

1990

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

ROYAL COMMISSIONS BILL 1990

INQUIRIES BILL 1990

ROYAL COMMISSIONS AND INQUIRIES (CONSEQUENTIAL PROVISIONS) BILL

1990

EXPLANATORY MEMORANDUM

Circulated by authority of

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CHIEF MINISTER

and

BERNARD COLLAERY MLA

ATTORNEY-GENERAL

**ROYAL COMMISSIONS BILL 1990, INQUIRY BILL 1990, ROYAL COMMISSIONS AND INQUIRIES (CONSEQUENTIAL PROVISIONS) BILL 1990**

**Outline**

The Royal Commissions Bill 1990 provides for the establishment in the Territory of a Royal Commission. The Bill provides for the Executive to, by instrument published in the Gazette, appoint one or more persons as a Royal Commission. Only a person who is or has been a Judge or has been enrolled for not less than 5 years as a legal practitioner may be appointed as a Commissioner.

The Bill intends that a Royal Commission is to be provided with the protection of privilege and extensive powers of coercion and substantial penalties for contempt. A Commission would be able to hold an inquiry of an investigatory and inquisitorial nature.

The Inquiries Bill 1990 provides for the establishment by the Executive, by instrument, of a Board of Inquiry to hold a general investigatory inquiry into a matter specified in the instrument of appointment. It is intended that a Board of Inquiry would be established to provide the Government of the Territory with information on a matter of general importance.

The Royal Commissions and Inquiries (Consequential Provisions) Bill 1990 repeals the Enquiry Bill 1938 and makes technical amendments to the Electricity Bill 1971 and the Parole Bill 1976 consequent to the repeal of the Enquiry Bill 1938 and to the enactment of the Inquiries Bill 1990.

The Bill amends the Administrative Decisions (Judicial Review) Act 1989 to provide that a decision made under the Royal Commissions Bill 1990 or under the Inquiries Bill 1990 is not a decision to which the Administrative Decisions (Judicial Review) Act 1989 will apply, and amends the Ombudsman Act 1989 to provide that an action taken by a Royal Commission under the Royal Commissions Bill 1990 or by a Board of Inquiry under the Inquiries Bill 1990 is not subject to the Ombudsman Act 1989. The Bill also amends the Remand Centres Act 1976 to provide that a person remanded in custody under the Royal Commissions Act 1990 may be detained in a remand centre.

**Financial Considerations:** The Bills will provide for contingent events: the financial implications of the legislation are not able to be calculated.

Details of the Bills are set out in the Attachment.

ROYAL COMMISSIONS BILL 1990

Clause 1 provides that the short title of the Bill, when enacted, is to be the Royal Commissions Act 1990.

Clause 2 provides for commencement and includes automatic commencement at the end of a period of six months after the day on which the Bill is notified in the Gazette.

Clause 3 is an interpretation clause.

Clause 4 provides that the Crown is to be bound.

Clause 5 provides for the Executive, by instrument to be published in the Gazette, to appoint one or more persons as a Royal Commission to inquire into a matter specified in the instrument of appointment.

Clause 6 deals with Commissioners.

Subclause 6(1) provides that a person shall not be appointed as a Commissioner unless the person is or has been a Judge or has been enrolled as a legal practitioner for not less than 5 years.

Subclause 6(2) provides that where more than one person constitutes a Commission, the Executive shall appoint one of those persons to be the Chairperson of the Commission.

Subclause 6(3) provides that where a Commission is constituted by two or more persons and one of those persons dies, resigns or is removed from office, the remaining Commissioner or Commissioners shall constitute the Commission.

Subclause 6(4) provides that where a Commission is constituted by more than two persons and the Chairperson dies, resigns or is removed from office, the Executive shall appoint one of the remaining Commissioners to be the Chairperson.

Subclause 6(5) provides that an appointment of a Commissioner is not to be invalidated by a defect or irregularity in the appointment of the Commissioner.

Clause 7 provides that a Commissioner is to hold office on such terms and conditions, in relation to matters not provided for under the Bill, as are determined by the Executive.

Clause 8 deals with the remuneration and allowances of a Commissioner.

Subclause 8(1) provides that a Commissioner shall be paid such remuneration and allowances as are prescribed.

Subclause 8(2) provides that a Commissioner shall not be paid such remuneration as is prescribed if there is, (a) a subsisting determination relating to the remuneration to be paid to the Commissioner; or (b) an allowance of the kind as prescribed if there is a subsisting determination relating to the allowance of that kind to be paid to the Commissioner.

