



TASMANIA

COMMISSIONS OF INQUIRY ACT 1995

No. 70 of 1995

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SCHEDULE 1

PROVISIONS WITH RESPECT TO MEMBERSHIP OF COMMISSION





COMMISSIONS OF INQUIRY ACT 1995

No. 70 of 1995

AN ACT to provide for the establishment and conduct of Commissions of Inquiry and to repeal Division 2 of Part II of the *Evidence Act 1910*

[Royal Assent 14 November 1995]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART 1

PRELIMINARY

Short title

1—This Act may be cited as the *Commissions of Inquiry Act 1995*.

Commencement

2—This Act commences on the day on which it receives the Royal Assent.

Interpretation

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

“act” includes an omission or failure to act;

“Commission” means a Commission established under section 4;

“Commissioner” means a member of a Commission;

“function” includes duty;

“misconduct” means conduct by a person that could reasonably be considered likely to bring discredit upon that person;

“officer of the Commission” includes any person appointed under section 6 to assist a Commission and any person whose services are made available to a Commission under section 7;

“police officer” has the same meaning as in the *Police Regulation Act 1898*.

PART 2

ESTABLISHMENT AND OPERATION

Establishment of Commissions

4—(1) The Governor may, by order, if satisfied that it is in the public interest and expedient to do so—

(a) direct that an inquiry be made into a matter; and

(b) establish a Commission to conduct and report on that inquiry; and

(c) appoint one or more persons as members of that Commission; and

- (d) fix a date for the delivery of the Commission's report; and
- (e) provide for any other matter in relation to the inquiry, the Commission or the Commission's report as the Governor thinks fit.

(2) The Governor may appoint a member of a Commission as its president.

(3) The Governor may, by order, amend a date referred to in subsection (1) (d) whether or not that date has passed.

(4) An order under this section is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

(5) Schedule 1 has effect with respect to the membership of a Commission.

Function and power of Commission

5—(1) The function of a Commission is to conduct an inquiry into the matter in respect of which it is established and report to the Governor on that inquiry.

(2) For the purposes of performing that function, a Commission may—

- (a) hold hearings; and
- (b) receive written submissions; and
- (c) exercise all or any of the powers conferred on it by this Act.

Support and services

6—(1) Subject to the order by which it is established, a Commission may—

- (a) make such arrangements as it considers necessary for the provision of services and facilities for its inquiry; and
- (b) appoint such persons as it considers necessary to assist it including—
 - (i) persons to act as counsel, clerks, reporters and assistants; and
 - (ii) persons having special knowledge.

(2) The terms and conditions on which persons are appointed under subsection (1) are, subject to any relevant award or industrial agreement, as determined by the Commission.

(3) The *Tasmanian State Service Act 1984* does not apply to persons appointed under this section.

Arrangements relating to staff

7—(1) A Commission may arrange with the Head of an Agency within the meaning of the *Tasmanian State Service Act 1984* for the services of persons employed in that Agency to be made available to it.

(2) A Commission may arrange with an authority of the Commonwealth or another State for the services of officers or employees in the public service of the Commonwealth or State, or of the authority, to be made available to it.

(3) In subsection (2) “another State” includes a Territory of the Commonwealth.

Immunities

8—(1) A Commissioner has, in performing the duty of a Commissioner, the same protection and immunity as a judge of the Supreme Court.

(2) Subsection (1) has effect notwithstanding the *Statutory Authorities (Protection from Liability of Members) Act 1993*.

(3) A person who is appointed or made available to assist a Commission as counsel or in some other capacity has, in performing that duty in good faith, the same protection and immunity as counsel appearing before the Supreme Court.

(4) A person who appears before or makes representations to a Commission as counsel for a witness or a person whose conduct is in issue in the inquiry has the same protection and immunity as counsel assisting the Commission.

(5) A witness who appears before a Commission has the same protection and immunity as a witness appearing before the Supreme Court.

Decisions of Commission, &c.

