

Western Australia

Royal Commissions Act 1968

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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*¹.

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The *Royal Commissioners' Powers Act 1902*, is repealed.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

- ¹ 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 ^{1a}. 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)
Reprint of the <i>Royal Commissions Act 1968</i> as at 2 Nov 1995 (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)
Reprint of the <i>Royal Commissions Act 1968</i> as at 14 Sep 2001 (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))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Citation	Number and year	Assent	Commencement
<i>Royal Commissions (Powers) Amendment Act 2006 Pt. 2</i> ²	30 of 2006	4 Jul 2006	To be proclaimed (see s. 2)

² On the date as at which this compilation was prepared, the *Royal Commissions (Powers) Amendment Act 2006 Pt. 2* had not come into operation. It reads as follows:

“

Part 2 — Amendments to *Royal Commissions Act 1968*

3. The Act amended

The amendments in this Part are to the *Royal Commissions Act 1968*.

4. Section 4 amended

Section 4 is amended as follows:

- (a) in the definition of “documents” by deleting “1906.” and inserting instead —
“ 1906; ”;
- (b) after the definition of “documents” by inserting —

“

“**officer of the Commission**”, in relation to a Commission, means —

- (a) a person appointed by the Attorney General to assist the Commission; or
- (b) any other person appointed, employed, seconded or engaged to assist the Commission.

”.

5. Sections 8A and 8B inserted

After section 8 the following sections are inserted —

“

8A. Power to obtain information from public authority or officer

- (1) In this section —
“**public authority**” and “**public officer**” have the meanings given to those terms in section 3 of the *Corruption and Crime Commission Act 2003*.
- (2) A Commission may, for the purposes of the inquiry, serve written notice on a public authority or public officer, requiring the authority or officer to produce a statement of information.
- (3) A notice under this section must —
 - (a) specify or describe the information required;
 - (b) fix a time and day by which the statement of information must be produced; and
 - (c) specify the person (being the Commission or an officer of the Commission) to whom the production is to be made.
- (4) 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.
- (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 the production of a statement of information on grounds of public interest;
 - (b) any privilege of a public authority or public officer in that capacity which the authority or officer 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 officer.
- (6) Subsection (5) does not limit or otherwise affect the operation of the *Parliamentary Privileges Act 1891*.
- (7) 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; or
 - (b) proceedings for an offence against this Act.

- (8) Despite subsection (7), the person may, in any civil or criminal proceedings, be asked about the statement under section 21 of the *Evidence Act 1906*.

8B. Power to obtain documents and other things

- (1) A Commission may, for the purposes of the inquiry, serve written notice on a person requiring 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 documents, books, writings or things 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 persons who may so act.

”.

6. Section 9 amended

Section 9 is amended by deleting “or writings” and inserting instead —

“ writings or things ”.

7. Section 12 repealed

Section 12 is repealed.

8. Sections 13 and 14 replaced by sections 12A to 15E

Sections 13 and 14 are repealed and the following sections are inserted instead —

“

12A. Contempt: failing to produce statement of information

A person who —

- (a) fails, without reasonable excuse, to comply with a notice served on the person under section 8A; or
- (b) in purported compliance with a notice served on the person or some other person under section 8A, furnishes information knowing it to be false or misleading in a material particular,

is in contempt of the Commission.

13. Contempt: failing to attend or produce documents

- (1) A person who fails, without reasonable excuse, to —
 - (a) attend before a Commission or an officer of a Commission as required by a notice under section 8B; or
 - (b) produce any documents, books, writings or things to a Commission or an officer of a Commission as required by a notice under section 8B,is in contempt of the Commission.
- (2) A person who fails, without reasonable excuse, to —
 - (a) attend before a Commission as required by a summons under section 9 and by section 10; or
 - (b) produce any documents, books, writings or things to a Commission as required by a summons under section 9,is in contempt of the Commission.
- (3) If a person released by order of a Commission under section 16A on condition that the person appear and report before the Commission in accordance with the terms of the order fails, without reasonable excuse, so to appear and report, the person is in contempt of the Commission.
- (4) 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 but, despite section 31(2), in the case of failure to produce any documents, books, writings or things it does not include the excuse that their production —

 - (a) might incriminate or tend to incriminate the person or render the person liable to a penalty; or
 - (b) 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.

