



National Crimes Commission Act 1982

No. 138 of 1982

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National Crimes Commission Act 1982

No. 138 of 1982

An Act to establish a National Crimes Commission to investigate criminal activities, in particular organized criminal activities, with a view to the prosecution of offenders

[Assented to 24 December 1982]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *National Crimes Commission Act 1982*.

Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. (1) In this Act, unless the contrary intention appears—
“acting member” means a person, not being a member, who is acting as Chairman or as a member other than the Chairman;
“appoint” includes re-appoint;
“Chairman” means Chairman of the Commission;

“document” includes any book, register or other record of information, however compiled, recorded or stored;

“Federal Court” means the Federal Court of Australia;

“Governor of a State” includes the Administrator of the Northern Territory;

“Judge” means—

(a) a Judge of a court created by the Parliament or of a court of a State or Territory; or

(b) a person who has the same designation and status as a Judge of a court created by the Parliament;

“legal practitioner” means a barrister, a solicitor, a barrister and solicitor, or a legal practitioner, of the High Court or of the Supreme Court of a State or Territory;

“member” means member of the Commission and includes the Chairman;

“member of the staff of the Commission” means a person assisting the Commission under section 35 or a person employed or engaged under section 36;

“officer of a Territory” includes—

(a) a person holding an office or appointment, or employed, under a law of a Territory; and

(b) a person who is, or is a member of, an authority or body established for a public purpose by or under a law of a Territory or is an officer or employee of such an authority or body;

“officer of the Commonwealth” has the same meaning as in paragraph 75 (v) of the Constitution and includes a person who is, or is a member of, an authority or body established for a public purpose by or under a law of the Commonwealth or is an officer or employee of such an authority or body but does not include an officer of a Territory;

“participating State” means a State by or under the law of which functions are conferred on the Commission in relation to the investigation of alleged offences against laws of the State;

“passport” means an Australian passport or a passport issued by the Government of a country other than Australia;

“State” includes the Northern Territory;

“Territory” does not include the Northern Territory.

(2) A reference in this Act to the Parliament of a State, shall, in relation to the Northern Territory, be construed as a reference to the Legislative Assembly of that Territory.

Act to bind the Commonwealth

4. This Act binds the Crown in right of the Commonwealth and of Norfolk Island but does not bind the Crown in right of a State.

Extension to external Territories

5. This Act extends to all the external Territories.

PART II—THE NATIONAL CRIMES COMMISSION

Division 1—Establishment, Functions and Powers

Establishment and constitution of Commission

6. (1) There is established by this Act a Commission by the name of the National Crimes Commission.

(2) The Commission shall consist of a Chairman and not less than 1 nor more than 4 other members.

(3) The Chairman and the other member or members shall be appointed by the Governor-General.

(4) A member other than a member who is, and is expected to continue to be, a Judge may be appointed as a full-time member or as a part-time member.

(5) A person shall not be appointed as Chairman unless—

(a) he is or has been a Judge; or

(b) he is enrolled as a legal practitioner, and has been so enrolled for not less than 5 years.

(6) A person shall not be appointed as a member unless he appears to the Governor-General to be suitable for appointment by reason of his having expertise, or having had experience, relevant to the work of the Commission.

(7) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only of a vacancy or vacancies in the membership of the Commission.

Functions

7. (1) Subject to sections 8 and 10, the functions of the Commission are—

(a) to investigate of its own motion or at the request of the Attorney-General—

(i) any circumstance suggesting that an offence may have been, or may be being, committed against a law of the Commonwealth or of a Territory;

(ii) any allegation that an offence has been, or is being, committed against a law of the Commonwealth or of a Territory;

(iii) any circumstance suggesting that a person has or may have, or any allegation that a person has, influenced or attempted to influence an officer of the Commonwealth or an officer of a Territory to do any act or thing contrary to law or to his duty or authority as such an officer; and

- (iv) any activity that is, or appears to be, impeding the implementation or enforcement of a law of the Commonwealth or of a Territory;
 - (b) to assemble, with a view to the prosecution of the offender, any evidence of the commission of an offence against a law of the Commonwealth or of a Territory that it obtains in the course of its investigations and to furnish any such evidence in accordance with this Act to the Commissioner of the Australian Federal Police or to the Attorney-General or a person nominated by him;
 - (c) as required, to coordinate its activities with the activities of authorities and persons in other countries performing functions similar to the functions of the Commission; and
 - (d) when requested by the Attorney-General, to furnish advice to him as to the likely effect (if any) on the incidence of crime of proposed laws of the Commonwealth or of a Territory, or of existing or proposed administrative practices or arrangements, referred to in the request.
- (2) The Commission shall, in the course of investigating circumstances, allegations and activities referred to in paragraph (1) (a), seek, so far as practicable, to direct its activities in relation to—
- (a) organized criminal activities, that is to say, offences that appear to be connected with one another and involve several offenders and substantial planning and organization;
 - (b) offences involving the use of sophisticated methods, planning or techniques; and
 - (c) bribery or corruption involving officers of the Commonwealth or officers of a Territory.

