

**Corruption and Crime Commission Amendment Bill 2012
Explanatory Memorandum**

OUTLINE

The principal purposes of this Bill are to amend the *Corruption and Crime Commission Act 2003 (WA)* to:

- (1) confer on the Corruption and Crime Commission an organised crime function, enabling it to use exceptional powers to assist police investigations into serious offences, exercise certain powers under the *Criminal Property Confiscation Act 2000(WA)* and implement those recommendations from the Archer Review identified as essential to support the organised crime and serious offences functions, and
- (2) transfer the Corruption and Crime Commission's oversight of minor misconduct by public officers and its corruption prevention and education functions to the Public Sector Commissioner.

PART 1 – PRELIMINARY MATTERS

Clause 1 **Short title**
Cites the title of this Act.

Clause 2 **Commencement**
Provides for Part 1 of the Act to come into operation the day the Act receives Royal Assent, and for the rest of the Act on such day or days as is or are fixed by proclamation.

PART 2 – MISCONDUCT

Division 1 – Corruption and Crime Commission Act 2003 amended

Clause 3 **Act amended**
Specifies that the amendments in this Division are to the *Corruption and Crime Commission Act 2003*.

Clause 4 **Long title amended**
Amends the long title creating an oversight role for the Public Sector Commissioner with respect to minor misconduct by public officers.

Clause 5 **Section 1 amended**
Short title is amended to reflect the division of functions under the Act and represent the hierarchical nature of the jurisdictions being conferred on the Corruption and Crime Commission and the Public Sector Commissioner.

- Clause 6** **Section 3 amended**
 Deletes, replaces and inserts new definitions to facilitate the redefined role of the Corruption and Crime Commission and the new role of the Public Sector Commissioner with respect to misconduct under the Act.
- Subsection (2) is amended by deleting the words “exclusively” and “unless that House so resolves”. The provisions of subsection (2) of the former Act have been virtually ineffectual in defining the scope of the CCC’s jurisdiction with respect to allegations of misconduct against Members of Parliament. This is because, despite the *Parliamentary Privileges Act 1891* and the *Parliamentary Papers Act 1891*, there currently exists overlapping regulation of unacceptable activities in Parliament through various offences under the Criminal Code. The current provisions also wrongly imply that Parliament can waive all privilege by resolution.
- Clause 7** **Section 4 amended**
 The definition of “misconduct” is amended by deleting subsection (d)(v), which removes the reference to misconduct engaged in by a public officer which could constitute an offence against the *Statutory Corporations (Liability of Directors) Act 1996* or any other law.
- Clause 8** **Section 7B amended**
 Subsections (3), (4),(5) and (6) are inserted in light of the new purposes of the Act, to confer the newly defined misconduct functions on the Corruption and Crime Commission and Public Sector Commissioner respectively.
- Clause 9** **Section 17 deleted**
 The former section 17 of the Act provided for the Corruption and Crime Commission as the statutory authority responsible for the misconduct prevention and education function. This function extended to all forms of misconduct, both serious and minor, and is now conferred upon the Public Sector Commissioner under new Part 4A.
- Clause 10** **Section 18 amended**
 Amends and redefines the function of the Corruption and Crime Commission as the statutory authority responsible for “serious misconduct”. Its former “minor misconduct” functions are now conferred on the Public Sector Commissioner via Part 4A.
- Clause 11** **Section 21A amended**
 Provides that nothing in section 21A limits the powers of the Corruption and Crime Commission with respect to allegations, assessments and opinions about the occurrence of misconduct in relation to police.

- Clause 12** **Section 21AA inserted**
Provides for the Corruption and Crime Commission to retain a prevention and education role regarding police misconduct.
- Section 21AB inserted**
Retains a capacity development function for the Corruption and Crime Commission if it identifies a special need to increase the capacity of a public sector authority, or authorities, to prevent or combat misconduct. This capacity development function is to be excised in cooperation with the Public Sector Commissioner.
- Section 21AC inserted**
Provides for the Public Sector Commissioner to make details about minor misconduct allegations available to the Corruption and Crime Commission to assist the Commission to carry out its serious misconduct and capacity development functions.
- Clause 13** **Heading to Part 3 replaced**
Replaces Part 3 heading of the former Act which was simply “misconduct” with “Part 3 – Serious misconduct: role of Commission”.
- Clause 14** **Section 23 deleted**
Deletes section 23 of the former Act, which provided for the making of findings or the forming of opinions of misconduct by the Corruption and Crime Commission. A revised version of this section is inserted by the new section 217A, with application to both the Corruption and Crime Commission and the Public Sector Commissioner.
- Clause 15** **Section 27A deleted**
As it only related to the procedure by which the Commission dealt with allegations of minor misconduct against a member of Parliament, a function the Commission will no longer exercise, section 27A is deleted. It is not necessary to apply this procedure to the Public Sector Commissioner as he will have no role concerning minor misconduct allegations regarding members of Parliament.
- Section 27B deleted**
For the same reason concerning the deletion of section 27A, section 27B is also deleted.
- Clause 16** **Section 32 amended**
Replaces the word “matter” in subsection (3) with “matter relating to serious misconduct” in light of the new section 45L(3) and the Corruption and Crime Commission’s redefined jurisdiction.

- Clause 17** **Section 34 amended**
 Has the effect of replacing the word “decides” in subsection (1) with “when deciding”. This amendment ensures consistency with the wording of the new section 45N(1).
- In subsection (2), a cross-reference to section 33(1)(c) is inserted and the opening words of subsection (2) are reworded for consistency with the wording of the new section 45N(2). The reference to the opinion of the Corruption and Crime Commission with respect to serious misconduct in subsection (2)(b), is deleted.
- Clause 18** **Section 37 amended**
 Provides a cross-reference to the powers of the Corruption and Crime Commission under section 33(1)(c) to refer an allegation of serious misconduct to an independent agency or appropriate authority. This amendment was made for consistency in light of the new section 45N, subsections (1) and (2), and 45Q(1).
- Clause 19** **Section 38 amended**
 Provides a cross-reference to the powers of the Corruption and Crime Commission under section 33(1)(c) to refer an allegation of serious misconduct to an independent agency or appropriate authority. This amendment was made for consistency in light of the new sections 45N, subsections (1) and (2), and 45Q(1).
- Clause 20** **Section 42 amended**
 The existing power whereby the Corruption and Crime Commission may direct an appropriate authority to not investigate an allegation of misconduct is extended to also cover the Public Sector Commissioner.
- Clause 21** **Part 4A inserted**
 Inserts a new Part before Part 4 of the Act, “Part 4A – Misconduct: role of the Public Sector Commissioner”.
- PART 4A – MISCONDUCT: ROLE OF PUBLIC SECTOR COMMISSIONER**
- Part 4A Division 1 inserted**
 Inserts a new division within Part 4A, “Division 1 – Functions in relation to misconduct”.
- Division 1 – Functions in relation to misconduct***
- Section 45A inserted**
 Replicates section 17 of the former Act which provided for the misconduct prevention and education function previously conferred on the Corruption and Crime Commission. This function is now conferred upon the Public Sector Commissioner in relation to misconduct of public officers generally.

It extends to both serious and minor misconduct under the amended Act and encompasses the misconduct prevention and education functions for both criminal and disciplinary behaviour.

Subsection (3) provides for a collaborative approach to misconduct prevention and education, with the involvement of the Corruption and Crime Commission, other independent agencies and appropriate authorities.

Section 45B inserted

Confers upon the Public Sector Commissioner the new minor misconduct function.

Subsection (2) provides that the Public Sector Commissioner's functions under this Act are not intended to be limited by any other functions under any other Act, particularly the *Public Sector Management Act 1994* and the *Public Interest Disclosure Act 2003*. The Public Sector Commissioner's functions enable him to deal with any allegation of minor misconduct that has or may have occurred; or is or may be occurring; or is or may be about to occur; or is likely to occur. The Public Sector Commissioner may consult, cooperate and exchange information with Chief Executive Officers of notifying authorities and other appropriate agencies or authorities where appropriate.