14. Contempt: failing to be sworn or to give evidence when summoned

- (1) A person served with a summons under section 9 requiring the person to attend a Commission and give evidence who —
 - (a) refuses to be sworn or make an affirmation; or
 - (b) fails to answer any question relevant to the investigation that the Commission requires the person to answer,is in contempt of the Commission.

- (2) Despite section 31(2), a person required by the Commission to answer a question relevant to the inquiry is not excused from the requirement 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.

15. Contempt: hindering execution of search warrants

- (1) This section applies to a Commission to which section 18 applies.
- (2) In this section —
“**authorised person**” has the meaning given to that term in section 18(11).
- (3) A person who, without reasonable excuse —
- (a) prevents or attempts to prevent an authorised person from exercising a power conferred by or under section 18;
 - (b) hinders or obstructs an authorised person in the exercise of a power conferred by or under section 18;
 - (c) fails to comply with a direction or request of an authorised person under section 18(2)(b) or (4)(d); or
 - (d) fails to comply with a condition imposed on the person under section 18(6)(b),
- is in contempt of the Commission.
- (4) Despite section 31(2), a person is not excused from producing documents, books, writings or things under section 18(4)(d) on the ground that their production might incriminate or tend to incriminate the person or render the person liable to a penalty.
- (5) A person who furnishes to an authorised person acting under a warrant issued under section 18 information that is false in a material particular is in contempt of the Commission.

15A. Other contempts

- (1) A person who —
- (a) threatens or insults —
 - (i) a Commission;
 - (ii) a person appointed by the Attorney General to assist a Commission;
 - (iii) any witness summoned to attend or appearing before a Commission; or
 - (iv) a person authorised by a Commission to appear before it for the purpose of representing any person;

- (b) interrupts the proceedings of a Commission without reasonable excuse;
- (c) creates or continues or joins in creating or continuing, a disturbance in or near a place where a Commission is conducting an inquiry; or
- (d) does anything else at an inquiry conducted by the Commission or otherwise that would be contempt of court if the Commission were a Judge acting judicially,

is in contempt of the Commission.

- (2) A Commission may order that a person who under subsection (1) is in contempt of the Commission at an inquiry be excluded from the place where the inquiry is being conducted.
- (3) An officer of the Commission, acting under the Commission's order, may exclude the person from the place and may use necessary and reasonable help and force to do so.

15B. Punishment of contempt of Commission

- (1) In this section and sections 15C to 15E —
“**defendant**” means a person alleged to be in contempt of a Commission.
- (2) Where a contempt of a Commission is alleged to have taken place, the Commission may present to the Supreme Court a certificate setting out the details of the act or omission that the Commission considers constitutes the alleged contempt.
- (3) Unless the defendant has been —
 - (a) required under section 15C to show cause why the defendant should not be dealt with under section 15B for contempt of the Commission; or
 - (b) apprehended under a warrant under section 15C(4),the Commission is to give the defendant a written statement setting out the details of the alleged contempt.
- (4) A certificate presented under subsection (2) is prima facie evidence of the matters certified in it.
- (5) Where a certificate is presented under subsection (2), the Supreme Court has jurisdiction as if the alleged contempt were a contempt of that Court.
- (6) A Commissioner cannot be compelled to attend before the Supreme Court to give evidence in proceedings for an alleged contempt of a Commission.

