

**COMMISSION ON GOVERNMENT
ACT 1994**

(No. 20 of 1994)

ARRANGEMENT

PART 1 — PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Act binds Crown

PART 2 — FUNCTIONS OF COMMISSION

5. Commission's functions are to inquire and report on certain matters
6. Commission may decide not to make further inquiries into a matter
7. Reporting
8. Delivery and publication of reports

**PART 3 — ESTABLISHMENT AND PROCEEDINGS
OF COMMISSION**

Division 1 — Establishment

- 9. Commission established
- 10. Appointment and qualifications
- 11. Terms of appointment
- 12. Resignation and removal
- 13. Acting chairperson
- 14. Staff and consultants
- 15. Use of government staff etc.

Division 2 — Proceedings of Commission

- 16. Commission to consult and act openly
- 17. Access to certain Royal Commission records
- 18. Delegation
- 19. Meetings
- 20. Execution of documents
- 21. Financial administration

PART 4 — PARLIAMENTARY COMMITTEE

- 22. Committee to be established
- 23. Functions of committee

PART 5 — REGULATIONS

- 24. Regulations

PART 6 — DURATION OF ACT

- 25. Act is to expire after 2 years
- 26. Winding up of the Commission's affairs
- 27. Financial reporting

SCHEDULE 1

SPECIFIED MATTERS

WESTERN AUSTRALIA

**COMMISSION ON GOVERNMENT
ACT 1994**

No. 20 of 1994

AN ACT to establish a Commission to inquire into certain matters relating to public administration and relevant to the prevention of corrupt, illegal or improper conduct in the public sector.

[Assented to 10 June 1994.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY**Short title**

1. This Act may be cited as the *Commission on Government Act 1994*.

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

Definitions

3. In this Act, unless the contrary intention appears —

“**chairperson**” means the chairperson of the Commission and includes a person acting as chairperson under section 13;

“**Commission**” means the Commission established by section 9 (1) and includes a Commissioner acting separately under section 18;

“**Commissioner**” means the chairperson and a Commissioner appointed under section 10 (1);

“**Parliamentary Committee**” means the committee established under Part 4;

“**public official**” includes a Minister of the Crown and a member of Parliament;

“**Royal Commission**” means the Royal Commission into Commercial Activities of Government and Other Matters constituted by the persons appointed by the

commission issued by the Governor, and published in the *Gazette*, on 8 January 1991;

“specified matter” means a matter specified in Schedule 1 and includes part of a matter so specified.

Act binds Crown

4. This Act binds the Crown.

PART 2 — FUNCTIONS OF COMMISSION**Commission's functions are to inquire and report on certain matters**

5. The functions of the Commission are to inquire into —
- (a) the specified matters if and to the extent to which the Commission considers those matters to be relevant to the prevention of corrupt, illegal or improper conduct by or involving public officials;
 - (b) matters which, although not specified matters, are considered by the Commission to be relevant to the prevention of corrupt, illegal or improper conduct by or involving public officials; and
 - (c) any other matters considered by the Commission to be pertinent to matters into which it inquires under paragraphs (a) and (b),

and to report on those matters in accordance with sections 7 and 8.

Commission may decide not to make further inquiries into a matter

6. (1) If at any time the Commission considers that a specified matter has been addressed adequately by legislative or administrative action, or is of insufficient significance to merit further inquiry by the Commission, the Commission may make a determination to that effect.

(2) Despite section 5 (a), where a determination has been made about a specified matter the Commission is not to make any further inquiry into the matter and shall not report on the matter except under subsection (3) (b).

(3) A determination is to be —

- (a) recorded in the records of the Commission proceedings; and
- (b) mentioned in a report delivered under section 7.

Reporting

7. (1) The Commission is to report on the matters into which it has inquired under section 5 at such time or times as it thinks expedient but not later than 21 months after the day on which this Act commences.

(2) The Commission may report on a matter when it has completed its inquiry into the matter and is not required to withhold the report for inclusion in a consolidated interim or final report.