Part 4A Division 2 inserted

Inserts a new division within Part 4A, "Division 2 – Minor misconduct".

Division 2 – Minor misconduct

Subdivision 1 inserted

Inserts a new subdivision within Part 4A, Division 2, "Subdivision 1 – Assessments and opinions".

Subdivision 1 – Assessments and opinions

Section 45C inserted

Allows the Public Sector Commissioner to make assessments and form opinions as to whether minor misconduct has or may have occurred; or is or may be occurring; or is or may be about to occur; or is likely to occur. The Public Sector Commissioner may consult, cooperate and exchange information with independent agencies or authorities where appropriate.

If the Public Sector Commissioner makes an assessment or forms an opinion with respect to minor misconduct, he may conduct a review, in line with his powers and functions under Part 3A (except section 24B(2) and (5) and 24G) of the *Public Sector Management Act 1994*.

Subdivision 2 inserted

Inserts a new subdivision within Part 4A, Division 2, “Subdivision 2 – Allegations”.

Subdivision 2 – Allegations

Section 45D inserted

Replicates section 25 of Part 3, subject to section 45G, and enables allegations of minor misconduct to be received by the Public Sector Commissioner pursuant to reports under section 45E(1) and matters notified under section 45H(2). Under the new provision, the Public Sector Commissioner may also initiate allegations by way of propositions under section 45F.

Section 45E inserted

Provides for a public officer or any other person to report minor misconduct if they have reasonable grounds to suspect its occurrence. Subsection (5) also makes it a serious criminal offence to make a false, malicious or reckless report.

Section 45F inserted

Replicates section 26 of Part 3 and enables the Public Sector Commissioner to make a proposition about minor misconduct, based on his own experience and knowledge, whether or not he has received an allegation under section 45E.

Section 45G inserted

Replicates section 27 of Part 3 and prohibits allegations regarding the Corruption and Crime Commissioner (or Acting Commissioner), the Parliamentary Inspector or the holder of a judicial office from being received or initiated by the Public Sector Commissioner.

Subdivision 3 inserted

Inserts a new subdivision within Part 4A, Division 2, “Subdivision 3 – Duty to notify”.

Subdivision 3 – Duty to notify

Section 45H inserted

Replicates section 28 of Part 3 and imposes a mandatory obligation on the Parliamentary Commissioner, the Inspector of Custodial Services, the principal officer of a notifying authority and an officer who constitutes a notifying authority, to notify the Public Sector Commissioner of any matter that they suspect on reasonable grounds may concern minor misconduct. This provision is intended to apply as it does currently with respect to the Corruption and Crime Commission, to all notifying authorities and persons listed in the existing section 28(1) of the Act.

Duties under this section are in addition to the reporting requirements under the *Public Sector Management Act 1994*.

Section 45I inserted

Replicates section 29 of Part 3 with respect to the duty to notify the Public Sector Commissioner of suspected and actual minor misconduct in section 45H. This obligation must be complied with despite confidentiality requirements or other statutory provisions (enacted before or after the commencement of the Act). This provision does not remove other notification or reporting requirements under any other Act.

Section 45J inserted

Replicates section 30 of Part 3 and enables the Public Sector Commissioner to issue guidelines with respect to the notification of matters of minor misconduct under section 45H, the effect of which can alleviate a person from a requirement to notify under section 45H.

Section 45K inserted

Replicates section 31 of Part 3 and provides that the Public Sector Commissioner may report failures to comply with a duty to report or notify under sections 45H or 45J, to the relevant authority able to take disciplinary action.

Subdivision 4 inserted

Inserts a new subdivision within Part 4A, Division 2, “Subdivision 4 – Assessments, opinions and investigations”.

Subdivision 4 – Assessments, opinions and investigations

Section 45L inserted

Replicates section 32(2) and (3) of Part 3 and requires the Public Sector Commissioner to deal with an allegation of minor misconduct by assessing it, forming an opinion in accordance with section 45C, and making a decision under section 45M as to any further action.

The wording within subsection (2) now refers to the conducting of a “preliminary inquiry” instead of a “preliminary investigation” to ensure that this provision is consistent with the language used in section 45B.

The wording within subsection (3) has been amended to refer to “any other matter relating to minor misconduct” to further clarify the Public Sector Commissioner’s role in respect of misconduct under the Act.

Section 45M inserted

Replicates section 33 of Part 3 and enables the Public Sector Commissioner to decide to take further action in respect of an allegation after making an assessment, with or without the involvement and cooperation of an independent agency or appropriate authority. These include an inquiry, a referral or deciding to take no action.

Paragraph (d) enables the Public Sector Commissioner to refer allegations of misconduct to the Corruption and Crime Commission if considered appropriate.

Section 45N inserted

Replicates section 34 of Part 3 and sets out the relevant factors that the Public Sector Commissioner must take into consideration when deciding to take further action in respect of an allegation under section 45M.

When the Public Sector Commissioner is deciding to inquire into an allegation or take other action with or without involvement of an independent agency or appropriate authority, he or she must have regard to the nature of the misconduct. When the Public Sector Commissioner is considering referring a minor misconduct allegation to an independent agency or an appropriate authority, he or she must have regard to the seniority of the public officer to whom the allegation relates, the nature of the alleged misconduct, and whether there is a need for any inquiry to be conducted independently of a public authority to which the relevant public officer is connected.

Section 45O inserted

Replicates section 35 of Part 3 and provides that the Public Sector Commissioner must notify a person who has reported an allegation of minor misconduct under section 45E(1) or 45H(2) or had a complaint referred to the Public Sector Commissioner under the *Parliamentary Commissioner Act 1971*, when a decision has been made not to take any action.

Section 45P inserted

Replicates section 36 of Part 3 and provides that the Public Sector Commissioner may advise a person subject to an allegation of minor misconduct, of the outcome of an inquiry conducted by the Public Sector Commissioner or by an appropriate authority if it is in the public interest to do so and the person requests the information or it is in the person's best interests to do so.

Section 45Q inserted

Enables the Public Sector Commissioner to use his existing powers and procedures of special inquiry and investigation under the *Public Sector Management Act 1994* (particularly Part 3A Division 3 Subdivisions 2 and 3 of that Act but not including sections 24H(2) to (6) or 24K(2)) if he decides to take action and independently inquire into an allegation of minor misconduct.

Section 45R inserted

Replicates section 37 of Part 3 and enables the Public Sector Commissioner, when deciding to refer an allegation of minor misconduct to another independent agency or an appropriate authority under the new section 45N(c), to do so by reporting on the matter, with relevant information and recommendations.

Section 45S inserted

Replicates section 38 of Part 3 and requires the Public Sector Commissioner to consult with the Parliamentary Commissioner or the Auditor General before referring an allegation of minor misconduct to them. The Parliamentary Commissioner and Auditor General are required to apply their governing legislation in the event of dealing with a referred allegation.

Section 45T inserted

Enables the Public Sector Commissioner to refer an allegation to the Corruption and Crime Commission if the Public Sector Commissioner considers it is related to serious misconduct or otherwise appropriate to do so. The Corruption and Crime Commission may deal with the referred matter as if it had been notified under section 28(2).

Section 45U inserted

Replicates section 39 of Part 3 and enables the Public Sector Commissioner to, at any time, decide to take a different course of action in accordance with section 45M(a), (b) or (c). This option is not available to the Public Sector Commissioner if the matter has already been referred to the Parliamentary Commissioner unless a change is agreed.