Subclause 8(3) provides that if a person who is a Judge is appointed as a Commissioner, that person is not entitled to receive remuneration under the Bill while receiving a salary or annual allowance as a Judge.

Subclause 8(4) provides that the word "remuneration" used in subclause 8(2) means a determination of the Remuneration Tribunal.

Clause 9 provides that a Commissioner ceases to hold office as a Commissioner, (a) when the Commission's Report has been submitted to the Chief Minister as provided for in the Bill; or (b) when the Commission notifies the Chief Minister in accordance with clause 22 that outstanding matters have been finalised.

Clause 10 provides for the resignation of a Commissioner.

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

Clause 12 provides for the staff of a Commission.

Clause 13 deals with the terms of reference of a Commission.

Subclause 13(1) provides that the Executive may determine the terms of reference of a Commission.

Subclause 13(2) provides that where the Executive makes a determination as to the terms of reference of a Commission, (a) the Commission shall conduct an inquiry in accordance with those terms of reference; and (b) the Chief Minister shall publish the terms of reference in the Gazette.

Clause 14 provides that, except as otherwise provided by the Bill, a Commission shall determine the conduct of an inquiry.

Clause 15 deals with a report of a Commission.

Subclause 15(1) provides that after completing an inquiry, a Commission shall, (a) prepare a report of the inquiry; and (b) submit that report to the Chief Minister.

Subclause 15(2) provides that a report shall be submitted to the Chief Minister, (a) where the Executive has fixed a date for the submission of a report, on or before that date; or (b) where no such date has been fixed, as soon as is practicable after completion of the inquiry.

Subclause 15(3) provides that 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.

Subclause 15(4) provides that on the submission of a report to the Chief Minister or on the completion of any outstanding matters as is provided for under clause 22, a Commission shall commit any documents or things in its possession to the custody of the Chief Minister for safekeeping.

Clause 16 deals with the tabling of a report of a Commission.

Subclause 16(1) provides that the Chief Minister may lay a copy of a report, or of part of a report, submitted by a Commission, before the Legislative Assembly.

Subclause 16(2) provides the Chief Minister may make a report or part of a report public whether or not the Assembly is sitting and whether or not the report or part of the report has been laid before the Assembly.

Subclause 16(3) provides that where a report or part of a report is made public by the Chief Minister before it is laid before the Assembly, the report or part of the report, as the case may be, attracts the same privileges and immunities as if the report or part of the report had been laid before the Assembly:

Clause 17 deals with the determination of questions that may arise before a Commission of two or more persons.

Subclause 17(1) provides that a question arising before a Commission constituted by two or more persons shall be decided, (a) where the Commission consists of more than two persons, by majority; or (b) where a Commission consists of two Commissioners and they are divided on the question, in accordance with the opinion of the Chairperson.

Subclause 17(2) provides that where a question arises before two or more Commissioners and they are not unanimous in opinion on the question, if a Commissioner so requires, the opinion of the dissenting Commissioners shall be recorded in the Commissions' report.

Clause 18 provides that a Commission may appoint a legal practitioner to assist the Commission as counsel.

Clause 19 deals with the protection of a Commissioner, a legal practitioner assisting a Commission and the protection and liabilities of a witness before a Commission.

Subclause 19(1) provides that a Commissioner is to have, in the exercise of powers and functions under the Bill, the same protection and immunity as a Judge of the Supreme Court.

Subclause 19(2) provides that a legal practitioner assisting a Commission or appearing before a Commission on a person's behalf has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

Subclause 19(3) provides that, subject to the Bill, a person summoned to attend or appear 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.

Clause 20 creates an offence of the disclosure, recording, use or provision to another person of information or material acquired by a person who is or who has been a Commissioner, a member of the staff of a Commission or counsel assisting a Commission or any person who has, or has had, access to information or material but no authority, except in the performance of a duty or exercise of power under the Bill, to deal with that information or material. A penalty of \$5,000 or imprisonment for 6 months or both is imposed for noncompliance.

Clause 21 provides that 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 the law of the Territory, the Commonwealth, a State or another Territory, the Commission may communicate the information or furnish the evidence to, (a) the Attorney-General or appropriate Minister of State for the Commonwealth, a State or Territory; or (b) the Chief Police Officer of the ACT.

