



# **Royal Commissions Act 1902**

**No. 12, 1902 as amended**

<b>Compilation start date:</b>	28 March 2013
<b>Includes amendments up to:</b>	Act No. 24, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### The compiled Act

This is a compilation of the *Royal Commissions Act 1902* as amended and in force on 28 March 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 5 April 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

### Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

### Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is set out in the endnotes.

### Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

### Provisions ceasing to have effect

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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# Contents

<b>Part 1—Preliminary</b>	<b>1</b>
1 Short title .....	1
1A Power to issue Royal Commission .....	1
1B Definitions .....	1
1C Application of the <i>Criminal Code</i> .....	3
<b>Part 2—Hearings and coercive and other powers of Royal Commissions</b>	<b>4</b>
2 Power to summon witnesses and take evidence .....	4
3 Failure of witnesses to attend or produce documents .....	5
4 Search warrants .....	7
5 Application by telephone for search warrants .....	9
6 Penalty for refusing to be sworn or to give evidence .....	9
6AA Legal professional privilege .....	9
6AB Offences relating to claims for legal professional privilege .....	11
6A Self incrimination .....	12
6B Arrest of witness failing to appear .....	12
6C Acts or omissions on different days to constitute separate offences .....	13
6D Rights of witness .....	13
6DD Statements made by witness not admissible in evidence against the witness .....	14
6F Power of Commission in relation to documents and other things .....	14
6FA Examination of witnesses by counsel etc .....	15
6G Witness to be paid expenses .....	16
<b>Part 3—Offences</b>	<b>17</b>
6H False or misleading evidence .....	17
6I Bribery of witness .....	17
6J Fraud on witness .....	18
6K Destroying documents or other things .....	19
6L Preventing witness from attending .....	20
6M Injury to witness .....	20
6N Dismissal by employers of witness .....	20
6O Contempt of Royal Commission .....	21

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<b>Part 4—Private sessions for the Child Sexual Abuse Royal Commission</b>	22
<b>Division 1—Definitions</b>	22
60A Definitions	22
<b>Division 2—Private sessions</b>	23
60B Power to hold private sessions	23
60C Status of private session	23
60E Statements made and documents produced etc. at a private session are not admissible in evidence	24
60F Protection of those who appear, or are authorised to be present, at a private session	25
<b>Division 3—Privacy of private sessions</b>	26
60G Privacy of private sessions	26
60H Offence for unauthorised use or disclosure of information given at a private session	26
60J Inclusion of information in reports and recommendations	27
60K Defence for disclosure to person who provided the information	27
60L No other exceptions under other laws	27
60M Relationship with the <i>Archives Act 1983</i>	27
<b>Part 5—Miscellaneous</b>	29
6P Commission may communicate information	29
7 Protection to Commissioners etc.	30
7AA Commission may have concurrent functions and powers under State laws	31
7A Effect of Royal Commissioner having authority to inquire under foreign law	31
7B Commission may take evidence outside Australia	32
7C Statements made by witness not admissible in evidence against the witness	33
7D Certain evidence before a State Commission inadmissible in Commonwealth proceedings	33
8 Allowances to witnesses	34
9 Custody and use of records of Royal Commission	34
10 Institution of proceedings in respect of other offences	40
15 Costs	40
16 Evidence of issue of Commission etc.	40
17 Regulations	41

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<b>Endnotes</b>	43
Endnote 1—Legislation history	43
Endnote 2—Amendment history	47
Endnote 3—Application, saving and transitional provisions	52
Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Act 2001 (No. 49, 2001)	52
Royal Commissions Amendment Act 2006 (No. 52, 2006)	52
Royal Commissions Amendment (Records) Act 2006 (No. 167, 2006)	52
Royal Commissions Amendment Act 2013 (No. 24, 2013)	53
Endnote 4—Uncommenced amendments	54
Endnote 5—Misdescribed amendments	55



# An Act relating to Royal Commissions

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Royal Commissions Act 1902*.

### 1A Power to issue Royal Commission

Without in any way prejudicing, limiting, or derogating from the power of the King, or of the Governor-General, to make or authorise any inquiry, or to issue any commission to make any inquiry, it is hereby enacted and declared that the Governor-General may, by Letters Patent in the name of the King, issue such commissions, directed to such person or persons, as he or she thinks fit, requiring or authorising him or her or them or any of them to make inquiry into and report upon any matter specified in the Letters Patent, and which relates to or is connected with the peace, order, and good government of the Commonwealth, or any public purpose or any power of the Commonwealth.

### 1B Definitions

- (1) In this Act, unless the contrary intention appears:

***authorised member hearing*** means a hearing of a Commission that is held as referred to in subsection 2(1A).

***Commission*** and ***Royal Commission*** means any Commission of inquiry issued by the Governor-General by Letters Patent under this Act or any other power, and includes the following persons sitting for the purposes of the inquiry:

- (a) in relation to an authorised member hearing—the member or members of the Commission holding the hearing;
- (b) in relation to a Commission that is constituted by 2 or more members (except if paragraph (a) applies)—the members of the Commission, or a quorum of those members;
- (c) in relation to a sole Commissioner—the Commissioner.

Section 1B

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**document** includes any book, register or other record of information, however compiled, recorded or stored.

**Finance Minister** means the Minister administering the *Financial Management and Accountability Act 1997*.

**Foreign Affairs Minister** means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

**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**, in relation to a Commission, means:

- (a) in the case of a Commission constituted by one person—that person; or
- (b) in the case of a Commission constituted by 2 or more persons—each of those persons.

**reasonable excuse** means:

- (a) in relation to any act or omission by a witness before a Commission—an excuse which would excuse an act or omission of a similar nature by a witness before a court of law; or
- (b) in relation to any act or omission by a person summoned as a witness before a Commission—an excuse which would excuse an act or omission of a similar nature by a person summoned as a witness before a court of law; or
- (c) in relation to any act or omission by a person served with a notice under subsection 2(3A) or 6AA(3)—an excuse which would excuse an act or omission of a similar nature by a person served with a subpoena in connection with a proceeding before a court of law.

**relevant Commission** means a Commission established by Letters Patent that declare that the Commission is a relevant Commission for the purposes of the provision in which the expression appears.

- (2) In this Act, unless the contrary intention appears:
  - (a) a reference to a requirement to produce a document includes a reference to a requirement to produce a part of the document; and

- (b) a reference to refusal or failure to produce a document includes:
  - (i) if production of the whole of the document is required—a reference to refusal or failure to produce a part of the document; and
  - (ii) if production of a part of the document is required—a reference to refusal or failure to produce a part of that part of the document.
- (3) A reference in any other Act to a Royal Commission (being a Royal Commission established by the Governor-General by Letters Patent under this Act or any other power) includes a reference to one or more members of a Commission holding an authorised member hearing.