Section 45V inserted

Replicates section 40 of Part 3 and requires appropriate authorities that take action in respect of an allegation (either in cooperation with or if referred by the Public Sector Commissioner) to report to the Public Sector Commissioner on the action the appropriate authority has taken. The Public Sector Commissioner may direct the appropriate authority to report to the Public Sector Commissioner on action taken and if no action has been taken in relation to an allegation, the reasons for not doing so. This provision provides transparency and effective monitoring of actions taken by authorities.

Section 45W inserted

Replicates section 41 of Part 3 and enables the Public Sector Commissioner to review the way in which an appropriate authority has dealt with a referred minor misconduct allegation. It requires the authority under review to provide the Public Sector Commissioner with all necessary help to undertake the review.

Subdivision 5 inserted

Inserts a new subdivision within Part 4A, Division 2, “Subdivision 5 – Recommendations”.

Subdivision 5 – Recommendations

Section 45X inserted

Replicates section 43 of Part 3 to enable the Public Sector Commissioner, on the basis of his own assessments, consultations, opinions or inquiries in relation to minor misconduct, to recommend disciplinary and other actions to be taken against a particular person. The Public Sector Commissioner may also recommend further inquiry or investigation and may give such recommendations to another independent agency or appropriate authority.

A recommendation made under section 45X is not to be taken as a finding that a particular person has engaged in conduct that warrants termination of that person’s tenure of office, contract of employment, or agreement for the provision of services.

Section 45Y inserted

Replicates section 44 of Part 3 to provide that Part 4A does not limit any actions that may lawfully be taken with regard to discipline or minor misconduct, for example by an appropriate authority.

Division 3 inserted

Inserts a new division within Part 4A, “Division 3 – Reporting”.

Division 3 – Reporting

Section 45ZA inserted

Replicates and amends section 84 under Part 3 to enable the Public Sector Commissioner to report to Parliament on any minor misconduct matter that has been the subject of an inquiry or other action, which may include assessments, opinions, recommendations or reasons.

Subsection (3) provides a cross-reference to the *Public Sector Management Act 1994* to require that the reporting requirements set out under sections 22E and 22F of that Act (which pertain to reporting under section 22D of that Act) are complied with.

Section 45ZB inserted

Enables the Public Sector Commissioner to report to Parliament after receiving a report from an appropriate authority under subsection 45U(1) or (4), or during or after the taking of action by an appropriate authority in respect of an allegation referred under section 45Q(1). The Public Sector Commissioner's reporting requirements are directly related to reporting requirements under the *Public Sector Management Act 1994*.

Section 45ZC inserted

Replicates section 86 of Part 5, and provides that the Public Sector Commissioner must give a person the subject of a potentially adverse report a reasonable opportunity to make representations before the report is published.

Section 45ZD inserted

Prescribes what the Public Sector Commissioner is required to include in Annual Reports prepared pursuant to section 22D of the *Public Sector Management Act 1994* in accordance with his new functions under the *Corruption and Crime Commission Act 2003*. The proposed section prescribes generally matters similar to those prescribed in section 91 that are to be included in the annual reports to Parliament of the Corruption and Crime Commission.

Clause 22**Section 91 amended**

Requires the Corruption and Crime Commission to provide descriptions of the information required to be provided in the Annual Report under subsection 2(d) and (e).

Replaces a reference in subsection 2(d) to independent "authorities" with reference to independent "agencies", the latter being a term defined in subsection 3(1).

Inserts the words "a description of" into subsections (2)(d) and (e) to ensure consistency with subsections (2)(a), (b) and (p).

Clause 23**Section 166 amended**

Extends the offence of malicious or false allegation to include such material provided to the Public Sector Commissioner.

Clause 24**Section 175 amended**

Extends the offence where someone victimises a person to include the situation where a person provides evidence to the Public Sector Commissioner.

- Clause 25** **Section 217A inserted**
Replicates the current prohibition on the Corruption and Crime Commission and prohibits the Public Sector Commissioner publishing or reporting a finding or opinion that a particular person has committed, may have committed or is likely to commit, a criminal or disciplinary offence.
- Clause 26** **Section 219 replaced**
The class of people protected is widened to include an employee in the office of the Public Sector Commissioner and a person acting under the direction of such an employee, as defined in the *Public Sector Management Act 1994*.

Subsection (2) is amended to remove protection under the Act for anything done maliciously or without reasonable and probable cause.
- Clause 27** **Section 220 amended**
Extends the protections against criminal or civil liability available to persons making disclosures about allegations under the Act to the Public Sector Commissioner.
- Clause 28** **Section 222 amended**
Extends to the Public Sector Commissioner the existing protection from defamation action in respect to transcripts, reports or recommendations which may be printed or published by him.
- Clause 29** **Various references to “misconduct” amended**
A table lists the provisions in the Act where “misconduct” will be replaced by “serious misconduct” and another table lists sections which will have new headings.
- Division 2 – Other Acts amended***
- Clause 30** ***Freedom of Information Act 1992* amended**
Amends the *Freedom of Information Act 1992* by inserting a reference to the Public Sector Commissioner when exercising functions under the *Corruption, Crime and Misconduct Act 2003*.
- Clause 31`** ***Inspector of Custodial Services Act 2003* amended**
Amends the *Inspector of Custodial Services Act 2003* by including a reference to the Public Sector Commissioner under the *Corruption, Crime and Misconduct Act 2003*.
- Clause 32** ***Local Government Act 1995* amended**
Amends the *Local Government Act 1995* by replacing a reference to section 28 with a reference to section 28 or 45H of the *Corruption, Crime and Misconduct Act 2003*.

- Clause 33** ***Parliamentary Commissioner Act 1971 amended***
Amends the *Parliamentary Commissioner Act 1971* by deleting references to the *Corruption and Crime Commission Act 2003* and inserting *Corruption, Crime and Misconduct Act 2003*, adding where appropriate references to the Public Sector Commissioner when exercising functions under that Act.
- Clause 34** ***Public Sector Management Act 1994 amended***
Increases the penalties contained in Schedule 3 of the *Public Sector Management Act 1994* to provide consistency with penalty provisions under sections 25(5) and 45E(5).
- Clause 35** ***Terrorism (Preventative Detention) Act 2006 amended***
Amends the *Terrorism (Preventative Detention) Act 2006* by replacing references to misconduct under the *Corruption and Crime Commission Act 2003* with serious misconduct under the *Corruption, Crime and Misconduct Act 2003*.
- Clause 36** **References in other Acts to “*Corruption and Crime Commission Act 2003*” amended**
A table lists provisions in various Acts in which references to the *Corruption and Crime Commission Act 2003* are to be replaced with *Corruption, Crime and Misconduct Act 2003*.

PART 3 – MAJOR CRIME AND ORGANISED CRIME

Division 1 – Corruption and Crime Commission Act 2003 amended

- Clause 37** **Act amended**
Specifies that the amendments in this Division are to the *Corruption and Crime Commission Act 2003*.
- Clause 38** **Long title amended**
Amends the long title by redefining the role of the Corruption and Crime Commission under the Act as concerning major crime, organised crime and serious misconduct by public officers.
- Clause 39** **Section 3 amended**
Deletes, replaces and inserts new definitions to facilitate the redefined role of the Corruption and Crime Commission and the new major crime and organised crime functions under the Act.

Clause 40

Section 5 replaced

Replaces section 5 of the Act with two new sections.

Section 5 inserted

Provides a definition of “major crime” to facilitate the major crime function of the Corruption and Crime Commission.

“Major crime” is defined by subsection 5(1) as *“an activity or course of activity for the purpose of committing one or more major offences”*.

Subsection (2) defines a *“major offence”* for the purposes of subsection (1) as either:

- a *“primary offence”* that is punishable by 14 or more years’ imprisonment;
- an *“incidental offence”* that is directly or indirectly connected to a primary offence; or
- an *“ancillary offence”* that facilitates the commission of a primary offence, involves conspiring to commit a primary offence, or involves attempting to commit a primary offence.