Functions under State laws

8. In addition to its functions under section 7, the Commission shall perform any functions in relation to the investigation of an offence or offences, however described or referred to, against the laws of a State that are conferred upon it by or under any law of a State.

Members may have concurrent functions and powers under State laws

9. If—

- (a) with the consent of the Attorney-General, any functions or powers are conferred on a member or members by the Governor of a State or a Minister of a State; and
- (b) the Attorney-General informs the member or members in writing that he is satisfied that those functions or powers may conveniently be performed or exercised in conjunction with the performance or exercise by the Commission of its functions or powers under this Act,

then, notwithstanding anything contained in any other provision of this Act, the member or members referred to in paragraph (a) shall perform the functions, or may exercise the powers, referred to in that paragraph in conjunction with

the performance or exercise by the Commission of its functions or powers under this Act, and the members of the staff of the Commission may be employed by the Commission in assisting the member or members referred to in paragraph (a) in the performance of the functions or the exercise of the powers referred to in that paragraph.

General investigations by the Commission

10. (1) If the Attorney-General of the Commonwealth, or the appropriate Minister of a participating State with the consent of the Attorney-General of the Commonwealth, by notice in writing to the Commission, requests the Commission to conduct a general investigation into a particular matter, being a matter with respect to which powers are vested in the Parliament or the Government of the Commonwealth or of that State, as the case may be, for the purpose of ascertaining the nature, extent and cause of any criminal activity connected with that matter, the Commission shall conduct an investigation accordingly and shall report to the Attorney-General or State Minister, as the case may be, its findings and any recommendations for the enactment of laws, or the taking of administrative action, that it considers appropriate to reduce, or remove the cause of, that criminal activity.

(2) A report by the Commission under this section shall not—

- (a)** identify persons as being suspected of having committed offences; or
- (b)** identify persons as having committed offences unless those persons have been convicted of those offences.

(3) In any report by the Commission under this section the Commission shall take reasonable care to ensure that the identity of a person is not revealed if to reveal his identity might, in light of any material appearing in the report, prejudice the safety or reputation of a person or the fair trial of a person who has been or may be charged with an offence.

Commission to work in co-operation with Police Forces, &c.

11. In performing its functions the Commission shall, so far as practicable, work in co-operation with the Australian Federal Police and the Police Forces of the States and any other authorities or persons responsible for the enforcement of the laws of the Commonwealth or of the States.

Directions and guidelines to Commission

12. (1) The Attorney-General may, by notice in writing to the Commission, give directions or furnish guidelines to the Commission, including directions or guidelines with respect to the priority to be accorded by the Commission to particular investigations or classes of investigations but the Attorney-General is not entitled to give directions or furnish guidelines in relation to the conduct of a particular investigation.

(2) Where the Attorney-General gives any directions or furnishes any guidelines to the Commission under sub-section (1), the Attorney-General shall cause a copy of the directions or guidelines to be published in the *Gazette*.

(3) If the Commission has functions conferred on it by or under a law of a State as mentioned in section 8, the Attorney-General shall not give any directions or furnish any guidelines to the Commission under sub-section (1) with respect to the performance of those functions unless the appropriate Minister of that State has agreed to the giving of the directions or the furnishing of the guidelines.

Evidence obtained in course of investigation

13. (1) Where in the course of an investigation it appears to the Commission that there is evidence of the commission of an offence against the laws of the Commonwealth or of a Territory, or against the laws of a State, the Commission may either—

- (a) terminate the investigation, or the part of the investigation that relates to the commission of that offence, and furnish the evidence to the Commissioner of the Australian Federal Police or to the Commissioner of the Police Force of the State, as the case may be; or
- (b) to the extent to which it is within the scope of the functions of the Commission to do so, continue the investigation, or the part of the investigation that relates to the commission of that offence, with a view to assembling evidence required for the prosecution of the offender and furnish the evidence that it obtains to the Attorney-General of the Commonwealth or to the appropriate Minister of the State, as the case may be, or to a person nominated by that Attorney-General or Minister to receive the evidence.