Clause 22 provides that where a Commission has, (1)(a) submitted its report in accordance with clause 15; and (b) there are matters outstanding in connection with the Commission, the Commission shall, (c) notify the Chief Minister that there are

outstanding matters; and (d) and exercise its powers for the purpose of finalising the outstanding matters; and (2) when the matters are finalised, notify the Chief Minister accordingly.

Clause 23 provides for the procedure of a Commission. A Commission is, (a) 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 for the fair and expeditious conduct of the inquiry.

Clause 24 provides that a statement or disclosure made or evidence given or produced before a Commission by a witness before a Commission, is not, except in proceedings for an offence against this Bill, admissible in evidence against the witness in any civil or criminal proceedings.

Clause 25 deals with search warrants.

Subclause 25(1) provides that the Chairperson of a Commission may issue a search warrant where, (a) the Chairperson has reasonable grounds for suspecting that there may be then or within the next 24 hours in or on any premises, a thing of a particular kind connected with a matter into which the Commission is inquiring; and (b) the Chairperson believes on reasonable grounds that if a summons were not issued for the production of the thing it might be concealed, lost, mutilated, destroyed or disposed of.

Subclause 25(2) provides that a search warrant shall authorise a police officer or an authorised person named in the warrant to, with assistance and force as is necessary and reasonable, (a) enter; and (b) search premises; and to (c) seize; and (d) deliver any thing relevant to the inquiry of a Commission, to the Commission.

Subclause 25(3) provides that 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 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 used; and (d) specify the date, being a date not later than one month after the date of issue of the warrant, on which the warrant ceases to have effect.

Subclause 25(4) provides that 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 as that on which the warrant ceases to have effect.

Subclause 25(5) provides that, if, in searching under a search warrant, (a) the person executing the warrant finds a thing relevant to the inquiry although not a thing of a kind specified in the search warrant; and (b) the person believes on reasonable grounds that it is necessary to seize the thing in order that it

not be concealed, lost, mutilated, destroyed or disposed of, the person may seize the thing and shall deliver it to the Commission.

Subclause 25(6) provides that a person executing a search warrant shall, on request by an occupant of the premises to which the warrant relates, show the warrant to the occupant.

Subclause 25(7) provides that a reference in subclause 25(1) to the Chairperson is to be read as including a reference to a Commissioner authorised by the Chairperson to act under the subclause.

Clause 26 deals with the inspection and retention of documents.

Subclause 26(1) provides that a Commission, a Commissioner, a member of the staff of a Commission or an authorised person may (a) inspect a document or thing produced before or delivered to a Commission; (b) retain possession of the document or thing for such a 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 of the document as are relevant to a matter the subject of the inquiry.

Subclause 26(2) provides that where a document is retained under subclause (1), (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 by all courts as evidence as if it were the original; and (b) until the certified copy is supplied, the Commission shall, at times and places 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.

Subclause 26(3) provides that 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 cause the document or thing to be delivered to a person, if the person appears to the Commission to be entitled to the document or thing and if the person so requests.

Clause 27 gives a Commission power to do all things necessary or incidental to the performance of its functions.

Clause 28 deals with the power of a Commission to hold hearings.

Subclause 28(1) provides a general power for the Commission, for the purposes of an inquiry, to hold hearings.

Subclause 28(2) provides that, subject to subclause (3), a hearing shall be in public.



Subclause 28(3) provides that where a Commission is satisfied that it is desirable to do so the Commission may, (a) direct that a hearing shall be 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 public or private, or of matters contained in documents received by the Commission at a hearing; and, (c) give directions prohibiting or restricting the disclosure to some or all of the persons present at a hearing of evidence given, or the contents of a document lodged with or received in evidence by, the Commission at the hearing.

Subclause 28(4) provides that in considering whether to give a direction under subclause 28(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 or material before a Commission at a hearing should be available to all persons present at the hearing and to the public, 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 evidence or material before the Commission should be prohibited or restricted.

Clause 29 provides that the Chairperson shall preside at a hearing.

Clause 30 provides that, except as otherwise provided for by the Bill, the procedure at a hearing shall be determined by the Commission.

Clause 31 deals with appearance and representation before a Commission.

Subclause 31(1) provides that, at a hearing, (a) a person summoned to attend or appear 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.

Subclause 31(2) interprets the word "person" in paragraph 31(1)(b) to include an unincorporated association.