Section 6A inserted

Provides a new definition of “organised crime” for the purposes of the organised crime function of the Corruption and Crime Commission.

“Organised crime” is defined by subsection 6A(1) as *“the activities of a group (however organised and whether or not having an identifiable organisational structure) of 2 or more persons (whether or not all or any of those persons are in the State) who act in concert for the purpose of committing one or more serious offences”*.

“Serious offence” is defined by subsection (2) for the purposes of subsection (1) as either:

- a *“primary offence”* that is punishable by 2 or more years’ imprisonment;
- an *“incidental offence”* that is directly or indirectly connected to a primary offence; or
- an *“ancillary offence”* that facilitates the commission of a primary offence, involves conspiring to commit a primary offence, or involves attempting to commit a primary offence.

Clause 41

Section 7A amended

Combatting and reducing major crime is inserted into the Act’s purposes as a new function to be conferred upon the Corruption and Crime Commission.

- Clause 42** **Section 7B amended**
Redefines the role of the Corruption and Crime Commission to enable the achievement of the Act’s new purposes with respect to major crime and organised crime.
- Clause 43** **Section 21 amended**
Updates cross-references to Part 4 of the Act to include Part 5A functions.
- Clause 44** **Part 4 heading amended**
Adds “major crime” to the Part 4 heading.
- Clause 45** **Section 45 amended**
Adds a definition of “criminal activity” to encompass major crime or organised crime as defined in the Act.
- Clause 46** **Section 46 amended**
Deletes references to “offence” and inserts “criminal activity” in line with the new definition in section 45.

Extends scope of provision to encompass criminal activity that has or may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur.
- Clause 47** **Section 47 replaced**
Deletes the former section 47 of the Act and inserts a new statement of purpose for Divisions 2 to 5 to encompass the investigation of criminal activity or suspected criminal activity that has or may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur, including in cases where the Corruption and Crime Commission has made an exceptional powers finding.
- Clause 48** **Section 48 amended**
Deletes references to “an organised crime summons” and inserts “criminal activity summons” in line with the new definition in section 45.
- Clause 49** **Section 49 amended**
Deletes references to “an organised crime examination” and “an organised crime summons” and inserts “criminal activity examination” and “criminal activity summons” respectively in line with the new definition in section 45.
- Clause 50** **Section 50 amended**
Deletes reference to “an organised crime summons” and inserts “criminal activity summons” in line with the new definition in section 45.

- Clause 51** **Section 52 amended**
Deletes references to “section 5 offence” and inserts “criminal activity” in line with the new definition in section 45.
- Extends scope of the enhanced police powers conferred by this provision to encompass criminal activity that has or may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur.
- Clause 52** **Section 53 amended**
Deletes references to “section 5 offence” and inserts “criminal activity” in line with the new definition in section 45.
- Clause 53** **Section 63 amended**
Deletes the definition of “criminal activity” from Division 5 as it is now in Part 4 in section 45.
- Clause 54** **Section 68 amended**
Deletes references to “organised crime” and inserts “criminal activity” in line with the new definition in section 45.
- Clause 55** **Section 69 amended**
Deletes references to “organised crime” and inserts “criminal activity” in line with the new definition in section 45.
- Clause 56** **Section 72 amended**
Deletes references to “organised crime” and inserts “criminal activity” in line with the new definition in section 45.
- Clause 57** **Part 5A inserted**
Inserts a new Part after Part 4, “Part 5A – Organised crime: investigations by Commission”.
- Part 5A provides the Corruption and Crime Commission with the ability to conduct organised crime investigations, either independently or jointly with the WA Police or other law enforcement agencies.
- PART 5A – ORGANISED CRIME: INVESTIGATIONS BY THE COMMISSION**
- Part 5A Division 1 inserted**
Inserts a new division within Part 5A, “Division 1 – Preliminary”.
- Division 1 – Preliminary***
- Section 84A inserted**
Defines terminology in Part 5A.

Part 5A Division 2 inserted

Inserts a new division within Part 5A, “Division 2 – Investigations of organised crime”.

Division 2 – Investigations of organised crime

Section 84B inserted

Provides an additional function for the Corruption and Crime Commission with respect to investigating organised crime referred to it by the Organised Crime Reference Group, established under section 84D, without limiting the Corruption and Crime Commission’s current functions in relation to organised crime.

Section 84C inserted

Provides that the powers currently available to the Corruption and Crime Commission under the Act within Parts 6 and 7 are to be available for the purposes of investigating a “referred matter” as defined by section 84A.

Part 5A Division 3 inserted

Inserts a new division within Part 5A, “Division 3 – Organised Crime Reference Group”.

Division 3 – Organised Crime Reference Group

Section 84D inserted

Establishes the Organised Crime Reference Group (the “Reference Group”), consisting of two or three members.

Section 84E inserted

Provides for one member of the Reference Group to be the Corruption and Crime Commissioner or the person appointed to act as Commissioner. Also allows for an Assistant Commissioner to attend if authorised to do so by the Commissioner.

Section 84F inserted

Provides for one member of the Reference Group to be the Police Commissioner or the person authorised to act as Police Commissioner. Also allows for a Deputy Commissioner to attend if authorised to do so by the Police Commissioner.

Section 84G inserted

Enables the Governor to appoint a third member to the Reference Group. This person must be a former judge or person qualified to serve as a judge in the High Court of Australia, Federal Court of Australia, Supreme Court or District Court in any State or Territory in Australia. The third member does not have a deliberative vote or a casting vote but is present to minimise deadlocks and ensure the efficient and effective functioning of the Reference Group.

Section 84H inserted

Enables the Reference Group to refer organised crime matters to the Corruption and Crime Commission. If the referral relates to a particular kind of organised crime (a “general referral”), the referral must identify the kind of organised crime to be investigated, set out the persons involved or suspected to be involved, and the activities that constitute or are suspected of constituting the referred matter.

If the referral relates to a specific incident of organised crime (a “specific referral”), the referral must identify both the particular incident of organised crime to be investigated, and either the persons involved or suspected of being involved, or the activities constituting or suspected of constituting, the incident.

Subsection (5) requires a referral to have bipartisan support from the Corruption and Crime Commissioner and Police Commissioner, with respect to the incident or kind of organised crime being referred, and the terms of the referral.

Subsection (6) requires the referral to be given to the Corruption and Crime Commission in writing after being signed by each member of the Reference Group.

Section 84I inserted

Provides that the Reference Group may only make a “general referral” or a “specific referral” if it is in the public interest for the particular kind of organised crime or particular incident of organised crime to be referred.

The Reference Group may take into account certain matters set out under subsections (2) and (3) when deciding whether or not to refer a particular kind of organised crime or particular organised crime incident, including:

- the seriousness of the organised crime and its potential consequences;
- the number of persons that may be involved;
- the degree of planning and organisation likely to be involved;
- the persons likely to be responsible for that planning and organisation;
- the likely involvement of those persons in similar activities;

- the financial or other benefits likely to be derived by any person;
- whether investigation by the Corruption and Crime Commission is a justifiable use of resources; and
- the likely effectiveness of an investigation by the police using their available powers, including the exceptional powers under this Act.

Section 84J inserted

Prescribes the required terms of a referral. A referral must set out the details of the referred matter and whether the matter must be investigated by the Corruption and Crime Commission alone or in cooperation with the police or another law enforcement agency. The referral may also include limitations or conditions on the Corruption and Crime Commission in undertaking the investigation, as appropriate.

Section 84K inserted

Provides that a general referral does not authorise the Corruption and Crime Commission to undertake an investigation into a specific incident of organised crime. If a specific incident is identified during a general investigation, that specific incident of organised crime must be referred to the Reference Group as a separate specific referral for approval, although the Commission may continue its investigation until notified by the Reference Group otherwise.

Section 84L inserted

Provides that the terms of a referral may be changed if the Corruption and Crime Commissioner and the Police Commissioner agree in writing, sign the amendment and give it to the Corruption and Crime Commission.

