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Robyn Webb
Chief Parliamentary Counsel
Dated 30 April 2021



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

1. Short title

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

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2. Commencement

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

3. Interpretation

In this Act, unless the contrary intention appears

—
act includes an omission or failure to act;

adverse finding means a finding of a Commission under section 19 that is adverse to the interests of a person;

authorised Commissioner hearing means a hearing of a Commission that is held as referred to in section 5A(1);

Commission means a Commission established under section 4;

Commissioner means a member of a Commission;

counsel means an Australian legal practitioner;

function includes duty;

misconduct means conduct by a person that could reasonably be considered likely to result in a criminal charge, civil liability, disciplinary proceedings, or other legal proceedings, being brought against that person in respect of the conduct;

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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;

reasonable excuse, in relation to an act by a person, means –

- (a) if the person is a witness, or providing information, to a Commission, an excuse that would excuse the act by a witness in proceedings of a similar nature in a court of law; or
- (b) if the person is the subject of a notice, or warrant in relation to a Commission, an excuse that would excuse the act by a person summoned before a court of law in proceedings of a similar nature in the court; or
- (c) in any case, an excuse that the Commission considers reasonable in the circumstances in relation to the act by the person;

vehicle includes an aircraft and a vessel.

3A. References to Commission

A reference to the Commission includes the following persons sitting for the purposes of an inquiry under this Act:

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- (a) in relation to an authorised Commissioner hearing, the Commissioner or Commissioners holding the inquiry;
- (b) in relation to a Commission that is constituted by two or more Commissioners (except if paragraph (a) applies), the Commissioners;
- (c) in relation to a sole Commissioner, the Commissioner.

PART 2 – ESTABLISHMENT AND OPERATION

4. Establishment of Commissions

- (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) For the avoidance of doubt, the Governor may, by order, amend or revoke an order under subsection (1) for any reason, including but not limited to –
 - (a) to appoint one or more persons as members of the Commission, whether before, or during, the inquiry that the Commission is established to conduct; or

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- (b) to 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.

5. Function and power of Commission

- (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.
- (3) Subject to this Act or any other Act, a Commission –
 - (a) may –
 - (i) conduct its inquiry in any manner that it considers appropriate; and

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- (ii) obtain information in any manner that it considers appropriate; and
 - (iii) determine its own procedure in conducting its inquiry; and
- (b) must, in conducting its inquiry –
- (i) observe the rules of procedural fairness; and
 - (ii) comply with this Act; and
 - (iii) act within the scope of the order under section 4(1) that established the Commission.

5A. Authorised Commissioner hearings

- (1) If a Commission is constituted by two or more Commissioners, a hearing of the Commission may be held by one or more of the Commissioners if each of the Commissioners holding the hearing is either –
- (a) the President of the Commission; or
 - (b) authorised in writing by the President of the Commission to hold authorised Commissioner hearings in relation to the Commission.
- (2) The following person presides at an authorised Commissioner hearing:
- (a) the President of the Commission;

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- (b) if the President is not one of the Commissioners holding the authorised Commissioner hearing, the Commissioner who is authorised in writing by the President to preside at the hearing.

6. Support and services

- (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 *State Service Act 2000* does not apply to persons appointed under this section.

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7. Arrangements relating to staff

- (1) A Commission may arrange with the Head of a State Service Agency for the services of State Service officers and State Service employees 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.

7A. Provisions of other Acts that do not apply

- (1) The *Personal Information Protection Act 2004*, section 24(1) of the *Custodial Inspector Act 2016*, section 26(1) of the *Ombudsman Act 1978* and section 37 of the *Health Complaints Act 1995* do not apply in relation to any information collected for communication to or communicated to the Commission of Inquiry into Institutional Child Sexual Abuse established on 4 March 2013.
- (2) The regulations may prescribe certain Acts, or certain provisions of Acts, as Acts or provisions that do not apply in relation to any information collected, or used, by or on behalf of a prescribed Commission.

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8. Immunities

- (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.

9. Decisions of Commission, &c.

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

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- (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.

10. Commission report

- (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.

11. Delegation

A Commission may delegate the exercise of any of its powers to make procedural and

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administrative decisions in respect of the
Commission or its inquiry.

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Division 1 – General powers and procedures

12. Control of proceedings

- (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).

13. Hearings to be public

- (1) Subject to subsection (2) and Division 1A, 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

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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.

14. Control of public reporting

- (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 1000 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.

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15. Right of representation

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

16. Referral of questions of law

- (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.