Clause 32 provides for the persons who may be present at a private hearing of a Commission.

Clause 33 provides that, at a hearing, (a) counsel assisting the Commission; or (b) any other person present who is permitted by the Chairperson to do so may, as the Commission thinks appropriate, examine or cross-examine a witness on any matter the Commission considers relevant to its inquiry.

Clause 34 provides power for a Commission to summon witnesses and to take evidence.

Subclause 34(1) provides that, for the purposes of a hearing, 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 documents or other things referred to in the summons; or (b) at a hearing to give evidence or to give evidence and to produce documents or things referred to in the summons.

Subclause 34(2) provides that a person shall be taken to have complied with a summons if the person delivers the documents or things to the Commission before the date specified in the summons.

Subclause 34(3) provides that the summons shall be, (a) in the prescribed form; and (b) served on the person in the prescribed manner.

Subclause 34(4) provides that, 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 make an affirmation; and (b) a Commissioner or authorised person may administer an oath or affirmation to a witness at a hearing.

Subclause 34(5) provides that at a hearing, the Chairperson may, (a) require a witness to answer a question put to the witness; and (b) require a person summoned to appear at the hearing to produce a document specified in the summons.

Clause 35 provides for the arrest of a witness who fails to appear when summoned.

Subclause 35(1) provides that if a person served with a summons fails to appear and attend as required by the summons, the Chairperson may, on proof of the service of the summons, issue a warrant for the apprehension of the person.

Subclause 35(2) provides for the warrant of apprehension to authorise, (a) the apprehension of the witness; (b) the bringing of the witness before the Commission; and (c) the detention of the witness for the purpose of bringing the witness before the Commission.

Subclause 35(3) provides that a warrant may be executed by, (a) a police officer; (b) a member of the police force of a State or the Northern Territory; and (c) the person to whom the warrant is addressed.

Subclause 35(4) provides the person executing the warrant may, with such assistance and by such force, as is necessary and reasonable, enter any premises for the purpose of executing the warrant.

Subclause 35(5) provides that the apprehension of a witness under this clause does not relieve the witness from liability incurred by reason of the witness' noncompliance with the summons.

Clause 36 deals with the failure of a witness to attend before, or to produce documents to, a Commission.

Subclause 36(1) provides that a person served with a summons to appear before a Commission shall not, without reasonable excuse, (a) fail to appear as required by the summons; or (b) fail to attend from day to day unless excused or released by a Commissioner, and provides a penalty for noncompliance of \$5,000 or imprisonment for 6 months.

Subclause 36(2) provides that a person appearing as a witness before a Commission shall not, without reasonable excuse, refuse to, or fail to produce a document or other thing as required, (a) by the summons; or (b) by the Chairperson, and provides a penalty for noncompliance of \$5,000 or imprisonment for 6 months.

Subclause 36(3) provides that it is a defence to a prosecution for an offence against subclause (2) that the document or thing required to be produced by the summons was not relevant to the matter into which the Commission was inquiring.

Subclause 36(4) provides that it is not a reasonable excuse for the purposes of subclause (2) for a person who refuses or fails to produce a document or thing that the production of the document or thing would tend to incriminate the person.

Clause 37 deals with the refusal of a person to be sworn or to give evidence.

Subclause 37(1) provides that a person appearing as a witness at a hearing shall not, without reasonable excuse, refuse or fail, (a) to comply with a requirement under paragraph 34(4)(a) to take an oath or affirmation; or (b) to answer a question the person is required by the Chairperson to answer, and provides a penalty for noncompliance of \$5,000 or 6 months imprisonment.

Subclause 37(2) provides that each act or omission that constitutes an offence against subclause 37(1) done on the same day constitutes a separate offence.

Subclause 37(3) provides that it is not a reasonable excuse to an offence under paragraph 37(1)(b) for a person to refuse or to fail to answer a question that to answer the question might tend to incriminate the person.

Clause 38 creates an offence of knowingly giving evidence that is false or misleading in a material particular and provides a penalty of \$50,000 or imprisonment for 5 years.

Clause 39 creates an offence of improper dealing with documents and provides that 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 thing; (b) render the document or thing incapable of identification; or (c) render a document illegible or indecipherable. A penalty of \$20,000 or imprisonment for 2 years is imposed.

Clause 40 deals with the intimidation or dismissal of a witness.

Subclause 40(1) provides that a person shall not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage on or to a person because, (a) 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. A penalty of \$50,000 or imprisonment for 5 years is provided.

