

1990

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Royal Commissions Bill 1990

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Royal Commissions Bill 1990

A BILL

FOR

An Act relating to Royal Commissions

The Legislative Assembly for the Australian Capital Territory enacts
as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Royal Commissions Act 1990*.

Commencement

2. (1) Section 1 and this section commence on the day on which
this Act is notified in the *Gazette*.

- 10 (2) The remaining provisions commence on a day fixed by the
Minister by notice in the *Gazette*.

(3) If the remaining provisions have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
- “authorised person” means a person or class of persons declared in writing by the Chairperson to be an authorised person or authorised class of persons for the purposes of this Act;
 - “Chairperson” means the Chairperson of a Commission appointed under subsection 6 (2) or (4);
 - “Chief Police Officer” means the police officer who is responsible for the day-to-day administration and control of police services in the Territory;
 - “Commission”—
 - (a) means a Royal Commission appointed under section 5; and
 - (b) in relation to an inquiry, means the Royal Commission appointed to conduct that inquiry;
 - “Commissioner”—
 - (a) in relation to a Commission constituted by 1 person, means that person; or
 - (b) in relation to a Commission constituted by 2 or more persons, means each of those persons;
 - “Judge” means—
 - (a) a Justice of the High Court;
 - (b) a Judge of the Federal Court or Family Court;
 - (c) a Judge of the Supreme Court; or
 - (d) a Judge of the Supreme Court of a State or the Northern Territory;
 - “legal practitioner” means a legal practitioner (however described) of the High Court, of another federal court or of the Supreme Court of the Territory, a State or another Territory;
 - “premises” includes—
 - (a) a building or other structure;
 - (b) an aircraft, vehicle or vessel; and
 - (c) a place, whether enclosed or built on, or not.

(2) In this Act, unless the context otherwise requires, a reference to the Chairperson of a Commission shall, in relation to a Commission constituted by 1 person, be read as a reference to that person.

Act binds Crown

4. This Act binds the Crown.

PART II—ROYAL COMMISSIONS

Appointment

5. The Executive may, by instrument published in the *Gazette*, appoint 1 or more persons as a Royal Commission to inquire into a matter specified in the instrument of appointment.

Commissioners

6. (1) A person shall not be appointed as a Commissioner unless the person—

- (a) is or has been a Judge; or
- 10 (b) is a legal practitioner and has been enrolled as a legal practitioner for not less than 5 years.

(2) Where a Commission is constituted by 2 or more persons, the Executive shall appoint 1 of those persons to be the Chairperson.

(3) Where—

- 15 (a) a Commission is constituted by 2 or more persons; and
- (b) a Commissioner dies, resigns or is removed from office under section 11;

the remaining Commissioners shall constitute the Commission.

(4) Where—

- 20 (a) a Commission is constituted by more than 2 persons; and
- (b) the Chairperson dies, resigns or is removed from office under section 11;

the Executive shall appoint 1 of the remaining Commissioners to be the Chairperson.

- 25 (5) The appointment of a Commissioner is not invalid because of a defect or irregularity in connection with the Commissioner's appointment.

Terms and conditions of appointment

- 30 7. A Commissioner holds office on such terms and conditions in relation to matters not provided for by this Act as are determined in writing by the Executive.

Remuneration and allowances

8. (1) A Commissioner shall be paid such remuneration and allowances as are prescribed.

- 35 (2) Subsection (1) does not apply in relation to—

- (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the Commissioner; or
- (b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid
- 40 to the Commissioner.

(3) If a person who is a Judge is appointed as a Commissioner, the person is not, while receiving a salary or annual allowance as a Judge, entitled to remuneration under this Act.

(4) In subsection (2)—

“determination” means a determination of the Remuneration Tribunal. 5

Cessation of office

9. A Commissioner ceases to hold office as a Commissioner—

- (a) when the Commission’s report of its inquiry has been submitted to the Chief Minister in accordance with section 15; or 10
- (b) if section 22 applies—when the Commission notifies the Chief Minister in accordance with that section that any outstanding matters have been finalised.