(2) Where in the course of an investigation it appears to the Commission that there is evidence of the commission of an offence against a law of the Commonwealth or of a State, the Commission may, whether or not the Commission has taken, or proposes to take, action with respect to the evidence in accordance with sub-section (1), furnish the evidence to the authority or person responsible for the administration or enforcement of that law.

Search warrants

14. (1) Where—

- (a) the Commission has reasonable grounds for suspecting that there may be, at that time or within the next following 24 hours, upon any land or upon or in any premises, vessel, aircraft or vehicle, a thing or things of a particular kind connected with a matter in respect of which the Commission is conducting an investigation (in this section referred to as “things of the relevant kind”); and
- (b) the Commission believes on reasonable grounds that, if a summons were issued for the production of the thing or things, the thing or things might be concealed, lost, mutilated or destroyed,

the Commission may apply to a Judge of a prescribed court for the issue of a search warrant under sub-section (3).

(2) A reference in sub-section (1) to the Commission includes a reference to a member authorized by the Commission to act under that sub-section.

(3) Where an application under sub-section (1) is made to a Judge of a prescribed court, the Judge may, if he is satisfied that there are reasonable grounds for issuing the warrant, issue a search warrant authorizing a member of the Australian Federal Police or of the Police Force of a State, or any other person, named in the warrant, with such assistance as he thinks necessary and if necessary by force—

- (a) to enter upon the land or upon or into the premises, vessel, aircraft or vehicle;
- (b) to search the land, premises, vessel, aircraft or vehicle for things of the relevant kind; and
- (c) to seize any things of the relevant kind found upon the land or upon or in the premises, vessel, aircraft or vehicle and deliver things so seized to the Commission.

(4) There shall be stated in a warrant issued under this section—

- (a) a statement of the purpose for which the warrant is issued, which shall include a reference to the matter in respect of which the Commission is conducting an investigation and with which the things of the relevant kind are connected;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of things authorized to be seized; and
- (d) a date, not being later than one month after the date of issue of the warrant, upon which the warrant ceases to have effect.

(5) If, in the course of searching, in accordance with a warrant issued under this section, for things of a particular kind connected with a matter in respect of which the Commission is conducting an investigation, the person executing the warrant finds—

- (a) any thing of another kind that he believes on reasonable grounds to be connected with that matter; or
- (b) any thing that he believes on reasonable grounds to be connected with another matter into which the Commission is conducting an investigation,

and he believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss, mutilation or destruction, the warrant shall be deemed to authorize him to seize that thing.

(6) Where a thing is seized pursuant to a warrant issued under this section—

- (a) the Commission may retain the thing so long as is reasonably necessary for the purposes of the investigation to which the thing is relevant; and
- (b) when the retention of the thing by the Commission ceases to be reasonably necessary for those purposes, the Commission shall cause the thing to be delivered to the person who appears to the Commission to be entitled to possession of the thing unless the Commission has

furnished the thing to a person referred to in paragraph 13 (1) (a) or (b), as the case requires.

(7) A reference in this section to a Judge of a prescribed court shall be construed as a reference to—

- (a) a Judge of the Federal Court; or
- (b) a Judge of a court of a State or Territory.

(8) In this section “thing” includes a document.

Application by telephone for search warrants

15. (1) Where, by reason of circumstances of urgency, the Commission considers it necessary to do so, the Commission may make application by telephone for a search warrant under sub-section 14 (1).

(2) Where a Judge issues a search warrant upon an application made by telephone, he shall—

- (a) complete and sign that warrant;
- (b) inform the Commission of the terms of the warrant and the date on which and the time at which it was signed; and
- (c) forward a copy of the warrant to the Commission.

(3) Where a search warrant is issued upon an application made by telephone, a member of the staff of the Commission or a member of the Australian Federal Police or of the Police Force of a State may complete a form of warrant in the terms indicated by a Judge under sub-section (2).

(4) A form of warrant duly completed in accordance with sub-section (3) shall be deemed to be a warrant issued under section 14.

Order for delivery to Commission of passport of witness

16. (1) Where, upon application by the Commission, a Judge of the Federal Court sitting in Chambers is satisfied by evidence on oath that—

- (a) in connection with an investigation that is being conducted by the Commission, a summons has been issued under this Act requiring a person to appear before the Commission at a hearing (whether or not the summons has been served), or a person has appeared before the Commission at a hearing, to give evidence or to produce documents or other things;
- (b) there are reasonable grounds for believing that the person may be able to give to the Commission evidence or further evidence that is, or to produce to the Commission documents or other things or further documents or other things that are, relevant to the matter in respect of which the Commission is conducting the investigation and could be of particular significance to the investigation; and
- (c) there are reasonable grounds for suspecting that the person intends to leave Australia and has in his possession, custody or control a passport issued to him,

the Judge may make an order requiring the person to appear before the Federal Court on a date, and at a time and place, specified in the order to show cause why he should not be ordered to deliver the passport to the Commission.