### **1C Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part 2—Hearings and coercive and other powers of Royal Commissions**

### **2 Power to summon witnesses and take evidence**

- (1) A member of a Commission may summon a person to appear before the Commission at a hearing to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce the documents, or other things, specified in the summons.
- (1A) If a Commission is constituted by 2 or more members, a hearing of the Commission may be held by one or more members of the Commission if each of the members holding the hearing is either:
  - (a) the President or Chair of the Commission; or
  - (b) authorised in writing by the President or Chair of the Commission to hold authorised member hearings in relation to the Commission.
- (1B) The following person presides at an authorised member hearing:
  - (a) the President or Chair of the Commission;
  - (b) if the President or Chair is not one of the members holding an authorised member hearing—the member of the Commission who is authorised in writing by the President or Chair to preside at the hearing.
- (2) The member of a Commission presiding at a hearing of the Commission may require a person appearing at the hearing to produce a document or other thing.
- (3) A Commission may, at a hearing, take evidence on oath or affirmation and for that purpose:
  - (a) a member of the Commission 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 of the Commission presiding at the hearing; and
  - (b) a member of the Commission, 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.

- (3A) A member of a Commission may, by written notice served (as prescribed) on a person, require the person to produce a document or thing specified in the notice to a person, and at the time and place, specified in the notice.
- (3B) A member of a Commission must not require, under subsection (3A), a person to produce a document or thing at a private session (within the meaning of Part 4).
- (4) In this section, a reference to a person who is an authorised person in relation to a 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:
  - (a) in relation to an authorised member hearing—the member of the Commission presiding at the hearing; and
  - (b) in relation to a Commission that is constituted by 2 or more members (except if paragraph (a) applies)—the President or Chair of the Commission; and
  - (c) in relation to a sole Commissioner—the Commissioner.
- (5) For the purposes of sections 3, 6AA and 6AB, the power of a member of a Commission under this section to require or summon a person to produce a document includes the power to require or summon the person to produce a document that is subject to legal professional privilege.

Note: Under section 6AA, legal professional privilege might still be a reasonable excuse for refusing or failing to produce the document.

### **3 Failure of witnesses to attend or produce documents**

- (1) A person served, as prescribed, with a summons to appear as a witness at a hearing before a Commission shall not:
  - (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.

- (1A) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Section 3

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(1B) Subsection (1) does not apply if the person has a reasonable excuse.

(2) A person appearing as a witness at a hearing before a Commission shall not fail to produce a document or other thing that the person was required to produce by a summons under this Act served on him or her as prescribed or that the person was required to produce by the member of the Commission presiding at the hearing.

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

(2A) Subsection (2) is an offence of strict liability.

(2B) Subsection (2) does not apply if the person has a reasonable excuse.

(3) It is a defence to a prosecution for an offence against subsection (2) constituted by a failure to produce a document or other thing to a Commission if the document or other thing was not relevant to the matters into which the Commission was inquiring.

Note: A defendant bears an evidential burden in relation to the matters in subsections (1B), (2B) and (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) A person served with a notice under subsection 2(3A) must not refuse or fail to produce a document or other thing that the person was required to produce in accordance with the notice.

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

(5) Subsection (4) does not apply if the person has a reasonable excuse.

(6) It is a defence to a prosecution for an offence against subsection (4) constituted by a refusal or failure to produce a document or other thing if the document or other thing was not relevant to the matters into which the Commission was inquiring.

Note: A defendant bears an evidential burden in relation to the matters in subsections (5) and (6) (see subsection 13.3(3) of the *Criminal Code*).

(7) The references in subsections (3) and (6) to the matters into which the Commission was inquiring are, for a Commission that holds an authorised member hearing, references to the matters into which the Commission as a whole was inquiring.

#### 4 Search warrants

(1A) A relevant Commission may authorise:

- (a) a member of the relevant Commission; or
- (b) a member of the Australian Federal Police, or of the Police Force of a State or Territory, who is assisting the relevant Commission;

to apply for search warrants under subsection (3) in relation to matters into which the relevant Commission is inquiring. The authorisation must be in writing.

(1) Where:

- (a) a relevant Commission, or a person authorised by a relevant Commission under subsection (1A), 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 into which the relevant Commission is inquiring (in this section referred to as *things of the relevant kind*); and
- (b) the relevant Commission, or the person, 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 relevant Commission, or the person, may apply to a Judge of a prescribed court for the issue of a search warrant under subsection (3).

(3) Where an application under subsection (1) is made to a Judge of a prescribed court, the Judge may, if he or she is satisfied that there are reasonable grounds for issuing the warrant, issue a search warrant authorising 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 the 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

Section 4

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- (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 relevant 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 into which the relevant Commission is inquiring and with which the things of the relevant kind are connected;
  - (b) whether entry is authorised 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 authorised 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 into which a relevant Commission is inquiring, the person executing the warrant finds:
  - (a) any thing of another kind that he or she believes on reasonable grounds to be connected with that matter; or
  - (b) any thing that he or she believes on reasonable grounds to be connected with another matter into which the relevant Commission is inquiring;and he or she 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.
- (5A) The references in this section to a relevant Commission do not include references to one or more members of a Commission holding an authorised member hearing.
- (6) 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 of Australia; or
  - (b) a Judge of a court of a State or Territory.
- (7) In this section, *thing* includes a document.

**5 Application by telephone for search warrants**

- (1) An application for a search warrant under subsection 4(1) may be made by telephone if the applicant for the warrant considers it necessary to do so because of circumstances of urgency.
- (2) Where a Judge issues a search warrant upon an application made by telephone, the Judge shall:
  - (a) complete and sign that warrant;
  - (b) inform the applicant 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 applicant.
- (3) Where a search warrant is issued upon an application made by telephone, a member of the staff of the relevant 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 subsection (2).
- (4) A form of warrant duly completed in accordance with subsection (3) shall be deemed to be a warrant issued under section 4.

**6 Penalty for refusing to be sworn or to give evidence**

- (1) If any person appearing as a witness before the Commission refuses to be sworn or to make an affirmation or to answer any question relevant to the inquiry put to him or her by any of the Commissioners, the person shall be guilty of an offence.
- (2) The penalty for an offence under subsection (1) is a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.
- (3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**6AA Legal professional privilege**

- (1) It is not a reasonable excuse for the purposes of subsection 3(2B) or (5) for a person to refuse or fail to produce a document that the document is subject to legal professional privilege, unless:

**Section 6AA**

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- (a) a court has found the document (or the relevant part of the document) to be subject to legal professional privilege; or
  - (b) a claim that the document (or the relevant part of the document) is subject to legal professional privilege has been made, to the member of the Commission who required production of the document:
    - (i) within the time that the member of the Commission, in requiring production of the document, allowed for its production; or
    - (ii) within such further time as the member of the Commission allows for production of the document.
- (2) If such a claim is made, the member of the Commission who required production of the document may decide whether to accept or reject the claim.
- (3) The member of the Commission may, by written notice served (as prescribed) on a person, require the person to produce the document for inspection (by the member of the Commission or a person authorised by the member of the Commission) for the purpose of deciding whether to accept or reject the claim.
- (4) If the document has been produced for inspection and the member of the Commission decides to accept the claim, the Commission must:
  - (a) return the document to the person; and
  - (b) disregard, for the purposes of any report or decision that the Commission makes:
    - (i) if the claim is accepted in relation to the whole document—the whole document; or
    - (ii) if the claim is accepted in relation to a part of the document—that part of the document.
- (5) If the document has been produced for inspection and the member of the Commission decides to reject the claim, the Commission may use the document for the purposes of the inquiry.
- (6) Without limiting subsections (3) and (5), the powers of a member of a Commission, or a Commission, under section 2 apply, by force of this subsection, in relation to deciding whether to accept or reject the claim.

