



Parliamentary Commission of Inquiry Act 1986

No. 9 of 1986

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Parliamentary Commission of Inquiry Act 1986

No. 9 of 1986

An Act to provide for the establishment of a Parliamentary Commission of Inquiry

[Assented to 13 May 1986]

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 *Parliamentary Commission of Inquiry Act 1986*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

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

“Commission” means the Parliamentary Commission of Inquiry appointed in accordance with section 4;

“Judge” means a Judge of a court created by the Parliament or of the Supreme Court of a State or Territory;

“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 a member of the Commission;

“National Crime Authority” means the Authority established by section 7 of the *National Crime Authority Act 1984*;

“Presiding Member” means the member of the Commission holding an appointment under sub-section 4 (4) or 9 (2).

PART II—PARLIAMENTARY COMMISSION OF INQUIRY

Division 1—Establishment and Functions of the Commission

Establishment of Commission

4. (1) As soon as practicable after the commencement of this Act, a Commission to be known as the Parliamentary Commission of Inquiry shall be appointed.

(2) The Commission shall consist of 3 members appointed by resolution of the Senate and by resolution of the House of Representatives.

(3) A person shall not be appointed as a member unless the person is or has been a Judge.

(4) The resolution of the Senate and the resolution of the House of Representatives appointing the members shall also appoint one of the members to be the Presiding Member.

Functions

5. (1) The Commission shall, in accordance with this section, inquire, and advise the Parliament, whether any conduct of the Honourable Lionel Keith Murphy has been such as to amount, in its opinion, to proved misbehaviour within the meaning of section 72 of the Constitution.

(2) In carrying out its inquiry the Commission shall consider only specific allegations made in precise terms.

(3) In considering any allegation, the Commission shall have regard to the outcome of any previous official inquiry into that allegation, and only consider it to the extent that the Commission believes it necessary or desirable to do so, and shall not be precluded by any other law or by any privileges of either House of the Parliament from obtaining access to the

records of evidence given at, or findings made as a result of, such an inquiry.

(4) The Commission shall not consider—

- (a) the issues dealt with in the trials leading to the acquittal of the Honourable Lionel Keith Murphy of certain criminal charges on 5 July 1985 and 28 April 1986 and, in particular, the issue of the Honourable Lionel Keith Murphy's guilt or innocence of those charges; or
- (b) whether the conduct to which those charges related was such as to constitute proved misbehaviour within the meaning of section 72 of the Constitution,

except to the extent that the Commission considers necessary for the proper examination of other issues arising in the course of the Commission's inquiry.

Evidence

6. (1) The Honourable Lionel Keith Murphy shall not be required to give evidence on a matter before the Commission unless the Commission is of the opinion that there is before the Commission evidence of misbehaviour within the meaning of section 72 of the Constitution sufficient to require an answer and the Commission has given to the Honourable Lionel Keith Murphy particulars in writing of that evidence.

(2) In the conduct of its inquiry, the Commission shall not make a finding except upon evidence that would be admissible in proceedings in a court.

Conduct of proceedings

7. (1) The Commission shall, unless it thinks the circumstances require otherwise, conduct the whole of its inquiry in private.

(2) The Commission shall conduct its inquiry as quickly as a proper consideration of the matters before the Commission will permit.

Report to Parliament

8. (1) The Commission shall report to the President of the Senate and the Speaker of the House of Representatives—

- (a) its findings of fact; and
- (b) its conclusions whether any conduct of the Honourable Lionel Keith Murphy has been such as to amount, in its opinion, to proved misbehaviour within the meaning of section 72 of the Constitution.

(2) The report under sub-section (1) shall be made on or before 30 September 1986, unless that date is extended by a resolution of each House of the Parliament.

(3) The Commission shall submit with its report a record of so much of the evidence before the Commission as the Commission thinks necessary to substantiate its findings of fact and its conclusions.

(4) Subject to sub-section (6), the President of the Senate and the Speaker of the House of Representatives shall, as soon as practicable after they receive the report of the Commission and the record of evidence, cause copies of the report and record to be laid before the Senate and the House of Representatives.

(5) If the Commission is of the opinion that, if any of its findings or conclusions, or any of the evidence given before the Commission were to be laid before the Houses of the Parliament—

- (a) a person who has been or may be charged with an offence may not receive a fair trial for the offence;
- (b) the conduct of an investigation of a breach or possible breach, of the law, may be prejudiced;
- (c) the existence or identity of a confidential source of information in relation to the enforcement or administration of the law may be disclosed or a person enabled to ascertain the existence or identity of that source; or

(d) there may be prejudice to the safety or reputation of a person, the Commission may include those findings or conclusions, or that evidence, in a separate report and deliver the report to the President of the Senate and the Speaker of the House of Representatives, together with a statement of its opinion.

