

Western Australia

## **Royal Commission (Police) Act 2002**

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As at 28 Jun 2002

No. 10 of 2002

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## Royal Commission (Police) Act 2002

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**Defined Terms**



Western Australia

## Royal Commission (Police) Act 2002

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No. 10 of 2002

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An Act to —

- confer additional powers on the Royal Commission appointed by a commission dated 12 December 2001 and published in the *Gazette* of 28 December 2001;
  - assist the conduct of that Royal Commission;
  - amend the *Surveillance Devices Act 1998* and the *Telecommunications (Interception) Western Australia Act 1996* for the purposes of the Royal Commission; and
  - amend the *Prisons Act 1981*,
- and for related purposes.

[Assented to 28 June 2002]

The Parliament of Western Australia enacts as follows:

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Royal Commission (Police) Act 2002*.

### 2. Commencement

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

### 3. Interpretation

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

“**ACC Act**” means the *Anti-Corruption Commission Act 1988*;

“**Commission**” means —

- (a) the Royal Commission constituted by the person appointed by the commission dated 12 December 2001 and published in the *Gazette of 28 December 2001* to inquire into and report on whether since 1 January 1985 there has been corrupt conduct or criminal conduct by any Western Australian police officer; and
- (b) any Royal Commission with the same or similar terms of reference as the Royal Commission referred to in paragraph (a) and which replaces that Royal Commission,

and includes the person appointed to be the Commission acting in the exercise of his duty as a Commissioner;

“**Commissioner**” means the person appointed to be the Commission;

“**corrupt conduct**” and “**criminal conduct**” include, but are not limited to, the meanings given to those phrases by section 3 of the ACC Act;

**“Deputy Parliamentary Commissioner”** means a person for the time being holding the office of Deputy Parliamentary Commissioner for Administrative Investigations under the *Parliamentary Commissioner Act 1971*;

**“disciplinary measures”** means measures under section 8 or 23 of the *Police Act 1892* and any related proceedings, hearing or inquiry;

**“legal practitioner”** means a practitioner within the meaning of the *Legal Practitioners Act 1893*;

**“1968 Act”** means the *Royal Commissions Act 1968*;

**“officer of the Commission”** means —

- (a) a legal practitioner appointed to assist the Commission; and
- (b) any other person appointed, employed, seconded or engaged to assist the Commission;

**“officer of the Parliamentary Commissioner”** has the meaning given to “officer of the Commissioner” by the *Parliamentary Commissioner Act 1971*;

**“Parliamentary Commissioner”** means a person for the time being holding or acting in the office of the Parliamentary Commissioner for Administrative Investigations under the *Parliamentary Commissioner Act 1971*;

**“premises”** includes any structure, building, aircraft, vehicle, vessel and place (whether built or not), and any part of it;

**“public authority”** has the same meaning as in the ACC Act;

**“public officer”** has the same meaning as in *The Criminal Code* and includes a former public officer.

- (2) For the purposes of this Act the Commission is taken to have ended when it has delivered its final report under the terms of reference as set out in the commission dated 12 December 2001 or, if those terms are amended, under those terms as so amended.

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- (3) At the time the Commission ends under subsection (2), section 4B of the *Surveillance Devices Act 1998*, as inserted by section 36, and section 3A of the *Telecommunications (Interception) Western Australia Act 1996*, as inserted by section 38, shall each expire.

**4. Relationship with *Royal Commissions Act 1968***

- (1) For the purposes of the operation of the Commission, this Act is to be read as if it formed part of the 1968 Act.
- (2) The provisions of this Act are in addition to, and not in derogation of, any provisions of the 1968 Act, except as specifically provided by this Act.
- (3) Nothing in the 1968 Act operates to constrain or restrict the exercise of a function conferred or imposed by or under this Act.

## **Part 2 — Obtaining information, documents and other things**

### **5. Power to obtain information**

- (1) For the purposes of the Commission's inquiry, the Commissioner may, by written notice served on a public authority or public officer, require the authority or officer to produce a statement of information.
- (2) A notice under this section must —
  - (a) specify or describe the information concerned;
  - (b) fix a time and date by which the statement of information must be produced; and
  - (c) specify the person (being the Commissioner or an officer of the Commission) to whom the production is to be made.
- (3) The notice —
  - (a) may provide that the requirement may be satisfied by some other person acting on behalf of the public authority or public officer; and
  - (b) may specify the person or class of persons who may so act.
- (4) Subject to section 41, a person who —
  - (a) fails to comply with a notice served on the person under this section; or
  - (b) in purported compliance with a notice served on the person or some other person under this section, furnishes information knowing it to be false or misleading in a material particular,is guilty of a contempt of the Commission.
- (5) A statement of information produced by a person in compliance with a notice served under this section is not admissible in

evidence against that person in any civil or criminal proceedings except —

- (a) contempt proceedings;
- (b) proceedings for an offence against this Act or the 1968 Act; or
- (c) disciplinary measures.