**6AB Offences relating to claims for legal professional privilege**

- (1) A person commits an offence if:
- (a) the person had refused or failed to produce a document as required by a member of a Commission under section 2; and
  - (b) the member of the Commission has decided under subsection 6AA(2) to reject a claim that the document (or the relevant part of the document) is subject to legal professional privilege; and
  - (c) the person refuses or fails to produce the document as the member of the Commission requires, after that decision, under section 2.

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

- (2) A person commits an offence if the person refuses or fails to produce a document that the person was required under subsection 6AA(3) to produce for inspection.

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

- (3) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

- (5) It is not a reasonable excuse for the purposes of subsection (4) for a person to refuse or fail to produce a document that the document is subject to legal professional privilege, unless a court has found the document to be subject to legal professional privilege.

- (6) It is a defence to a prosecution for an offence against this section constituted by a refusal or failure to produce a document if the document was not relevant to the matters into which the Commission was inquiring.

Note: A defendant bears an evidential burden in relation to the matters in subsections (4) and (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) The reference in subsection (6) to the matters into which the Commission was inquiring is, for a Commission that holds an authorised member hearing, a reference to the matters into which the Commission as a whole was inquiring.

Section 6A

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**6A Self incrimination**

- (1) It is not a reasonable excuse for the purposes of subsection 3(2B) or (5), or section 6AB, for a natural person to refuse or fail to produce a document or other thing that the production of the document or other thing might tend to:
  - (a) incriminate the person; or
  - (b) make the person liable to a penalty.
- (2) A natural person is not excused from answering a question that the person is required to answer by a member of a Commission on the ground that answering the question might tend to:
  - (a) incriminate the person; or
  - (b) make the person liable to a penalty.
- (3) Subsections (1) and (2) do not apply to the production of a document or other thing, or the answer to a question, if:
  - (a) the production or answer might tend to incriminate the person in relation to an offence; and
  - (b) the person has been charged with that offence; and
  - (c) the charge has not been finally dealt with by a court or otherwise disposed of.
- (4) Subsections (1) and (2) do not apply to the production of a document or other thing, or the answer to a question, if:
  - (a) the production or answer might tend to make the person liable to a penalty; and
  - (b) proceedings in respect of the penalty have commenced; and
  - (c) those proceedings have not been finally dealt with by a court or otherwise disposed of.

**6B Arrest of witness failing to appear**

- (1) If any person served with a summons to attend a Royal Commission as a witness fails to attend the Commission in answer to the summons, the President or Chair, or the sole Commissioner, may, on proof by statutory declaration of the service of the summons, issue a warrant for the person's apprehension.
- (2) The warrant shall authorise the apprehension of the witness and the witness being brought before the Commission, and the witness'

detention in custody for that purpose until he or she is released by order of the President or Chair, or the sole Commissioner.

- (3) The warrant 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 it shall have power to break and enter any place building or vessel for the purpose of executing it.
- (4) The apprehension of any witness under this section shall not relieve him or her from any liability incurred by the witness by reason of his or her non-compliance with the summons.
- (5) The reference in subsection (2) to the Commission does not include a reference to one or more members of a Commission holding an authorised member hearing.

#### **6C Acts or omissions on different days to constitute separate offences**

Where any person has on any day done or omitted to do something, and the person's act or omission amounts to an offence against section 3 or 6, and does or omits to do the same thing at any hearing of the Commission held on some other day, each such act or omission shall be a separate offence.

#### **6D Rights of witness**

- (1) Nothing in this Act shall make it compulsory for any witness before a Royal Commission to disclose to the Commission any secret process of manufacture.
- (2) If any witness before a Royal Commission requests that the witness' evidence relating to a particular subject be taken in private on the ground that the evidence relates to the profits or financial position of any person, and that the taking of the evidence in public would be unfairly prejudicial to the interests of that person, the Commission may, if it thinks proper, take that evidence in private, and no person who is not expressly authorised by the Commission to be present shall be present during the taking of that evidence.
- (3) The Commission may direct that:
  - (a) any evidence given before it;

**Section 6DD**

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- (b) the contents of any document, or a description of any thing:
    - (i) produced before, or delivered to, the Commission; or
    - (ii) produced under a notice under subsection 2(3A); or
  - (c) any information that might enable a person who has given evidence before the Commission to be identified;
- shall not be published, or shall not be published except in such manner, and to such persons, as the Commission specifies.
- (4) A person who makes any publication in contravention of any direction given under subsection (3) 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.
  - (5) This section shall be read as in aid of and not as in derogation of the Commission's general powers to order that any evidence may be taken in private.

**6DD Statements made by witness not admissible in evidence against the witness**

- (1) The following are not admissible in evidence against a natural person in any civil or criminal proceedings in any court of the Commonwealth, of a State or of a Territory:
  - (a) a statement or disclosure made by the person in the course of giving evidence before a Commission;
  - (b) the production of a document or other thing by the person pursuant to a summons, requirement or notice under section 2 or subsection 6AA(3).
- (2) Subsection (1) does not apply to the admissibility of evidence in proceedings for an offence against this Act.

**6F Power of Commission in relation to documents and other things**

- (1) A Commission, a member of a Commission or a person who is an authorised person in relation to a Commission may:
  - (a) inspect any documents or other things:
    - (i) produced before, or delivered to, the Commission; or
    - (ii) produced under a notice under subsection 2(3A) or 6AA(3); and

- (b) retain the documents or other things for so long as is reasonably necessary for the purposes of the inquiry to which the documents or other things are relevant; and
  - (c) in the case of documents:
    - (i) produced before, or delivered to, the Commission; or
    - (ii) produced under a notice under subsection 2(3A) or 6AA(3);make copies of any documents that contain matter that is relevant to a matter into which the Commission is inquiring.
- (2) Where the retention of a document or other thing by a Commission ceases to be reasonably necessary for the purposes of the inquiry to which the document or other thing is relevant, 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 unless the Commission has furnished the document or other thing to a person or body referred to in paragraph 6P(1)(a), (aa), (c), (d), (da) or (e) or subsection 6P(2), (2A) or (2B).
- (2A) Subsection (2) has effect subject to subsection 9(10).
- (3) In subsection (1), a reference to a person who is an authorised person in relation to a 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 that subsection by:
- (a) in relation to an authorised member hearing—the member of the Commission presiding at the hearing; and
  - (b) in relation to a Commission that is constituted by 2 or more members (except if paragraph (a) applies)—the President or Chair of the Commission; and
  - (c) in relation to a sole Commissioner—the Commissioner.