- (7) A record or transcript of the proceedings of a Commission is admissible in evidence in proceedings for an alleged contempt of the Commission.
- (8) A person is not liable to be punished for contempt under this section in respect of failure to comply with a summons served under section 9 if, in the case of a failure to produce any documents, books, writings or things, the person proves that the documents, books, writings or things were not relevant to the inquiry.
- (9) If the appointment of a Commission ends before a certificate has been presented under subsection (2) in relation to an alleged contempt, the alleged contempt may be dealt with on the motion of the Attorney General as if the person concerned were in contempt of the Supreme Court and the Supreme Court has jurisdiction accordingly.

15C. General provisions regarding contempt

- (1) The Chairman may cause a summons in writing under the Chairman's hand to be served on a defendant requiring the defendant to attend the Commission at a time and place named in the summons to show cause why the defendant should not be dealt with under section 15B for contempt of the Commission.
- (2) If the defendant fails to attend before the Commission in obedience to the summons, and no reasonable excuse to the satisfaction of the Commission is offered for the failure, the Chairman may, on proof of the service of the summons, issue a warrant for the defendant to be apprehended and brought before the Commission to show cause why the defendant should not be dealt with under section 15B for the contempt.
- (3) If a contempt of a Commission is committed in the face or hearing of the Commission, no summons need be served on the defendant, but the defendant may be —
 - (a) taken into custody in a prison or elsewhere then and there by a member of the Police Force or a person authorised for the purpose by the Commission; and
 - (b) called on to show cause why the defendant should not be dealt with under section 15B for the contempt.
- (4) The Chairman may issue a warrant for the apprehension of the defendant while the defendant (whether or not already in custody under this section) is before the Commission and for the defendant to be brought before the Supreme Court as soon as is practicable.

- (5) A warrant under subsection (4) authorises the apprehension of the defendant and the defendant being brought before the Supreme Court and detained in custody in a prison or elsewhere for that purpose.
- (6) The warrant is to be accompanied by either the instrument by which the Commission certifies the contempt to the Supreme Court or a written statement setting out the details of the alleged contempt.
- (7) The Commission may revoke the warrant at any time before the defendant is brought before the Supreme Court.
- (8) When the defendant is brought before the Supreme Court, the Court may, pending determination of the matter, direct that the defendant be kept in such custody as the Court may determine or direct that the defendant be released.

15D. Conditional release of defendant

- (1) At any time before a defendant detained under section 15C is brought before the Supreme Court the Commission may by order release the defendant on condition that the defendant appear before the Supreme Court.
- (2) The release of a defendant under subsection (1) may (but need not) be made subject to —
 - (a) one or more conditions for the purpose of ensuring the attendance of the defendant before the Supreme Court (for example, the provision of sureties by the defendant, the surrender of any passport held by the defendant, a requirement as to where the defendant is to live and regular reporting by the defendant to the Commission); and
 - (b) any other condition that the Commission thinks appropriate.
- (3) The Commission may by order amend, revoke or add to the conditions to which the release of a defendant under subsection (1) is subject.
- (4) A defendant who without reasonable excuse fails to comply with a condition to which the release of the defendant under subsection (1) is subject is guilty of an offence.
Penalty: Imprisonment for 2 years and a fine of \$24 000.

15E. Conduct that is both a contempt and an offence

- (1) An act or omission may be punished as a contempt of a Commission even though it could be punished as an offence.

- (2) An act or omission may be punished as an offence even though it could be punished as a contempt of a Commission.
- (3) If an act or omission constitutes both an offence and a contempt of a Commission the defendant is not liable to be punished twice.

”.

9. Section 16 amended

- (1) Section 16(2) is repealed and the following subsections are inserted instead —

“

- (2) The Chairman 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 Chairman 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.
- (2a) A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.
- (2b) 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.
- (2c) A warrant under this section authorises the apprehension of the person and the person being promptly brought before the Commission and detained in custody for that purpose in a prison or elsewhere until released by order of the Commission.

”.

- (2) Section 16(3) is amended by deleting “pursuant to subsections (1) and (2)” and inserting instead —

“ under this section ”.