**6. Power to obtain documents etc.**

- (1) For the purposes of the Commission's inquiry, the Commissioner may, by written notice served on a person, require the person —
  - (a) to attend, at a time and place specified in the notice, before the Commission or an officer of the Commission as specified in the notice; and
  - (b) to produce at that time and place to the person so specified a document or other thing specified in the notice.
- (2) The notice —
  - (a) may provide that the requirement may be satisfied by some other person acting on behalf of the person on whom it was imposed; and
  - (b) may specify the person or class of person who may so act.
- (3) Subject to section 41, a person who fails to comply with a notice served on the person under this section is guilty of a contempt of the Commission.

**7. Power to enter public premises**

- (1) For the purposes of the Commission's inquiry, the Commissioner or an officer of the Commission authorised in writing by the Commissioner may, at any time —
  - (a) enter and inspect any premises occupied or used by a public authority or public officer in that capacity;

- (b) inspect any document or other thing in or on the premises; and
  - (c) take copies of any document in or on the premises.
- (2) The powers conferred by this section must not be exercised other than for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve corrupt conduct or criminal conduct.
- (3) A public authority or public officer must make available to the Commissioner or authorised officer such facilities as are necessary to enable the powers conferred by subsection (1) to be exercised.
- (4) Subject to subsection (5), the powers conferred by this section may be exercised despite —
  - (a) any rule of law which, in proceedings in a court, might justify an objection to an inspection of the premises or to the production of a document or other thing on grounds of public interest;
  - (b) any privilege of a public authority or public officer in that capacity which the authority or official could have claimed in a court of law; or
  - (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.
- (5) Nothing in this section affects the operation of the *Parliamentary Privileges Act 1891*.

**8. Legal professional privilege**

- (1) Subject to subsection (2), nothing in this Act prevents a person who is required under section 5, 6 or 7 to produce a statement of information, document or other thing or make facilities available from claiming legal professional privilege as a reason for not complying with that requirement.

- (2) Subsection (1) does not apply to any privilege of a public authority or public officer in that capacity.

## **Part 3 — Attendance before the Commission**

### **9. Arrest of witness**

- (1) If a person served with a summons under section 9 of the 1968 Act fails to attend as required by the summons and section 10 of that Act, the Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the apprehension of that person.
- (2) The Commissioner may issue a warrant for the apprehension of a person whose evidence is desired and is necessary and relevant to the Commission's inquiry if the Commissioner is satisfied by evidence on oath or affirmation that it is probable that the person —
  - (a) will not attend before the Commission to give evidence without being compelled to do so; or
  - (b) is about to or is making preparation to leave the State and the person's evidence will not be obtained by the Commission if the person departs.
- (3) The powers conferred by subsection (2) must not be exercised unless the Commissioner is satisfied that the evidence of the person concerned is required for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve corrupt conduct or criminal conduct.
- (4) A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.
- (5) A warrant may be issued under subsection (2) after the issue of a summons to the person whose evidence is desired, even though the time specified in the summons for the person to attend has not yet passed.
- (6) A warrant under this section authorises the apprehension of the person and his or her being promptly brought before the Commission and detained in custody for that purpose until released by order of the Commissioner.

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- (7) A warrant issued under this section may be executed by a member of the Police Force, or by any person to whom it is addressed, and the person executing it may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it.
- (8) The apprehension of a witness under this section does not prevent the witness from being dealt with for contempt under section 41 for non-compliance with the summons.
- (9) This section operates in place of section 16 of the 1968 Act.

**10. Conditional release of a witness**

- (1) The release of a witness by order of the Commission under section 9(6) may be made subject to one or more of the following conditions —
  - (a) that the witness appear and report before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the Commissioner or an officer of the Commission;
  - (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example, the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission);
  - (c) any other condition that the Commissioner thinks appropriate.
- (2) The Commissioner may by order amend, revoke or add to those conditions.
- (3) A witness who without reasonable excuse fails to comply with a condition to which the release of the witness under section 9(6) is subject is guilty of an offence.

Penalty: Imprisonment for 2 years and a fine of \$8 000.

**11. Review by Supreme Court**

- (1) A witness who has not been released by the Commissioner under section 9(6) or whose release under that provision is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release the witness or of the terms of one or more of those conditions.
- (2) The Supreme Court may do either or both of the following —
  - (a) affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness;
  - (b) make any order that the Commissioner may make in relation to the detention or release of the witness.
- (3) The Supreme Court may also exercise its powers under subsection (2) where the Commissioner has not made a decision within a reasonable time on the release of a witness.
- (4) An order under subsection (2) is taken to be an order of the Commissioner.