**6FA Examination of witnesses by counsel etc.**

Any legal practitioner appointed by the Attorney-General to assist a Commission, any person authorised by a Commission to appear before it, or any legal practitioner authorised by a Commission to appear before it for the purpose of representing any person, may, so far as the Commission thinks proper, examine or cross-examine any witness on any matter which the Commission deems relevant to the inquiry, and any witness so examined or cross-examined

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**Section 6G**

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shall have the same protection and be subject to the same liabilities as if examined by any of the Commissioners, or by the sole Commissioner, as the case may be.

**6G Witness to be paid expenses**

- (1) Any witness appearing before a Royal Commission shall be paid a reasonable sum for the expenses of his or her attendance in accordance with the prescribed scale.
- (2) In the absence of a prescribed scale, the President or Chair of the Commission, or the sole Commissioner, may authorise the payment of such sum as he or she deems reasonable.

## **Part 3—Offences**

### **6H False or misleading evidence**

- (1) A person shall not, at a hearing before a Commission, intentionally give evidence that the person knows to be false or misleading with respect to any matter, being a matter that is material to the inquiry being made by the Commission.
- (2) An offence against subsection (1) is an indictable offence and, subject to this section, is punishable on conviction by imprisonment for a period not exceeding 5 years or by a fine not exceeding \$20,000.
- (3) Notwithstanding that an offence against subsection (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 subsection (3), a court of summary jurisdiction convicts a person of an offence against subsection (1), the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months.
- (5) The reference in subsection (1) to the inquiry being made by the Commission is, for a Commission that holds an authorised member hearing, a reference to the inquiry being made by the Commission as a whole.

Note:        However, the reference in subsection (1) to a hearing before a Commission may be an authorised member hearing.

### **6I Bribery of witness**

- (1) Any 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 any Royal Commission shall give false testimony or withhold true testimony; or

Section 6J

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- (b) attempts by any means to induce a person called or to be called as a witness before any Royal Commission to give false testimony, or to withhold true testimony; or
- (c) asks, receives or obtains, or agrees to receive or obtain any property or benefit of any kind for himself or herself, or any other person, upon any agreement or understanding that any person shall as a witness before any Royal Commission give false testimony or withhold true testimony;

shall be guilty of an indictable offence.

Penalty: Imprisonment for five years.

(2) Any 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 who is required to produce a document or other thing pursuant to a summons, requirement or notice under section 2 will not comply with the requirement; or
- (b) attempts by any means to induce any person who is required to produce a document or other thing pursuant to a summons, requirement or notice under section 2 not to comply with the requirement; or
- (c) asks, receives or obtains, or agrees to receive or obtain any property or benefit of any kind for himself or herself, or any other person, upon any agreement or understanding that any person who is required to produce a document or other thing pursuant to a summons, requirement or notice under section 2 will not comply with the requirement;

is guilty of an indictable offence.

Penalty: Imprisonment for 5 years.

**6J Fraud on witness**

- (1) Any person who practises any fraud or deceit, or intentionally makes or exhibits any statement, representation, token, or writing, knowing it to be false, to any person called or to be called as a witness before any Royal Commission with intent to affect the testimony of that person as a witness, shall be guilty of an indictable offence.

Penalty: Imprisonment for two years.

- (2) Any person who practises any fraud or deceit, or intentionally makes or exhibits any statement, representation, token, or writing, knowing it to be false, to any person with intent that any person who is required to produce a document or other thing pursuant to a summons, requirement or notice under section 2 will not comply with the requirement, is guilty of an indictable offence.

Penalty: Imprisonment for 2 years.

### **6K Destroying documents or other things**

- (1) A person commits an offence if:
- (a) the person acts or omits to act; and
  - (b) the act or omission results in a document or other thing being:
    - (i) concealed, mutilated or destroyed; or
    - (ii) rendered incapable of identification; or
    - (iii) in the case of a document, rendered illegible or indecipherable; and
  - (c) the person knows, or is reckless as to whether, the document or thing is one that:
    - (i) is or may be required in evidence before a Commission; or
    - (ii) a person has been, or is likely to be, required to produce pursuant to a summons, requirement or notice under section 2.
- (2) An offence under subsection (1) is an indictable offence and, subject to this section, is punishable on conviction by imprisonment for a period not exceeding 2 years or by a fine not exceeding \$10,000.
- (3) Notwithstanding that an offence under subsection (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 subsection (3), a court of summary jurisdiction convicts a person of an offence under subsection (1),
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**Section 6L**

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the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months.

**6L Preventing witness from attending**

- (1) Any person who intentionally prevents any person who has been summoned to attend as a witness before any Royal Commission from attending as a witness or from producing anything in evidence pursuant to the summons to attend shall be guilty of an indictable offence.

Penalty: Imprisonment for one year.

- (2) Any person who intentionally prevents any person who is required to produce a document or other thing pursuant to a notice under subsection 2(3A) from producing that document or thing in accordance with the notice is guilty of an indictable offence.

Penalty: Imprisonment for 1 year.

**6M Injury to witness**

Any person who uses, causes or inflicts, any violence, punishment, damage, loss, or disadvantage to any person for or on account of:

- (a) the person having appeared as a witness before any Royal Commission; or
- (b) any evidence given by him or her before any Royal Commission; or
- (c) the person having produced a document or thing pursuant to a summons, requirement or notice under section 2;

is guilty of an indictable offence.

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

**6N Dismissal by employers of witness**

- (1) Any employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee having:
- (a) appeared as a witness before a Royal Commission; or
  - (b) given evidence before a Royal Commission; or

(c) produced a document or thing pursuant to a summons, requirement or notice under section 2;  
is guilty of an indictable offence.

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

- (2) Subsection (1) does not apply if the employee was dismissed or prejudiced in his or her employment for some reason other than the reasons mentioned in subsection (1).

Note: A defendant bears an evidential burden in relation to the matters in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

## **6O Contempt of Royal Commission**

- (1) Any person who intentionally insults or disturbs a Royal Commission, or interrupts the proceedings of a Royal Commission, or uses any insulting language towards a Royal Commission, or by writing or speech uses words false and defamatory of a Royal Commission, or is in any manner guilty of any intentional contempt of a Royal Commission, shall be guilty of an offence.