10. Section 17 replaced by sections 16A and 17

Section 17 is repealed and the following sections are inserted instead —

“

16A. Conditional release of a witness

- (1) At any time before a person detained under section 16 is brought before the Commission, the Commission may by order release the person on condition that the person appear and report before the Commission unless excused from attendance or until released from further attendance by the Commission.
- (2) The release of a person under subsection (1) may (but need not) be made subject to —
 - (a) one or more conditions for the purpose of ensuring the further attendance of the person before the Commission (for example, the provision of sureties by the person, the surrender of any passport held by the person, a requirement as to where the person is to live and regular reporting by the person to the Commission); and
 - (b) any other condition that the Commission thinks appropriate.
- (3) The Commission may by order amend, revoke or add to the conditions to which the release of a person under subsection (1) is subject.
- (4) A person who without reasonable excuse fails to comply with a condition to which the release of the person under subsection (1) is subject is guilty of an offence.

Penalty: Imprisonment for 2 years and a fine of \$24 000.

17. Review by Supreme Court

- (1) A person who has not been released by the Commission under section 15D or 16A may apply to the Supreme Court for a review of the decision not to release the person.
- (2) A person who has been released under section 15D or 16A may apply to the Supreme Court for a review of the terms of a condition to which the release is subject.
- (3) The Supreme Court may do either or both of the following —
 - (a) affirm or set aside a decision by the Commission not to release the person or any condition imposed by the Commission to which the release is subject;
 - (b) make any order that the Commission may make in relation to the detention or release of the person.
- (4) The Supreme Court may also exercise its powers under subsection (3) where the Commission has not made a decision

within a reasonable time on the release of a person under section 15D or 16A.

- (5) An order under subsection (3) is taken to be an order of the Commission.

”.

11. Section 18 amended

Section 18(7) to (10) are repealed.

12. Section 19B replaced

Section 19B is repealed and the following section is inserted instead —

“

19B. Restrictions on recording and publication of proceedings

- (1) In this section —
“**publishes**” includes broadcasts;
“**visual recording**” means any recording on any medium from which a moving image may be produced by any means, and includes the accompanying sound track.
- (2) A person who makes a sound recording of proceedings of a Commission is in contempt of the Commission unless the recording is made —
- (a) for the purpose of a fair report of the proceedings; or
 - (b) with the leave of the Commission.
- (3) Subsection (2)(a) does not apply if the Commission has directed that a sound recording of the proceedings is not to be made.
- (4) A person who photographs or makes a visual recording of proceedings of a Commission without the leave of the Commission is in contempt of the Commission.
- (5) A person who, without the leave of a Commission, publishes —
- (a) a sound recording of proceedings of the Commission made under subsection (2)(a);
 - (b) a photograph or visual recording of proceedings of the Commission;
 - (c) a written record or transcript of proceedings of the Commission, or of evidence given before the Commission, which the Commission has directed not to be published; or

- (d) any documents, books or writings produced to or obtained by the Commission which the Commission has directed not to be published,

is in contempt of the Commission.

- (6) If the appointment of a Commission has ended, the Governor may give the leave referred to in subsection (5) and that subsection applies as if leave had been given by the Commission.
- (7) If a contravention of subsection (5) occurs after the appointment of a Commission has ended, the contravention may be dealt with on the motion of the Attorney General as if the person concerned were in contempt of the Supreme Court and the Supreme Court has jurisdiction accordingly.

”.

13. Section 32 amended

Section 32 is amended by deleting “Crown in right of the” in both places where it occurs.

14. Amendments as to offences and penalties

Sections 24, 25, 26, 27, 28, 29 and 30(1) are amended as follows:

- (a) by deleting “misdemeanour.” and inserting instead —
“crime.”;
- (b) by deleting the penalty and inserting instead —

“

Penalty: Imprisonment for 5 years.

Summary conviction penalty: Imprisonment for 2 years and a fine of \$24 000.

”.
”.