(6) Where a separate report is prepared in accordance with sub-section (5), the President of the Senate and the Speaker of the House of Representatives shall not cause that separate report to be laid before the Houses of the Parliament.

Death or incapacity of member

9. (1) If a member dies, becomes physically or mentally incapable of performing the functions of a member or, by notice in writing to the President of the Senate and the Speaker of the House of Representatives, resigns his or her appointment, the remaining members shall thereafter constitute the Commission, and this Act shall have effect as if sub-section 4 (2) required the appointment of 2 members.

(2) If the Presiding Member dies, becomes physically or mentally incapable of performing the functions of a member or, by notice in writing to the President of the Senate and the Speaker of the House of Representatives, resigns his or her appointment, one of the remaining members shall be appointed by resolution of the Senate and by resolution of the House of Representatives to be the Presiding Member.

Decision of questions

10. (1) Questions arising before the Commission shall be decided in accordance with the opinion of a majority of the members or, if the Commission consists of 2 members and those members are divided in opinion, in accordance with the opinion of the Presiding Member.

(2) Where the members are not unanimous in opinion on a question arising before the Commission, there shall, if a member so requires, be recorded in the report of the Commission particulars of the opinions of the members on that question.

Division 2—Powers of the Commission

Power to summon witnesses and take evidence

11. (1) Subject to sub-section 6 (1), a 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) The Presiding Member may require a person appearing at a hearing to produce a document or other thing.

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

- (a) a 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 Presiding Member; and
- (b) a member, or a person who is an authorised person in relation to the Commission, may administer an oath or affirmation to a person so appearing at the hearing.

(4) In this section, a reference to a person who is an authorised person in relation to the Commission is a reference to a person authorised in writing, or a person included in a class of persons authorised in writing, for the purposes of this section by the Presiding Member.

Search warrants

12. (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 the matter into which the Commission is inquiring (in this section referred to as “things of the relevant kind”); and
- (b) the Commission believes on reasonable grounds that, if a summons were not issued for the production of the thing or things, a thing or things might be concealed, lost, mutilated or destroyed,

the Commission may issue a search warrant.

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

(3) A search warrant issued under sub-section (1) shall authorise a member of the Australian Federal Police or of the Police Force of a State or of the Northern Territory or any other person, named in the warrant,

with such assistance as that member or person 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) A warrant issued under this section shall—
- (a) state the purpose for which the warrant is issued;
 - (b) state whether entry is authorised to be made at any time of the day or night;
 - (c) include a description of the kind of things authorised to be seized; and
 - (d) specify a day, not being later than one month after the date of issue of the warrant, at the expiration of which the warrant ceases to have effect.

(5) A warrant issued under this section may be executed, in accordance with its terms, at any time during the period commencing on the date of issue of the warrant and ending at the expiration of the day specified for the purpose of paragraph (4) (d).

(6) If, in the course of searching, in accordance with a warrant issued under this section, for things of a particular kind connected with the matter into which the Commission is inquiring, the person executing the warrant finds any thing of another kind that the person believes on reasonable grounds to be connected with that subject-matter and the person 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 authorise the person to seize that thing.

Access to certain material held by National Crime Authority

13. (1) The Presiding Member may, by notice in writing given to the Chairman or Acting Chairman of the National Crime Authority, require the Authority—

- (a) to produce to the Commission documents and other materials in the possession of the Authority relating to the inquiry conducted by the Honourable Donald Gerard Stewart under Letters Patent issued on 25 June 1981, as varied by Letters Patent issued on 28 March 1983 and 29 March 1985, including documents or materials delivered by the Honourable Donald Gerard Stewart to the Authority upon the termination of that inquiry; or
- (b) to permit the Commission, or a member authorised for that purpose by the Commission and specified in the notice, together with such

other persons as are specified in the notice, to have access to documents or materials referred to in paragraph (a).

(2) The National Crime Authority shall comply with a notice under sub-section (1).

(3) The National Crime Authority may make available to the Commission, at the request of the Presiding Member, documents or materials (other than documents or materials referred to in sub-section (1)), being documents or materials relevant to the matter into which the Commission is inquiring.

Hearings

14. (1) For the purposes of its inquiry the Commission may hold hearings.

(2) Hearings before the Commission may be held at such places within Australia as the Commission determines.

(3) The Presiding Member shall preside at a hearing before the Commission.

(4) At a hearing before the Commission, the Honourable Lionel Keith Murphy is entitled to appear, and to be represented by a legal practitioner, at any time during the hearing.

(5) Subject to sub-section (4), in relation to a hearing conducted in private, the Commission may give directions as to the persons who may be present.

(6) Nothing in this Act prevents the presence, when evidence is being taken at a hearing, 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 (5), is entitled to be present.