(3) A report on any matter (other than a report of a determination under section 6 (3) (b)) is to include recommendations with respect to the matter and an objective summary of and comment on all considerations of which the Commission is aware that support or oppose or otherwise are pertinent to its recommendations.

Delivery and publication of reports

8. (1) A report of the Commission under section 7 is to be delivered —

- (a) subject to subsection (4), to the chairperson of the Parliamentary Committee; and
- (b) to the Minister.

(2) Subject to subsection (3), the chairperson of the Parliamentary Committee is to cause a report received by him or her to be laid before each House of Parliament on the next sitting day of that House after it is received by him or her.

(3) If on the day of receipt of a report the chairperson is of the opinion that a House of Parliament will not sit within the next 7 days, he or she is to deliver a copy of the report to the clerk of that House.

(4) If a House of Parliament has been prorogued or dissolved, it is sufficient compliance with subsection (1) if a report is delivered to the Minister only; and in that event the Minister is to deliver a copy of the report to the clerk of that House.

(5) A copy of a report delivered to the clerk of a House under this section —

(a) is to be taken to have been laid before that House;

(b) is to be printed by authority of the clerk; and

(c) is to be taken to be a document published under the authority of that House.

(6) The laying of a copy of a report that is taken to have occurred under subsection (5) (a) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the clerk.

**PART 3 — ESTABLISHMENT AND PROCEEDINGS
OF COMMISSION**

Division 1 — Establishment

Commission established

9. (1) A body called the Commission on Government is established.

(2) The Commission consists of —

- (a) a chairperson; and
- (b) 4 other Commissioners.

Appointment and qualifications

10. (1) The chairperson and other Commissioners are to be appointed by the Governor on the recommendation of the Minister.

(2) The Minister is not to recommend an appointment under subsection (1) unless —

- (a) the Minister is of the opinion that the proposed appointee has knowledge and experience relevant to the specified matters or a majority of those matters;
- (b) the Minister has consulted the Leader of the Opposition in the Legislative Assembly on the proposed appointment; and
- (c) the Parliamentary Committee has approved of the proposed appointment.

Terms of appointment

11. (1) Subject to section 12, a Commissioner is to hold office until this Act expires under section 25.

(2) The terms and conditions of a Commissioner's appointment, including the remuneration and allowances to be paid to a Commissioner, are to be determined by the Governor.

(3) A person holds office as chairperson on such full-time or part-time basis as the Governor determines in relation to that person.

(4) A person holds office as a Commissioner (other than the chairperson) on such part-time basis as the Governor determines in relation to that person.

(5) In determining the remuneration and allowances to be paid to a Commissioner the Governor is to act on the recommendation of the Salaries and Allowances Tribunal established under the *Salaries and Allowances Act 1975*.

(6) The Salaries and Allowances Tribunal is to make any recommendations that are required from time to time under subsection (5) and, for the purpose of performing that function, it has all the powers given to it by section 10 (1) and (2) of the *Salaries and Allowances Act 1975*.

Resignation and removal

12. (1) The office of a Commissioner becomes vacant if he or she —

- (a) resigns the office by written notice delivered to the Minister;
- (b) is an insolvent under administration within the meaning of the Corporations Law;
- (c) is removed from office under subsection (2).

(2) The Houses of Parliament may, by resolution, request the Governor to remove a Commissioner from office on the grounds of neglect of duty, misbehaviour, or mental or physical incapacity, and the Governor is to comply with any such request.

Acting chairperson

13. (1) The Governor may on the recommendation of the Minister appoint another Commissioner to act as chairperson —

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the chairperson is absent from duty or from the State or is, for any reason, unable to perform the duties of the office.

(2) The Minister is not to recommend an appointment under subsection (1) unless he or she has consulted the Parliamentary Committee on the proposed appointment.

Staff and consultants

14. (1) The Commission may appoint such research and support staff as it considers necessary for the carrying out of this Act.

(2) Subject to the *Workplace Agreements Act 1993* and the *Industrial Relations Act 1979*, the terms and conditions of service of a person appointed under subsection (1) are those determined by the Commission.

(3) The *Public Service Act 1978* does not apply to a person appointed under subsection (1).