(2) Where—

(a) an order under sub-section (1) has been made in respect of a person; and

(b) a copy of that order has been served upon the person,

the person shall not leave Australia unless—

(c) he has appeared before the Federal Court as required by the order under sub-section (1); and

(d) if the Court makes an order in respect of him under paragraph (3) (a)—he has complied with the terms of that order and any passport delivered by him to the Commission in accordance with that order has been returned to him.

Penalty: \$5,000 or imprisonment for 2 years.

(3) Where a person appears before the Federal Court in pursuance of an order made under sub-section (1), the Court may, if it thinks fit, make an order—

(a) requiring the person to deliver to the Commission any passport issued to him that is in his possession, custody or control; and

(b) authorizing the Commission to retain the passport until the expiration of such period (not exceeding one month) as is specified in the order.

(4) The Federal Court may, upon application by the Commission, extend for a further period (not exceeding one month) or further periods (not exceeding one month in each case) the period for which the Commission is authorized to retain a passport in pursuance of an order made under sub-section (3), but so that the total period for which the Commission is authorized to retain the passport does not exceed 3 months.

(5) The Federal Court has jurisdiction with respect to matters arising under this section.

(6) In this section, “Australia” includes the external Territories.

Division 2—Hearings

Hearings

17. (1) For the purposes of an investigation under this Act the Commission may hold hearings.

(2) At a hearing, the Commission may be constituted by one or more members or acting members.

(3) Subject to sub-section (2), section 34 applies, so far as it is capable of application, at a hearing before the Commission as if the hearing were a meeting of the Commission.

(4) At a hearing before the Commission, any person giving evidence may be represented by a legal practitioner, and any other person may, with the consent of the Commission, be represented by a legal practitioner.

(5) The Commission may, in its discretion, direct that a hearing before the Commission shall, in whole or in part, be held either in public or in private.

(6) In exercising its discretion under sub-section (5) in relation to a hearing or part of a hearing, the Commission shall have regard to—

- (a) whether it is necessary or desirable for evidence that is to be given to the Commission at the hearing to be taken in private in order to ensure that a person who has been or may be charged with an offence will or would receive a fair trial for the offence or in order to avoid prejudice to the safety or reputation of a person;
- (b) whether the evidence that is to be given to the Commission includes, or is likely to include, evidence that relates to the profits or financial position of any person and the taking of the evidence in public would be unfairly prejudicial to the interests of the person;
- (c) the wishes of any person appearing as a witness at the hearing; and
- (d) any other matter which in the opinion of the Commission is relevant.

(7) An application by a person that his evidence, or any part of his evidence, should be taken in private shall, if the person making the application so desires, be heard in private.

(8) Where the Commission directs that a hearing or a part of a hearing before the Commission be held in private, the Commission may give directions as to the persons who may be present.

(9) Nothing in any direction given by the Commission under sub-section (8) prevents the presence, when evidence is being taken at a hearing or a part of a hearing that is being held in private, of a person representing the person giving evidence or representing a person who, by reason of a direction given by the Commission under sub-section (8), is entitled to be present.

(10) Where the Commission directs that a hearing or a part of a hearing before the Commission be held in private, a person (other than a member or an acting member, counsel assisting the Commission in relation to the matter that is the subject of the hearing or a member of the staff of the Commission approved by the Commission) shall not be present at that hearing or part of a hearing unless he is entitled to be present by virtue of the direction or by virtue of sub-section (9).

(11) At a hearing before the Commission for the purposes of an investigation under this Act—

- (a) counsel assisting the Commission generally or in relation to the matter to which the investigation relates;
- (b) any person authorized by the Commission to appear before it at the hearing; or

(c) any legal practitioner representing a person at the hearing pursuant to sub-section (4),
may, so far as the Commission thinks appropriate, examine or cross-examine any witness on any matter that the Commission considers relevant to the investigation.

(12) The Commission may direct that—

- (a) any evidence given before it;
- (b) the contents of any document, or a description of any thing, produced to the Commission or seized pursuant to a search warrant issued under section 14;
- (c) any information that might enable a person who has given evidence before the Commission to be identified; or
- (d) the fact that any person has given or may be about to give evidence at a hearing,

shall not be published, or shall not be published except in such manner, and to such persons, as the Commission specifies.