Section 84M inserted

Provides that the Reference Group may withdraw a referral at any time and must withdraw a referral if either member advises the other in writing that they no longer agree to the referral. The withdrawal must be in writing, signed by each member, and given to the Corruption and Crime Commission.

Section 84N inserted

Provides that a general referral by the Reference Group must be reviewed within 5 years. If a general referral is not reviewed within the required time, the referral will lapse and the matter will need to be re-referred to the Reference Group for further approval if still required.

Clause 58

Section 84 amended

Creates a new reporting power for the Corruption and Crime Commission's activity under the new Part 5A.

Clause 59

Section 91 amended

Requires, in addition to the former prescribed annual reporting requirements, that the Corruption and Crime Commission report on the types of investigations it has carried out, including those undertaken in cooperation with another person or body.

The new subsection (2)(ca) also requires the Corruption and Crime Commission to report any referred matters carried out under Part 5A, where its investigations are complete.

- Clause 60** **Section 137 amended**
Replaces “organised crime summons” with “criminal activity summons” in line with the new definition in section 45.
- Clause 61** **Section 140 amended**
Limits the scope of public examinations by excluding criminal activity examinations, in line with the new definition in section 45, and investigations conducted under Part 5A Division 2.
- Clause 62** **Schedule 1 deleted**
Deletes Schedule 1 of the former Act, which listed the offences that may be relevant to the former Part 4 and is now redundant because of the new definition.

Division 2 – Surveillance Devices Act 1998 amended

- Clause 63** **Act amended**
Provides that amendments in this Division are to the *Surveillance Devices Act 1998*
- Clause 64** **Section 18A amended**
Deletes reference to the *Corruption and Crime Commission Act 2003* and inserts instead reference to the *Corruption, Crime and Misconduct Act 2003*.
- It also replaces references to “a section 5 offence” with “an organised crime offence”.

PART 4 – ASSUMED IDENTITIES AND CONTROLLED OPERATIONS

- Clause 65** Provides that amendments in this Part apply to the *Corruption and Crime Commission Act 2003*.

- Clause 66** **Section 60 amended**
Amends paragraph 60(2)(a) to ensure consistency with the new definition of “criminal activity” in section 45.
- Clause 67** **Section 64 amended**
Amends paragraph 64(3)(a) to ensure consistency with the new definition of “criminal activity” in section 45.
- Clause 68** **Part 6 Division 3 Subdivision 1 heading inserted**
Inserts a new subdivision in Part 6, Division 3, “Subdivision 1 – Preliminary”

Subdivision 1 – Preliminary
- Clause 69** **Section 102 amended**
Inserts a definition for “*authorised officer*” of the Corruption and Crime Commission who is authorised under this Part to acquire or use an assumed identity.
- Clause 70** **Part 6 Division 3 Subdivision 2 heading inserted**
Inserts a new subdivision within Part 6, Division 3, “Subdivision 2 – Approval of acquisition and use of assumed identities”.

Subdivision 2 – Approval of acquisition and use of assumed identities
- Clause 71** **Section 103 amended**
Inserts subsection 103(2A) which provides the grounds on which the Corruption and Crime Commission may grant approval to acquire and use an assumed identity.

Subsection (3) is amended to require separate approval to be given in respect to each assumed identity, and subsection (4) is amended to include a requirement that the approver must make a record of its reasons for the approval.
- Clause 72** **Section 104 amended**
Amends subsection (1) by replacing “an assumed identity” with “the assumed identity”.
- Clause 73** **Section 111A inserted**
Provides that each assumed identity approval will be reviewed by the Corruption and Crime Commission at least once every 6 months and will be cancelled if no longer necessary.
- Clause 74** **Part 6 Division 3 Subdivision 3 heading inserted**
Inserts a new subdivision within Part 6, Division 3, “Subdivision 3 – Acquisition and use of assumed identities”

Subdivision 3 – Acquisition and use of assumed identities

- Clause 75** **Section 114A inserted**
 Extends protection and indemnity from criminal liability for authorised officers and issuing agencies when an authorised officer continues to use an assumed identity that has been limited or cancelled, if they are unaware of the variation or cancellation and not reckless about the variation's existence. An officer is deemed to be "reckless" if they are aware of a substantial risk about the approval being varied or cancelled and are not justified in taking that risk that the authorisation continues.
- Clause 76** **Section 115 replaced**
 Replaces section 115 by amending the offence provisions and penalties for disclosure of information about assumed identities, to achieve consistency with model covert powers laws contained in *the Criminal Investigation (Covert Powers) Bill 2011*.
- Clause 77** **Section 118 deleted**
 Deletes section 118 as its provisions are subsumed by the newly inserted section 111A.
- Clause 78** **Part 6 Division 3 Subdivisions 4 and 5 inserted**
 Inserts two new subdivisions in Part 6, after Division 3, "Subdivision 4 – Reporting and record-keeping" and "Subdivision 5 – Transitional provisions for *Corruption and Crime Commission Amendment Act 2012*".

Subdivision 4 – Reporting and record-keeping**Section 119A inserted**

Requires the Corruption and Crime Commission to prepare a report after 30 June each year, to be laid before Parliament within 15 days of the Minister receiving the report. The report must contain all the information set out in subsection (1) with respect to assumed identity activities throughout the year.

Subsection (2) requires the Corruption and Crime Commissioner to advise the Minister of any sensitive information in the report that should be excluded before it is laid before Parliament. The Minister must exclude the information if satisfied on any of the 3 relevant grounds that it is inappropriate to make the information public.

Section 119B inserted

Requires the Corruption and Crime Commission to maintain appropriate records in relation to assumed identities and sets out what those records must include.

Section 119C inserted

Requires the Corruption and Crime Commission to arrange for assumed identity records to be audited at least once every 6 months while an authority is in force, and at least once within 6 months of the cancellation of an authority. The person conducting the audit, appointed by the Corruption and Crime Commissioner, may be an officer of the Commission, but must not be the person involved in granting, varying or cancelling the authority, or the recipient of the assumed identity approval. Results of audits must be given to the Corruption and Crime Commissioner.

Subdivision 5 – Transitional provision for Corruption and Crime Commission Amendment Act 2012**Section 119D inserted**

A transitional provision ensuring that the amended Part 4 provisions do not apply to any assumed identity approvals granted before the commencement of Part 4 of the *Corruption and Crime Commission Amendment Act 2012*.

Clause 79**Part 6 Division 4 Subdivision 1 heading inserted**

Inserts a new subdivision within Part 6, Division 4, “Subdivision 1 – Preliminary”

Subdivision 1 - Preliminary**Clause 80****Section 119 amended**

Inserts definitions and inserts and amends cross-references necessary for the operation of this Division.

Clause 81**Part 6 Division 4 Subdivision 2 heading inserted**

Inserts a new subdivision within Part 6, Division 4, “Subdivision 2 – Authorisation of controlled operations or integrity testing programmes”

Subdivision 2 – Authorisation of controlled operations or integrity testing programmes**Clause 82****Section 121 amended**

Provides the grounds on which the Corruption and Crime Commission must be reasonably satisfied before granting authority to conduct controlled operations, including that the authorising of a controlled operation is justified given the nature and extent of the suspected criminal

activity and that the risks of abuse, endangerment, damage to property and increase in illicit goods is minimised.

There are two types of authorities that can be granted: a written “formal authority” or an oral “urgent authority”. The “urgent authority” is granted only if the Corruption and Crime Commission is satisfied that undue delay may prejudice the operation of a controlled operation. A formal authority must not last longer than 3 months, and an oral authority must not last longer than 7 days.