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17. Requirement to be met before a person is investigated

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.

18. Allegations of misconduct

(1) If a Commission is satisfied that –

- (a) an allegation of misconduct involving a person has been or should be made in its inquiry; and
- (b) that person should be required, or is likely to be required, to give evidence in the inquiry in relation to the allegation –

the Commission must give that person notice of –

- (c) the allegation; and
 - (d) the substance of the evidence, or nature and substance of anticipated evidence, supporting the allegation.
- (2) The notice is to be given a reasonable period, to be not less than 48 hours, before the person is called to give evidence in relation to the allegation.

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- (2A) Subsection (2) does not apply in respect of a person given a notice under subsection (1) if –
- (a) the allegation specified in the notice relates to misconduct by the person in respect of the giving, or presentation, of evidence in the inquiry; or
 - (b) the person waives the reasonable period, referred to in subsection (2), in respect of the allegation specified in the notice.
- (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

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- (b) the person may be represented by counsel as of right.
- (5) In determining what constitutes a reasonable period for the purposes of subsections (2) and (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.

19. Commission findings

- (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.
- (2A) If, in its report, a Commission intends to make a finding that is an adverse finding in respect of a person, the Commission must –
 - (a) notify the person in writing of –
 - (i) the Commission’s intention to make the adverse finding in respect of the person; and

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- (ii) the details of the adverse finding;
and
 - (b) allow the person at least 10 working days to make representations to the Commission in respect of the adverse finding before the report is finalised.
- (2B) If the report of a Commission makes an adverse finding in respect of a person, the rules of procedural fairness apply in respect of that person and that finding.
- (3) The report of a Commission is not admissible in legal proceedings to prove a fact found by the Commission.

Division 1A – Private sessions

19A. Private sessions

- (1) Unless otherwise specified by the order by which it is established, a Commission may hold a private session for the Commission to obtain information in respect of the matter into which the Governor has directed it to inquire.
- (2) A private session of a Commission under subsection (1) –
 - (a) is not a hearing of the Commission; and
 - (b) must be held in private; and
 - (c) subject to this Act and the order establishing the Commission, may be held as determined by the Commission.

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- (3) A person who appears at a private session of a Commission under subsection (1) –
 - (a) is not a witness before the Commission;
and
 - (b) does not give evidence to the Commission.
- (4) Despite subsection (3)(a), sections 36, 37 and 38 apply to a person who appears at a private session of a Commission under subsection (1) as if that person had appeared before the Commission or had been a witness to an inquiry.
- (5) Information that relates to an individual that has been provided at a private session of a Commission, or given to a member of a Commission solely for the purposes of a private session or proposed private session, may be included in a report or recommendation of the Commission only if the information –
 - (a) is also given in evidence to the Commission other than at a private session; or
 - (b) does not disclose the identity of, or lead to the identification of, the individual.

19B. Legal effect of private sessions

- (1) The following are not admissible in evidence against a person in any civil or criminal proceedings, other than proceedings for an offence in section 19C, in any court:

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- (a) a statement or disclosure made by the person –
 - (i) at a private session; or
 - (ii) to a member of a Commission solely for the purposes of a private session or proposed private session;
 - (b) the production of a document or other thing by the person at a private session.
- (2) A person who appears, or is authorised to be, at a private session has the same protection and immunity, and is subject to the same liabilities in respect of any civil or criminal proceedings, as a witness has in a case tried in the Supreme Court.
- (3) A legal practitioner who appears on behalf of another person at a private session has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

19C. Offences relating to private sessions

- (1) A person must not make a record of, use or disclose information that –
- (a) was obtained by the person at a private session of a Commission; or
 - (b) was given at a private session of a Commission and obtained by the person before, or after, the information was so given; or

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- (c) was given to a member of a Commission for the purposes of a private session or proposed private session.

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

(2) Subsection (1) does not apply if –

- (a) the disclosure of the information was required or authorised under this Act, or any other Act, in order to ensure the safety and welfare of a person or a class of persons; or
- (b) the record, use or disclosure of the information was for the purposes of performing functions, or exercising powers, under this Act in respect of the Commission to whom the information was given; or
- (c) the person is authorised to make the record of, or to use or disclose, the information under this Act and only records, uses or discloses the information in accordance with this Act; or
- (d) the information is recorded, used or disclosed with the consent of –
 - (i) in relation to information referred to in subsection (1)(a) or (b), the person who gave the information at the private session of the