(13) A person who—

- (a) is present at a hearing or a part of a hearing in contravention of sub-section (10); or
- (b) makes a publication in contravention of a direction given under sub-section (12),

is guilty of an offence punishable, upon summary conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months.

Reimbursement of expenses of witnesses

18. A witness appearing before the Commission shall be paid by the Commonwealth in respect of the expenses of his attendance an amount ascertained in accordance with the prescribed scale or, if there is no prescribed scale, such amount as the Commission determines.

Legal and financial assistance

19. (1) A witness who is appearing or who is about to appear before the Commission may make an application to the Attorney-General for the provision of assistance under this section in respect of his appearance.

(2) Where an application is made by a person under sub-section (1), the Attorney-General may, if he is satisfied that—

- (a) it would involve hardship to the person to refuse the application; and
- (b) the circumstances of the case are of such a special nature that the application should be granted,

authorize the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in respect of the appearance of that person before the Commission as the Attorney-General determines.

Power to summon witnesses and take evidence

20. (1) A member or an acting member may summon a person to appear before the Commission at a hearing to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

(2) A summons under sub-section (1) requiring a person to appear before the Commission to give evidence shall set out, as far as is reasonably practicable, the general nature of the matters in relation to which the Commission intends to question the person, but nothing in this sub-section prevents the Commission from questioning the person in relation to any other matter that the Commission may, in the proper performance of its functions, investigate.

(3) The member or acting member presiding at a hearing before the Commission may require a person appearing at the hearing to produce a document or other thing.

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

- (a)** a member or acting member may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member or acting member presiding at the hearing; and
- (b)** a member or acting member, or a person who is an authorized person in relation to the Commission, may administer an oath or affirmation to a person so appearing at the hearing.

(5) In this section, a reference to a person who is an authorized person in relation to the Commission is a reference to a person authorized in writing, or a person included in a class of persons authorized in writing, for the purposes of this section by the Chairman or a person acting as Chairman.

Failure of witnesses to attend and answer questions

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

- (a)** fail to attend as required by the summons; or
- (b)** fail to attend from day to day unless excused, or released from further attendance, by a member or an acting member.

(2) A person appearing as a witness at a hearing before the Commission shall not, without reasonable excuse—

- (a)** when required pursuant to section 20 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b)** refuse or fail to answer a question that he is required to answer by the member or acting member presiding at the hearing; or
- (c)** refuse or fail to produce a document or thing that he was required to produce by a summons under this Act served on him as prescribed.

(3) Where—

- (a) a legal practitioner is required to answer a question or produce a document at a hearing before the Commission; and
- (b) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in his capacity as a legal practitioner,

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by whom the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner refuses to comply with the requirement, he shall, if so required by the member or acting member presiding at the hearing, furnish to the Commission the name and address of the person to whom or by whom the communication was made.

(4) Subject to sub-sections (5) and (7), it is a reasonable excuse for the purposes of sub-section (2) for a natural person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Commission; or
- (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Commission,

that the answer to the question, or the production of the document or thing, as the case may be, might tend to incriminate him.

(5) It is not a reasonable excuse for the purposes of sub-section (2) for a person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Commission; or
- (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Commission,

that the answer to the question or the production of the document or thing might tend to prove his guilt of an offence against a law of the Commonwealth or of a Territory if the Attorney-General has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, will not be used in evidence in any proceedings against him for an offence against a law of the Commonwealth or of a Territory and if the Attorney-General states in the undertaking—

- (c) that, in his opinion, there are special grounds which in the public interest require that answers be given or documents or things be produced by that person; and
- (d) the general nature of those grounds.

(6) The Commission may recommend to the Attorney-General that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Commission or to produce a document or thing at a hearing before the Commission be given an undertaking by the Attorney-General in accordance with sub-section (5).

(7) It is not a reasonable excuse for the purposes of sub-section (2) for a person—

- (a) to refuse or fail to answer a question put to him at a hearing before the Commission; or
- (b) to refuse or fail to produce a document or thing that he was required to produce at a hearing before the Commission,

that the answer to the question or the production of the document or thing might tend to prove his guilt of an offence against the law of a State if the Attorney-General of that State has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, will not be used in evidence in any proceedings against him for an offence against a law of that State and if the Attorney-General of that State states in the undertaking—

- (c) that, in his opinion, there are special grounds which in the public interest require that answers be given or documents or things be produced by that person; and
- (d) the general nature of those grounds.