## **Part 4 — Secrecy, disclosure and admissibility**

### **12.        Restriction on publication of evidence**

- (1) The Commissioner may direct that —
- (a) any evidence given before the Commission;
  - (b) the contents of any statement of information, document, or a description of any thing, produced to the Commission;
  - (c) the contents of any document, or a description of any thing, seized under a search warrant issued under the 1968 Act;
  - (d) any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located;
  - (e) the fact that any person has given or may be about to give evidence before the Commission,

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

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

Penalty: Imprisonment for 12 months and a fine of \$4 000.

- (3) This section operates in place of section 19B of the 1968 Act.

### **13.        Restriction on disclosure**

- (1) The Commissioner may include a restriction on disclosure in —
- (a) a notice under section 5(1) or 6(1) to produce a statement of information or to attend and produce a document or other thing; or
  - (b) a summons to attend the Commission to give evidence or produce a document or other thing.

- (2) A “**restriction on disclosure**” is a direction that the person required to comply with the notice or summons must not disclose to any person except a person specified in the notice or summons or a person to whom the information may be disclosed under subsection (4) —
- (a) the existence or nature of the notice or summons;
  - (b) the part or aspect of the Commission’s inquiry to which the notice or summons relates; or
  - (c) any information from which a person could reasonably be expected to infer the existence or nature of the notice or summons or of the part or aspect of the Commission’s inquiry to which it relates.
- (3) A person served with a notice under section 5(1) or 6(1), or a summons to attend the Commission, that includes a restriction on disclosure must comply with the restriction on disclosure.  
Penalty: Imprisonment for 12 months and a fine of \$4 000.
- (4) A person does not contravene subsection (3) if —
- (a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter;
  - (b) the disclosure is made to obtain legal advice or representation in relation to the notice or summons; or
  - (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

#### **14. Application of ACC Act**

- (1) Section 14 of the ACC Act does not apply to the Commissioner or to any officer of the Commission.
- (2) The ACC Act does not apply to prevent the Commissioner or an officer of the Commission authorised for the purposes of this

section by the Commissioner from furnishing, divulging or communicating evidence or information, or producing a document, for the purposes of a function of the Commission.

**15. Disclosure of information and giving of evidence by Parliamentary Commissioner**

- (1) The Parliamentary Commissioner, the Deputy Parliamentary Commissioner or an officer of the Parliamentary Commissioner authorised for the purposes of this section by the Parliamentary Commissioner or Deputy Parliamentary Commissioner, may —
  - (a) disclose to the Commission information obtained in the course of, or for the purposes of, the *Parliamentary Commissioner Act 1971* or any other Act to the Commission; and
  - (b) give evidence before the Commission and produce any document to the Commission, in respect of that information.
- (2) This section applies despite section 23 of the *Parliamentary Commissioner Act 1971* and any other law.

**16. Application of *Telecommunications (Interception) Western Australia Act 1996***

Section 22 of the *Telecommunications (Interception) Western Australia Act 1996* does not apply to prevent the disclosure of any information or record for the purposes of any proceedings for an offence under this Act.

## Part 5 — Investigation of police complaints by Commission

### 17. Interpretation

In this Part —

**“police complaint”** means an allegation or complaint which concerns or may concern corrupt conduct or criminal conduct by a person who is or has been a member of the Police Force of the State.

### 18. Termination of police investigation

- (1) If the Commissioner gives to the Commissioner of Police notification that the Commissioner is investigating a police complaint or part of a police complaint (**“the matter”**) —
  - (a) the Commissioner of Police must not commence any investigation of the matter or, if an investigation of the matter has already commenced, must discontinue the investigation;
  - (b) the Commissioner of Police must take all reasonable steps to ensure that an investigation of the matter is not conducted by a police officer; and
  - (c) the notification absolves the Commissioner of Police and other police officers from any duty with respect to crime and the preservation of the peace so far as it relates to investigation of the matter or to the bringing of an offender concerned before the courts to be dealt with according to law.
- (2) Subsection (1)(b) does not apply to a special constable who is an officer of the Commission.
- (3) Subsection (1) does not prevent an investigation of the matter that is conducted in accordance with arrangements made between the Commission and the Commissioner of Police.

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- (4) Despite subsection (1), an investigation of the matter by the Commissioner of Police may be commenced or resumed —
  - (a) if the Commissioner notifies the Commissioner of Police that the Commissioner has completed or discontinued investigation of the matter; or
  - (b) after the end of the Commission.