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- Commission and each person referred to in the information; and
- (ii) in relation to information referred to in subsection (1)(c), the person who gave the information to the member of the Commission; or
 - (e) the information that is recorded, or used or disclosed, does not disclose the identity of, or lead to the identification of, a person who has not given consent to the recording, use or disclosure of that information.
- (3) Except as provided in subsection (2), nothing in this Act, or any other Act, authorises the making of a record, or the use or disclosure, of information provided at a private session or for the purposes of a private session or proposed private session.
- (4) Section 33 applies to a person who gives information at, or produces a document or thing to, a private session of a Commission as if –
- (a) a reference to a witness in section 33(1) were a reference to a person who appears at a private session under this Division; and
 - (b) a reference to a person giving evidence, or producing or surrendering a document or thing, in section 33(2) or (3) were a reference to a person appearing at, or producing or surrendering a document or

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thing to, a private session under this
Division.

Division 2 – Evidence and witnesses

20. Rules of evidence

- (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.

21. Admissibility of evidence in other proceedings

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

22. Notices to witnesses

- (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

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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 or directed to give evidence to a Commission is –
 - (a) a prisoner or detainee under the *Corrections Act 1997* or the *Youth Justice Act 1997*; or
 - (b) a patient detained in an approved hospital under the *Mental Health Act 2013*; or
 - (c) a person who is subject to a restriction under the *Criminal Justice (Mental Impairment) Act 1999* –

the notice requiring or directing the person to provide any information or explanation authorises and requires the Director of Corrective Services, the Secretary within the

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meaning of the *Youth Justice Act 1997*, the controlling authority of the approved hospital or the responsible medical officer, within the meaning of the *Criminal Justice (Mental Impairment) Act 1999*, to allow the person to provide that information or explanation to 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.

23. Notice to produce document or statement

- (1) A Commission may, by notice served on a person, require the person to –
- (a) prepare a document for or statement to the Commission, or a person designated by the Commission, containing the information known by the person in respect of the matter specified in the notice; and
 - (b) give the document or statement so prepared to a person by the time, and at the place or in the manner, specified in the notice.
- (2) A Commission must not require a person to prepare a document or statement under subsection (1) if that person has been charged with an offence in respect of the matter to which the document or statement relates.

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- (3) Subsection (2) does not apply if the charge has been finally disposed of.
- (4) A notice under this section served by the Commission on a person may form, but is not required to form, part of a notice served under section 22 by that Commission on that person.

23A. Privilege does not apply in certain circumstances

If a person refuses to prepare or produce a document or statement as required under section 22 or 23 on the grounds that the document or statement, or the information contained in the document or statement, is protected by privilege –

- (a) the Commission may require the production of the document or statement to assess whether privilege so applies; and
- (b) the production of the document or statement to the Commission, or the use of the document or statement by the Commission, does not affect whether the document or statement is protected by privilege in any other circumstances.

23B. Powers in relation to witnesses

If a Commission is satisfied that it is necessary in the circumstances, the Commission may do one or more of the following in respect of a person giving evidence to the Commission:

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- (a) permit the person to give evidence anonymously or under a pseudonym;
- (b) use any means that the Commission considers appropriate to prevent the direct, or indirect, identification of the person;
- (c) identify the person as potentially vulnerable and apply any special evidentiary procedures, or measures, that may be appropriate, including but not limited to measures under the *Evidence (Children and Special Witnesses) Act 2001* whether or not the prerequisites under that Act for those measures are met.

Division 3 – Obtaining evidence

24. Power of entry, search and seizure

- (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 or vehicle, 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

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- (b) there are reasonable grounds to suspect that the document or thing is in the place, building or vehicle 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 or vehicle 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.

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24A. Application for use of surveillance device

A Commission may apply for a warrant under Part 2 of the *Police Powers (Surveillance Devices) Act 2006* as if the Commission were a law enforcement officer within the meaning of that Act and a reference in that Act to a relevant offence were read as a reference to the matter of the inquiry being undertaken by the Commission.

24B. Application for use of listening device

- (1) A Commission may apply for a warrant under Part 4 of the *Listening Devices Act 1991* as if –
 - (a) the Commission were a police officer of or above the rank of sergeant; and
 - (b) a reference in that Part to a prescribed offence were read as a reference to the matter of the inquiry being undertaken by the Commission.
- (2) If a magistrate authorizes the use of a listening device, by the Commission, under a warrant under Part 4 of the *Listening Devices Act 1991* –
 - (a) the warrant may specify a person who is, or a class of persons who are, authorised to install and retrieve a listening device under the authority of the warrant; and
 - (b) that Act applies in respect of the warrant so issued.