Penalty: Two hundred dollars, or imprisonment for three months.

- (2) If the President or Chair of a Royal Commission or the sole Commissioner is a Justice of the High Court, or a Judge of any other Federal Court, of the Supreme Court of a Territory or of the Supreme Court or County Court or District Court of a State, he or she shall, in relation to any offence against subsection (1) of this section committed in the face of the Commission, have all the powers of a Justice of the High Court sitting in open Court in relation to a contempt committed in face of the Court, except that any punishment inflicted shall not exceed the punishment provided by subsection (1) of this section.

## **Part 4—Private sessions for the Child Sexual Abuse Royal Commission**

### **Division 1—Definitions**

#### **6OA Definitions**

In this Part:

***Child Sexual Abuse Royal Commission*** means the Royal Commission into Institutional Responses to Child Sexual Abuse issued by the Governor-General by Letters Patent on 11 January 2013 (and including any later variations of those Letters Patent).

***private session*** means a private session held under section 6OB.

## **Division 2—Private sessions**

### **6OB Power to hold private sessions**

- (1) Any of the following members of the Child Sexual Abuse Royal Commission may hold a private session to obtain information in relation to matters into which the Commission is inquiring:
  - (a) the Chair of the Commission;
  - (b) a member who is authorised in writing by the Chair of the Commission.
- (2) A private session may be held only by one or 2 members referred to in subsection (1).
- (3) Any member of the Commission holding a private session may (subject to the Letters Patent establishing the Commission and Division 3) determine any matters relating to the conduct of the private session, having regard to any directions given by the Chair of the Commission.

### **6OC Status of private session**

- (1) A person who appears at a private session:
  - (a) is not a witness before the Commission; and
  - (b) does not give evidence to the Commission.
- (2) A private session is not a hearing of the Commission.

#### *Powers of Commission and custody and use of records*

- (3) The following provisions apply as if information, a document, record or other thing obtained by one or 2 members of the Child Sexual Abuse Royal Commission at a private session were produced before, delivered or given to, or otherwise obtained or received by, the Commission:
  - (a) section 6F (power of Commission in relation to documents and other things);
  - (b) section 6P (Commission may communicate information);
  - (c) section 9 (custody and use of records of Royal Commission).

Section 6OE

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- (4) Section 9 (custody and use of records of Royal Commission) also applies as if a record produced by one or 2 members of the Child Sexual Abuse Royal Commission at a private session were produced by the Commission.

*Application of Part 4 (offences)*

- (5) Sections 6H (false or misleading evidence), 6I (bribery of witness), 6J (fraud on witness), 6L (preventing witness from attending), 6M (injury to witness) and 6N (dismissal by employers of witness) apply as if:
- (a) a person who appears, or intends to appear, at a private session were called or summoned, or appeared, as a witness before the Child Sexual Abuse Royal Commission; and
  - (b) any information provided, or that a person intends to provide, at a private session were testimony or evidence given at a hearing before the Commission; and
  - (c) any document or other thing that a person produces, or intends to produce, at a private session was produced or would have been produced because the person was required to do so under a summons, requirement or notice under section 2.
- (6) Section 6O (contempt of Royal Commission) applies in relation to a private session as if:
- (a) the member or members of the Child Sexual Abuse Royal Commission holding the private session were the Commission; and
  - (b) the private session were proceedings of the Commission.

**6OE Statements made and documents produced etc. at a private session are not admissible in evidence**

- (1) The following are not admissible in evidence against a natural person in any civil or criminal proceedings in any court of the Commonwealth, of a State or of a Territory:
- (a) a statement or disclosure made by the person at a private session;
  - (b) the production of a document or other thing by the person at a private session.

- (2) Subsection (1) does not apply to the admissibility of evidence in proceedings for an offence against this Act.

**6OF Protection of those who appear, or are authorised to be present, at a private session**

- (1) Any person who appears, or is authorised to be present, at a private session has the same protection and, in addition to the penalties provided by this Act, is to be subject to the same liabilities in any civil or criminal proceeding, as a witness in any case tried in the High Court.
- (2) A legal practitioner who appears on behalf of a person at a private session has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

## **Division 3—Privacy of private sessions**

### **6OG Privacy of private sessions**

A private session must be held in private, and only persons who are authorised by a member of the Child Sexual Abuse Royal Commission holding the private session may be present during the private session.

### **6OH Offence for unauthorised use or disclosure of information given at a private session**

A person commits an offence if:

- (a) the person obtains information:
  - (i) at a private session; or
  - (ii) that was given at a private session; and
- (b) the person makes a record of, uses or discloses the information; and
- (c) none of the following applies:
  - (i) the record, use or disclosure is for the purposes of performing functions or duties or exercising powers in relation to the Child Sexual Abuse Royal Commission;
  - (ii) the person is authorised to make the record of, or use, disclose or publish, the information in accordance with section 6OJ (inclusion of information in reports and recommendations), 6P (Commission may communicate information) or 9 (custody and use of records of Commission);
  - (iii) the person gave the information at the private session;
  - (iv) the person makes the record of, uses or discloses the information with the consent of the person who gave the information at the private session.

Penalty: 20 penalty units or imprisonment for 12 months or both.

Note: For a defence to this offence, see section 6OK.

### **6OJ Inclusion of information in reports and recommendations**

Information that relates to a natural person that has been obtained at a private session may be included in a report or recommendation of the Child Sexual Abuse Royal Commission only if:

- (a) the information is also given as evidence to the Commission or under a summons, requirement or notice under section 2; or
- (b) the information is de-identified.

### **6OK Defence for disclosure to person who provided the information**

Section 6OH does not apply to a disclosure of information to the person who gave the information at a private session.

Note: A defendant bears an evidential burden in relation to the matter in this section (see subsection 13.3(3) of the *Criminal Code*).

### **6OL No other exceptions under other laws**

- (1) A provision of a law of the Commonwealth, a State or a Territory has no effect to the extent that it would otherwise require or authorise a person to make a record of, use or disclose information obtained at a private session if the record, use or disclosure:
  - (a) would contravene a provision of this Division; or
  - (b) would not be permitted by a provision of this Division.
- (2) Subsection (1) has effect whether the provision concerned is made before or after the commencement of this section.

### **6OM Relationship with the *Archives Act 1983***

- (1) For the purposes of the *Archives Act 1983*, a record:
  - (a) that contains information obtained at a private session; or
  - (b) that relates to a private session and identifies a natural person who appeared at a private session;is in the open access period on and after 1 January in the year that is 99 years after the calendar year that the record came into existence.
- (2) To avoid doubt, subsection (1) applies in relation to a record even if the record came into existence after the private session.

**Part 4** Private sessions for the Child Sexual Abuse Royal Commission

**Division 3** Privacy of private sessions

Section 6OM

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- (3) Subsection 3(7) and section 56 of the *Archives Act 1983* do not apply to a record referred to in subsection (1).