- Clause 83** **Section 122 amended**
Amends the restrictions on granting or taking part in controlled operations under this Part in line with model covert powers laws contained in the *Criminal Investigation (Covert Powers) Bill 2011*.
- Clause 84** **Part 6 Division 4 Subdivision 3 heading inserted**
Inserts a new subdivision within Part 6, Division 4, “Subdivision 3 – Conduct of authorised operations”
- Subdivision 3 – Conduct of authorised operations***
- Clause 85** **Section 130A inserted**
Provides that the protection from criminal responsibility under section 128 and the indemnity against civil liability under section 129 do not apply to participants in controlled operations who are or could have been authorised by other State laws governing the particular activities listed.
- Clause 86** **Section 130 amended**
Amends the restrictions on conduct within controlled operations in line with the Model Laws.
- Clause 87** **Section 133A and Part 6 Division 4 Subdivision 4 inserted**
- Section 133A inserted**
Inserts section 113A to make it, in accordance with the Model Laws, an offence and sets penalties for disclosure of information about controlled operations. This provision is designed to protect persons participating in controlled operations and to ensure the integrity of operations.
- Part 6 Division 4 Subdivision 4 inserted**
Inserts a new subdivision within Part 6, Division 4, “Subdivision 4 – Reporting and record-keeping for controlled operations”
- Subdivision 4 – Reporting and record-keeping for controlled operations***
- Section 133B inserted**
Imposes an obligation on the principal officer for an operation to make a

report to the Corruption and Crime Commissioner within 2 months of the completion of a controlled operation. The details, aligned with the requirements of Model Laws, which must be included in the report are listed.

Section 133C inserted

Imposes an obligation on the Corruption and Crime Commissioner to submit a report to the Parliamentary Commissioner, as soon as practicable after 30 June and 31 December each year, detailing completed controlled operations conducted during the previous 6 months. The details that each report must include are listed.

Section 133D inserted

Requires the Parliamentary Inspector, as soon as practicable after 30 June in each year, to prepare an annual report of the work and activities of controlled operations of the Corruption and Crime Commission, concluded in the preceding year. A copy of the report is to be given to the Minister and the Corruption and Crime Commissioner.

The Parliamentary Inspector must comment on the comprehensiveness and adequacy of reports provided by the Corruption and Crime Commission on the controlled operations.

The Parliamentary Inspector must advise the Minister of any sensitive information in the report that should be excluded before it is laid before Parliament. The Minister must exclude the information if satisfied on any of the 3 relevant grounds that it is inappropriate to make the information public.

Section 133E inserted

Enhances the oversight process by requiring the Corruption and Crime Commission to keep detailed records of authorised controlled operations and sets out the information to be included.

Section 133F inserted

Enhances the oversight process by requiring the Corruption and Crime Commissioner to keep a general register of controlled operations and sets out the information to be included.

Section 133G inserted

Requires that the Parliamentary Commissioner must, at least once every 12 months, inspect the Corruption and Crime Commission's controlled operations records, to determine compliance with this Division.

Clause 88 **Part 6 Division 4 Subdivision 5 heading inserted**
Inserts a new subdivision within Part 6, Division 5, “Subdivision 5 – Legal proceedings”

Subdivision 5 – Legal proceedings

Clause 89 **Part 6 Division 4 Subdivision 6 heading inserted**
Inserts a new subdivision within Part 6, Division 6, “Subdivision 6 – Transitional provisions for *Corruption and Crime Commission Amendment Act 2012*”

Subdivision 6 – Transitional provisions for Corruption and Crime Commission Amendment Act 2012

Section 135A inserted

Inserts a transitional provision providing that the amended Part 4 provisions do not apply to any controlled operation approvals granted before the commencement of the *Corruption and Crime Commission Amendment Act 2012*.

PART 5 - FORTIFICATIONS

Clause 90 **Act amended**
This Part amends the *Corruption and Crime Commission Act 2003*.

Clause 91 **Section 78A inserted**
Inserts a new section 78A after section 77 which establishes criminal offence provisions and imposes penalties with respect to rebuilding fortifications after removal or modification.

Subsection (2) provides defences to a charge of an offence under subsection (1). Subsections (3)-(6) provide for the types of court orders that may be made and confer removal powers on the Police Commissioner.

Clause 92 **Section 78 amended**
Updates cross-references in the Act necessitated by amendments made by this Bill.

PART 6 – OTHER AMENDMENTS TO *CORRUPTION AND CRIME COMMISSION ACT 2003*

Clause 93 **Act amended**
Specifies that the amendments in this Part are to the *Corruption and Crime Commission Act 2003*.

- Clause 94 Long title amended**
Amends the long title by deleting a now redundant purpose.
- Clause 95 Section 3 amended**
Deletes, replaces and inserts new definitions to facilitate amendments to the Act regarding the new office of Assistant Commissioner, strategic plans and maintaining the Corruption and Crime Commission’s current role regarding police misconduct.
- Clause 96 Section 9 amended**
Allows for the creation of one or more new offices of Assistant Commissioner and provides for their appointment.
- Clause 97 Section 10 amended**
Allows a serving judge to be appointed as Corruption and Crime Commissioner by removing the requirement for a judge to retire from judicial office prior to appointment.
- Clause 98 Section 11 amended**
Amendment to allow for the appointment of Assistant Commissioners.
- Clause 99 Section 12 amended**
Amendment to allow for the appointment of Assistant Commissioners.
- Clause 100 Section 14 amended**
An amendment consequential upon the abolition of the nomination committee for the office of Commissioner.
- Clause 101 Section 15A inserted**
Facilitates an Assistant Commissioner acting as Commissioner during periods of a vacancy in that office or inability or absence.
- Clause 102 Section 21AAA inserted**
Confers on Corruption and Crime Commission functions, including the ability to apply to the court for unexplained wealth declarations, under the *Criminal Property Confiscation Act 2000* as functions of the Commission.
- Clause 103 Part 2 Division 3 inserted**
Inserts a new division within Part 2, “Division 3 – Strategic priorities and annual plans”.
- Section 21B inserted**
Establishes a more transparent and accountable strategic priority setting process for the Commission by which strategic directions may be formulated and conveyed. The new section requires the Commission to devise annual strategic priorities in respect of the performance by the

Commission of its functions. The Commission is required to consult with the Minister and any other person or body that the Commission considers appropriate (such as the Police Commissioner) in formulating its annual strategic priorities. After consulting with the Corruption and Crime Commission, the Minister may publish information about the strategic priorities.

Section 21C inserted

Requires the Corruption and Crime Commission to issue an annual plan each financial year which sets out how the Commission intends to perform its functions during the year. Before issuing the annual plan, the Corruption and Crime Commission must consult with the Police Commissioner and any other person or body that the Commission considers appropriate. The annual plan will set out strategic priorities, performance targets and financial resources.

The Corruption and Crime Commission is required to give the annual plan to:

- the Standing Committee;
- the Minister;
- the Parliamentary Inspector;
- the Commissioner of Police;
- any other person or body that the Commission considers appropriate.

The annual plan is also required to be published in the *Gazette* and on the Corruption and Crime Commission's website.

Clause 104

Section 22 amended

Amends section 22(3), to clarify that the Corruption and Crime Commission may provide a public sector oversight agency or an appropriate authority with the facts upon which an assessment or opinion as to the occurrence of serious misconduct is based.

Clause 105

Section 30 amended

Allows the Corruption and Crime Commission by guidelines to relieve people from the mandatory reporting requirement of section 28.

Clause 106

Section 40 amended

Allows the Corruption and Crime Commission to relieve a person from the obligation to prepare a detailed report of the action the appropriate authority has taken in relation to an allegation.

Clause 107

Section 48 amended

Provides the Corruption and Crime Commission with an over-riding capacity to refuse to issue a criminal activity summons in respect of a person if the Commission is satisfied that it would not be in the public

interest to do so.