Subclause 40(2) provides that an employer shall not dismiss an employee from employment or prejudice an employee in employment, (a) because the employee appeared or is to appear before a Commission; or (b) because of any evidence given by an employee before a Commission. A penalty of \$50,000 or imprisonment for 5 years is provided.

Subclause 40(3) provides that if all the elements of an offence under subclause 40(2) other than the reason for the employer's action are proved, the onus of proving that the dismissal or prejudice to an employee was not because the employee appeared or was to appear as a witness before a Commission is on the employer.

Clause 41 creates an offence of preventing a witness from attending a Commission and provides that a person shall not wilfully prevent a person who has been summoned to attend as a witness before a hearing, (a) from so attending; (b) from answering a question that the Chairperson requires the person to answer; or (c) from producing a document or other thing referred to in the summons. A penalty of \$10,000 or imprisonment for 1 year is provided.

Clause 42 provides that a person shall not, (a) provide a benefit of any kind to any person called or to be called as a witness before a Commission on any agreement or understanding that the person will give false testimony or withhold true testimony; (b) induce a person called or to be called as a witness before a Commission to give false testimony or withhold true testimony; or (c) seek or agree to receive a benefit of any kind, 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. A penalty of \$50,000 or imprisonment for 5 years is provided.

Clause 43 creates an offence for any person to practise any fraud or deceit on any person called or to be called as a witness before a Commission with intent to affect the testimony of the person and provides a penalty of \$20,000 or imprisonment for 2 years.

Clause 44 creates the offence of the wilful contempt of a Commission and provides a penalty of \$10,000 or imprisonment for 1 year.

Clause 45 creates an offence in subclause 45(1) of the false representation by a person that that person is an officer of a Commission and provides a penalty of \$10,000 or imprisonment for 1 year. Subclause 45(2) defines "an officer of a Commission".

Clause 46 provides that certain offences may be dealt with summarily.

Subclause 46(1) provides that, notwithstanding that an offence against clause 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.

Subclause 46(2) provides that where a person is convicted of an offence that has been dealt with as provided in subclause 46(1), the penalty that the court may impose is a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year.

Clause 47 provides for the protection of a person who is or who has been a public servant or a person acting under the direction of a Commissioner against personal liability to any action or proceeding in relation to an act done in good faith in performance or purported performance of any function pursuant to the Bill.

Clause 48 provides that no proceedings for an injunction, declaration or prerogative writ shall be brought against a Commission.

Clause 49 provides that no action, civil or criminal, shall lie against a person in respect of the publication, other than a publication in contravention of a direction given under subclause 28(3), of a fair and accurate report of the proceedings of a hearing before a Commission.

Clause 50 provides for the reimbursement of expenses of a witness before a Commission.

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Clause 51 provides that the Executive may make regulations, not inconsistent with the Bill, prescribing matters for the purposes of the Bill.

## INQUIRIES BILL

Clause 1 provides that the short title of the Bill, when enacted, is to be the Inquiries Act 1990.

Clause 2 provides for commencement and includes automatic commencement at the end of a period of 6 months after the day on which the Bill is notified in the Gazette.

Clause 3 is an interpretation clause.

Clause 4 provides that the Crown is to be bound.

Clause 5 provides that the Executive may, by instrument, appoint 1 or more persons as a Board of Inquiry to inquire into a matter specified in the instrument of appointment.

Clause 6 deals with members of a Board of Inquiry.

Subclause 6(1) provides that where a Board is constituted by 2 or more persons, the Executive shall appoint 1 of those persons to be the Chairperson

Subclause 6(2) provides that where a Board is, (a) constituted by 2 or more persons; and (b) a member dies, resigns or is removed from office, the remaining members shall constitute the Board.

Subclause 6(3) provides that where a Board is, (a) constituted by more than 2 persons; and (b) the Chairperson dies, resigns or is removed from office, the Executive shall appoint 1 of the remaining members of the Board to be the Chairperson

Subclause 6(4) provides that an appointment of a member of a Board is not to be invalidated by a defect or irregularity in the appointment of the member.

Clause 7 deals with the terms and conditions of the appointment of a Board.

Subclause 7(1) provides that a person may be appointed as a full-time or as a part-time member.

Subclause 7(2) provides that a member of a Board holds office on such terms and conditions in relation to matters not provided for in the Bill as are determined in writing by the Executive.

