

## ROYAL COMMISSIONS.

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No. 65 of 1968.

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AN ACT relating to Royal Commissions and for purposes connected therewith and to repeal the Royal Commissioners' Powers Act, 1902-1956.

[Assented to 18th November, 1968.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Royal Commissions Act, 1968*. Short title.

2. The Royal Commissioners' Powers Act, 1902-1956, is repealed. Repeal.

## Application.

3. This Act applies in relation to any Royal Commission appointed before the commencement of this Act as well as in relation to a Royal Commission appointed after its commencement, but this section shall not be construed to authorize the application of this Act to proceedings in respect of offences committed before its commencement.

## Interpretation.

4. In this Act unless the contrary intention appears—

“Chairman” means a person appointed to be chairman of a Commission and if there is but one Commissioner then it means that Commissioner;

“Commission” means a Royal Commission constituted pursuant to this Act or any other power and includes a person acting in the exercise of his duty as a Commissioner;

“Commissioner” means a person appointed to be a Commission or to be a member of a Commission;

“section” means a section of this Act.

## Power to appoint Commission.

5. Without in any way prejudicing, limiting, or derogating from the power of the Governor to make or authorize any inquiry, or to issue any Commission to make any inquiry, the Governor may, under the Public Seal of the State, appoint any person or persons to be a Royal Commission, generally or upon such terms of appointment as the Governor thinks fit, to inquire into and report upon, and, where so required or authorized by terms of appointment, to make recommendations in respect of any matter specified in the appointment.

## Chairman.

6. Where more than one person is appointed as a Commission the Governor may appoint one of them to be Chairman of the Commission.

7. Without in any way prejudicing, limiting, or derogating from the power of a Commission in respect of the matter of its inquiry, a Commission may do all such things as are necessary or incidental to the exercise of its function as a Commission and to the performance of its terms of appointment, if any.

Powers of  
Commission.

8. For the purposes of this Act, where the members of a Select Committee of either House of Parliament are appointed as the members of a Commission, a majority of the members shall form a quorum at any meeting and any decision of a majority of members shall be the decision of the Commission.

Select  
Committee  
appointed as  
a Royal  
Commission.

9. The Chairman may cause a summons in writing under his hand to be served upon any person requiring him to attend the Commission, at a time and place named in the summons, and then and there to give evidence and to produce any books, documents, or writings in his custody or control which he is required by the summons to produce.

Power to  
summon  
witnesses  
and  
documents.

10. A person who has been served with a summons pursuant to section 9 shall, unless excused by the Chairman, attend as required by the summons and report himself to the Commission from day to day until released from further attendance by the Chairman.

Duty of  
witness to  
continue in  
attendance.

11. A Commissioner may administer an oath to any person appearing as a witness before the Commission, whether the witness has been summoned or appears without being summoned, and may examine the witness on oath.

Power to  
examine on  
oath.

12. (1) Where a witness to be examined before a Commission conscientiously objects to take an oath, he may make an affirmation that he so objects

Affirmation  
in lieu of  
oath.

and that he will state the truth, the whole truth, and nothing but the truth, to all questions that may be asked him.

(2) An affirmation made pursuant to subsection (1) of this section is of the same force and effect and entails the same liabilities as an oath.

Penalty for failing to attend or produce documents.

13. (1) If a person who has been served with a summons pursuant to section 9 fails without reasonable excuse to attend as required by the summons and section 10, or to produce any documents, books, or writings in his custody or control which he was required by the summons to produce, he is guilty of an offence.

Penalty: One thousand dollars.

(2) It is a defence to a prosecution pursuant to subsection (1) of this section for failing without reasonable excuse to produce any documents, books, or writings, if the defendant proves that the documents, books, or writings were not relevant to the inquiry.

(3) In this section "reasonable excuse", in respect of an act or omission, means such an excuse as would excuse an act or omission of a similar nature by a witness or a person summoned as a witness before the Supreme Court.

Penalty for refusing to be sworn or to give evidence.

14. If a person who has been served with a summons pursuant to section 9 attends as required by the summons and section 10 but refuses to be sworn or to make an affirmation or refuses to answer any question relevant to the inquiry put to him by a Commissioner he is guilty of an offence.

Penalty: One thousand dollars.

Acts or omissions on different days to constitute separate offences.

15. Where a person has on any day done or omitted to do something, and his act or omission is an offence pursuant to section 13 or section 14, and

he does or omits to do the same thing at any meeting of the Commission held on some other day, each such act or omission is a separate offence.

16. (1) If a person who has been served with a summons pursuant to section 9 fails to attend as required by the summons and section 10, the Chairman may, on proof by statutory declaration of the service of the summons, issue a warrant for the apprehension of that person.