9—Unless otherwise provided by the order by which it is established, if a Commission consists of 3 or more Commissioners—

- (a) the Commission's quorum is half of the total number of Commissioners; and
- (b) an act or decision of a majority of the Commissioners is an act or decision of the Commission; and
- (c) the Commission may perform its functions and exercise its powers despite a vacancy in its membership as long as the remaining Commissioners constitute a quorum.

Commission report

10—(1) A Commission's report to the Governor in respect of an inquiry is to be in writing.

(2) A copy of the report is to be tabled in each House of Parliament within 10 sitting days after the day on which it is received by the Governor.

(3) The Governor may omit a part of the report before it is tabled in Parliament if satisfied that the public interest in the disclosure of the matters set out in that part of the report is significantly outweighed by any other consideration, including public security, privacy of personal or financial affairs or the right of any person to a fair trial.

(4) The omission of a part of the report is to be clearly indicated on a copy of the report tabled in Parliament.

Delegation

11—A Commission may delegate the exercise of any of its powers to make procedural and administrative decisions in respect of the Commission or its inquiry.

PART 3

CONDUCT OF INQUIRIES

Division 1—General powers and procedures

Control of proceedings

12—(1) A Commission has power to—

(a) control its proceedings; and

(b) maintain order at any hearing or other proceeding conducted by the Commission.

(2) A Commission may request the Commissioner of Police to assist it in maintaining order at any hearing or other proceeding conducted by it.

(3) The Commissioner of Police is authorised and required to accede to a request made under subsection (2).

Hearings to be public

13—(1) Subject to subsection (2), the hearings of a Commission are open to the public.

(2) A Commission may refuse to admit the public or any person to a hearing if it is satisfied that the public interest in an open hearing is outweighed by any other consideration, including public security, privacy of personal or financial affairs or the right of any person to a fair trial.

(3) If a Commission intends to take or receive evidence at a hearing which is not open to the public, it must announce that intention during a previous hearing which is open to the public and state, in general terms, the reasons why it intends to hold a closed hearing.

Control of public reporting

14—(1) A Commission may, by order, prohibit or restrict the public reporting of a hearing or the publishing of any evidence taken or received by it if it is satisfied that the public interest in the reporting of that hearing or the publishing of that evidence is outweighed by any other consideration, including public security, privacy of personal or financial affairs or the right of any person to a fair trial.

(2) An order under subsection (1) is to be made during a hearing which is open to the public and on making the order the Commission must state, in general terms, the reasons for making the order.

(3) A person must not fail to comply with an order of a Commission made under subsection (1).

Penalty:

- (a) in the case of a body corporate—a fine not exceeding 1 000 penalty units; or
- (b) in the case of an individual—a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years.

Right of representation

15—A person appearing before a Commission may, with its permission, be represented by counsel.

Referral of questions of law

16—(1) In this section, “parties” means persons who have been given leave to appear before a Commission or been interviewed by that Commission.

(2) A Commission may refer a question of law arising in the course of its inquiry to the Supreme Court for decision.

(3) If a Commission refers a question of law to the Supreme Court for decision, the Commission may—

- (a) conclude its inquiry subject to the decision; or
- (b) adjourn its inquiry until the decision is given.

(4) A question of law may be referred to the Supreme Court in the form of a special case drawn up by the parties to the inquiry or, if there are no parties to the inquiry or the parties cannot agree, by the Commission.

(5) The decision of the Supreme Court on a question of law referred to it under this section is final and is binding on the Commission and the parties to its inquiry.

Requirement to be met before a person is investigated

17—A Commission must not commence an investigation of a person or a person's actions unless it is satisfied that there are matters involving that person, and arising from circumstances relevant to its inquiry, which require investigation.

Allegations of misconduct

18—(1) If a Commission expects that an allegation of misconduct involving a person is likely to be made during its inquiry, or if such an allegation is made, the Commission is to give notice of the allegation to that person as soon as practicable after forming that expectation or immediately after the making of the allegation.