(4) The Commission may engage persons under contracts for services to provide such professional, technical or other assistance as the Commissioner considers necessary for the carrying out of this Act.

Use of government staff etc.

15. (1) The Commission may by arrangement make use, either full-time or part-time, of —

- (a) the services of staff employed in the public service or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department of the public service or of a State agency or instrumentality.

(2) An arrangement under subsection (1) is to be made between the Commission and the department, agency or instrumentality concerned and, where the *Public Service Act 1978* applies, after consultation with the Public Service Commissioner.

Division 2 — Proceedings of Commission**Commission to consult and act openly**

16. (1) In performing its functions the Commission —

- (a) is to take all such steps as it considers practicable to consult with the public on the matters for inquiry;
- (b) is to act openly, and in particular is to make available to the public all submissions, objections and suggestions made to it in respect of those matters; and
- (c) is to co-operate with the Parliamentary Committee and provide such information to the Committee as it requests.

(2) The Commission need not comply with subsection (1) (b) in a particular case if in the opinion of the Commission it would be contrary to the public interest or unfair to any person for it to do so in that case.

(3) In complying with subsection (1) (b) and (c) the Commission need not disclose the identity of a person who made a submission, objection or suggestion.

Access to certain Royal Commission records

17. (1) Despite anything contained in the *Royal Commission (Custody of Records) Act 1992* —

- (a) any person, other than the Director of Public Prosecutions, who has custody under that Act of a relevant record of the Royal Commission is to allow the Commission to have access to that record for the purpose of performing its functions under this Act if the Commission requests that access;
- (b) where the Director of Public Prosecutions has custody of a relevant record of the Royal Commission, the Director of Public Prosecutions may allow the Commission to have access to that record for the purpose of performing its functions under this Act.

(2) Where the Commission is allowed access to a record under subsection (1) the Commission is to deal with the record in a manner that is consistent with any confidentiality or restriction on publication or public access that applies to that record.

(3) The Commission is to return the record to the person who provided the access as soon as it has finished using the record.

(4) Section 16 of the *Royal Commission (Custody of Records) Act 1992* applies in relation to the provision of access to a record under subsection (1).

(5) In this section —

“record of the Royal Commission” and **“terms of reference”** have the same meanings as they have in the *Royal Commission (Custody of Records) Act 1992*;

“relevant record” means submissions obtained or records prepared or obtained by the Royal Commission in respect of paragraph (1) 1 (e) or (1) 2 (e) of the terms of reference.

Delegation

18. The Commission may delegate to one or more Commissioners the performance of any function of the Commission in respect of any matter for inquiry to enable that Commissioner or those Commissioners to act separately from the other or others in that respect.

Meetings

19. (1) The first meeting of the Commission is to be convened by the chairperson and, subject to subsection (2), subsequent meetings are to be held at such times and places as the Commission determines.

(2) A special meeting of the Commission may at any time be convened by the chairperson.

(3) The chairperson is to preside at all meetings of the Commission at which he or she is present.

(4) If the chairperson is absent from a meeting the Commissioners present are to appoint one of their number to preside.

(5) Four Commissioners constitute a quorum for a meeting of the Commission.

(6) Questions arising at a meeting of the Commission are to be decided by a majority of the votes of the Commissioners present.

(7) If the votes of the Commissioners present at a meeting and voting on a question are equally divided, the question is decided in the negative.

(8) Subsections (1) to (7) have effect subject to any delegation under section 18.

(9) Subject to this Act, the Commission is to determine its own procedure.

Execution of documents

20. (1) The chairperson may sign agreements and instruments on behalf of the Commission and an agreement or instrument so signed is to be taken to be signed by authority of the Commission unless the contrary is shown.

(2) Subsection (1) does not apply to reports under section 7.

Financial administration

21. (1) There is to be an account at the Treasury called the "Commission on Government Account".

(2) The account referred to in subsection (1) —

(a) is to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; and

(b) is to be the account —

(i) to which all funds of the Commission are to be credited; and

- (ii) to which all expenditure incurred by the Commission in performing its functions under this Act is to be charged.