Clause 8 deals with the remuneration and allowances of a Board.

Subclause 8(1) provides that a member of a Board shall be paid such remuneration and allowances as are prescribed.

Subclause 8(2) provides that subclause 8(1) does not apply in relation to (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to a member; or (b) an allowance if there is a subsisting determination relating to an allowance of that kind to be paid to a member of a Board.

Subclause 8(3) provides that, in subclause 8(2), "determination" means a determination of the Remuneration Tribunal.

Clause 9 provides that a member ceases to hold office as a member when the Board's report of its inquiry has been submitted to the Chief Minister in accordance with the Bill.

Clause 10 provides for the resignation of a member.

Clause 11 provides that the Executive may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

Clause 12 provides for the staff of a Board.

Clause 13 provides that, except as otherwise provided by the Bill, a Board shall determine the conduct of an inquiry.

Clause 14 deals with reports of Boards.

Subclause 14(1) provides that after completing an inquiry, a Board shall, (a) prepare a report of the inquiry; and (b) submit the report to the Chief Minister.

Subclause 14(2) provides that a report shall be submitted to the Chief Minister, (a) where the Executive has fixed a date for the submission of the report, on or before that date; or (b) where no date has been fixed by the Executive for the submission of the report, as soon as practicable after completion of the inquiry.

Subclause 14(3) provides that when submitting a report to the Chief Minister, a Board shall commit any documents or things then in its possession to the custody of the Chief Minister.



Clause 15 provides that a Board may appoint a legal practitioner to assist the Board as counsel.

Clause 16 deals with the protection of a member, a legal practitioner assisting a Board and the protection and liabilities of a witness before a Board.

Subclause 16(1) provides that a member of a Board has, in the performance of functions under the Bill, the same protection and immunity as a Judge of the Supreme Court in proceedings in that Court.

Subclause 16(2) provides that a legal practitioner assisting a Board or appearing on a person's behalf before a Board has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

Subclause 16(3) provides that, subject to the Bill, a person summoned to appear before a Board as a witness has the same protection and is subject to the same liabilities as a witness in proceedings in the Supreme Court.

Clause 17 provides that it is an offence for a person who is or who has been a member of a Board, a member of the staff of a Board or counsel assisting a Board, except in the performance of a duty or exercise of a power under the Bill, to make a record of, divulge or communicate to any person, either directly or indirectly, or make use of any information or material acquired by virtue of an office or employment under the Bill, and provides a penalty of \$5,000 or imprisonment for 6 months or both.

Clause 18 provides for the procedure of a Board. A Board is, (a) 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 Board considers necessary for the fair and expeditious conduct of the inquiry.

Clause 19 provides that a statement or disclosure made or evidence given or produced before a Board by a witness before a Board, is not, except in proceedings for an offence against this Bill, admissible in evidence against the witness in any civil or criminal proceedings.

Clause 20 deals with search warrants.

Subclause 20(1) provides that the Chairperson of a Board may issue a search warrant where, (a) the Chairperson has reasonable grounds for suspecting that there may be at that time or within 24 hours in or on any premises, a thing of a particular kind connected with a matter into which the Board is inquiring; and

(b) the Chairperson of the Board believes on reasonable grounds that if a summons were not issued for the production of the thing it might be concealed, lost, mutilated, destroyed or disposed of.

Subclause 20(2) provides that a search warrant shall authorise a police officer or an authorised person named in the warrant to, with assistance and force as is necessary and reasonable, (a) enter; and (b) search premises; and to (c) seize and, (d) deliver, to the Board any thing relevant to the inquiry of a Board.

Subclause 20(3) provides that a search warrant shall, (a) state the purpose for which it was issued; (b) specify particular hours during which the entry is authorised or state that 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 used; 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.

Subclause 20(4) provides that 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 as that on which the warrant ceases to have effect.

Subclause 20(5) provides that, if, in searching under a search warrant, (a) the person executing the warrant finds a thing relevant to the inquiry although not a thing of a kind specified in the search warrant; and (b) the person believes on reasonable grounds that it is necessary to seize the thing in order that it not be concealed, lost, mutilated, destroyed or disposed of, the person may seize the thing and shall deliver it to the Board.

Subclause 20(6) provides that a person executing a search warrant shall, on request by an occupant of the premises to which the search warrant relates, show the warrant to the occupant.