(2) Notice of an allegation of misconduct is to include the substance of the allegation and any relevant evidence in relation to the alleged misconduct.

(3) A person who receives notice of an allegation of misconduct may respond to that allegation by doing all or any of the following:—

- (a) making oral or written submissions to the Commission;
- (b) giving evidence to the Commission to contradict or explain the allegation or evidence, including the giving of oral evidence under examination by the person's counsel;
- (c) cross-examining the person making the statement constituting the allegation or evidence;
- (d) calling witnesses on matters relevant to the allegation or evidence.

(4) For the purposes of subsection (3)—

- (a) the Commission must allow the person a reasonable period in which to prepare the response; and
- (b) the person may be represented by counsel as of right.

(5) In determining what constitutes a reasonable period for the purposes of subsection (4) (a), the Commission may have regard to such matters as it considers relevant in the circumstances.

(6) A Commission must not make a finding of misconduct against a person unless the person has been given notice of the misconduct and an opportunity to respond to the notice in accordance with this section.

Commission findings

19—(1) Subject to section 18 (6), in its report a Commission may make a finding of fact on or in respect of any matter into which the Governor has directed it to inquire.

(2) In its report a Commission must not express a conclusion of law in respect of the legal liability of a person.

(3) The report of a Commission is not admissible in legal proceedings to prove a fact found by the Commission.

Division 2—Evidence and witnesses

Rules of evidence

20—(1) Unless otherwise provided by the order by which it is established, a Commission is not bound by any rule of law which relates to evidence in judicial proceedings.

(2) Subject to section 18 (3), a Commission may refuse to receive any evidence.

Admissibility of evidence in other proceedings

21—Evidence given by a person before a Commission is not admissible in subsequent legal proceedings other than proceedings against that person under this Act.

Notices to witnesses

22—(1) A Commission may, by notice served on a person, require that person to appear before it to do either or both of the following—

(a) give evidence;

(b) produce to the Commission, or a person designated by the Commission, any document or thing in that person's possession or control which the Commission considers relevant to its inquiry.

(2) A Commission must not require a person to give evidence about a matter if that person has been charged with an offence in respect of that matter.

(3) Subsection (2) does not apply if the charge has been finally disposed of.

(4) If the Commission considers it expedient to do so because of the distance a person resides from the place at which the Commission would otherwise require that person to attend to give evidence, or because of any other consideration, the Commission may appoint another person to take the evidence of that person and report that evidence to the Commission.

(5) If a person required to appear before a Commission is a prisoner or detainee under the *Prison Act 1977* or a patient detained in an institution under the *Mental Health Act 1963*, the notice requiring the person to appear authorises and requires the Director of Corrective Services or the controlling authority of the institution to present the person before the Commission in accordance with the notice.

(6) A person who has been required by the Commission to appear before it must continue to attend the Commission proceedings from day to day until the Commission excuses that person from so attending.

Witness certificates

23—(1) If a Commission is satisfied that a person has made full and true disclosure to it in respect of the matters on which the person has been examined, the Commission must issue that person with a certificate to that effect.

(2) If any legal proceedings are instituted against a person in respect of a matter on which that person has been examined by a Commission—

(a) the person may apply to the court before which the case is to be heard for a stay of the proceedings; and

- (b) on proof of a certificate referred to in subsection (1) in relation to the subject matter of the proceedings, the court or a judge of the court sitting in chambers—
- (i) must stay the proceedings; and
 - (ii) may award reasonable costs of the person.

Division 3—Obtaining evidence

Power of entry, search and seizure

24—(1) If a Commission believes on reasonable grounds that a document or thing that it considers relevant to its inquiry is in any place, building, vehicle or vessel, the Commission may apply to a magistrate for a warrant.

(2) A magistrate to whom an application under subsection (1) is made may issue a warrant if satisfied that—

- (a) the document or thing referred to in the application is relevant to the Commission's inquiry; and
- (b) there are reasonable grounds to suspect that the document or thing is in the place, building, vehicle or vessel referred to in the application.