## Part 5—Miscellaneous

### 6P Commission may communicate information

- (1) Where, 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 evidence of a contravention of 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 so to do, communicate the information or furnish the evidence, as the case may be, to:
- (a) the Attorney-General of the Commonwealth, of a State, of the Australian Capital Territory or of the Northern Territory; or
  - (aa) the Director of Public Prosecutions; or
  - (c) a Special Prosecutor appointed under the *Special Prosecutors Act 1982*; or
  - (d) the Commissioner of the Australian Federal Police or of the Police Force of a State or of the Northern Territory; or
  - (e) the authority or person responsible for the administration or enforcement of that law.
- (1A) 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.
- (2) Where, in the course of inquiring into a matter, a Commission:
- (a) obtains information;
  - (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 so to do, communicate the information or furnish the evidence, document or thing, as the case may be, to that other Commission.
- (2A) Where, in the course of inquiry into a matter, a Commission:

Section 7

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- (a) obtains information;
- (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 Australian Crime Commission, the Commission may, if in its opinion it is appropriate so to do, communicate the information or furnish the evidence, document or thing, as the case may be, to the Chief Executive Officer of the Australian Crime Commission.

- (2B) If, in the course of inquiry 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 the performance of the functions of the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*), the Commission may, if in its opinion it is appropriate so to do, communicate the information or furnish the evidence, document or thing, as the case may be, to the Integrity Commissioner.

- (2C) A person who obtains information, evidence, a document or a thing in accordance with this section may (subject to sections 6DD and 6OE) 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.
- (3) A reference in subsection (2), (2A) or (2B) 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.
- (4) The references in this section to the opinion of the Commission do not include references to the opinion of one or more members of the Commission while holding an authorised member hearing.

**7 Protection to Commissioners etc.**

- (1) Every such Commissioner shall in the exercise of his or her duty as Commissioner have the same protection and immunity as a Justice of the High Court.

- (2) Every witness summoned to attend or appearing before the Commission shall have the same protection, and shall in addition to the penalties provided by this Act be subject to the same liabilities in any civil or criminal proceeding, as a witness in any case tried in the High Court.
- (3) A legal practitioner assisting a Commission or appearing on behalf of a person at a hearing before a Commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

#### **7AA Commission may have concurrent functions and powers under State laws**

If, with the consent of the Minister, any functions or powers are conferred on:

- (a) a sole Commissioner; or
- (b) all the members of a Commission;

by the Governor of a State or a Minister of a State, the sole Commissioner, or the members of the Commission, as the case may be, may perform those functions or exercise those powers in conjunction with the performance or exercise by the sole Commissioner, or by the members of the Commission, as the case may be, of the Commissioner's or members' functions or powers under this Act.

#### **7A Effect of Royal Commissioner having authority to inquire under foreign law**

Where:

- (a) by Letters Patent, a commission to make inquiry into and report upon the matters specified in the Letters Patent has been issued to a person or persons under section 1A;
- (b) an authority to inquire into, and take evidence in relation to, specified matters is granted by, or issued under, a law of another country, to the person, or to any one or more of the persons, referred to in paragraph (a);
- (c) in the opinion of the Attorney-General, the matters specified:
  - (i) in the case of an authority granted by a law of another country—in that law; or

Section 7B

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- (ii) in the case of an authority issued under a law of another country—in the instrument by which the authority is issued;  
are the same or substantially the same as the matters specified in the Letters Patent or are significantly related to those last-mentioned matters; and
- (d) arrangements have been made between Australia and that other country in relation to the performance of functions and the exercise of powers under the authority by the person or persons referred to in paragraph (b);  
any information obtained, and any evidence taken, by the person or persons referred to in paragraph (b), in the course of the performance of a function, or the exercise of a power, under the authority, being information or evidence that relates to the matters specified in the Letters Patent, may, subject to:
  - (e) any conditions or restrictions subject to which the authority was granted or issued; and
  - (f) any provision of the arrangements;be used by the person or persons referred to in paragraph (a) for the purposes of the performance of any function, or the exercise of any power, under the commission.

**7B Commission may take evidence outside Australia**

Where:

- (a) by Letters Patent, a commission has been issued to a person or persons (in this section referred to as the **Commission**) under section 1A; and
- (b) arrangements have been made between Australia and another country in relation to the taking of evidence in that country by the Commission;

the Commission may, in that other country, subject to any provision of the arrangements and to the laws of that other country, administer an oath or affirmation to any person appearing as a witness before the Commission and take evidence given by that witness on oath or affirmation, and any evidence taken in that country by the Commission in accordance with those arrangements may be used by the Commission in Australia for the purpose of the performance of any function, or the exercise of any power, under the commission.

**7C Statements made by witness not admissible in evidence against the witness**

A statement or disclosure made by any witness in the course of giving evidence, being evidence that is taken as mentioned in section 7A or 7B, is not (except in proceedings for an offence against this Act) admissible in evidence against that witness in any civil or criminal proceedings in any court of the Commonwealth, of a State or of a Territory.

**7D Certain evidence before a State Commission inadmissible in Commonwealth proceedings**

- (1) In this section:

**Commissioner** means Gerald Edward Fitzgerald Q.C., in his capacity as the person making the inquiry.

**Commonwealth proceedings** means proceedings in a court of the Commonwealth, of a State or of a Territory, whether instituted before or after the commencement of this section, being:

- (a) criminal proceedings under a law of the Commonwealth or of a Territory (other than the Northern Territory); or
- (b) civil proceedings instituted by, or on behalf of, the Commonwealth.

**inquiry** means the inquiry being made by Gerald Edward Fitzgerald Q.C. under the Order in Council that was made under *The Commissions of Inquiry Act of 1950* of the State of Queensland and published in the Queensland Government Gazette, on 26 May 1987, at pages 758A and 758B, being that Order in Council as amended by:

- (a) the Order in Council made under that Act and published in the Queensland Government Gazette, on 24 June 1987, at pages 1841A and 1841B; and
- (b) any other instrument, whether made before or after the commencement of this section.

**State law** means subsection 14(2) of *The Commissions of Inquiry Act of 1950* of the State of Queensland.

- (2) Where the State law would not render a statement or disclosure made by a witness in answer to a question put to the witness by or

Section 8

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before the Commissioner inadmissible against the witness in Commonwealth proceedings, the statement or disclosure is, by force of this section, inadmissible against the witness in any such proceedings.

**8 Allowances to witnesses**

- (1) The Governor-General may make regulations prescribing a scale of allowances to be paid to any witness summoned under this Act for his or her travelling expenses and maintenance while absent from his or her usual place of abode.
- (2) The claim to allowance of any such witness, certified by the President or Chair of the Commission or by the sole Commissioner as the case may be, shall be paid by the Finance Minister out of moneys to be provided by the Parliament for the purposes of the Commission.