**19. Termination of Parliamentary Commissioner investigation**

- (1) If the Commissioner gives to the Parliamentary Commissioner notification that the Commissioner is investigating a police complaint or part of a police complaint (“**the matter**”) —
  - (a) the Parliamentary Commissioner must not commence any investigation of the matter or, if an investigation of the matter has already commenced, must discontinue the investigation;
  - (b) the Parliamentary Commissioner must take all reasonable steps to ensure that an investigation of the matter is not conducted by the Deputy Parliamentary Commissioner or an officer of the Parliamentary Commissioner; and
  - (c) the notification absolves the Parliamentary Commissioner from any duty under the *Parliamentary Commissioner Act 1971* so far as it relates to investigation of the matter.
- (2) Subsection (1) does not prevent an investigation of the matter that is conducted in accordance with arrangements made between the Commission and the Parliamentary Commissioner.
- (3) Despite subsection (1), an investigation of the matter by the Parliamentary Commissioner may be commenced or resumed —
  - (a) if the Commissioner notifies the Parliamentary Commissioner that the Commissioner has completed or discontinued investigation of the matter; or

(b) after the end of the Commission.

**20. This Part does not require information to be disclosed by Commission**

Nothing in this Part is to be construed as requiring the Commission to disclose any information to the Commissioner of Police or the Parliamentary Commissioner.

## Part 6 — Assumed identities

### 21. Interpretation

In this Part —

“agency”, “chief employee”, “chief executive officer” and “organisation” have the same meanings as in the *Public Sector Management Act 1994*.

### 22. Approval for assumed identity

- (1) The Commissioner may grant an approval (an “**assumed identity approval**”) for the acquisition and use of an assumed identity by an officer of the Commission.
- (2) The approval —
  - (a) must be in writing;
  - (b) may specify documents that may be acquired for use as evidence of the assumed identity;
  - (c) can cover more than one assumed identity;
  - (d) must be signed by the Commissioner.
- (3) The approval may be granted subject to conditions specified in the approval.
- (4) The Commissioner may, in writing, vary or cancel the approval.
- (5) Unless it is sooner cancelled, the approval remains in force until the Commission ends.
- (6) If an approval ceases to be in force the Commissioner must notify each chief executive officer and chief employee who issued a document under section 24 in accordance with the approval.

**23. What an approval authorises**

- (1) An assumed identity approval authorises the officer to whom it applies to acquire and use an assumed identity specified in the approval if the acquisition or use —
  - (a) is in the course of duty; and
  - (b) is in accordance with the assumed identity approval.
- (2) The officer can use an assumed identity under the authority of an assumed identity approval without having actually acquired the identity.
- (3) An assumed identity approval also authorises —
  - (a) the making (by the officer to whom the approval applies or by the Commissioner) of any false or misleading representation about the officer, for the purposes of or in connection with the acquisition or use of the assumed identity by the officer; and
  - (b) the use by the officer of the assumed identity to obtain evidence of the identity.

**24. Duties of agencies and organisations**

- (1) The chief executive officer or chief employee of an agency or organisation to whom an assumed identity approval is presented is authorised and required —
  - (a) to prepare and provide to the Commissioner or an officer of the Commission the documents specified in the approval; and
  - (b) to make an appropriate entry in respect of the assumed identity in each register or record, relevant to those documents, kept by the agency or organisation.
- (2) On being directed by the Commissioner to cancel an assumed identity, a chief executive officer or chief employee, is authorised and required to cancel any evidence of identity or entry in a register or record provided or made in respect of the assumed identity.

- (3) In subsection (1) —

**“appropriate entry”**, in respect of an assumed identity, means a written or electronic entry that, either alone or with other entries, is not inconsistent with the assumed identity being a real identity.

**25. Identity of certain officers not to be disclosed in legal proceedings**

- (1) If, in proceedings before a court, the identity of an officer in respect of whom an assumed identity approval is or was in force may be disclosed, the court must, unless it considers that the interests of justice otherwise require —
- (a) ensure that such parts of the proceedings as relate to the real identity of the officer are held in private; and
  - (b) make such orders as to the suppression of evidence given before it as, in its opinion, will ensure that the identity of the officer is not disclosed.
- (2) In particular, the court —
- (a) may allow an officer in respect of whom an assumed identity approval was or is in force to appear before it under the assumed identity or under a code name or code number; and
  - (b) may make orders prohibiting the publication of any information (including information derived from evidence before it) that identifies, or might facilitate the identification of, any person who has been or is proposed to be called to give evidence.
- (3) A person who discloses information in contravention of an order in force under this section is guilty of a crime.