Resignation

10. A person may resign as a Commissioner or as the Chairperson by writing signed by the person and delivered to the Chief Minister. 15

Termination of appointment

11. The Executive may terminate the appointment of a Commissioner for misbehaviour or physical or mental incapacity.

Staff

12. (1) The staff of a Commission shall be public servants made available to the Commission by the Head of Administration. 20

(2) While a public servant is performing services for a Commission, he or she shall perform those services in accordance with the directions of a Commissioner, and not otherwise. 25

PART III—INQUIRIES

Terms of reference

13. (1) The Executive may determine the terms of reference that are to apply in relation to a matter the subject of an inquiry to be conducted by a Commission. 30

(2) Where the Executive makes a determination under subsection (1)—

- (a) the Commission shall conduct the inquiry in accordance with the terms of reference; and
- (b) the Chief Minister shall publish a copy of the terms of reference in the *Gazette*. 35

Conduct

14. Except as otherwise provided by this Act, an inquiry shall be conducted in such manner as the Commission determines.

Reports of Commissions

5 15. (1) After completing an inquiry, a Commission shall—

- (a) prepare a report of the inquiry; and
- (b) submit the report to the Chief Minister.

(2) A report shall be submitted to the Chief Minister—

- 10 (a) where the Executive has fixed a date for submission of the report—on or before that date; or
- (b) where paragraph (a) does not apply—as soon as practicable after completion of the inquiry.

15 (3) A Commission may submit with its report a recommendation that, for the reasons specified in the recommendation, the report or part of the report should not be published.

(4) When a Commission—

- 20 (a) submits its report to the Chief Minister; or
- (b) if section 22 applies—notifies the Chief Minister in accordance with that section that any outstanding matters have been finalised;

the Commission shall commit any documents and things then in its possession to the custody of the Chief Minister for safe-keeping.

Tabling reports

25 16. (1) The Chief Minister may lay a copy of a report or part of a report submitted by a Commission before the Legislative Assembly.

(2) The Chief Minister may make a report or part of a report public whether or not the Legislative Assembly is sitting and whether or not the report or part has been laid before the Assembly.

30 (3) Where a report or part of a report is made public by the Chief Minister before it is laid before the Legislative Assembly, the report or part attracts the same privileges and immunities as if the report or part had been laid before the Assembly.

PART IV—PROCEEDINGS OF COMMISSIONS

Division 1—General

35 Determination of questions

17. (1) A question arising before a Commission constituted by 2 or more persons shall be decided—

- (a) where the Commission consists of more than 2 Commissioners—in accordance with the opinion of a majority of the Commissioners; or
 - (b) where the Commission consists of 2 Commissioners and those Commissioners are divided in opinion—in accordance with the opinion of the Chairperson. 5
- (2) Where, in relation to a question arising before a Commission constituted by 2 or more persons, the Commissioners are not unanimous in opinion, there shall, if a Commissioner so requires, be recorded in the Commission's report particulars of the opinions of the Commissioners on that question. 10

Counsel assisting Commissions

18. A Commission may appoint a legal practitioner to assist the Commission as counsel, either generally or in relation to a particular matter. 15

Protection of Commissioners etc.

19. (1) A Commissioner has, in the performance or exercise of any function or power as a Commissioner in relation to an inquiry, the same protection and immunity as a Judge of the Supreme Court in proceedings in that Court. 20
- (2) A legal practitioner assisting a Commission or appearing on a person's behalf at a hearing before a Commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, a person summoned to attend or appearing before a Commission as a witness has the same protection and is subject to the same liabilities as a witness in proceedings in the Supreme Court. 25

Non-disclosure of information by Commissioners etc.