Subclause 20(7) provides that a reference in subclause 20(1) to the Chairperson shall be read as including a reference to a member authorised by the Chairperson to act under that subclause.

Clause 21 deals with the power of a Board to hold hearings.

Subclause 21(1) provides a general power for the Board, for the purposes of an inquiry, to hold hearings.

Subclause 21(2) provides that, subject to subclause 21(3), a hearing shall be in public.

Subclause 21(3) provides that where a Board is satisfied that it is desirable to do so the Board may, (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 public or private, or of matters contained in

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

Subclause 21(4) provides that in considering whether to give a direction under subclause 21(3), a Board shall take as the basis of its consideration the principle that it is desirable that hearings be in public and that evidence or material before a Board at a hearing should be available to all persons present at the hearing and to the public, but shall pay due regard to any reasons given to the Board why the hearing should be held in private or why publication or disclosure of evidence or material before the Board should be prohibited or restricted.

Clause 22 provides that the Chairperson shall preside at a hearing.

Clause 23 provides that, except as otherwise provided by the Bill, the procedure at a hearing shall be determined by the Board.

Clause 24 provides for the persons who may be present at a private hearing of the Board.

Clause 25 provides that, at a hearing, (a) counsel assisting the Board; or (b) any other person present who is permitted by the Chairperson to do so may, as the Board thinks appropriate, examine or cross-examine a witness on any matter the Board thinks relevant to the inquiry.

Clause 26 provides power for the Board to summon witnesses and take evidence.

Subclause 26(1) provides that the Chairperson, or a member authorised by the Chairperson, may summon a person to appear before the Board, (a) on a date specified in the summons to produce the documents and things referred to in the summons; or (b) at a hearing to give evidence and to produce documents or other things referred to in the summons.

Subclause 26(2) provides that a person shall be taken to have complied with the summons if the person delivers the documents or things to the Commission before the date specified in the summons.

Subclause 26(3) provides that a summons shall be, (a) in writing; and (b) served on the person named in the summons.

Subclause 26(4) provides that at a hearing, the Board may take evidence on oath or affirmation, and for that purpose, (a) a member may require a witness at the hearing either to take an oath or make an affirmation; and (b) a member or authorised person may administer an oath or affirmation to a witness at a hearing.

Subclause 26(5) provides that 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.

Clause 27 deals with the failure of a witness to attend before, or produce documents to, a Board.

Subclause 27(1) provides that a person served with a summons to appear as a witness at a hearing before a Board shall not, without reasonable excuse, (a) fail to appear before the Board as required by the summons; or (b) fail to attend from day to day unless excused, or released from further attendance by a member. A penalty for noncompliance of \$5,000 or imprisonment for 6 months is provided.

Subclause 27(2) provides that a person appearing as a witness at a hearing before a Board 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 the Bill served on the person; or (b) by the Chairperson. A penalty of \$5,000 or imprisonment for 6 months is provided for noncompliance.

Subclause 27(3) provides that it is a defence to a prosecution for an offence against subsection 27(2) that the document or other thing was not relevant to the matter into which the Board was inquiring.

Subclause 27(4) provides that it is not a reasonable excuse for the purposes of subclause 27(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.

Clause 28 deals with the refusal of a person to be sworn or to give evidence.

Subclause 28(1) provides that a person appearing as a witness at a hearing shall not, without reasonable excuse, refuse or fail, (a) to comply with a requirement under paragraph 26(4)(a) to take an oath or make an affirmation; or (b) to answer a question the person is required by the Chairperson to answer, and provides a penalty for noncompliance of \$5,000 or imprisonment for 6 months.

Subclause 28(2) provides that each act or omission that constitutes an offence under subclause 28(1) done on the same day constitutes a separate offence.

Subclause 28(3) provides that it is not a reasonable excuse to an offence under paragraph 28(1)(b) for a person to refuse or fail to answer a question on the ground that the answer might tend to incriminate the person.

Clause 29 creates an offence of knowingly giving evidence that is false or misleading in a material particular at a hearing of the Board and provides for a penalty of \$50,000 or imprisonment for 5 years.

Clause 30 creates an offence of improper dealing with documents and provides that a person, knowing or having reasonable grounds for believing that a document or other thing is or may be required in evidence before a Board, 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) render a document illegible or indecipherable. A penalty of \$20,000 or imprisonment for 2 years is imposed.

Clause 31 deals with the intimidation or dismissal of a witness.