(3) A warrant issued under this section authorises the person named in the warrant, together with any police officer that person calls on for assistance, to—

- (a) enter and search the place, building, vehicle or vessel specified in the warrant, using such force as is reasonably necessary; and
- (b) take possession on behalf of the Commission of the document or thing in respect of which the warrant has been issued.

(4) A warrant issued under this section may be made subject to any conditions the magistrate considers appropriate.

(5) If a Commission obtains possession of a document or thing as a result of a search conducted pursuant to a warrant issued under this section, the Commission—

- (a) may retain the document or thing until the conclusion of its inquiry or until the document or thing is no longer required by the Commission; and

- (b) must then return the document or thing to a person from whose possession or custody it was taken.

Power to examine under oath

25—A Commissioner may—

- (a) administer an oath to a person appearing before the Commission to give evidence; and
(b) examine a person under oath.

Self-incrimination

26—A person is not excused from answering a question asked by a Commission or from producing a document or thing to a Commission on the ground that the answer to the question or the production of the document or thing might incriminate or tend to incriminate that person.

Failure to give or produce evidence is contempt

27—(1) A person who has been served with a notice under section 22 (1) and who fails, without reasonable excuse, to attend before the Commission or produce the document or thing specified in the notice is guilty of contempt of the Commission.

(2) Punishment for contempt of a Commission, or liability to be so punished, does not excuse a person referred to in subsection (1) from complying with the requirement to attend before the Commission or to produce a document or thing to the Commission.

(3) A Commission may apply to a magistrate for a warrant to have a person referred to in subsection (1) apprehended and brought before the Commission.

(4) A magistrate to whom an application under subsection (3) is made may issue a warrant if satisfied that the person who is the subject of the application—

- (a) has been served with a notice under section 22 (1); and
(b) has failed, without reasonable excuse, to attend before the Commission or produce the document or thing specified in the notice.

(5) A warrant issued under this section authorises any police officer to—

- (a) apprehend the person named in the warrant and bring that person before the Commission that applied for the warrant; and
- (b) detain that person in custody to secure the person's attendance before that Commission.

(6) A police officer executing a warrant issued under this section is, for that purpose, authorised to enter and search any place, building, vehicle or vessel, using such force as is reasonably necessary.

(7) A person who is apprehended and detained in custody pursuant to a warrant issued under this section may apply to a judge of the Supreme Court to be released from custody.

(8) The release of a person from custody under this section may be made subject to any conditions the judge considers appropriate.

Other contempts

28—A person is guilty of contempt of a Commission if that person—

- (a) being called on or examined as a witness before the Commission, without reasonable excuse—
 - (i) refuses to be sworn or make an affirmation; or
 - (ii) refuses or otherwise fails to answer a question put to that person by the Commission or a Commissioner in respect of the matter into which the Commission is making inquiry; or
 - (iii) refuses to answer a question properly put by an officer of the Commission or by a witness or counsel authorised to appear for a witness; or
- (b) having appeared before the Commission as a witness—
 - fails to continue to attend at the Commission proceedings from day to day without having been excused from doing so by the Commission; or
- (c) does any act which, if the Commission were a court of law having power to commit for contempt, would be in contempt of that court.

Division 4—Dealing with contempt**Show cause procedure**

29—(1) If a Commission considers that a person has or may have done an act so as to be guilty of contempt of the Commission, it may, by notice served on that person, call on that person to show cause why the Commission should not certify the contempt to the Supreme Court.

(2) A person on whom a notice to show cause is served may do all or any of the following in support of the person's case:—

- (a) make oral or written submissions to the Commission;
- (b) give evidence to the Commission, including the giving of oral evidence under examination by the person's counsel;
- (c) call witnesses.

(3) For the purposes of subsection (2), the person called on to show cause may be represented by counsel as of right.

Review of decision to certify contempt

30—(1) A person who is aggrieved by a decision of a Commission to certify a contempt by that person to the Supreme Court may move that court to review that decision.