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

(4) In this section —

“**court**” includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

**26. Protection from liability**

(1) Despite any other law —

- (a) an officer of the Commission who acquires and uses an assumed identity under this Part is not criminally liable for any act the officer does in good faith in accordance with the assumed identity approval; and
- (b) a chief executive officer or chief employee who engages in conduct that, apart from this section, would constitute an offence against a law of the State is not criminally liable for the offence if the chief executive officer or chief employee engages in the conduct in response to an assumed identity approval.

(2) Conduct of —

- (a) the Commissioner;
- (b) a chief executive officer or chief employee; or
- (c) an officer of the Commission,

does not, if the conduct was in good faith and for the purpose of executing this Part, subject the Commissioner, chief executive officer, chief employee or officer of the Commission to any action, claim, liability or demand.

(3) A certificate signed by the Commissioner stating that —

- (a) a chief executive officer or chief employee is authorised by section 23 to prepare and provide a specified document or make a specified entry; or

- (b) on a specified date, or during a specified period, a specified officer of the Commissioner was authorised to acquire and use a specified assumed identity in accordance with specified conditions,

is admissible in any legal proceedings and is conclusive evidence of the matters specified in the certificate.

**27. Report to Attorney General**

- (1) The Commission may furnish to the Attorney General a report containing information relating to —
  - (a) assumed identity approvals issued under this Part; and
  - (b) such other matters relating to the approvals as the Commission considers appropriate.
- (2) The Attorney General is to cause a report furnished by the Commission under subsection (1) to be laid before each House of Parliament as soon as practicable.

## **Part 7 — Controlled operations and integrity testing programmes**

### **28. Interpretation**

In this Part —

**“controlled activity”** means an activity that, but for section 32, would be unlawful;

**“controlled operation”** means an operation —

- (a) in which one or more officers of the Commission participate for the purpose of obtaining or facilitating the obtaining of evidence of corrupt conduct or criminal conduct by a police officer; and
- (b) which involves or may involve a controlled activity.

### **29. Authorisation of controlled operation**

- (1) The Commissioner may authorise a controlled operation.
- (2) The authorisation must —
  - (a) be in writing;
  - (b) specify the officer of the Commission responsible for the operation;
  - (c) specify the names of any officers of the Commission who are authorised to participate in the operation;
  - (d) identify the controlled operation;
  - (e) specify the nature of the particular controlled activities in which officers of the Commission are authorised to engage;
  - (f) specify a period, not exceeding 6 months, for which the authorisation is given;
  - (g) specify a date and time, being not earlier than its signing, when the authorisation comes into force; and
  - (h) be signed by the Commissioner.

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- (3) For the purposes of subsection (2)(d) a controlled operation may be identified by reference to a plan of the controlled operation held by the Commissioner.
- (4) A person is sufficiently identified for the purposes of subsection (2)(b) or (c) if the person is identified —
  - (a) by an assumed identity under which the person is operating; or
  - (b) by a code name or number,so long as the assumed identity, code name or code number can be matched to the person's identity by reference to documentation kept by the Commissioner.
- (5) The authorisation may be granted subject to conditions specified in the authorisation.
- (6) The Commissioner may, in writing, vary or cancel the authorisation.
- (7) Unless it is sooner cancelled, an authorisation remains in force for the period specified in the authority.

**30. Commissioner may authorise integrity testing programmes**

- (1) The Commissioner may authorise an officer of the Commission or another person to conduct a programme (an “**integrity testing programme**”) to test the integrity of any particular police officer or class of police officers.
- (2) An integrity testing programme may involve an act or omission (by a person who is participating in the programme) that offers a police officer whose integrity is being tested the opportunity to engage in behaviour, whether lawful or unlawful, in contravention of the principles of integrity required of a police officer.
- (3) The authorisation must —
  - (a) be in writing;

- (b) specify the officer of the Commission responsible for the programme;
  - (c) specify the names of any persons who are authorised to participate in the programme;
  - (d) identify the integrity testing programme;
  - (e) specify the nature of the particular activities in which the persons specified in the authorisation are authorised to engage;
  - (f) specify a period, not exceeding 6 months, for which the authorisation is given;
  - (g) specify a date and time, being not earlier than its signing, when the authorisation comes into force; and
  - (h) be signed by the Commissioner.
- (4) For the purposes of subsection (3)(d) an integrity testing programme may be identified by reference to a plan of the programme held by the Commissioner.
- (5) A person is sufficiently identified for the purposes of subsection (3)(b) or (c) if the person is identified —
- (a) by an assumed identity under which the person is operating; or
  - (b) by a code name or number,
- so long as the assumed identity, code name or code number can be matched to the person's identity by reference to documentation kept by the Commissioner.
- (6) The authorisation may be granted subject to conditions specified in the authorisation.
- (7) The Commissioner may, in writing, vary or cancel the authorisation.
- (8) Unless it is sooner cancelled, an authorisation remains in force for the period specified in the authority.