**9 Custody and use of records of Royal Commission**

*Definitions*

- (1) In this section:

**body** means a body (whether a body corporate or not) and includes:

- (a) an agency within the meaning of the *Public Service Act 1999*; and
- (b) a Department of State for, or an agency of, a State or a Territory.

**civil penalty proceeding** means a proceeding for a civil penalty in relation to a contravention of a law of the Commonwealth, a State or a Territory.

**confiscation proceeding** means a proceeding under:

- (a) the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*; or
- (b) a corresponding law within the meaning of either of those Acts;

but does not include a criminal prosecution for an offence under either of those Acts or a corresponding law.

**custodian** of a Royal Commission record means a person who, or a body that, has custody of the record under:

- (a) regulations made for the purposes of paragraph (2)(a); or
- (b) a direction under subsection 22(3) of the *Archives Act 1983*.

**disciplinary proceeding:**

- (a) means a proceeding of a disciplinary nature under a law of the Commonwealth, a State or a Territory; and
- (b) includes action taken under Subdivision D of Division 5 of Part V of the *Australian Federal Police Act 1979*.

**law enforcement purposes** means the purposes of taking action to enforce a law of the Commonwealth, a State or a Territory and includes the following purposes:

- (a) the purpose of bringing:
  - (i) a prosecution for an offence against a law of the Commonwealth, a State or a Territory; or
  - (ii) a civil penalty proceeding; or
  - (iii) a confiscation proceeding; or
  - (iv) a disciplinary proceeding;
- (b) the purpose of investigating whether:
  - (i) an offence has been committed against a law of the Commonwealth, a State or a Territory; or
  - (ii) there has been a contravention of a law of the Commonwealth, a State or a Territory in relation to which civil penalty proceedings may be brought;
- (c) the purpose of preparing the material necessary to prosecute a person for an offence against a law of the Commonwealth, a State or a Territory;
- (d) the purpose of preparing the material necessary to bring civil penalty proceedings against a person for a contravention of a law of the Commonwealth, a State or a Territory;
- (e) the purpose of preparing the material necessary to bring a confiscation proceeding;
- (f) the purpose of preparing the material necessary to bring a disciplinary proceeding.

**public authority** means:

- (a) an agency within the meaning of the *Public Service Act 1999*;  
or

Section 9

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- (b) a Department of State for, or an agency of, a State or a Territory; or
- (c) a body established or incorporated for a public purpose by or under a law of the Commonwealth, a State or a Territory.

**public office holder** means:

- (a) a Minister of State for the Commonwealth, a State or a Territory; or
- (b) the holder of an office established for a public purpose by or under a law of the Commonwealth, a State or a Territory.

**record** has the same meaning as in the *Archives Act 1983*.

**Royal Commission record** means a record that:

- (a) was produced by, given to or obtained by a Royal Commission; and
- (b) is no longer required for the purposes of the Commission; and includes a copy of such a record.

**use** of a Royal Commission record includes use of information contained in the record.

*Regulations may provide for the custody, use or transfer of, or access to, Royal Commission records*

- (2) The regulations:
  - (a) may, subject to subsection (3), provide for the custody in which some or all of the Royal Commission records of a Royal Commission are to be kept; and
  - (b) may specify either or both of the following:
    - (i) purposes for which a custodian of Royal Commission records may use some or all of those records;
    - (ii) purposes for which a custodian of Royal Commission records must not use some or all of those records; and
  - (c) may provide for the circumstances in which the custodian of Royal Commission records must, or may, give some or all of those records to other persons or bodies; and
  - (d) may provide for the circumstances in which the custodian of Royal Commission records must, or may, allow access to some or all of those records to other persons or bodies; and
  - (e) may specify either or both of the following:

- (i) purposes for which persons or bodies to whom a custodian of Royal Commission records gives, or gives access to, those records may use some or all of those records;
- (ii) purposes for which persons or bodies to whom a custodian of Royal Commission records gives, or gives access to, those records must not use some or all of those records.

Regulations made for the purposes of paragraph (a) may provide for a person or body to have custody of Royal Commission records even if the person or body already has custody of those records under a direction under subsection 22(3) of the *Archives Act 1983*.

- (3) The persons and bodies who may be given custody of Royal Commission records by regulations made for the purposes of paragraph (2)(a) are the following:
  - (a) the Attorney-General of the Commonwealth, of a State, of the Australian Capital Territory or of the Northern Territory;
  - (b) the Director of Public Prosecutions;
  - (c) a Special Prosecutor appointed under the *Special Prosecutors Act 1982*;
  - (d) the Commissioner of the Australian Federal Police or of the Police Force of a State or of the Northern Territory;
  - (e) the Australian Securities and Investments Commission;
  - (f) the Australian Competition and Consumer Commission;
  - (g) the Australian Crime Commission;
  - (h) the Australian Commission for Law Enforcement Integrity;
  - (i) the Secretary of the Department of the Prime Minister and Cabinet;
  - (j) the National Archives of Australia;
  - (k) a body or person responsible for the administration or enforcement of a law of the Commonwealth, a State or a Territory.

*Regulations may impose conditions*

- (4) Regulations made for the purposes of subsection (2) in relation to Royal Commission records may impose conditions to be complied with by:
  - (a) the custodian of the records; or

Section 9

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- (b) persons and bodies to whom the records are given or who are allowed access to the records.

*Effect of regulations under paragraph (2)(a)*

- (5) If regulations are made for the purposes of paragraph (2)(a) in relation to particular Royal Commission records, the *Archives Act 1983* has effect as if a direction to the same effect as the regulations were in force in relation to the records under subsection 22(3) of that Act at all times when the regulations are in force.

*Use of Royal Commission records*

- (6) A custodian of Royal Commission records may use the records for:
  - (a) the purposes of the performance of the custodian's functions and the exercise of the custodian's powers; and
  - (b) any other purpose for which the custodian could use the records if the custodian had acquired the records in the performance of the custodian's functions or the exercise of the custodian's powers.
- (7) If:
  - (a) the custodian of a Royal Commission record gives a person or body (the **recipient**) the record or access to the record; and
  - (b) the recipient is a public office holder or a public authority;the recipient may use the record for:
  - (c) the purposes of the performance of the recipient's functions and the exercise of the recipient's powers; and
  - (d) any other purpose for which the recipient could use the record if the recipient had acquired the record in the performance of the recipient's functions or the exercise of the recipient's powers.
- (8) Subsections (6) and (7) have effect subject to any regulations that:
  - (a) specify purposes for which the custodian or the recipient must not use some or all of the records; or
  - (b) impose conditions to be complied with by the custodian or the recipient.

Note: See paragraphs (2)(b) and (e) and subsection (4).