25. Power to examine under oath

A Commissioner may –

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

26. Self-incrimination

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.

27. Failure to give or produce evidence is contempt

- (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.

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- (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 or vehicle, using such force as is reasonably necessary.

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- (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.

28. Other contempts

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

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- (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

29. Show cause procedure

- (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.

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

30. Review of decision to certify contempt

- (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.

31. Punishment for contempt

- (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

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- (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.

32. Fines for contempt

If the Supreme Court imposes a fine on a person for contempt of a Commission, Part 4 of the *Monetary Penalties Enforcement Act 2005* applies in relation to the payment of that fine as if it were a fine imposed under section 7 of the *Sentencing Act 1997*.

PART 4 – MISCELLANEOUS

33. Offences

- (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 –

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- (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).

34. Copies of documents

- (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.

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- (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.

34A. Commission may communicate information

- (1) If, in the course of inquiring into a matter, a Commission obtains information that relates, or that may relate, to a contravention of a law, or to evidence of a contravention of a law, of the State, the Commonwealth, another State or a Territory, the Commission may, if in the opinion of the Commission it is appropriate to do so, communicate the information or furnish the evidence, as the case may be, to –
- (a) the Attorney-General of the State, the Commonwealth, another State, the Australian Capital Territory or the Northern Territory; or
 - (b) the Director of Public Prosecutions; or
 - (c) the authority or person responsible for the administration or enforcement of that law.

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- (2) A reference in subsection (1) to a contravention of a law is a reference to a contravention for which a person may be liable to –
- (a) a criminal penalty; or
 - (b) a civil or administrative penalty.
- (3) If, in the course of inquiring into a matter, a Commission –
- (a) obtains information; or
 - (b) takes evidence; or
 - (c) receives a document or thing –
- that, in the opinion of the Commission, relates or may relate to a matter into which another Commission is required or authorised to inquire, the first-mentioned Commission may, if in its opinion it is appropriate to do so, communicate the information or furnish the evidence, document or thing, as the case may be, to that other Commission.
- (4) For the purposes of subsection (3) –
- another Commission* includes a Royal Commission, or a Commission of Inquiry, established in another Australian jurisdiction.
- (5) If, in the course of inquiry into a matter, a Commission –
- (a) obtains information; or

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- (b) takes evidence; or
- (c) receives a document or thing –

that, in the opinion of the Commission, relates or may relate to the performance of the functions of the Integrity Commission (established under the *Integrity Commission Act 2009*), the Commission may, if in its opinion it is appropriate to do so, communicate the information or furnish the evidence, document or thing, as the case may be, to the Integrity Commission.

- (5A) If, in the course of inquiry into a matter, a Commission obtains information or evidence in relation to a person that relates, or may relate, to the safety and protection of children, the Commission may, if in the opinion of the Commission it is appropriate to do so, communicate the information or furnish the evidence, as the case may be, to a person or organisation that the Commission is satisfied –
 - (a) is responsible for the management or oversight of, or reporting on, the safety and protection of children generally; or
 - (b) is responsible for the oversight, registration, approval or any other endorsement of persons in the same occupation, industry or recreational activity as the person to whom the information relates; or
 - (c) is responsible for disciplinary proceedings relating to members of the

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same occupation, industry or recreational activity as the person to whom the information relates.

- (6) A person who obtains information, evidence, a document or thing in accordance with this section may make a record of, use or disclose the information, evidence, document or thing for the purposes of performing his or her functions or exercising his or her powers.
- (7) A reference in subsection (3) or (5) to the furnishing of a document or thing includes a reference to the furnishing of the contents of the document or a description of the thing.

35. Service of notices

A notice required to be served on a person under this Act may be served or given by –

- (a) in the case of an individual –
 - (i) delivering it to the person personally; or
 - (ii) leaving it at, or sending it by post to, the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person serving the notice; or

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- (iii) sending it by electronic transmission to an email address nominated by the person as an email address to be used for the giving or service of documents; or
 - (iv) sending it by any other electronic means nominated by the person as a means to be used for the giving or service of documents; or
- (b) in the case of a body corporate –
- (i) leaving it with a person apparently of or above the age of 16 years at, or sending it by post to, the head office, a registered office or a principal place of business of the body corporate or to an address specified by the body corporate for the giving or service of documents; or
 - (ii) sending it by electronic transmission to an email address nominated by the body corporate as an email address to be used for the giving or service of documents; or
 - (iii) sending it by any other electronic means nominated by the body corporate as a means to be used

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for the giving or service of documents.