(2) Section 107 of the *Justices Act 1959* applies to a review of a decision of a Commission referred to in subsection (1) as if—

- (a) the decision were an order of justices; and
- (b) the reference in section 107 (3) (b) (ii) of that Act to the clerk of the justices were a reference to the Commission; and
- (c) the reference in section 107 (4) of that Act to the justices were a reference to the Commission.

Punishment for contempt

31—(1) Subject to section 29, a Commission, or the president of a Commission, may certify a contempt to the Supreme Court.

- (2) If a contempt is certified to the Supreme Court—
- (a) the Supreme Court must inquire into the matter; and
 - (b) having regard to the evidence produced against and by or on behalf of the person named in the Commission's certificate—the Supreme Court may, if satisfied that the person is guilty of the contempt, punish the person in the same manner and to the same extent as would be the case if the person had committed the contempt in relation to the Supreme Court.
- (3) The rules of court of the Supreme Court apply, with any necessary modification, to the Supreme Court's consideration and punishment of a contempt in relation to a Commission.

Fines for contempt

32—If the Supreme Court imposes a fine on a person for contempt of a Commission, section 397A of the *Criminal Code* applies in relation to the payment of that fine as if it were a fine imposed on a conviction for a crime.

PART 4

MISCELLANEOUS

Offences

33—(1) A person must not intentionally prevent or intentionally try to prevent a person who is required by a Commission to appear before it from attending as a witness or producing any document or thing to the Commission.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years.

(2) A person must not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to another person for or on account of—

- (a) that other person having given evidence before a Commission or produced or surrendered any document or thing to a Commission; or
- (b) any evidence given by that other person before a Commission or any document or thing produced or surrendered by that other person to a Commission.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years.

(3) An employer must not dismiss an employee from employment or prejudice an employee in employment for or on account of—

- (a) that employee having given evidence before a Commission or produced or surrendered any document or thing to a Commission; or
- (b) any evidence given by that employee before a Commission or any document or thing produced or surrendered by that employee to a Commission.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years.

(4) In any proceedings for an offence under subsection (3), it lies on the employer to prove, on the balance of probabilities, that the employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than a reason specified in subsection (3).

Copies of documents

34—(1) If a document or thing has been received in evidence during a Commission's inquiry or been taken into the possession of a Commission under section 24, the person who produced it or from whose possession or custody it was taken or a person entitled to it may request the Commission to release the document or thing to that person.

(2) A Commission may direct that a copy be made of a document referred to in subsection (1) and that the copy or the original document be released to the person who requested its release.

(3) If a Commission releases an original document under this section—

- (a) the Commission or the president of the Commission is to certify the copy of that document to be a true copy of the original; and
- (b) the certified copy may be admitted as evidence in the Commission's inquiry in place of the original document.

Service of notices

35—A notice required to be served on a person under this Act is to be delivered personally to that person.

Legal costs of witnesses

36—(1) A Commission may order that the whole or any part of the legal costs of a person who appears before it are to be paid by the Crown.

(2) In determining whether to make an order under subsection (1), the Commission may have regard to the following matters:—

- (a) whether the person has shown that he or she had a valid reason to seek legal representation;
- (b) whether in all the circumstances, including the events which led to the Governor directing the making of the Commission's inquiry, it would be a hardship or injustice for the person to bear the costs;
- (c) the nature and possible effect of any allegations made about the person;
- (d) whether the person has been found to have been seriously at fault, to the extent that criminal or other charges have been recommended or instituted;
- (e) whether a certificate has been issued to the person by the Commission under section 23;
- (f) any other relevant matter.

(3) Legal costs ordered to be paid under subsection (1) are to be taxed by a taxing officer of the Supreme Court.

Allowances to witnesses

37—(1) In this section, “**witness to an inquiry**” means a person who—

- (a) is required by a notice under section 22 to appear before a Commission; or
- (b) is requested by a Commission to attend at a place to be interviewed on behalf of that Commission.