20. (1) This section applies to— 30
- (a) a person who is or has been—
 - (i) a Commissioner;
 - (ii) a member of the staff of a Commission; or
 - (iii) counsel assisting a Commission; and
 - (b) any other person who has or has had access to information by virtue of that person's office or employment under or for the purposes of this Act. 35
- (2) A person to whom this section applies shall not, either directly or indirectly, except in the performance or exercise of a function or power under or for the purposes of this Act— 40
- (a) make a record of, or divulge or communicate to any person,

any information acquired by the first-mentioned person by virtue of that person's office or employment under or for the purposes of this Act;

- (b) make use of any such information; or
- 5 (c) produce to any person, or permit any person to have access to, a document furnished for the purposes of this Act.

Penalty: \$5,000 or imprisonment for 6 months, or both.

Disclosure of information by Commissions

10 21. Where, in the course of an inquiry, a Commission obtains information that relates or may relate to the commission of an offence, or evidence of the commission of an offence, against a law of the Territory, the Commonwealth, a State or another Territory, the Commission may, if in its opinion it is appropriate to do so, communicate the information or furnish the evidence to—

- 15 (a) the Attorney-General or the appropriate Minister of State for the Commonwealth, a State or that other Territory; or
- (b) the Chief Police Officer.

Outstanding matters

22. (1) Where—

- 20 (a) a Commission has submitted its report in accordance with section 15; and
 - (b) there are any outstanding matters connected with the performance by the Commission of its functions under this Act;
- the Commission shall—
- 25 (c) notify the Chief Minister that there are outstanding matters; and
 - (d) for such time as is necessary, continue to exercise its powers under this Act for the purpose of finalising those matters.

30 (2) When any outstanding matters have been finalised, the Commission shall notify the Chief Minister accordingly.

Division 2—Evidence

Procedure

23. In conducting its proceedings, a Commission—

- 35 (a) is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate; and
- (b) may do whatever the Commission considers necessary or expedient for the fair and expeditious conduct of the inquiry.

Admissibility of evidence

24. A statement or disclosure made, or a document or other thing produced, by a witness in the course of giving evidence before a Commission, or any information, document or thing obtained as a direct or indirect consequence of the making of the statement or disclosure, or of the production of the first-mentioned document or thing, is not (except in proceedings for an offence against this Act) admissible in evidence against that witness in any civil or criminal proceedings.

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Division 3—Powers

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Search warrants

25. (1) The Chairperson may issue a search warrant where—

- (a) the Chairperson has reasonable grounds for suspecting that there may be, at that time or within the next following 24 hours, in or on any premises, a thing of a particular kind connected with a matter into which the Commission is inquiring (in this section referred to as a “thing of the relevant kind”); and
- (b) the Chairperson believes on reasonable grounds that, if a summons were not issued for the production of the thing, that thing might be concealed, lost, mutilated, destroyed or disposed of.

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(2) A search warrant shall authorise a police officer or an authorised person named in the warrant with such assistance, and by such force, as is necessary and reasonable—

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- (a) to enter the premises;
- (b) to search the premises for things of the relevant kind;
- (c) to seize any things of the relevant kind found in or on the premises; and
- (d) to deliver any thing so seized to the Commission.

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(3) A search warrant shall—

- (a) state the purpose for which it is issued;
- (b) specify particular hours during which the entry is authorised or state that the entry is authorised at any time of the day or night;
- (c) include a description of the kind of things in relation to which the powers under the warrant may be exercised; and
- (d) specify the date, being a date not later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect.

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(4) A search warrant may be executed, in accordance with its terms, at any time during the period commencing on the date of issue of the

warrant and ending at the expiration of the date specified for the purpose of paragraph (3) (d).

(5) If, in the course of searching under a search warrant for a thing of a relevant kind—

- 5 (a) the person executing the warrant finds a thing that the person believes on reasonable grounds to be connected with the matter into which the Commission is inquiring, although not of a kind specified in the warrant; and
- 10 (b) the person believes on reasonable grounds that it is necessary to seize that thing in order to prevent its being concealed, lost, mutilated, destroyed or disposed of;

the person may seize that thing and shall deliver the thing so seized to the Commission.

- 15 (6) A person executing a search warrant shall, on request by an occupant of the premises to which the warrant relates, show the warrant to that occupant.