36. Legal costs of witnesses

- (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.

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

37. Allowances to witnesses

- (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.

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- (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 Employment Award made under the *Industrial Relations Act 1984* in respect of State Service officers and State Service employees.

38. Compensation to witnesses for loss of income

- (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.

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- (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.

39. Costs and expenses of Commissions, &c.

The following are a charge on the Public Account and are payable out of the Public Account 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);

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- (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.

40. Regulations

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

41.

42. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements 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.

**SCHEDULE 1 – PROVISIONS WITH RESPECT TO
MEMBERSHIP OF COMMISSION**

Section 4(5)

1. Period of appointment

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.

2. Terms and conditions of appointment

- (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.

3. Resignation

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

4. Termination of appointment

- (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

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- (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.

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NOTES

The foregoing text of the *Commissions of Inquiry Act 1995* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 1 March 2021 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Commissions of Inquiry Act 1995</i>	No. 70 of 1995	14.11.1995
<i>Mental Health (Consequential Amendments) Act 1996</i>	No. 32 of 1996	1.11.1999
<i>Youth Justice (Consequential Amendments) Act 1999</i>	No. 49 of 1999	1.2.2000
<i>Commissions of Inquiry Amendment Act 2000</i>	No. 14 of 2000	19.4.2000
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Statute Law Revision Act 2003</i>	No. 9 of 2003	16.4.2003
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Integrity Commission Act 2009</i>	No. 67 of 2009	1.10.2010
<i>Monetary Penalties Enforcement (Miscellaneous Amendments) Act 2011</i>	No. 4 of 2011	1.6.2011
<i>Commissions of Inquiry Amendment Act 2013</i>	No. 54 of 2013	4.3.2013
<i>Mental Health (Transitional and Consequential Provisions) Act 2013</i>	No. 69 of 2013	17.2.2014
<i>Custodial Inspector Act 2016</i>	No. 30 of 2016	16.11.2016
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Justice Miscellaneous (Commissions of Inquiry) Act 2021</i>	No. 4 of 2021	1.3.2021

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TABLE OF AMENDMENTS

Provision affected	How affected
Section 3	Amended by No. 76 of 2003, Sched. 1, No. 54 of 2013, s. 4 and No. 4 of 2021, s. 9
Section 3A	Inserted by No. 54 of 2013, s. 5
Section 4	Amended by No. 4 of 2021, s. 10
Section 5	Amended by No. 4 of 2021, s. 11
Section 5A	Inserted by No. 54 of 2013, s. 6
Section 6	Amended by No. 86 of 2000, Sched. 1
Section 7	Amended by No. 86 of 2000, Sched. 1
Section 7A	Amended by No. 54 of 2013, s. 7, No. 30 of 2016, Sched. 2 and No. 4 of 2021, s. 12
Section 13	Amended by No. 4 of 2021, s. 13
Section 18	Amended by No. 14 of 2000, s. 4 and No. 4 of 2021, s. 14
Section 19	Amended by No. 4 of 2021, s. 15
Section 19A of Part 3	Inserted by No. 4 of 2021, s. 16
Section 19B of Part 3	Inserted by No. 4 of 2021, s. 16
Section 19C of Part 3	Inserted by No. 4 of 2021, s. 16
Section 22	Amended by No. 32 of 1996, Sched. 1, No. 49 of 1999, Sched. 1, No. 9 of 2003, Sched. 1, No. 67 of 2009, s. 115 and No. 69 of 2013, Sched. 1
Section 23	Substituted by No. 4 of 2021, s. 17
Section 23A	Inserted by No. 4 of 2021, s. 17
Section 23B	Inserted by No. 4 of 2021, s. 17
Section 24	Amended by No. 4 of 2021, s. 18
Section 24A	Inserted by No. 67 of 2009, s. 116 Amended by No. 4 of 2021, s. 19
Section 24B	Inserted by No. 4 of 2021, s. 20
Section 27	Amended by No. 4 of 2021, s. 21
Section 32	Amended by No. 4 of 2011, s. 36
Section 34A	Inserted by No. 54 of 2013, s. 8 Amended by No. 4 of 2021, s. 22
Section 35	Substituted by No. 4 of 2021, s. 23
Section 37	Amended by No. 86 of 2000, Sched. 1
Section 39	Amended by No. 4 of 2017, Sched. 1
Section 41	Repealed by No. 4 of 2021, s. 24