(2) A witness to an inquiry is entitled to receive such of the following as are applicable to that person:—

- (a) an allowance for meals;
- (b) an allowance for travelling;
- (c) an allowance for accommodation.

(3) A person who appears before a Commission otherwise than as a witness to an inquiry may apply in writing to the Commission for such of the following as are applicable to that person:—

- (a) an allowance for meals;
- (b) an allowance for travelling;
- (c) an allowance for accommodation.

(4) On an application under subsection (3), the Commission in its discretion may, having regard to such matters as it considers relevant, order that the applicant be paid such allowance or allowances as the Commission by the order specifies.

(5) An allowance under this section is payable on the same terms and at the same rate as is prescribed from time to time for the equivalent allowance in the General Conditions of Service Award made under the *Industrial Relations Act 1984* in respect of persons who are permanent or temporary employees under the *Tasmanian State Service Act 1984*.

Compensation to witnesses for loss of income

38—(1) In this section, “**witness to an inquiry**” has the same meaning as in section 37.

(2) A witness to an inquiry is entitled to receive compensation for loss of income.

(3) A person who appears before a Commission otherwise than as a witness to an inquiry may apply in writing to the Commission for compensation for loss of income.

(4) On an application under subsection (3), the Commission in its discretion may, having regard to such matters as it considers relevant, order that the applicant be paid compensation for loss of income in respect of such periods of time as the Commission by the order specifies.

(5) Subject to subsection (6), the amount of any compensation under this section is to be determined by the Commission applying the same rate as is payable for compensation for loss of income under section 430 of the *Criminal Code*.

(6) A person who is entitled to or successfully applies for compensation under this section and who suffers a loss of income greater than the amount payable under subsection (5) may apply in writing to the Commission to have the rate of compensation increased.

(7) On an application under subsection (6) the Commission in its discretion may, having regard to such matters as it considers relevant, order that the applicant be paid compensation for loss of income at such rate greater than that provided for by subsection (5) as the Commission by the order specifies.

Costs and expenses of Commissions, &c.

39—The following are a charge on the Consolidated Fund and are payable out of the Consolidated Fund without further appropriation than this section:—

- (a) the costs and expenses incurred in, or in connection with, the conduct of an inquiry under this Act;
- (b) the amount of any legal costs ordered to be paid under section 36 (1) that have been taxed under section 36 (3);
- (c) the amount of any allowance that a person is entitled to receive or is ordered to be paid under section 37;
- (d) the amount of any compensation that a person is entitled to receive or is ordered to be paid under section 38.

Regulations

40—The Governor may make regulations for the purposes of this Act.

Repeal

41—Division 2 of Part II of the *Evidence Act 1910* is repealed.

Administration of Act

42—Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangement Act 1990*—

- (a) the administration of this Act is assigned to the Minister for Justice; and
 - (b) the Department responsible to the Minister for Justice in relation to the administration of this Act is the Department of Justice.
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SCHEDULE 1

Section 4 (5)

PROVISIONS WITH RESPECT TO MEMBERSHIP OF COMMISSION**Period of appointment**

1—A Commissioner is appointed for the duration of the inquiry in respect of which the Commission of which he or she is a member is established.

Terms and conditions of appointment

2—(1) A Commissioner is entitled to be paid such remuneration and allowances as the Governor may determine.

(2) A Commissioner holds office on such terms and conditions as are determined by the Governor.

Resignation

3—A Commissioner may resign by signed notice given to the Governor.

Termination of appointment

4—(1) The Governor may terminate the appointment of a Commissioner if the Commissioner—

- (a) becomes mentally or physically incapable of performing the duties of office; or

- (b) is convicted in Tasmania or elsewhere of a crime or an offence punishable by imprisonment for 2 years or longer; or
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration or estate for their benefit.

(2) A Commissioner is not to be removed from office otherwise than in accordance with this clause.

*[Second reading presentation speech made in:—
House of Assembly on 30 June 1995
Legislative Council on 11 October 1995]*