(7) Where the Commission conducts a hearing in private, a person (other than a member, counsel assisting the Commission or a member of the staff of the Commission approved by the Commission) shall not be present at that hearing unless the person is entitled to be present by virtue of a direction under sub-section (5) or by virtue of sub-section (6).

(8) At a hearing before the Commission—

(a) counsel assisting the Commission;

(b) any person authorised by the Commission or entitled to appear before it at the hearing; or

(c) any legal practitioner authorised by the Commission to appear before it for the purpose of 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 its inquiry.

(9) Subject to this Act, the procedure at a hearing before the Commission shall be such as the Commission directs.

(10) Except in accordance with a direction of the Commission—

- (a) evidence given before the Commission;
- (b) the contents of a document, or a description of a thing, produced to the Commission or seized pursuant to a warrant issued under section 12;
- (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, and the Commission shall not give such a direction if to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

(11) A person who—

- (a) is present at a hearing in contravention of sub-section (7); or
- (b) makes a publication in contravention of sub-section (10),

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

Counsel assisting the Commission

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

Statement made by witness not admissible in evidence

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

Arrest of witness failing to appear

17. (1) If a person served with a summons to attend before the Commission as a witness fails to attend in accordance with the summons, the Presiding Member may, on proof of the service of the summons, issue a warrant for the apprehension of the person.

(2) A warrant under sub-section (1) shall authorise the apprehension of the witness and the bringing of the witness before the Commission and the detention of the witness in custody for that purpose until the witness is released by order of the Presiding Member.

(3) A warrant under sub-section (1) may be executed by any member of the Australian Federal Police or of the police force of a State or of the

Northern Territory, or by any person to whom it is addressed, and the person executing the warrant has power to break and enter any place, building or vessel for the purpose of executing it.

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

Powers of Commission in relation to documents and other things

18. (1) The Commission, a member or a person who is an authorised person in relation to the Commission may—

- (a) inspect any documents or other things produced before, or delivered to, the Commission;
- (b) retain the documents or other things for so long as is reasonably necessary for the purposes of the Commission's inquiry; and
- (c) in the case of documents produced before, or delivered to, the Commission—make copies of matter contained in the documents, being matter that is relevant to the Commission's inquiry.

(2) Where the retention of a document or other thing by the Commission ceases to be reasonably necessary for the purposes of the Commission's inquiry, the Commission shall, if a person who appears to the Commission to be entitled to the document or other thing so requests, cause the document or other thing to be delivered to that person.

(3) In sub-section (1), a reference to a person who is an authorised person in relation to the Commission is a reference to a person authorised in writing, for the purposes of that sub-section, by the Presiding Member.

Division 3—Administrative Provisions

Remuneration and allowances

19. (1) Subject to sub-section (4), a member shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration is in operation, the member shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

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

(5) A member ceases to hold office as a member when a copy of the report of the Commission has been laid before each House of the Parliament.

Staff of the Commission

20. (1) Subject to sub-section (2), the staff of the Commission shall be persons made available to the Commission by the President of the Senate and the Speaker of the House of Representatives.

(2) The President of the Senate and the Speaker of the House of Representatives may arrange with the Secretary of a Department of the Australian Public Service for the services of officers or employees in the Department to be made available to the Commission.

(3) While a person is performing services for the Commission pursuant to an arrangement under this section, that person shall perform his or her functions and duties in accordance with the directions of the Presiding Member and not otherwise.

Protection of members, &c.

21. (1) A member has, in the performance of the functions or the exercise of the powers of a member, 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.

Legal and financial assistance

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

(2) An application under sub-section (1) shall be forwarded by the Attorney-General to the President of the Senate and the Speaker of the House of Representatives.

(3) Where an application is made by a person under sub-section (1), the President of the Senate and the Speaker of the House of Representatives may, if they are satisfied that—

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

request the Attorney-General to authorise the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the President and the Speaker determine, of such legal or

financial assistance in respect of the appearance of that person before the Commission as the President and the Speaker determine.

(4) The Attorney-General shall comply with a request under sub-section (3).

Reimbursement of expenses of witnesses

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

PART III—OFFENCES

Failure of witnesses to attend or produce documents

24. (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 of the Commission.

Penalty: \$1,000 or imprisonment for 6 months.

(2) A person appearing as a witness at a hearing before the Commission shall not, without reasonable excuse, refuse or fail to produce a document or other thing that the person was required to produce by a summons under this Act served on the person as prescribed or that the person was required to produce by the Presiding Member.

Penalty: \$1,000 or imprisonment for 6 months.

(3) It is a defence to a prosecution for an offence against sub-section (2) constituted by a refusal or failure to produce a document or other thing to the Commission that the document or other thing was not relevant to the matter into which the Commission was inquiring.