(8) The Commission may recommend to the Attorney-General of a State that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Commission or to produce a document or thing at a hearing before the Commission be given an undertaking by the Attorney-General of that State in accordance with sub-section (7).

(9) A person who contravenes sub-section (1), (2) or (3) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.

(10) Where the Commission is satisfied that—

- (a) a person served, as prescribed, with a summons to appear as a witness at a hearing before the Commission has, without reasonable excuse, failed to attend as required by paragraph (1) (a) or (b); or
- (b) a person appearing as a witness at a hearing before the Commission has, without reasonable excuse—
 - (i) when required pursuant to section 20 either to take an oath or make an affirmation;
 - (ii) when required by the member or acting member presiding at the hearing to answer a question; or
 - (iii) when required to produce a document or any other thing by a summons under this Act served on him as prescribed,

refused or failed to comply with the requirement,

a member or acting member may, by instrument in writing, certify the failure to attend or the refusal or failure to comply with the requirement, as the case may be, to the Federal Court or to the Supreme Court of a State or Territory.

(11) Where a certificate is given under sub-section (10), the court, upon application by the Attorney-General, may inquire into the case and, if it is

satisfied that the person to whom the certificate relates has, without reasonable excuse, failed to attend or refused or failed to comply with a requirement as mentioned in the certificate, may order the person to attend or to comply with the requirement at a hearing before the Commission to be held on a date, and at a time and place, specified in the order.

(12) The Federal Court and, subject to the Constitution, the Supreme Courts of the Territories (including the Supreme Court of the Northern Territory) have jurisdiction with respect to matters arising under sub-section (11).

False or misleading evidence

22. (1) A person shall not, at a hearing before the Commission, give evidence that is to his knowledge false or misleading in a material particular.

(2) An offence against sub-section (1) is an indictable offence and, subject to this section, is punishable, upon conviction, by imprisonment for a period not exceeding 5 years or by a fine not exceeding \$20,000.

(3) Notwithstanding that an offence against sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(4) Where, in accordance with sub-section (3), a court of summary jurisdiction convicts a person of an offence against sub-section (1), the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months.

Contempt of Commission

23. (1) A person shall not—

- (a) insult a member or an acting member in the performance of his functions or the exercise of his powers as a member or acting member at a hearing before the Commission;
- (b) interrupt a hearing before the Commission;
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Commission is holding a hearing; or
- (d) do any other act that would, if the Commission were a court of record, constitute contempt of that court.

Penalty: \$2,000 or imprisonment for 12 months.

(2) An offence against sub-section (1) is punishable on summary conviction.

Protection of members, &c.

24. (1) A member or an acting member has, in the performance of his functions or the exercise of his powers as a member or acting member in

relation to a hearing before the Commission, the same protection and immunity as a Justice of the High Court.

(2) A legal practitioner assisting the Commission or representing a person at a hearing before the Commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Commission as a witness has the same protection as a witness in proceedings in the High Court.

(4) A member or acting member, a legal practitioner assisting the Commission, or a member of the staff of the Commission, is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred by or under this Act or any law of a State.

Division 3—Administrative Provisions

Terms and conditions of appointment

25. (1) Subject to this section, a member holds office for such period, not exceeding 2 years, as is specified in the instrument of his appointment, but is eligible for re-appointment for a period not exceeding 2 years.

(2) Subject to sub-section (3), a person who has attained the age of 65 years shall not be appointed as a member and a person shall not be appointed as a member for a period that extends beyond the day on which he will attain the age of 65 years.

(3) In the case of a person who is, and is expected to continue to be, a Judge, a reference in sub-section (2) to the age of 65 years shall be construed as a reference to the age of 70 years.

(4) A member, other than a member who is a Judge, holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

Remuneration and allowances

26. (1) Subject to sub-section (3), a member shall be paid such remuneration and allowances as are determined by the Attorney-General.

(2) An office of member is not a public office for the purposes of Part II of the *Remuneration Tribunals Act 1973*.

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

Appointment of Judge as member not to affect tenure, &c.

27. (1) The appointment of the holder of a judicial office as a member or acting member, or service by the holder of a judicial office as a member or

acting member, does not affect his tenure of that judicial office or his rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, his service as a member or acting member shall be taken to be service as the holder of that judicial office.

(2) In this section, “judicial office”, means—

- (a) an office of Judge of a court created by the Parliament; or
- (b) an office the holder of which has, by virtue of his holding that office, the same status as a Judge of a court created by the Parliament.

Leave of absence

28. (1) The Attorney-General may grant to a full-time member leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Attorney-General determines.

