

Western Australia

## **Royal Commissions Act 1968**

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## Royal Commissions Act 1968

**An Act relating to Royal Commissions and for purposes connected therewith and to repeal the *Royal Commissioners' Powers Act 1902*.**

**1. Short title**

This Act may be cited as the *Royal Commissions Act 1968*<sup>1</sup>.

**2. Repeal**

The *Royal Commissioners' Powers Act 1902*, is repealed.

**3. Application**

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 authorise the application of this Act to proceedings in respect of offences committed before its commencement.

**4. Interpretation**

In this Act unless the contrary intention appears —

“**Chairman**” means —

- (a) where there is one Commissioner, that Commissioner;
- (b) where there is more than one Commissioner and a Commissioner is acting separately from the other or others, that Commissioner so acting;
- (c) subject to paragraphs (a) and (b), a person appointed as Chairman under section 6;

“**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;

“**documents**” includes things that are documents within the meaning of section 79B of the *Evidence Act 1906*.

[Section 4 amended by No. 72 of 1990 s. 4; No. 3 of 1991 s. 4.]

**5. Power to appoint Commission**

Without in any way prejudicing, limiting, or derogating from the power of the Governor to make or authorise 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 authorised by terms of appointment, to make recommendations in respect of any matter specified in the appointment.

**6. Chairman**

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

**7. Powers of Commission**

- (1) 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, and, where there is more than one Commissioner, may determine from time to time whether in any respect one or more of the Commissioners will act separately from the other or others.

- (2) Subsection (1) has effect subject to section 8 and the terms of a Commission's appointment.

*[Section 7 amended by No. 3 of 1991 s. 5.]*

**8. Select Committee appointed as a Royal Commission**

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.

**9. Power to summon witnesses and documents**

A Commissioner 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.

*[Section 9 amended by No. 3 of 1991 s. 6.]*

**10. Duty of witness to continue in attendance**

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

*[Section 10 amended by No. 3 of 1991 s. 7.]*

**11. Power to examine on oath**

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.

**12. Affirmation in lieu of oath**

- (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 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) is of the same force and effect and entails the same liabilities as an oath.

**13. Penalty for failing to attend or produce documents**

- (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 may be dealt with on the motion of the Attorney General as if he were in contempt of the Supreme Court and the Supreme Court has jurisdiction accordingly.
- (2) It is a defence to contempt proceedings pursuant to subsection (1) 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) Subject to subsection (4), 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.
- (4) Notwithstanding section 31(2), a person is not excused from producing any documents, books, or writings as required by a summons served pursuant to section 9 on the ground that the production of the documents, books, or writings might incriminate or tend to incriminate the person or render the person liable to a penalty.



*[Section 13 amended by No. 72 of 1990 s. 5.]*

**14. Penalty for refusing to be sworn or to give evidence**

- (1) 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 may be dealt with on the motion of the Attorney General as if he were in contempt of the Supreme Court and the Supreme Court has jurisdiction accordingly.
- (2) Notwithstanding section 31(2), when any question relevant to the inquiry is put to a person by the Commissioner the person is not entitled to refuse to answer the question on the ground that the answer might incriminate or tend to incriminate the person or render the person liable to a penalty.

*[Section 14 amended by No. 72 of 1990 s. 6.]*

*[15. Repealed by No. 72 of 1990 s. 7.]*

**16. Arrest of witness failing to appear**

- (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.
- (2) Subject to section 17, a warrant issued pursuant to subsection (1) shall authorise 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 Court of Appeal, as the case may be.
- (3) A warrant issued pursuant to subsections (1) and (2) 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

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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 prevent the witness from being dealt with for contempt pursuant to section 13(1) by reason of his non-compliance with the summons.

*[Section 16 amended by No. 72 of 1990 s. 8; No. 45 of 2004 s. 37.]*

**17. Appeal against apprehension**

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 Court of Appeal of the Supreme Court.

*[Section 17 amended by No. 45 of 2004 s. 37.]*

**18. Search warrants**

- (1) This section does not apply to a Commission unless by the terms of appointment or in an instrument made by the Governor the provisions of this section are expressly declared to so apply.
- (2) Where a Judge of the Supreme Court is satisfied, on the application of a Commissioner or a person appointed by the Attorney General to assist the Commission, that there are reasonable grounds for suspecting that there may be relevant material in or on particular premises, the Judge may issue a search warrant authorising a named person or named persons —
- (a) to enter and search the premises; and
  - (b) where the premises comprise a vehicle, vessel, aircraft or the like, to stop and detain and give directions as to the movement of the same.
- (3) A person or persons on whom authority is conferred by a warrant may be accompanied by such other persons as are necessary for the effective exercise of the powers conferred by

this section and those other persons have those powers as if they were named in the warrant.

- (4) In addition to exercising the powers in subsection (2) an authorised person acting under a warrant issued under that subsection may —
  - (a) break open and search any package or receptacle in or on the premises;
  - (b) seize any relevant material and deliver it to the Commission;
  - (c) secure any relevant material against interference;
  - (d) request any person found in or on the premises to produce any relevant material which at the time of the request is in the possession, under the control, or at the order or disposition, of that person whether in or on the premises or elsewhere; and
  - (e) take photographs or copies of, or extracts or notes from, any relevant material.
- (5) An authorised person acting under a warrant issued under subsection (2) may use such force as is necessary.
- (6) The Commission may —
  - (a) retain possession of any relevant material in accordance with section 21;
  - (b) at any time release any relevant material, whether conditionally or unconditionally, to any person who appears to be entitled to possession of it.
- (7) A person shall not without reasonable excuse —
  - (a) prevent or attempt to prevent an authorised person from exercising any power conferred by or under this section;
  - (b) hinder or obstruct an authorised person in the exercise of any such power; or
  - (c) fail to comply with a direction or request of an authorised person under subsection (2)(b) or (4)(d).