(7) A reference in subsection (1) to the Chairperson shall be read as including a reference to a Commissioner authorised by the Chairperson to act under that subsection.

20 **Inspection and retention of documents**

26. (1) A Commission, a Commissioner, a member of the staff of a Commission or an authorised person may—

- (a) inspect a document or other thing produced before, or delivered to, the Commission;
- 25 (b) retain possession of the document or thing for such period as is necessary for the purposes of the inquiry to which the document or thing relates; and
- (c) in the case of a document produced before, or delivered to, the Commission—make copies of, or take extracts from, such parts
- 30 of the document as are relevant to a matter the subject of the inquiry.

(2) Where a document is retained under paragraph (1) (b)—

- (a) the person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by a Commissioner to be a true copy and the certified copy shall be received in all courts as evidence as if it were the original; and
- 35 (b) until the certified copy is supplied, the Commission shall, at such times and places as it thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.
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(3) Where the retention of a document or other thing by a Commission ceases to be necessary for the purposes of an inquiry, the Commission shall, if a person who appears to the Commission to be entitled to the document or thing so requests, cause the document or thing to be delivered to the person.

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Additional powers

27. A Commission has power to do all things necessary or incidental to the performance of its functions.

Division 4—Hearings

Power to hold

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28. (1) For the purposes of conducting an inquiry, a Commission may hold hearings.

(2) Subject to subsection (3), a hearing shall be in public.

(3) Where a Commission is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter, or for any other reason, the Commission may—

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(a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present;

(b) give directions prohibiting or restricting the publication of evidence given at a hearing (whether in public or private) or of matters contained in documents lodged with, or received in evidence by, the Commission; and

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(c) give directions prohibiting or restricting the disclosure to some or all of the persons present at a hearing of evidence given before, or the contents of a document lodged with or received in evidence by, the Commission.

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(4) In considering whether to give a direction under subsection (3), a Commission shall take as the basis of its consideration the principle that it is desirable that hearings be in public and that evidence given before, or the contents of documents lodged with or received in evidence by, the Commission should be made available to the public and to all persons present at the hearing, but shall pay due regard to any reasons given to the Commission why the hearing should be held in private or why publication or disclosure of the evidence or the matter contained in the document should be prohibited or restricted.

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Person presiding

29. The Chairperson shall preside at a hearing.

Conduct

30. Except as otherwise provided by this Act, the procedure at a hearing shall be determined by the Commission.

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Appearance and representation

31. (1) At a hearing—

- (a) a person summoned to attend or appearing before the Commission as a witness may be represented by a legal practitioner; and
- (b) any other person who, in the opinion of the Commission, has a sufficient interest in the inquiry may appear and be represented by a legal practitioner.

(2) In paragraph (1) (b)—

“person” includes an unincorporated association.

Presence of persons at private hearings

32. Where a hearing is being held in private, a person shall not be present at the hearing unless the person is—

- (a) a Commissioner;
- (b) a member of the staff of the Commission directed to be present;
- (c) counsel assisting the Commission;
- (d) giving evidence before the Commission;
- (e) the legal practitioner representing the person giving evidence; or
- (f) entitled by virtue of a direction under paragraph 28 (3) (a) to be present.

Examination of witnesses

33. At a hearing—

- (a) counsel assisting the Commission; or
- (b) any other person present who is permitted by the Chairperson to do so;

may, so far as the Commission thinks appropriate, examine or cross-examine a witness on any matter that the Commission considers relevant to its inquiry.

Power to summon witnesses and take evidence

34. (1) For the purposes of a hearing before a Commission, the Chairperson, or a Commissioner authorised by the Chairperson, may summon a person to appear before the Commission—

- (a) on a date specified in the summons to produce the documents and other things referred to in the summons; or
- (b) at the hearing—
 - (i) to give evidence; or
 - (ii) to give evidence and produce the documents and other things referred to in the summons.

(2) A person shall be taken to have complied with a summons of the kind referred to in paragraph (1) (a) if the person delivers the

documents and things to the Commission before the date specified in the summons.