(3) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

PART 4 — PARLIAMENTARY COMMITTEE

Committee to be established

22. (1) A joint committee of both Houses of Parliament is to be established for the purposes of this Act.

(2) The committee is to be established in accordance with the rules and practices of Parliament.

Functions of committee

23. The functions of the committee are —

- (a) to monitor and to review the performance by the Commission of its functions;
- (b) to report at its earliest opportunity to both Houses of Parliament, with such comments as it thinks fit, on any matter pertaining to the Commission or the performance of its functions to which, in the opinion of the committee, the attention of Parliament should be directed;
- (c) to examine the report or reports of the Commission delivered under section 8 and report at its earliest opportunity to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- (d) to report at its earliest opportunity to both Houses of Parliament on any matter relating to its functions that is referred to it by both Houses of Parliament;
- (e) to advise each House of Parliament of the consideration and general nature of all contracts entered into by the Commission under section 14 (4).

PART 5 — REGULATIONS

Regulations

24. The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

PART 6 — DURATION OF ACT

Act is to expire after 2 years

25. This Act is to be in operation for 2 years from the day on which it commences and then expires.

Winding up of the Commission's affairs

26. (1) On the expiry of this Act —

- (a) all property that immediately before that expiry was vested in the Commission is vested in the Minister;
- (b) subject to section 27 (7), all records and data of the Commission pass to the Minister;
- (c) any right or liability of the Commission that was in existence immediately before that expiry devolves on the Minister;
- (d) any agreement made by and with the Commission and having effect immediately before that expiry has effect as an agreement made by and with the Minister and may be enforced by or against the Minister accordingly; and
- (e) any legal or other proceedings or any remedies that might, but for this section, have been commenced or continued or available by or against or to the Commission may be commenced or continued, or shall be available, by or against or to the Minister, as the case requires.

(2) The provisions of subsection (1) have effect for the purpose of the winding up of the affairs of the Commission and the Minister is to wind up those affairs as soon as is practicable and may exercise any powers that are necessary for that purpose.

(3) Despite section 25, the Commission on Government Account referred to in section 21 (1) may be kept open and operated on by the Minister for the purposes of this section.

(4) For the purposes of this section a reference to the Commission in —

- (a) a written law; or
- (b) a document in existence,

immediately before the expiry of this Act is to be construed after that expiry as a reference to the Minister.

Financial reporting

27. (1) If sections 66 to 69 of the *Financial Administration and Audit Act 1985* have not been complied with before the expiry of this Act in relation to the affairs of the Commission for a financial year that ended before that expiry, the Minister is to cause those sections to be complied with in relation to that year as soon as practicable after that expiry.

(2) As soon as practicable after the expiry of this Act the Minister is to cause sections 66 to 69 of the *Financial Administration and Audit Act 1985* to be complied with in relation to the affairs of the Commission for the period from 1 July last preceding the expiry of this Act to that expiry, and the report is to be regarded as an annual report for the purposes of section 69 of that Act.

(3) If this Act expires at the end of 30 June 1996 —

- (a) subsection (2) does not apply; and
- (b) the Minister is to cause sections 66 to 69 of the *Financial Administration and Audit Act 1985* to be complied with in relation to the affairs of the Commission for the year ending on 30 June 1996.

(4) As soon as practicable after the winding up of the affairs of the Commission has been completed the Minister is to cause to be prepared and submitted for audit to the Auditor General a report containing —

- (a) financial statements of receipts and payments relating to the winding up; and
- (b) any other information relating to the winding up that the Minister considers appropriate for inclusion in the report.

(5) The Minister is to cause copies of the report under subsection (4) together with a copy of the opinion of the Auditor General to be laid before both Houses of Parliament within 21 days of receiving the Auditor General's opinion.

(6) Section 69 (2), (3) and (4) of the *Financial Administration and Audit Act 1985* apply to the report under subsection (4) as if it were a report under section 66 of that Act.

(7) After the report under subsection (4) has been prepared and delivered, the Minister is to pass the records and data of the Commission to the Clerk of the Parliaments.