(2) The Attorney-General may grant to a part-time member leave of absence from a meeting of the Commission.

Resignation

29. A member may resign his office by writing signed by him and delivered to the Governor-General.

Disclosure of interests

30. (1) A member or acting member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Commission and the member or acting member shall not, unless the Attorney-General otherwise determines—

- (a) be present during any deliberation of the Commission with respect to that matter; or
- (b) take part in any decision of the Commission with respect to that matter.

Termination of appointment

31. (1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.

(2) If—

- (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) a full-time member engages, except with the approval of the Attorney-General, in paid employment outside the duties of his office;

- (c) a full-time member is absent from duty, except on leave granted by the Attorney-General in accordance with sub-section 28 (1), for 14 consecutive days, or for 28 days in any period of 12 months;
- (d) a part-time member is absent, except on leave granted by the Attorney-General in accordance with sub-section 28 (2), from 3 consecutive meetings of the Commission; or
- (e) a member fails, without reasonable excuse, to comply with his obligations under section 30,

the Governor-General shall terminate the appointment of that member.

(3) Sub-sections (1) and (2) do not apply to a member who is a Judge, but, if a member who is a Judge ceases to be a Judge, the Governor-General may terminate his appointment.

Acting Chairman

32. (1) The Attorney-General may appoint a person to act as Chairman—

- (a) during a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Attorney-General may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Chairman; and
- (b) at any time terminate such an appointment.

(3) Where a person is acting as Chairman in accordance with paragraph (1) (b) and the office of Chairman becomes vacant while that person is so acting, that person may continue so to act until the Attorney-General otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The appointment of a person to act as Chairman ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Attorney-General.

(5) While a person is acting as Chairman, he has, and may exercise, all the powers and shall perform all the functions of the Chairman.

(6) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had passed.

Acting member

33. (1) The Attorney-General may appoint a person to act as a member other than the Chairman—

- (a) during a vacancy in the office of a member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when a member is absent from duty or from Australia or is, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) The Attorney-General may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as a member; and
- (b) at any time terminate such an appointment.

(3) Where a person is acting as a member in accordance with paragraph (1) (b) and the office of that member becomes vacant while that person is so acting, that person may continue so to act until the Attorney-General otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The appointment of a person to act as a member ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Attorney-General.

(5) While a person is acting as a member, he has, and may exercise, all the powers and shall perform all the functions of a member.

(6) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had passed.

Meetings of Commission

34. (1) The Chairman may, at any time, convene a meeting of the Commission.

(2) The Chairman shall convene such meetings of the Commission as, in his opinion, are necessary for the efficient performance of its functions.

(3) At a meeting of the Commission, 2 members constitute a quorum.

(4) The Chairman shall preside at all meetings of the Commission at which he is present.

(5) If the Chairman is not present at a meeting of the Commission, the members present shall elect one of their number to preside at that meeting.

(6) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the members present.

(7) The person presiding at a meeting of the Commission has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

(8) The Commission may regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.

(9) In this section—

(a) a reference to the Chairman shall, if a person is acting as Chairman, be construed as a reference to the person so acting; and

(b) a reference to a member shall, if a person is acting as a member, be construed as including a reference to the person so acting.

Staff to be seconded to Commission

35. In the performance of its functions, the Commission shall be assisted by—

(a) persons appointed or employed under the *Public Service Act 1922* whose services are made available to the Commission;

(b) members of the Australian Federal Police whose services are made available to the Commission;

(c) officers and employees of authorities of the Commonwealth whose services are made available to the Commission; and

(d) persons whose services are made available to the Commission pursuant to arrangements made under section 39.

Employment of additional staff, consultants, &c.

36. (1) The Chairman may, on behalf of the Commonwealth and with the approval of the Attorney-General or of an authorized person, employ, under agreements in writing, such persons (if any) as he thinks necessary, in addition to persons referred to in section 35, to assist the Commission in the performance of its functions.

(2) The Chairman may, on behalf of the Commonwealth and with the approval of the Attorney-General or of an authorized person, engage, under agreements in writing, persons having suitable qualifications and experience as consultants to, or to perform services for, the Commission.

(3) The terms and conditions of employment of persons employed under sub-section (1) are such as are from time to time determined by the Chairman with the approval of the Public Service Board.

(4) The terms and conditions of engagement of persons engaged under sub-section (2) are such as are from time to time determined by the Chairman with the approval of the Attorney-General or of an authorized person.

(5) In this section—

(a) a reference to the Chairman shall, if a person is acting as Chairman, be construed as a reference to the person so acting; and

- (b) a reference to an authorized person is a reference to a person authorized by the Attorney-General, by writing under his hand, to grant approvals on behalf of the Attorney-General under this section.