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**31. Effect of authorisation**

- (1) While it is in force, an authorisation for a controlled operation or integrity testing programme authorises each person authorised to participate in the operation or programme to engage in the activities identified in the authorisation.
- (2) In any criminal proceedings, no evidence is to be excluded and no proceedings are to be stayed only by reason of the fact that a person who participated in an authorised controlled operation or authorised integrity testing programme was not authorised to participate in the operation.

**32. Protection from liability**

- (1) Despite any other law —
  - (a) a person who is authorised to participate in an authorised controlled operation or authorised integrity testing programme is not criminally liable for any act the person does, in good faith and in accordance with the terms of the authorisation, in the course of the operation or programme; and
  - (b) an activity engaged in by a person who is authorised to participate in an authorised controlled operation or authorised integrity testing programme in the course of or for the purpose of the operation or programme does not constitute corrupt conduct or criminal conduct if the activity is engaged in in good faith and in accordance with the terms of the authorisation.
- (2) Conduct of —
  - (a) the Commissioner; or
  - (b) a participant in an authorised controlled operation or authorised integrity testing programme,

does not, if the conduct was in good faith and for the purpose of executing this Part, subject the Commissioner or participant to any action, claim, liability or demand.

**33. Evidence**

A certificate signed by the Commissioner stating that, on a specified date or during a specified period, a specified person was authorised under this Part to participate in a controlled operation or integrity testing programme involving a specified act or omission is admissible in any legal proceedings and is conclusive evidence of the matters specified in the certificate.

**34. Report to Attorney General**

- (1) The Commission may furnish to the Attorney General a report containing information relating to —
  - (a) authorisations issued under this Part; and
  - (b) such other matters relating to authorised controlled operations and integrity testing as the Commission considers appropriate.
- (2) The Attorney General is to cause a report furnished by the Commission under subsection (1) to be laid before each House of Parliament as soon as practicable.

**Part 8 — *Surveillance Devices Act 1998* amended**

**35. The Act amended**

The amendments in this Part are to the *Surveillance Devices Act 1998*\*.

[\* *Act No. 56 of 1998.*

*For subsequent amendments see Act No. 35 of 2001.]*

**36. Section 4B inserted**

After section 4A the following section is inserted in Part 1 —

“

**4B. Application of Act to Royal Commission into the Police**

(1) In this section —

“**corrupt conduct**” has the same meaning as in the *Royal Commission (Police) Act 2002*;

“**Royal Commission**” has the same meaning as “Commission” in the *Royal Commission (Police) Act 2002*.

(2) This Act operates as if —

- (a) a reference in this Act to the Anti-Corruption Commission, other than in a provision listed in the Table to this subsection, included a reference to the Royal Commission;
- (b) a reference in this Act to an Anti-Corruption Commission officer, other than in the definitions in section 3(1) of “Anti-Corruption Commission Officer” and “authorised person”, included a reference to an officer of the Commission within the meaning of the *Royal Commission (Police) Act 2002*; and

- (c) a reference in this Act to an authorised person included, in the case of the Royal Commission, a reference to a person authorised by the Royal Commission.

**Table**

s. 3(1) “Anti-Corruption Commission”	s. 43(2)
s. 3(1) “authorised person”	s. 43(4)
s. 9(2)(a)(iii)	s. 44(1)(f)
s. 15(3)(b)	

- (3) This Act operates as if, for the purposes of the Royal Commission, in the provisions listed in the Table to this subsection —
  - (a) a reference to a suspected criminal offence included a reference to suspected corrupt conduct;
  - (b) a reference to an offence included a reference to an act of corrupt conduct; and
  - (c) a reference to a suspected offence included a reference to suspected corrupt conduct.

**Table**

s. 5(3)(b)	s. 13(8)(a)
s. 6(3)(b)(ii)	s.17(1)(a) and (b)
s. 13(1)(a) and (b)	

- (4) Section 9(2)(a) operates as if it included the following subparagraph —

“

- (iia) to the Royal Commission or to any person or persons authorised for the purpose by the Royal Commission;

”.

- (5) Section 15(3) operates as if it included the following paragraph —
- “
- (ba) in the case of an application by an officer of the Royal Commission, is required to attach an authorisation of the Royal Commission or a person delegated by the Royal Commission for the action proposed;
- ”.
- (6) The Royal Commission may furnish to the Attorney General a report containing information relating to —
- (a) applications for warrants and extensions of warrants, including the number of such applications and the orders made in respect of such applications;
- (b) applications for emergency authorisations, including the number of such applications and the authorisations issued in respect of such applications; and
- (c) such other matters relating to the use of surveillance devices and the administration of this Act as the Commission considers appropriate.
- (7) The Attorney General shall cause a report furnished by the Royal Commission under subsection (6) to be laid before each House of Parliament as soon as practicable.
- (8) Section 44(1) operates as if the reference in paragraph (f) to the chairman of the Anti-Corruption Commission included a reference to the Royal Commission.
- ”.