SCHEDULE 1

[Section 3]

SPECIFIED MATTERS

[*Note: references in brackets are to chapters of Part II of the Royal Commission's Report.*]

1. The secrecy laws of the State, both statutory and common law, as they apply to information possessed by government, its officials and agencies. (Chapter 2.3)
2. The operation of Cabinet secrecy.
3. The operation and adequacy of the *Financial Administration and Audit Act 1985* (particularly section 58C) with regard to providing Ministers, the Parliament and the Auditor General with access to all information held by, or relating to undertakings or commitments of, organizations in the public sector. (Chapter 2.5)
4. The organization, role and functions of media secretaries of the government and its agencies, and of the Government Media Office. (Chapter 2.7)
5. The functions and terms of reference of an Administrative Appeals Tribunal and its relationship to the respective roles of the judiciary and the executive. (Chapter 3.5)
6. The legislation governing the functions of the Auditor General with regard to the obligations of persons to answer any question put by the Auditor General and to produce any relevant documents, notwithstanding that the answer or the information may result in or tend towards self-incrimination. (Chapter 3.10)
7. The necessity and framework for legislation governing monitoring, control and Parliamentary scrutiny of State-owned companies, trading enterprises, partnerships and statutory authorities. (Chapter 3.14)
8. The appointment of officers employed in the public sector to Boards and Committees with particular reference to

Recommendation 16 in Part II of the Report of the Royal Commission. (Chapter 3.14)

9. The terms that would be appropriate for legislation to establish a separate and independent archives authority for the State. (Chapter 4.3)
10. The standards of conduct expected of all public officials for the purposes of —
 - (a) their formulation in codes of conduct; and
 - (b) determining what associated measures should be taken to facilitate adherence to those standards.(Chapter 4.6)
11. The legislative and other measures that should be taken —
 - (a) to facilitate the making and the investigation of whistleblowing complaints;
 - (b) to establish appropriate and effective protections for whistleblowers; and
 - (c) to accommodate any necessary protection for those against whom allegations are made.(Chapter 4.7)
12. The registration of the pecuniary and other interests of members of Parliament, ministers, senior public servants, members and senior officers of statutory authorities and State-owned companies, and of other officials for whom registration in some form may be appropriate given their official responsibilities. (Chapter 4.8)
13. The appropriate role, powers and functions of the Official Corruption Commission for the prevention and exposure of impropriety or corruption within the public sector with consideration given to the respective roles of other agencies and legislation. (Chapter 4.9)

14. The most effective means of securing the financial independence of Parliament so as to enable Parliament to undertake its business. (Chapter 5.2)
15. The electoral system for representation in the Legislative Council. (Chapter 5.3)
16. The electoral system for representation in the Legislative Assembly. (Chapter 5.3)
17. The means best suited to be adopted by Parliament to bring the entire public sector under its scrutiny and review, having regard particularly —
 - (a) to the use of parliamentary committees for the purpose;
 - (b) to question time; and
 - (c) to the manner in which the departments and agencies of government should be required to report to Parliament.

(Chapter 5.4)
18. The role of parliamentary committees on legislation including the accommodation of the right of the public to make representations on legislative measures referred to any such committee. (Chapter 5.7)
19. The operation of the *Parliamentary Privileges Act 1891* with a view to permitting proceedings in Parliament to be questioned in a court or like place while preserving the principle of free speech in Parliament. (Chapter 5.8)
20. The disclosure of political donations and contributions. (Chapter 5.9) .
21. The disclosure of electoral expenditure, and such other measures relating to political finance as may enhance the integrity of the system of representative government. (Chapter 5.9)

22. The appropriate guidelines to be observed by caretaker governments in relation to their conduct and management prior to elections.
23. The desirability of regulating —
 - (a) government advertising during an election period; and
 - (b) travel by persons in or connected with the government during an election period.

(Chapter 5.9)

24. The adequacy of the processes by which the constitutional laws of the State may be changed.

*NOTE: References in this Schedule to “**agencies**” and the “**public sector**” are not limited to persons or bodies that represent the Crown.*