Counsel assisting Commission

37. The Attorney-General may appoint a legal practitioner to assist the Commission as counsel, either generally or in relation to a particular matter or matters.

Secrecy

38. (1) This section applies to—

- (a) a member or acting member of the Commission;
- (b) a person assisting the Commission under section 35;
- (c) a person employed or engaged by the Chairman under section 36; and
- (d) a person appointed to assist the Commission under section 37.

(2) A person to whom this section applies who either, directly or indirectly, except for the purposes of this Act or otherwise in connection with the performance of his duties under this Act, and either while he is or after he ceases to be a person to whom this section applies—

- (a) makes a record of any information; or
- (b) divulges or communicates to any person any information,

being information acquired by him by reason of, or in the course of, the performance of his duties under this Act, is guilty of an offence punishable on summary conviction by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 1 year, or both.

(3) A person to whom this section applies shall not be required to produce in any court any document that has come into his custody or control in the course of, or by reason of, the performance of his duties under this Act, or to divulge or communicate to a court a matter or thing that has come to his notice in the performance of his duties under this Act, except where it is necessary to do so—

- (a) for the purpose of carrying into effect the provisions of this Act; or
- (b) for the purposes of a prosecution instituted as a result of an investigation carried out by the Commission in the performance of its functions.

(4) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to, and “production” has a corresponding meaning.

PART III—MISCELLANEOUS

Administrative arrangements with States

39. (1) The Attorney-General may make an arrangement with the appropriate Minister of a State under which the State will, from time to time as agreed upon under the arrangement, do either or both of the following:

- (a) make available a person who is the holder of a judicial or other office, or persons who are the holders of judicial or other offices, of the State to hold office as a member or members;
- (b) make available a person who is an officer or employee of the State or of an authority of the State or a member of the Police Force of the State, or persons who are such officers, employees or members, to perform services for the Commission.

(2) An arrangement under sub-section (1) may provide for the Commonwealth to reimburse a State with respect to the services of a person or persons to whom the arrangement relates.

Commission to keep Attorney-General informed of its operations

40. (1) The Commission shall—

- (a) from time to time inform the Attorney-General concerning the general conduct of its operations; and
- (b) furnish to the Attorney-General such information in relation to its operations as the Attorney-General requires.

(2) Where any functions are conferred upon the Commission by or under a law of a State, the Commission shall—

- (a) from time to time inform the appropriate Minister of that State concerning the general conduct of its operations in respect of the performance of those functions; and
- (b) furnish to that Minister such information in relation to its operations in respect of the performance of those functions as that Minister requires.

Annual report

41. (1) The Commission shall, as soon as practicable after each 30 June, prepare and furnish to the Attorney-General of the Commonwealth and to the appropriate Minister of each participating State a report of its operations under this Act or any law of a State during the year that ended on that 30 June.

(2) A report by the Commission under this section in relation to a year shall include the following:

- (a) a description of any patterns or trends, and the nature and scope, of any criminal activity that have come to the attention of the Commission during that year in the course of its investigations;
- (b) any recommendations for changes in the laws of the Commonwealth or of a participating State, or for administrative action, that, as a result of its investigations, the Commission considers should be made;

- (c) the general nature and the extent of any information furnished by the Commission during that year to the Commissioner of the Australian Federal Police, the Commissioner of the Police Force of a State or any authority or person responsible for the administration or enforcement of a law of the Commonwealth or of a State or Territory; and
 - (d) the extent to which its investigations have resulted in the prosecution in that year of persons for offences.
- (3) A report by the Commission under this section shall not—
- (a) identify persons as being suspected of having committed offences; or
 - (b) identify persons as having committed offences unless those persons have been convicted of those offences.

(4) In any report by the Commission under this section the Commission shall take reasonable care to ensure that the identity of a person is not revealed if to reveal his identity might, in light of any material appearing in the report, prejudice the safety or reputation of a person or the fair trial of a person who has been or may be charged with an offence.

(5) The Attorney-General shall cause a copy of every report furnished to him by the Commission under this section to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by him.

Regulations

42. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters—

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

Cessation of operation of Act

43. (1) This Act, unless sooner repealed, shall cease to be in force at the expiration of 5 years after the date of commencement of this Act.

(2) For the purposes of section 8 of the *Acts Interpretation Act 1901*, when this Act ceases to be in force by virtue of sub-section (1), it shall thereupon be deemed to have been repealed by an Act other than this Act.