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- (8) A person shall not furnish to an authorised person acting under a warrant information that is false in a material particular.
- (9) A person is not excused from producing any relevant material under subsection (4)(d) on the ground that it contains information that might incriminate or tend to incriminate him or render him liable to a penalty.
- (10) A person who, without reasonable excuse —
- (a) fails to comply with a condition imposed on the person under subsection (6)(b); or
  - (b) contravenes or fails to comply with subsection (7) or (8),
- may be dealt with on the motion of the Attorney General as if he were in contempt of the Supreme Court and the Supreme Court has jurisdiction accordingly.
- (11) In this section —
- “authorised person”** means the named person or named persons on whom authority is conferred by a warrant and other persons referred to in subsection (3);
- “relevant material”** means documents, books, writings or things that are or appear likely to be relevant to the Commission’s inquiry.

*[Section 18 inserted by No. 3 of 1991 s. 8.]*

**19. Nondisclosure of secret process — evidence in private**

- (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.
- (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, without limiting the operation of section 19A, a person who is not expressly authorised by the Commission to be present shall not be present during the taking of that evidence.

*[(3) and (4) repealed]*

- (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.

*[Section 19 amended by No. 72 of 1990 s. 10.]*

**19A. General provisions as to private hearings**

If a Commission is taking evidence in private, or conducting the inquiry in private, a person who is not expressly authorised by the Commission to be present shall not be present and, notwithstanding any other law —

- (a) the Commission is not required to authorise the presence of any person except that when evidence is being taken from a witness in private a person authorised by the Commission to appear before it for the purpose of representing that witness is entitled to be present;
- (b) the Commission is not required to make known to any person, during the course of the inquiry, the content or nature of any evidence taken in private.

*[Section 19A inserted by No. 72 of 1990 s. 11.]*

**19B. Restriction of publication of documents etc.**

- (1) 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.
- (2) A person who, without permission of the Governor, makes any publication in contravention of any direction under subsection (1) may be dealt with on the motion of the Attorney General as if he were in contempt of the Supreme Court and the Supreme Court has jurisdiction accordingly.

*[Section 19B inserted by No. 72 of 1990 s. 11.]*

**20. Statements made by witness not admissible in evidence against him**

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 contempt proceedings or 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.

*[Section 20 amended by No. 72 of 1990 s. 12.]*

**21. Power of Commission in relation to documents produced**

A Commission, a Commissioner, or a person thereto authorised 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.

**22. Examination of witnesses by counsel, etc.**

A person appointed by the Attorney General to assist a Commission, or authorised 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.

**23. Payment of witnesses**

- (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.

- (2) For the purposes of subsection (1) the Consolidated Fund is, to the necessary extent, appropriated accordingly.

*[Section 23 amended by No. 98 of 1985 s. 3; No. 6 of 1993 s. 11.]*

**24. Giving false testimony**

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 5 years.

**25. Bribery of witness**

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 5 years.

**26. Fraud on witness**

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 2 years.

**27. Destroying books or documents**

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.

Penalty: Imprisonment for 2 years.

**28. Preventing witness from attending**

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.

Penalty: Imprisonment for one year.

**29. Injury to witness**

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.

Penalty: \$1000, or imprisonment for one year.



**30. Dismissal by employers of witness**

- (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.

Penalty: \$1000, or imprisonment for one year.

- (2) In a proceeding for an offence against subsection (1) 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.

**31. Protection to Commissioners, witnesses, persons appearing**

- (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 authorised 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 authorised is a barrister or solicitor, he is subject to the same liabilities as he would be in appearing before that Court.

**32. Proceedings for defamation not to lie**

No action or proceeding, civil or criminal, lies against the Crown in right of the State against a Minister, or against a

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person employed or engaged by the Crown in right of the State, in respect of the printing or publishing of —

- (a) a transcript of proceedings of a Commission; or
- (b) a report of, or a recommendation made by, a Commission.

*[Section 32 amended by No. 57 of 1997 s. 108.]*

**33. Privilege, protection or immunity not limited or abridged**

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

*[34. Repealed by No. 84 of 2004 s. 78.]*

*[35, 36, 37. Repealed by No. 92 of 1994 s. 41.]*

**38. Evidence of appointment to be a Commission**

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) 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.

**Notes**

<sup>1</sup> This is a compilation of the *Royal Commissions Act 1968* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

Short title	Number and year	Assent	Commencement
<i>Royal Commissions Act 1968</i>	65 of 1968	18 Nov 1968	18 Nov 1968
<i>Acts Amendment (Financial Administration and Audit) Act 1985 s. 3</i>	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Royal Commissions Amendment Act 1990</i>	72 of 1990	20 Dec 1990	20 Dec 1990 (see s. 2)
<i>Royal Commissions Amendment Act 1991</i>	3 of 1991	23 May 1991	Deemed operative 8 Jan 1991 (see s. 2)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Fines, Penalties and Infringement Notices) Act 1994 s. 41</i>	92 of 1994	23 Dec 1994	1 Jan 1995 (see s. 2 and <i>Gazette</i> 30 Dec 1994 p. 7211)
<b>Reprint of the <i>Royal Commissions Act 1968</i> as at 2 Nov 1995</b> (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 108</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2)
<b>Reprint of the <i>Royal Commissions Act 1968</i> as at 14 Sep 2001</b> (includes amendments listed above)			
<i>Acts Amendment (Court of Appeal) Act 2004 s. 37</i>	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