(3) A summons shall be—

(a) in the prescribed form; and

(b) served on a person in the prescribed manner.

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(4) At a hearing, the Commission may take evidence on oath or affirmation and, for that purpose—

(a) a Commissioner may require a witness at the hearing either to take an oath or to make an affirmation; and

(b) a Commissioner or authorised person may administer an oath or affirmation to a witness at the hearing.

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(5) At a hearing, the Chairperson may—

(a) require a witness to answer a question put to the witness; and

(b) require a person appearing at the hearing pursuant to a summons to produce a document specified in the summons.

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Arrest of witnesses failing to appear

35. (1) If a person served with a summons to appear before a Commission as a witness fails to appear or attend pursuant to the summons, the Chairperson may, on proof of the service of the summons, issue a warrant for the apprehension of the person.

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(2) A warrant authorises—

(a) the apprehension of the witness;

(b) the bringing of the witness before the Commission; and

(c) the detention of the witness in custody for that purpose until the witness is released by order of the Chairperson.

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(3) A warrant may be executed by—

(a) a police officer;

(b) a member of the police force of a State or the Northern Territory; or

(c) the person to whom it is addressed.

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(4) The person executing a warrant may, with such assistance, and by such force, as is necessary and reasonable, enter any premises for the purpose of executing the warrant.

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

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PART V—OFFENCES

Failure of witnesses to attend or produce documents

36. (1) A person served with a summons to appear as a witness at a hearing before a Commission shall not, without reasonable excuse—

- 5 (a) fail to appear before the Commission as required by the summons; or
- (b) fail to attend from day-to-day unless excused, or released from further attendance, by a Commissioner.

Penalty: \$5,000 or imprisonment for 6 months.

10 (2) A person shall not, without reasonable excuse, refuse or fail to produce a document or other thing that the person was required to produce—

- (a) by a summons under this Act served on the person; or
- 15 (b) if the person appears as a witness at a hearing before a Commission—by the Chairperson.

Penalty: \$5,000 or imprisonment for 6 months.

(3) It is a defence to a prosecution for an offence against subsection (2) that the document or other thing was not relevant to the matter into which the Commission was inquiring.

20 (4) It is not a reasonable excuse for the purposes of subsection (2) for a person to refuse or fail to produce a document or other thing on the ground that the production of the document or thing might tend to incriminate the person.

Refusal to be sworn or give evidence

25 37. (1) A person appearing as a witness at a hearing before a Commission shall not, without reasonable excuse, refuse or fail—

- (a) to comply with a requirement under paragraph 34 (4) (a) to take an oath or make an affirmation; or
- 30 (b) to answer a question that the person is required by the Chairperson to answer.

Penalty: \$5,000 or imprisonment for 6 months.

35 (2) Where a person has on any day done or omitted to do something, being an act or omission that constitutes an offence against subsection (1), and the person does or omits to do the same thing at a hearing of the Commission held on some other day, each such act or omission constitutes a separate offence.

(3) It is not a reasonable excuse for the purposes of paragraph (1) (b) for a person to refuse or fail to answer a question on the ground that the answer to the question might tend to incriminate the person.

False evidence

38. A person shall not, at a hearing before a Commission, knowingly give evidence that is false or misleading in a material particular.

Penalty: \$50,000 or imprisonment for 5 years.

Improper dealings with documents

39. A person, knowing or having reasonable grounds for believing that a document or other thing is or may be required in evidence before a Commission, shall not wilfully—

- (a) conceal, mutilate, destroy or alter the document or other thing;
- (b) render the document or other thing incapable of identification; or
- (c) in the case of a document—render it illegible or indecipherable.

Penalty: \$20,000 or imprisonment for 2 years.

Intimidation or dismissal of witnesses

40. (1) A person shall not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage on or to a person—

- (a) because the person appeared or is to appear as a witness before a Commission; or
- (b) because of any evidence given by the person before a Commission.