- Clause 108** **Section 88 amended**
 Authorises the Corruption and Crime Commission at any time to prepare a report regarding its operational effectiveness or an administrative or general policy matter regarding its operations or functions.
- Clause 109** **Section 91 amended**
 Requires the Corruption and Crime Commission to include specific information relating to the annual plan within the annual report to Parliament.
- Clause 110** **Section 100 amended**
 Deletes subsection (2) which related to the former “misconduct” function of the Corruption and Crime Commission, which is now within the jurisdiction of the Public Sector Commissioner.
- Clause 111** **Section 101 amended**
 Replaces the definition of “relevant material”, a term used in relation to investigations with a new definition, consistent with the transfer of the minor misconduct function to the Public Sector Commissioner and the new functions of the Corruption and Crime Commission with respect to serious misconduct, major crime and organised crime.
- Clause 112** **Section 119 amended**
 Amends the definition of “controlled operation” by the use of the term “investigation”, consistent with the transfer of the minor misconduct function to the Public Sector Commissioner and the new functions of the Corruption and Crime Commission with respect to serious misconduct, major crime and organised crime.
- Clause 113** **Section 122 amended**
 Removes the current limitation on the use of controlled operations to the investigation of police officers or prescribed persons.
- Clause 114** **Section 123 amended**
 Removes the current limitation on the use of integrity testing programmes to the testing of police officers or prescribed persons.
- Clause 115** **Section 129 amended**
 Allows the Corruption and Crime Commission to assume the conduct of any litigation in which it has a duty to indemnify a person.
- Clause 116** **Section 136 amended**
 Extends the Commission’s power to include anything necessary or incidental to the performance of its functions under the Act

- Clause 117** **Section 137 amended**
Provides a cross-reference to the definition of “investigation” under section 3(1).
- Clause 118** **Section 138 amended**
Provides a cross-reference to the definition of “investigation” under section 3(1).
- Clause 119** **Section 145A inserted**
Provides a procedure for dealing with a claim that seized material is privileged, such procedure being substantially adapted from the provisions dealing with that topic under s.151 of the *Criminal Investigation Act 2006*.
- Clause 120** **Part 8 heading amended**
Replaces “warrants” with “powers”.
- Clause 121** **Section 148 amended**
Amends wording and provides cross-references within the Act.

Deletes elements related to the former “misconduct” function of the Corruption and Crime Commission that are now within the jurisdiction of the Public Sector Commissioner.
- Clause 122** **Section 149A amended**
Replaces an obligation to keep witnesses in conditions equivalent to where jurors are kept together overnight to those applicable to persons on remand.
- Clause 123** **Section 152 amended**
Extends the scope of the term “official information”.
- Clause 124** **Section 163 amended**
Deletes the reference to “an examination summons” in subsection (5) and inserts the words “criminal activity summons” in light of the new definition contained in section 45.
- Clause 125** **Section 164A inserted**
As the Act currently stands, if a person is alleged to be in contempt of the Corruption and Crime Commission, unless an arrestable offence has been committed, the Corruption and Crime Commission is unable to issue a warrant for the arrest an alleged contemnor to bring him or her before the

Supreme Court. New section 164A(1) provides the Corruption and Crime Commission with the power to summons and issue a warrant to arrest alleged contemnors and bring them immediately before the Supreme Court.

Subsections (2), (3) and (5) set out requirements with respect to a summons and relevant court documentation. Subsections (4) and (6)-(9) set out when and how a warrant may be issued for an alleged contemnor to be apprehended. Subsection (10) gives the Supreme Court the power to direct that an alleged contemnor be kept in custody, or released, pending determination of the matter.

- Clause 126** **Section 177 amended**
 Inserts the words “unless this Act provides differently” to provide for the terms of the Act to enable a penalty different from the maximum penalty for summary convictions set out in subsection 177(2).
- Clause 127** **Section 184 amended**
 Expands the capacity for the Corruption and Crime Commission to authorise individual officers of the Commission or classes of officers to perform functions of the Commission either under the Act or under the Commission’s proposed new powers under the *Criminal Property Confiscation Act 2000*.
- Clause 128** **Section 185 amended**
 Enables the Corruption and Crime Commissioner to delegate generally to an Assistant Commissioner and to delegate the power to conduct private examinations to a “lawyer”, as defined by section 3 of the *Legal Profession Act 2008*, with not less than 5 years’ experience.
- Clause 129** **Section 189 amended**
 Removes the role of the former nominating committee.
- Clause 130** **Section 193 amended**
 Deletes reference to the term “nomination”, made necessary because of the abolition of the Nominating committee.
- Clause 131** **Section 195 amended**
 Requires the Parliamentary Inspector to take into account any relevant annual plans in performing his or her functions under the Act.
- Clause 132** **Section 226 deleted**
 Deletes section 226 (a spent provision which required a review of the Act to be carried out following the expiration of 3 years after its commencement) from the Act.

- Clause 133** **Part 15 deleted**
Deletes Part 15 of the former Act. Part 15 was originally Part 7 — Consequential amendments of the 2003 Act, renumbered as Part 15 in the amendments under s.35 of the *Corruption and Crime Commission Amendment and Repeal Act 2003*. Its provisions are no longer extant.
- Clause 134** **Schedule 2 heading**
The words “and Assistant Commissioners” added to heading.
- Clause 135** **Schedule 2 clause 1 amended**
The words “and each Assistant Commissioner” added.
- Clause 136** **Schedule 2 clause 2 amended**
The words “or an Assistant Commissioner” added where applicable.
- Clause 137** **Schedule 2 clause 3 amended**
Amends the Schedule to provide for the remuneration of the Assistant Commissioner.
- Clause 138** **Schedule 2 clause 4 amended**
Amends the Corruption and Crime Commissioner’s appointment terms and adds provisions to apply in the case of an Assistant Commissioner who was a judge to allow for a judge to be reappointed to the same court, should they wish to return to a judicial role following completion of their appointment as Corruption and Crime Commissioner or Assistant Commissioner.
- Clause 139** **Schedule 2 clause 5 amended**
Adds appropriate references to extend the operation of the provisions to an Assistant Commissioner
- Clause 140** **Schedule 2 clause 6 replaced**
Enables a resigning Corruption and Crime Commissioner to specify in writing the date the resignation is to take effect, which may be later than the date the resignation is accepted and signed by the Governor.
- Clause 141** **Schedule 3 clause 3 amended**
Amends clause 3 of Schedule 3 to correct administrative anomalies with respect to the Parliamentary Inspector’s conditions of appointment.
- Clause 142** **Schedule 3 clause 4 amended**
Amends clause 4 of Schedule 3 to rectify anomalies with respect to the Parliamentary Inspector’s conditions of appointment in the case of a serving judge.

Clause 143 **Schedule 3 clause 6 replaced**
 Enables a resigning Parliamentary Inspector to specify in writing the date the resignation is to take effect, which may be later than the date the resignation is accepted and signed by the Governor.

Clause 144 **Schedule 4 deleted**
 Deletes Schedule 4 of the principal Act, which is now spent. Schedule 4 (*“Amendments to other Acts as a consequence of enactment of Corruption and Crime Commission Act 2003”*) was originally schedule 3 of the former Act and was renumbered as Schedule 4 in the amendments under s.35(12) of the *Corruption and Crime Commission Amendment and Repeal Act 2003*.

Part 7 — CRIMINAL PROPERTY CONFISCATION ACT 2000 AMENDED

Clause 145 **Act amended**
 This Part amends the *Criminal Property Confiscation Act 2000*.

Clause 146 **Section 11 amended**
 Allows the Corruption and Crime Commission to apply for an unexplained wealth declaration.

Clause 147 **Section 15 amended**
 Allows the Corruption and Crime Commission to apply for a criminal benefits declaration.

Clause 148 **Section 27 amended**
 Allows the Corruption and Crime Commission to apply for a confiscable property declaration.

Clause 149 **Section 30 amended**
 Allows the Corruption and Crime Commission to apply for a declaration that property has been confiscated.