Arrest of witness failing to appear.

(2) Subject to section 17, a warrant issued pursuant to subsection (1) of this section shall authorize the apprehension of the person and his being brought before the Commission and his detention in custody for that purpose until he is released by order of the Chairman or, on appeal, by order of a Judge or the Full Court of the Supreme Court, as the case may be.

(3) A warrant issued pursuant to subsections (1) and (2) of this section may be executed by a member of the Police Force of the State, or by any person to whom it is addressed, and the person executing it has the power to break and enter any place, building or vessel for the purpose of executing it.

(4) The apprehension of a witness under this section does not relieve him from any liability incurred by him by reason of his non-compliance with the summons.

17. In respect of an apprehension pursuant to section 16, an appeal lies to a Judge or, where one of the Commissioners or the sole Commissioner is a Judge, to the Full Court of the Supreme Court.

Appeal against apprehension.

18. Where any person, who has been convicted of an offence against section 13 or section 14, is subsequently convicted on information by the Attorney General of an offence against either of those sections, committed by him after the

Penalty for subsequent offence.

firstmentioned conviction and in relation to the same Commission, he is liable to a penalty of not less than One thousand dollars and not more than Two thousand dollars, and to imprisonment for such period not exceeding three months as the Court thinks fit to order.

Non  
disclosure of  
secret  
process.

19. (1) Nothing in this Act shall make it compulsory for a witness before a Commission to disclose to the Commission any secret process of manufacture.

Evidence in  
private.

(2) If a witness before a Commission requests that his evidence relating to a particular subject be taken in private on the ground that the evidence relates to the profits or financial position of any person, and that the taking of the evidence in public would be unfairly prejudicial to the interests of that person, the Commission may, if it thinks proper, take that evidence in private, and a person who is not expressly authorized by the Commission to be present shall not be present during the taking of that evidence.

(3) A Commission may direct that any evidence given before it, or the contents of any documents, books or writings produced at the inquiry, shall not be published.

(4) A person who, without the permission of the Governor, makes any publication in contravention of any direction given under subsection (3) of this section is guilty of an offence.

Penalty: One thousand dollars or imprisonment for six months.

(5) This section shall be read as in aid of and not as in derogation of the Commission's general powers to order that any evidence may be taken in private.

20. A statement or disclosure made by a witness in answer to any question put to him by a Commission or any of the Commissioners shall not (except in proceedings for an offence against this Act) be admissible in evidence against him in any civil or criminal proceedings in any Court in this State.

Statements made by witness not admissible in evidence against him.

21. A Commission, a Commissioner, or a person thereto authorized in writing by the Chairman may inspect any documents, books, or writings produced before the Commission, and may retain them for such reasonable period as it or he thinks fit, and may make copies of such matter as is relevant to the inquiry or take extracts from them.

Power of Commission in relation to documents produced.

22. A person appointed by the Attorney General to assist a Commission, or authorized by a Commission to appear before it for the purpose of representing any person, may, so far as the Commission thinks proper, examine or cross-examine any witness on any matter which the Commission deems relevant to the inquiry, and any witness so examined or cross-examined shall have the same protection and be subject to the same liabilities as if examined by a Commissioner.

Examination of witnesses by counsel, etc.

23. (1) Where a person appears as a witness before a Commission, the Treasurer of the State shall pay to that person a reasonable sum for the expenses of his attendance, certified by the Chairman in accordance with a scale which may be prescribed or, if a scale is not prescribed, such sum as the Chairman certifies as reasonable.

Payment of witnesses.

(2) For the purposes of subsection (1) of this section the Public Account is hereby, to the necessary extent, appropriated accordingly.

Giving false  
testimony.

24. A witness before a Commission who knowingly gives false testimony touching any matter, material in the inquiry being made by the Commission, is guilty of a misdemeanour.

Penalty: Imprisonment for five years.

Bribery of  
witness.

25. A person who—

- (a) gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for, any person, upon any agreement or understanding that any person called or to be called as a witness before a Commission shall give false testimony or withhold true testimony; or
- (b) attempts by any means to induce a person called or to be called as a witness before a Commission to give false testimony, or to withhold true testimony; or
- (c) asks, receives or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself, or any other person, upon any agreement or understanding that any person shall as a witness before a Commission give false testimony or withhold true testimony,

is guilty of a misdemeanour.

Penalty: Imprisonment for five years.

Fraud on  
witness.

26. A person who practises any fraud or deceit on, or knowingly makes or exhibits any false statement, representation, token, or writing to, any person called or to be called as a witness before any Commission with intent to affect the testimony of that person as a witness, is guilty of a misdemeanour.