**Part 9 — Telecommunications (Interception) Western  
Australia Act 1996 amended**

**37. The Act amended**

The amendments in this Part are to the *Telecommunications (Interception) Western Australia Act 1996*\*.

[\* Act No. 44 of 1996.

*For subsequent amendments see Act No. 1 of 2000.]*

**38. Section 3A inserted**

After section 3 the following section is inserted in Part 1 —

“

**3A. Application of Act to Royal Commission into the  
Police**

This Act operates as if in section 3(1) —

(a) the following definition were included —

“

“**Royal Commission**” has the same meaning as  
“Commission” in the *Royal Commission (Police)  
Act 2002*;

”;

(b) the definition of “agency” included the  
following paragraph —

“ (bb) the Royal Commission; ”;

(c) the definitions of “certifying officer” and “chief  
officer” included the following paragraph —

“

(aa) in relation to the Royal Commission, the  
person appointed to be the Royal  
Commission;

”;

- (d) instead of the definition of “eligible authority” the following definition were included —

“

**“eligible authority”** means the Anti-Corruption Commission, the Royal Commission or the Police Force;

”;

- (e) the definition of “officer” included the following paragraph —

“

- (aa) in relation to the Royal Commission, an officer of the Commission within the meaning of the *Royal Commission (Police) Act 2002*;

”;

and

- (f) the definition of “responsible Minister” included the following paragraph —

“

- (aa) in relation to the Royal Commission, the Attorney General;

”.

”.

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**Part 10 — Prisons Act 1981 amended**

**39. The Act amended**

The amendments in this Part are to the *Prisons Act 1981*\*.

[\* Reprinted as at 22 December 2000.]

**40. Section 22 amended**

Section 22 is amended as follows:

- (a) by inserting before “Where” the subsection designation “(1)”;
- (b) by deleting “, inquest or Royal Commission” and inserting instead —  
“ or inquest ”;
- (c) at the end of the section by inserting the following subsection —

“

- (2) Where the presence of a prisoner is required for the purposes of a Royal Commission, a Commissioner appointed to be the Commission or to be a member of the Commission, or the superintendent of the prison in which the prisoner is confined, may, by order in writing, direct that the prisoner be brought up for those purposes to the place named in the order.

”.

## **Part 11 — Miscellaneous**

### **41. Contempt**

- (1) Where a contempt of the Commission is alleged to have taken place, the Commissioner may present to the Supreme Court a certificate setting out the details of the act or omission that the Commissioner considers constitutes the alleged contempt.
- (2) A certificate presented under subsection (1) is prima facie evidence of the matters certified within it.
- (3) Where a certificate is presented under subsection (1), the Supreme Court has jurisdiction as if the contempt were a contempt of that Court.
- (4) If, in relation to the Commission, there is any failure, refusal or contravention referred to in section 13(1), 14(1) or 18(10) of the 1968 Act, it may be dealt with under this section as a contempt of the Commission, and any defence that would have been available in proceedings under those sections in respect of the failure, refusal or contravention is available under this section.
- (5) A person is not liable to be punished for contempt under this section in respect of failure to comply with a notice served under section 5 or 6 of this Act if —
  - (a) the person establishes that there was a reasonable excuse for the act or omission concerned; or
  - (b) in the case of a failure without reasonable excuse to produce any document or other thing under section 6, the person proves that the document or other thing was not relevant to the inquiry.
- (6) Except as otherwise provided in this Act, a person required to comply with a notice served under section 5 or 6 has the same protection, and is subject to the same liabilities in any civil or criminal proceedings, as a witness in any case tried in the Supreme Court.

(7) In this section —

**“reasonable excuse”** means an excuse that would excuse a similar failure by a witness, or a person summoned as a witness, before the Supreme Court except that it does not include as an excuse for failing to comply with a notice that —

- (a) the production of the statement of information, document or other thing as required in the notice or summons might incriminate or tend to incriminate the person or render the person liable to a penalty; or
- (b) the production of the document or other thing would be in breach of an obligation of the person not to disclose information, or not to disclose the existence or contents of a document, whether the obligation arose under an enactment or otherwise.

#### 42. **Victimisation**

(1) A person who —

- (a) prejudices, or threatens to prejudice, the safety or career of another person;
- (b) intimidates or harasses, or threatens to intimidate or harass another person; or
- (c) does any act that is, or is likely to be, to the detriment of another person,

because that other person —

- (d) has assisted, is assisting or will or may in the future assist the Commission in the performance of its functions; or
- (e) has furnished, is furnishing or will or may in the future furnish information to the Commission,

is guilty of a crime.