Clause 150 **Section 31 amended**
 Where the Corruption and Crime Commission is the applicant for a declaration for confiscation of registrable property, and the declaration is made by the court, the amendment requires the Commission to give notice of the declaration by lodging a memorial and relevant particulars under the specified property registration legislation.

Clause 151 **Section 32 amended**
 The effect of this amendment is that, if the DPP applied for the original declaration, only the DPP can apply for a variation or, if the Corruption and Crime Commission applied for the original declaration, only the Corruption and Crime Commission can apply for a variation.

- Clause 152** **Section 33 amended**
Allows for an authorised Corruption and Crime Commission officer to seize, remove, retain and guard crime-used or crime-derived property.
- Clause 153** **Section 34 amended**
Allows for an authorised Corruption and Crime Commission officer to apply for the issue of a freezing notice for crime-used or crime-derived property.
- Clause 154** **Section 35 amended**
The effect this amendment is that, if an authorised Corruption and Crime Commission officer applied for the original freezing notice, such an officer may estimate or cause to be estimated the value of the property, and arrange for an inventory to be taken as may be required for the purposes of security and management of the property.
- Clause 155** **Section 37 amended**
The effect of this amendment is that, if the DPP or police applied for the original freezing notice, a person served with that notice must declare any other interested parties to the DPP or, if the Corruption and Crime Commission applied for the original freezing notice, the person served with that notice must declare any other interested parties to an authorised Corruption and Crime Commission officer.
- Clause 156** **Section 40 amended**
Requires an authorised Corruption and Crime Commission officer to cancel a freezing notice originally applied for by such an officer when grounds for suspicion warranting the notice no longer exist. Where relevant, that officer is required to ensure that the matters specified in subsection (2) are dealt with.
- Clause 157** **Section 41 amended**
Allows for the Corruption and Crime Commission to apply for freezing orders for confiscable property.
- Clause 158** **Section 43 amended**
Provides for the Corruption and Crime Commission, when applying for a freezing order, to advise the court of an associated or proposed application for an examination order, monitoring order or suspension order in relation to the property.
- Clause 159** **Section 45 amended**
Includes Corruption and Crime Commission as a body which may be appointed by the court to manage confiscable property while a freezing order is in force.

- Clause 160** **Section 47 amended**
Has the effect of requiring persons served with freezing orders to give a statutory declaration about any other interested party to the Corruption and Crime Commission where the Commission is the applicant for the order.
- Clause 161** **Section 53 amended**
Authorises financial institutions to volunteer certain information about transactions to an authorised Corruption and Crime Commission officer in addition to the DPP or a police officer.
- Clause 162** **Section 54 amended**
Includes an authorised Corruption and Crime Commission officer as a person who may require a financial institution to give certain information for the purposes of exercising powers under the Act.
- Clause 163** **Section 57 amended**
Allows the Corruption and Crime Commission to apply to the court for an order for the examination of a person.
- Clause 164** **Section 62 amended**
Allows the Corruption and Crime Commission to apply to the court for a production order for a property-tracking document.
- Clause 165** **Section 63 amended**
The effect of this amendment is that a court may issue a production order directing a person to give or make available the relevant document to the Corruption and Crime Commission where the Commission applied for the order.
- Clause 166** **Section 64 amended**
Allows the Corruption and Crime Commission to inspect retain and copy property tracking documents ordered to be produced or made available by the court.
- Clause 167** **Section 65 amended**
Provides that it is an offence for a person to produce false or misleading information to the Corruption and Crime Commission in response to a production order, and for a defence where the person producing the information draws attention to false or misleading information in the material produced by the person and gives any correct information in their possession or control.
- Clause 168** **Section 66 amended**
Allows the Corruption and Crime Commission to apply to the court to vary a production order.

- Clause 169** **Section 67 amended**
Allows for the Corruption and Crime Commission to apply to the court for monitoring order and suspension orders.
- Clause 170** **Section 68 amended**
The effect of this amendment is that a court may make monitoring orders and suspension orders that require financial institutions to give information about certain transactions to the Corruption and Crime Commission, and to notify the Commission about certain transactions.
- Clause 171** **Section 70 amended**
Provides for an offence to make certain restricted disclosures about information provided or to be provided to the DPP, a police officer or the Corruption and Crime Commission under relevant provisions of the Act.
- Clause 172** **Section 71 amended**
Allows for restricted disclosures to be made by corporations, their officers, and by individuals, including legal practitioners, in certain circumstances to the Corruption and Crime Commission or to an authorised Commission officer.
- Clause 173** **Section 73 amended**
Empowers an authorised Corruption and Crime Commission officer, where there are reasonable grounds for suspicion, to detain and search persons, vehicles and possessions for confiscable property or property-tracking documents, and to use necessary force for those purposes.
- Clause 174** **Section 74 amended**
Allows an authorised Corruption and Crime Commission officer seek and execute search warrants.
- Clause 175** **Section 75 amended**
Sets out procedures for searching of detained persons by an authorised Corruption and Crime Commission officer.
- Clause 176** **Section 76 amended**
Provides additional powers for an authorised Corruption and Crime Commission officer when exercising powers to detain and search and when executing search warrants.
- Clause 177** **Section 77 amended**
Allows action under a search warrant obtained by an authorised Corruption and Crime Commission officer to be taken by that officer at a later date when documents covered by the warrant may be able to be produced.

- Clause 178** **Section 78 amended**
Preserves the operation of other laws about search warrants which may apply under other legislation to an authorised Corruption and Crime Commission officer.
- Clause 179** **Section 82 amended**
Allows for an authorised Corruption and Crime Commission officer to apply to the court to set aside a freezing notice or freezing order which the Commission or that officer initially applied for.
- Clause 180** **Section 83 amended**
Allows for an authorised Corruption and Crime Commission officer to apply to the court to set aside a freezing order or freezing notice for crime-derived property in certain circumstances.
- Clause 181** **Section 88 amended**
Provides that the Corruption and Crime Commission is responsible for management and control of property seized by an authorised Commission officer under the Act.
- Clause 182** **Section 89 amended**
The effect of the amendments is to provide that in cases where an authorised officer of the Corruption and Crime Commission is the applicant for a freezing notice or freezing order, the Commission is to have responsibility for management of the frozen property the subject of that notice or order. Similarly the Commission is to be the responsible entity for the control and management of confiscated property in cases where the Commission or an authorised officer of the Commission obtains an unexplained wealth declaration, criminal benefits declaration or crime-used property declaration.
- The Commission is empowered to appoint a person listed in subsection 89(3) to manage property for which the Commission has responsibility under the preceding subsections.
- Clause 183** **Section 90 amended**
Empowers the Commission to carry out transactions necessary to facilitate the destruction, sale or other disposal of property under the Act.
- Clause 184** **Section 103 amended**
Empowers the Attorney General to appear in proceedings under the *Criminal Property Confiscation Act 2000* whether or not the DPP or the Corruption and Crime Commission is also a party.

- Clause 185** **Section 105 amended**
Enables an authorised officer of the Corruption and Crime Commission to give opinion evidence in support of an application for an unexplained wealth declaration or criminal benefits declaration made by the Commission.
- Clause 186** **Section 131 amended**
Allows the Corruption and Crime Commission to also receive reimbursement for the cost of the storage of property.
- Clause 187** **Section 132 amended**
Provides for an offence of obstructing an authorised Corruption and Crime Commission officer in the performance of the officer's functions under the Act.
- Clause 188** **Section 135A inserted**
Provides for the Corruption and Crime Commission to delegate certain of its functions under the Act to an Assistant Commissioner or to an officer of the Commission who is not an Assistant Commissioner.
- Clause 189** **Section 135 amended**
Enables the Corruption and Crime Commission to apply to the court for orders relating to sham transactions.
- Clause 190** **Glossary clause 1 amended**
Inserts a new definition of Corruption and Crime Commission.