Penalty for refusing to be sworn or give evidence

25. A person appearing as a witness at a hearing before the Commission shall not, without reasonable excuse—

- (a) when required pursuant to sub-section 11 (3) either to take an oath or make an affirmation—refuse or fail to comply with the requirement; or
- (b) refuse or fail to answer a question that the person is required to answer by the Presiding Member.

Penalty: \$1,000 or imprisonment for 6 months.

Acts or omissions on different days to constitute separate offences

26. Where a person has on any day done or omitted to do something, being an act or omission that amounts to an offence against section 25, and the person does or omits to do the same thing at a hearing of the Commission held on some other day, each such act or omission constitutes a separate offence.

Self-incrimination

27. (1) It is not a reasonable excuse for the purposes of section 24 for a person to refuse or fail to produce a document or other thing that the person was required to produce at a hearing before the Commission that the production of the document or other thing might tend to incriminate the person.

(2) A person is not entitled to refuse or fail to answer a question that the person is required to answer by the Presiding Member on the ground that the answer to the question might tend to incriminate the person.

False or misleading evidence

28. (1) A person shall not, at a hearing before the Commission, give evidence that is to the knowledge of the person false or misleading with respect to any matter, being a matter that is material to the inquiry being made by the Commission.

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

(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 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 1 year.

Destroying documents or other things

29. (1) A person who, knowing or having reasonable grounds to believe that a document or other thing is or may be required in evidence before the Commission, wilfully—

- (a) conceals, mutilates or destroys the document;
 - (b) renders the document or other thing incapable of identification; or
 - (c) in the case of a document, renders it illegible or indecipherable,
- is guilty of an offence.

(2) An offence against sub-section (1) is an indictable offence and, subject to this section, is punishable on conviction by a fine not exceeding \$10,000 or by imprisonment for a period not exceeding 2 years.

(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 under sub-section (1), the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 1 year.

Intimidation or dismissal of witnesses

30. (1) A person shall not use, cause, inflict, or procure any violence, punishment, damage, loss or disadvantage to a person because the person appeared as a witness before the Commission or because of any evidence given by the person before the Commission.

Penalty: \$20,000 or imprisonment for 5 years.

(2) An employer shall not dismiss an employee from employment or prejudice an employee in employment because the employee appeared as a witness before the Commission.

Penalty: \$20,000 or imprisonment for 5 years.

(3) In any proceedings for an offence against this section, it shall lie upon the employer to prove that an employee shown to have been dismissed or prejudiced in employment was so dismissed or prejudiced for some reason other than a reason mentioned in sub-section (1) or (2).

(4) Nothing in this section applies to, or in relation to, anything done by a person under, or for the purposes of, section 72 of the Constitution.

Preventing witnesses from attending

31. A person who wilfully prevents or wilfully endeavours to prevent a person who has been summoned to attend as a witness before the Commission from so attending as a witness or from producing anything in evidence in accordance with the summons is guilty of an indictable offence punishable on conviction by a fine not exceeding \$2,000 or by imprisonment for a period not exceeding 1 year.

Bribery of witness

32. A person who—

- (a) gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for, any person, upon any agreement or understanding that any person called or to be called as a witness before the Commission will give false testimony or withhold true testimony;
- (b) attempts by any means to induce a person called or to be called as a witness before the Commission to give false testimony or to withhold true testimony; or

- (c) asks, receives or obtains or agrees or attempts to receive or obtain any property or benefit of any kind, whether for the person or for any other person, upon any agreement or understanding that any person will as a witness before the Commission give false testimony or withhold true testimony,

is guilty of an indictable offence punishable, on conviction, by a fine not exceeding \$20,000 or by imprisonment for a period not exceeding 5 years.

Fraud on witness

33. A person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness before the Commission with intent to affect the testimony of that person as a witness is guilty of an indictable offence punishable, on conviction, by a fine not exceeding \$5,000 or by imprisonment for a period not exceeding 2 years.

PART IV—MISCELLANEOUS

Commission may communicate information

34. Where, in the course of its inquiry, the Commission obtains information that relates, or may relate, to the commission of an offence, or evidence of the commission of an offence against a law of the Commonwealth, of a State or of 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 Commonwealth or of a State or of the Northern Territory;
- (b) the National Crime Authority;
- (c) the Commissioner of the Australian Federal Police or of the Police Force of a State or Territory; or
- (d) the authority or person responsible for the administration or enforcement of that law.

Contempt of Commission

35. (1) A person shall not—

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

Penalty: \$2,000 or imprisonment for 1 year.

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

Appropriation

36. The remuneration and allowances of members and any other expenses occasioned by the operation of this Act shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

Regulations

37. The Governor-General may make regulations, not inconsistent with this Act, prescribing 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.

*[Minister's second reading speech made in—
House of Representatives on 8 May 1986
Senate on 8 May 1986]*