Subclause 31(1) provides that a person shall not use, cause inflict or procure any violence, punishment, damage, loss or disadvantage on or to a person because, (a) the person appeared or is to appear as a witness before a Board; or (b) because of any evidence given by a person before a Board. A penalty of \$50,000 or imprisonment for 5 years is provided.

Subclause 31(2) provides that an employer shall not dismiss an employee from employment or prejudice the employee in employment, (a) because the employee appeared or is to appear before a Board; or (b) because of any evidence given by the employee before a Board. A penalty of \$50,000 or imprisonment for 5 years is provided.

Subclause 31(3) provides that if all the elements of an offence under subclause 31(2) other than the reason for the employer's action are proved, the onus of proving that the dismissal of or prejudice to an employee was not because the employee appeared or was to appear before a Board as a witness is on the employer.

Clause 32 creates an offence of preventing a witness from attending a Board and provides that a person shall not wilfully prevent a person who has been summoned to attend as a witness before a hearing of a Board, (a) from 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. A penalty of \$10,000 or imprisonment for 1 year is imposed.

Clause 33 provides that a person shall not, (a) provide a benefit of any kind to any person called or to be called as a witness before a Board on any agreement or understanding that the person will give false testimony or withhold true testimony; (b) induce a person called or to be called as a witness before a Board to give false testimony or withhold true testimony; or (c) seek or agree to receive a benefit of any kind, for any person, on any agreement or understanding that any person called or to be called as a witness before a Board will give false testimony or withhold true testimony. A penalty of \$50,000 or imprisonment for 5 years is imposed.

Clause 34 creates an offence for any person to practise any fraud or deceit on any person called or to be called as a witness before a Board with the intent to affect the testimony of that person as a witness and provides a penalty of \$20,000 or imprisonment for 2 years.

Clause 35 creates the offence of the wilful contempt of a Board and provides a penalty of \$10,000 or imprisonment for 1 year.

Clause 36 provides that certain offences may be dealt with summarily.

Subclause 36(1) provides that, notwithstanding that an offence against clauses 29 and 30 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 the prosecution both consent to the offence being so dealt with.

Subclause 36(2) provides that where a person is convicted of an offence that has been dealt with as provided in subclause 36(1), the penalty that the court may impose is a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year.

Clause 37 provides that the Board may, with the consent in writing of the Chief Minister, by instrument, delegate any of its powers under this Bill.

Clause 38 provides that no action, civil or criminal, shall lie against a person in respect of the publication, other than a publication in contravention of a direction given under subclause 21(3), of a fair and accurate report of the proceedings of a hearing before a Board.

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Clause 39 provides for the reimbursement of expenses of a witness before a Board.

Clause 40 provides that the Executive may make regulations, not inconsistent with the Bill, prescribing matters for the purposes of the Bill.

ROYAL COMMISSIONS AND INQUIRIES (CONSEQUENTIAL PROVISIONS) BILL  
1990

Clause 1 provides that the title of the Bill, once enacted, is to be the Royal Commissions and Inquiries (Consequential Provisions) Act 1990.

Clause 2 provides for commencement and includes automatic commencement at the end of a period of 6 months after the day on which the Bill is notified in the Gazette.

Clause 3 repeals the Enquiry Act 1938.

Clause 4 provides that the Acts specified in the Schedule are amended as set out in the Schedule.

The Schedule amends Schedule 1 of the Administrative Decisions (Judicial Review) Act 1989 to include the Inquiries Act 1990 and the Royal Commissions Act 1990. The effect is to provide that a decision made under the Inquiries Act 1990 or under the Royal Commissions Act 1990 is not a decision to which the Administrative Decisions (Judicial Review) Act 1989 will apply.

The Schedule amends the Electricity Act 1971 and the Parole Act 1976 to delete references to a "Board of Enquiry" and the "Enquiry Act 1938-1970" and substitute references to a "Board of Inquiry" and the "Inquiry Act 1990".

The Schedule amends paragraph 3(1)(a) and subsection 5(2) of the Ombudsman Act 1989 to provide that action taken by a Royal Commission under the Royal Commissions Act 1990 or by a Board of Inquiry under the Inquiries Act 1990 are not actions into which the Ombudsman has power to investigate.

The Schedule amends subsection 15(1) of the Remand Centres Act 1976 to provide that a person apprehended pursuant to a warrant and remanded in custody pursuant to the Royal Commissions Act 1990 may be detained in a remand centre.