Penalty: \$50,000 or imprisonment for 5 years.

(2) An employer shall not dismiss an employee from employment or prejudice an employee in employment—

- (a) because the employee appeared or is to appear as a witness before a Commission; or
- (b) because of any evidence given by the employee before a Commission.

Penalty: \$50,000 or imprisonment for 5 years.

(3) If all the elements of an offence against subsection (2) other than the reason for the employer's action are proved, the onus of proving that the dismissal or prejudice was not because the employee appeared or was to appear as a witness or gave evidence is on the employer.

Preventing witnesses from attending

41. A person shall not wilfully prevent a person who has been summoned to attend before a Commission—

- (a) from so attending;
- (b) from answering a question that the person is required by the Chairperson to answer; or

(c) from producing a document or other thing referred to in the summons.

Penalty: \$10,000 or imprisonment for 1 year.

Bribery of witnesses

5 **42. A person shall not—**

- (a) give, confer or procure, or promise or offer to give, confer or procure any property or benefit of any kind to, on or for, any person on any agreement or understanding that any person called or to be called as a witness before a Commission will give false testimony or withhold true testimony;
- 10 (b) induce a person called or to be called as a witness before a Commission to give false testimony or to withhold true testimony; or
- 15 (c) ask for, receive or obtain, or agree to receive or obtain, any property or benefit of any kind, whether for the person or for another person, on any agreement or understanding that any person called or to be called as a witness before a Commission will give false testimony or withhold true testimony.

Penalty: \$50,000 or imprisonment for 5 years.

20 Fraud on witnesses

43. A person shall not practise any fraud or deceit, or knowingly make or exhibit any false statement, representation, token or writing, to any person called or to be called as a witness before a Commission with intent to affect the testimony of that person as a witness.

25 Penalty: \$20,000 or imprisonment for 2 years.

Contempt of Commissions

44. A person shall not—

- (a) wilfully insult or disturb a Commission;
- (b) wilfully interrupt the proceedings of a Commission;
- 30 (c) use insulting language towards a Commission;
- (d) make a statement that is false and defamatory of a Commission; or
- (e) commit a wilful contempt of a Commission.

Penalty: \$10,000 or imprisonment for 1 year.

35 False representation

45. (1) A person shall not falsely represent himself or herself to be an officer of a Commission.

Penalty: \$10,000 or imprisonment for 1 year.

(2) In subsection (1)—

- 40 “officer of a Commission” means—
 - (a) a Commissioner;

- (b) a member of the staff of a Commission;
- (c) counsel assisting a Commission; or
- (d) an authorised person.

Dealing with certain offences summarily

46. (1) Notwithstanding that an offence against section 38 or 39 is an indictable offence, proceedings in respect of such an offence may be heard and determined by a court of summary jurisdiction where—

- (a) the court is satisfied that it is proper to do so; and
- (b) the defendant and prosecution both consent to the offence being so dealt with.

(2) Where a person is convicted of an offence that has been dealt with pursuant to subsection (1), the penalty that the court may impose is a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year.

PART VI—MISCELLANEOUS

Protection of certain officers

47. A person who is or has been—

- (a) a public servant; or
- (b) a person acting under the direction of a Commissioner;

is not liable, personally, to an action or other proceeding for or in relation to an act done or omitted to be done in good faith in performance or exercise or purported performance or exercise of any function, power or authority conferred on the person in that capacity for the purposes of this Act.

No proceedings against Commissions

48. No proceedings for an injunction, declaration or writ of mandamus, prohibition or certiorari shall be brought against a Commission.

Publication of proceedings protected

49. No action or proceeding, civil or criminal, lies against a person in respect of the publication of a fair and accurate report of the proceedings of a hearing before a Board (except a publication in contravention of a direction under subsection 28 (3)).

Reimbursement of expenses of witnesses

50. A witness appearing before a Commission is entitled to be paid by the Territory in respect of the expenses of the attendance of the witness an amount authorised in accordance with the Supreme Court scale of costs.

Regulations

51. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- 5 (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.