Penalty: Imprisonment for two years.



27. A person who, knowing that a book, document, or writing is or may be required in evidence before a Commission, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being effectively used in evidence, is guilty of a misdemeanour.

Destroying  
books or  
documents.

Penalty: Imprisonment for two years.

28. A person who wilfully prevents or wilfully endeavours to prevent a person who has been summoned to attend as a witness before any Commission from attending as a witness or from producing anything in evidence pursuant to the summons to attend is guilty of a misdemeanour.

Preventing  
witness from  
attending.

Penalty: Imprisonment for one year.

29. A person who uses, causes, inflicts, or procures, any violence, punishment, damage, loss, or disadvantage to any other person for or on account of his having appeared as a witness before any Commission, or for or on account of any evidence given by him before any Commission, is guilty of a misdemeanour.

Injury to  
witness.

Penalty: One thousand dollars, or imprisonment for one year.

30. (1) An employer who dismisses an employee from his employment, or prejudices an employee in his employment, for or on account of the employee having appeared as a witness before a Commission, or for or on account of the employee having given evidence before a Commission, is guilty of a misdemeanour.

Dismissal by  
employers of  
witness.

Penalty: One thousand dollars, or imprisonment for one year.

(2) In a proceeding for an offence against subsection (1) of this section it lies upon the employer to prove that the employee shown to have been

dismissed or prejudiced in his employment was so dismissed or prejudiced for some reason other than the reasons mentioned in that subsection or any of them.

Protection to  
Commis-  
sioners,  
witnesses,  
persons  
appearing.

31. (1) A Commissioner has in the exercise of his duty as Commissioner, the same protection and immunity as a Judge has, in the exercise of his duties as a Judge.

(2) A witness summoned to attend or appearing before the Commission has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities in any civil or criminal proceeding, as a witness in any case tried in the Supreme Court.

(3) A person appointed by the Attorney General to assist a Commission or authorized by the Commission to appear before it for the purpose of representing another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court and, where the person so appointed or authorized is a barrister or solicitor, he is subject to the same liabilities as he would be in appearing before that Court.

Proceedings  
for  
defamation  
not to lie.

32. No action or proceeding, civil or criminal, lies against the Crown in right of the State against a Minister, or against a person employed or engaged by the Crown in right of the State, in respect of the printing or publishing of—

(a) a transcript or proceedings of a Commission; or

(b) a report of, or a recommendation made by, a Commission.

Privilege,  
protection  
or immunity  
not limited  
or abridged.

33. Sections 31 and 32 do not limit or abridge any privilege, protection, or immunity existing apart from those sections.

34. Proceedings for offences against this Act may be instituted by any person.

Proceedings  
for an  
offence.

35. Where a pecuniary penalty is adjudged to be paid by a person convicted of an offence against this Act the Court may—

Powers of  
Court on  
conviction  
as regards  
pecuniary  
penalties.

- (a) commit that person to gaol until the penalty is paid;
- (b) release that person upon his giving security for the payment of the penalty; or
- (c) exercise for the enforcement of the recovery of the penalty any power of distress or execution or imprisonment on default possessed by the Court for the enforcement and recovery of penalties in any other case.

36. The powers mentioned in paragraph (c) of section 35 may be exercised in the case of a pecuniary penalty adjudged to be paid by a person convicted of an offence against this Act, notwithstanding that he has been committed to gaol until the penalty is paid.

Levy of  
execution  
notwith-  
standing  
committal of  
offender.

37. The gaoler of a gaol to which a person convicted of an offence against this Act has been committed for non-payment of any penalty shall discharge him—

Release of  
offender.

- (a) on payment, by that person to the gaoler, of the penalty adjudged; or
- (b) on a certificate from the proper officer of the Court that the penalty has been paid or realized; or
- (c) if the penalty adjudged to be paid is not paid or realized, according to the scale in section 167 of the Justices Act, 1902; or
- (d) on order of the Governor.

Evidence of  
appointment  
to be a  
Commission.

38. In all legal proceedings the production of—

- (a) a document purporting to be signed by the Governor and to be sealed with the Public Seal of the State and purporting to appoint a person or persons to be a Commission in respect of a matter or matters, whether or not terms of appointment are specified in the document; or
- (b) a certified document purporting to be a copy of such a document as mentioned in paragraph (a) of this section and certified in writing by the person named therein as Chairman to be a true copy of it,

shall be evidence that the Governor has appointed the person or persons mentioned in that document, or that certified document, as a Commission in respect of the matter or matters and on the terms of appointment, if any, so mentioned.

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