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

**s. 43**

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- (2) This section operates in place of sections 29 and 30 of the 1968 Act.

**43. Secrecy**

- (1) An officer of the Commission must not, directly or indirectly —
- (a) make a record of any information; or
  - (b) divulge or communicate any information,

being information acquired by the person by reason of, or in the course of, the exercise of the person's functions as an officer of the Commission.

Penalty: Imprisonment for 2 years and a fine of \$8 000.

- (2) The Commissioner or an officer of the Commission cannot be required —
- (a) to produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions as Commissioner or an officer of the Commission; or
  - (b) to divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's functions as Commissioner or an officer of the Commission,

except for the purposes of —

- (c) a prosecution in respect of corrupt conduct or criminal conduct; or
  - (d) disciplinary measures.
- (3) Subsection (1) does not prevent the recording, divulging or communicating of information or the production of a document —
- (a) for the purposes of the Commission's inquiry and report or otherwise for the purposes of and in accordance with this Act or the 1968 Act;

- (b) for the purposes of a prosecution or disciplinary measures;
  - (c) for the purposes of compliance with the *Telecommunications (Interception) Western Australia Act 1996*;
  - (d) in accordance with a direction of the Commissioner, if the Commissioner certifies that it is necessary to do so in the public interest; or
  - (e) to any prescribed authority or person.
- (4) An authority or person to whom information is divulged or communicated or a document is given under subsection (3), and any person or employee under the control of that authority or person, is subject to the same rights, privileges, obligations and liabilities under subsections (1) and (2) in respect of that information as if he or she were a person to whom this section applies and had acquired the information in the exercise of the person's functions as Commissioner or an officer of the Commission.
- (5) In this section —
- “**court**” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;
- “**produce**” includes permit access to.

#### 44. Delegation

- (1) The Commissioner may delegate any of the Commission's functions under —
- (a) section 5, 6 or 7 of this Act; or
  - (b) section 9 or 10 of the 1968 Act,
- to the person appointed as Senior Counsel Assisting the Commission.

**s. 45**

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- (2) The person to whom a function is delegated under subsection (1) may only perform that function during the illness of the Commissioner or the absence of the Commissioner from Perth or the State.

**45. Protection from liability**

- (1) A matter or thing done by the Commission, the Commissioner or any person acting under the direction of the Commission or Commissioner which was done in good faith for the purposes of the Commission's inquiry or report or for the purpose of executing this or any other Act does not subject the Commissioner or the person so acting personally to any action, liability, claim or demand.
- (2) No criminal or civil liability attaches to any person for compliance or purported compliance in good faith with any requirement made under this Act.
- (3) In particular, if a person gives any statement of information or produces any document or other thing under section 5 or 6, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.
- (4) Any protection or immunity afforded by the 1968 Act and any protection existing apart from that Act and this section apply to any matter or thing done by the Commission, the Commissioner or any person acting under the direction of the Commission or Commissioner as if the matter or thing were done under that Act.

**46. Matter exempt from access**

Without limiting Schedule 1 clause 5(1) of the *Freedom of Information Act 1992*, matter created or maintained for the purposes of Part 6 or 7 is exempt matter for the purposes of that Act.

**47. Powers do not extend beyond end of Commission**

The powers conferred by sections 5, 6, 7, 9, 12, 18, 19, 22, 29 and 30 cannot be exercised after the end of the Commission.

**48. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act, or are necessary or convenient for giving effect to the purposes of this Act and in particular for the further implementation of Parts 6 and 7.



Defined Terms

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## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
1968 Act.....	3(1)
ACC Act .....	3(1)
agency .....	21
appropriate entry .....	24(3)
assumed identity approval.....	22(1)
chief employee .....	21
chief executive officer.....	21
Commission .....	3(1)
Commissioner .....	3(1)
controlled activity .....	28
controlled operation .....	28
corrupt conduct .....	3(1), 36
court .....	25(4), 43(5)
criminal conduct .....	3(1)
Deputy Parliamentary Commissioner .....	3(1)
disciplinary measures .....	3(1)
eligible authority .....	38
integrity testing programme .....	30(1)
legal practitioner .....	3(1)
officer of the Commission .....	3(1)
officer of the Parliamentary Commissioner .....	3(1)
organisation.....	21
Parliamentary Commissioner .....	3(1)
police complaint.....	17
premises .....	3(1)
produce .....	43(5)
public authority .....	3(1)
public officer.....	3(1)
reasonable excuse .....	41(7)
restriction on disclosure .....	13(2)
Royal Commission.....	36, 38
the matter .....	18(1), 19(1)