Parliamentary Commissioner Act 1971* and a number of other Acts, such as *The Criminal Code*, *Financial Administration and Audit Act 1985*, *Freedom of Information Act 1992*, *Telecommunications (Interception) Western Australia Act 1996*, to delete references to Anti-Corruption Commission and the ACC Act, following the repeal of that Act.