

WESTERN AUSTRALIA

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# OFFICIAL CORRUPTION COMMISSION ACT

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No. 52 of 1988

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**AN ACT to provide for the appointment of an Official Corruption Commission for receiving and considering allegations of corruption made against public officers and for incidental purposes.**

*[Assented to 8 December 1988]*

The Parliament of Western Australia enacts as follows:

## PART I—PRELIMINARY

### Short title

1. This Act may be cited as the *Official Corruption Commission Act 1988*.

### Commencement

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

### Interpretation

3. In this Act, unless the context otherwise requires—

“Commission” means the Official Corruption Commission established under section 5;

“member” means a member of the Commission; and

“public officer” has the same meaning as in *The Criminal Code* and also includes a member of Parliament.

### Application

4. The Commission may receive information and otherwise exercise its functions in relation to acts, omissions or conduct occurring before or after the coming into operation of this Act.

## PART II—THE OFFICIAL CORRUPTION COMMISSION

### Official Corruption Commission

5. (1) There is established by this section a Commission by the name of the Official Corruption Commission.

(2) The Commission shall consist of three members appointed by the Governor of whom—

(a) one shall be a person who has held office as a Judge, District Court Judge, magistrate or commissioned officer of the police force; and

(b) two shall be persons who are not public officers.

(3) The appointments referred to in subsection (2) shall be made in accordance with the recommendation of a committee consisting of—

(a) the Chief Justice;

(b) the Chief Judge of the District Court; and

(c) the Commissioner of Police.

(4) A member shall hold office for such term, not exceeding four years, as is specified in his instrument of appointment, and is eligible for reappointment.

(5) The office of a member becomes vacant if—

- (a) he resigns his office by written notice addressed to the Governor;
- (b) he is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
- (c) he is removed from office by the Governor on the grounds of misbehaviour, incompetence, or mental or physical incapacity impairing the performance of his duties and proved to the satisfaction of the Governor.

(6) The Governor shall appoint one of the members to be the chairman of the Commission.

(7) A member shall be paid such fees and allowances as are determined from time to time by the Governor.

### **Officers of the Commission**

6. (1) The Commission may appoint such officers as it considers necessary for the purpose of enabling the functions of the Commission properly to be carried out.

(2) Subject to this Act, the terms and conditions of service of officers of the Commission shall be such as the Commission determines.

(3) The Public Service Act 1978 does not apply to officers of the Commission.

(4) When an officer of the Public Service becomes an officer of the Commission he is entitled to retain all his existing and accruing rights, including any rights under the Superannuation and Family Benefits Act 1938, as if his service as such an officer were a continuation of his service as an officer of the Public Service.

(5) When a person ceases to be an officer of the Commission and becomes an officer of the Public Service his service as an officer of the Commission shall be regarded as service in the Public Service for the purposes of determining his rights as an officer of the Public Service and for the purposes of the Superannuation and Family Benefits Act 1938.

(6) An officer of the Commission shall, before he commences his duties as such, take an oath or affirmation, to be administered by the chairman of the Commission, that, except in accordance with this Act, he will not divulge any information received by him under this Act.

### Functions of Commission

7. (1) The functions of the Commission are to—

- (a) receive information furnished to it by any person who alleges that a public officer has corruptly acted or corruptly failed to act in the performance or discharge of the functions of his office or employment or has corruptly taken advantage of his position as holder of that office or employment to obtain any benefit for himself or any other person or has committed any other offence under section 60 or 61 or Chapter XIII of *The Criminal Code*;
- (b) consider whether, in its opinion, the matter should be referred to a person or body who, or which, is empowered by law to investigate and take action in relation to allegations of the kind made; and
- (c) consider every report furnished to the Commission by a person or body under subsection (5).

(2) The information referred to in subsection (1) (a) may be furnished to the Commission orally or in writing, but the Commission may then seek from the person furnishing that information such further information, in such form as it thinks fit, as it may require to fulfil its functions.

(3) Where the Commission is of the opinion that a matter should be referred to a person or body referred to in subsection (1) (b) it shall, as soon as possible after forming that opinion, forward a report and any recommendations it wishes to make on the matter to that person or body and shall inform the person who made the allegations concerned that it has done so.

(4) Where the Commission is of the opinion that the reference of a matter to a person or body referred to in subsection (1) (b) is not warranted, it shall so inform the person who made the allegations concerned.

(5) Where a matter is referred to a person or body referred to in subsection (1) (b), that person or body shall, as soon as possible after discharging its functions in respect of that matter, forward a report to the Commission as to the action taken by the person or body concerning that matter.

**Application of Financial Administration and Audit Act 1985 and annual report**

8. 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 III—MISCELLANEOUS****Protection from civil actions**

9. (1) The Commission, a member of the Commission or an officer of the Commission is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function under this Act.

(2) Where an allegation has been made to the Commission or any information has been furnished to the Commission the person who made the allegation or furnished the information is not liable to an action, suit or other proceeding by reason only that the allegation was made or the information was furnished.

**False or misleading information**

10. A person who furnishes to the Commission information containing a statement that to that person's knowledge is false or misleading in a material particular commits an offence.

Penalty: \$2 500 or imprisonment for 3 months, or both.

**Non-disclosure of Information**

11. (1) A person who is, or has at any time been, a member or an officer of the Commission shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act or in the performance or exercise of a function under this Act—

- (a) make a record of, or divulge or communicate to any person, any information received by him in his capacity as member or officer of the Commission;
- (b) make use of any such information as is mentioned in paragraph (a); or

- (c) produce to any person a document furnished for the purposes of this Act.

Penalty: \$2 500 or imprisonment for three months, or both.

## Rules of Parliament

**12.** (1) Rules of Parliament may be made for prescribing procedures to be adopted by the Commission in the exercise of its functions under this Act and for prescribing any other matter necessary or convenient for the due administration of this Act.

(2) The Rules of Parliament referred to in this section are rules that have been agreed upon by each House of Parliament in accordance with the Rules and Orders thereof.

(3) Rules of Parliament made under this Act shall be published in the *Gazette*.

(4) Section 42 of the Interpretation Act 1984 does not apply to Rules of Parliament made under this Act.

## Consequential amendments

**13.** (1) Schedule 1 to the *Government Employees Superannuation Act 1987\** is amended in Part A by inserting in the appropriate alphabetical position the following—

“ Official Corruption Commission ”.

[\*Act No. 25 of 1987 as amended by Acts Nos. 83 and 91 of 1987.]

(2) Schedule 1 to the *Financial Administration and Audit Act 1985\** is amended by inserting in the appropriate alphabetical position the following—

“ Official Corruption Commission ”.

[\*Reprinted as at 4 March 1987 and amended by Acts Nos. 9, 32, 65, 89 and 113 of 1987.]

**Review of Act**

14. (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiry of 2 years from its commencement and, in the course of that review, the Minister shall consider and have regard to—

- (a) the effectiveness of the Commission;
- (b) the need for the continuation of the functions of the Commission; and
- (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on the review carried out under subsection (1) and shall as soon as practicable, cause that report to be laid before each House of Parliament.

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