- (9) The purposes referred to in subparagraphs (2)(b)(i) and (e)(i) and subsections (6) and (7) need not be purposes for which the Royal Commission concerned produced, obtained or was given the Royal Commission records.

*Custodian's right to retain possession of records*

- (10) A custodian of a Royal Commission record may retain possession of the record for so long as the custodian considers it desirable to do so for the purposes of the performance of any of the custodian's functions or the exercise of any of the custodian's powers, despite any request from the record's owner for the return of the record.

*Records may be dealt with without consent, notice or opportunity to be heard*

- (11) If regulations made for the purposes of paragraph (2)(a) provide that a person or body is to have custody of Royal Commission records:
- (a) the custodian may, for law enforcement purposes:
    - (i) use the records under subsection (6); and
    - (ii) give the records to another person or body under regulations made for the purposes of paragraph (2)(c); and
    - (iii) allow another person or body access to the records under regulations made for the purposes of paragraph (2)(d); and
  - (b) a public office holder, or public authority, to whom the custodian gives the records, or access to the records, may, for law enforcement purposes, use the records under subsection (7);
- without obtaining the consent of, giving notice to, giving an opportunity to make submissions to or taking into account submissions made by the owner of the records or any other person.

*Operation of sections 6DD and 6OE not affected*

- (12) Nothing in this section affects the operation of sections 6DD and 6OE (admissibility of statements etc. made by witness) in relation to Royal Commission records that are dealt with in accordance with:
- (a) regulations made for the purposes of subsection (2); or

Section 10

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- (b) a direction under subsection 22(3) of the *Archives Act 1983*.

*Legal professional privilege not affected*

- (13) A Royal Commission record, or material in or referred to in a Royal Commission record, does not cease to be the subject of legal professional privilege merely because a person or body has custody of the record, or is given the record or access to the record, under:
  - (a) regulations made for the purposes of subsection (2); or
  - (b) a direction under subsection 22(3) of the *Archives Act 1983*.

**10 Institution of proceedings in respect of other offences**

- (1) Proceedings in respect of any offence against this Act (other than an indictable offence) may be instituted by action, information, or other appropriate proceeding, in the Federal Court of Australia by the Attorney-General or the Director of Public Prosecutions, or by information or other appropriate proceeding by any person in any court of summary jurisdiction.

**15 Costs**

In any proceedings for an offence against this Act (other than proceedings for the commitment for trial of a person charged with an indictable offence) the Court may award costs against any party, and all provisions of this Act relating to the recovery of penalties, except as to commitment to gaol, shall extend to the recovery of any costs adjudged to be paid.

**16 Evidence of issue of Commission etc.**

- (1) In all legal proceedings the production:
  - (a) of a document purporting to be Letters Patent in the name of the King, and purporting to be signed by the Governor-General and to be sealed with the seal of the Commonwealth, and purporting to be directed to any person or persons and to appoint the person or persons to be a Commissioner or Commissioners to make inquiry into any matter, or to authorise or require the person or persons to make inquiry into any matter, or
  - (b) of a document purporting to be a copy of any such Letters Patent and certified in writing by the person named therein as

President or Chair of the Commission or sole Commissioner, as the case may be, to be a true copy of the Letters Patent; shall be evidence that the Governor-General has issued the Commission.

(2) In all legal proceedings:

- (a) a certificate signed by the Foreign Affairs Minister, stating that arrangements have been made between Australia and a country specified in the certificate in relation to the receiving of evidence in that country by the person or persons to whom a commission has, by Letters Patent, been issued under section 1A, is evidence that those arrangements have been so made; and
- (b) a certificate signed by the Foreign Affairs Minister, stating that arrangements have been made between Australia and a country specified in the certificate in relation to the performance of functions, and the exercise of powers, by a person or persons specified in the certificate, under an authority to inquire into particular matters granted by, or issued under, the law of another country, is evidence that those arrangements have been so made.

(3) A certificate signed by the Attorney-General stating that, in his or her opinion:

- (a) the matters specified in a law of another country by which an authority to inquire into, and take evidence in relation to, those matters is granted to a person, being a law referred to in the certificate; or
- (b) the matters specified in an instrument by which an authority to inquire into, and take evidence in relation to, those matters is issued under the law of another country, being an authority referred to in the certificate;

are the same or substantially the same as the matters specified in the Letters Patent by which a commission referred to in the certificate has been issued under section 1A, or are significantly related to those last-mentioned matters, is evidence that the Attorney-General is of that opinion.

## **17 Regulations**

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

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**Section 17**

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- (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.

## Endnote 1—Legislation history

## Endnotes

## Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Royal Commissions Act 1902*.

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Royal Commissions Act 1902	12, 1902	8 Sept 1902	8 Sept 1902	
Royal Commissions Act 1912	4, 1912	19 Aug 1912	19 Aug 1912	s. 10
Royal Commissions Act 1933	1, 1933	27 May 1933	27 May 1933	—
Statute Law Revision (Decimal Currency) Act 1966	93, 1966	29 Oct 1966	1 Dec 1966	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	ss. 9(1) and 10
Administrative Changes (Consequential Provisions) Act 1978	36, 1978	12 June 1978	12 June 1978	s. 8
Jurisdiction of Courts (Miscellaneous Amendments) Act 1979	19, 1979	28 Mar 1979	Parts II–XVII (ss. 3–123): 15 May 1979 ( <i>see Gazette</i> 1979, No. S86) Remainder: Royal Assent	s. 124
Statute Law (Miscellaneous Amendments) Act (No. 1) 1982	26, 1982	7 May 1982	Part XXXIV (ss. 201–204): Royal Assent ( <i>a</i> )	—
Royal Commissions Amendment Act 1982 <b>as amended by</b>	139, 1982	24 Dec 1982	1 Feb 1983 ( <i>see Gazette</i> 1983, No. S17)	s. 8(2) (ad. by No. 91, 1983)

## Endnotes

### Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Statute Law (Miscellaneous Provisions) Act (No. 2) 1983	91, 1983	22 Nov 1983	(b)	ss. 2(14) and 6(1)
Statute Law (Miscellaneous Provisions) Act (No. 2) 1983	91, 1983	22 Nov 1983	s. 3: 20 Dec 1983 (c)	s. 6(1)
Director of Public Prosecutions (Consequential Amendments) Act 1983	114, 1983	14 Dec 1983	Part XIII (ss. 28–31): 5 Mar 1984 (see s. 2(1) and <i>Gazette</i> 1984, No. S55) (d)	—
National Crime Authority (Consequential Amendments) Act 1984	42, 1984	15 June 1984	1 July 1984 (see s. 2 and <i>Gazette</i> 1984, No. S245)	—
Crimes Legislation Amendment Act 1987	120, 1987	16 Dec 1987	Part IX (ss. 51, 52): Royal Assent (e)	—
Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994	33, 1994	15 Mar 1994	ss. 53–56: Royal Assent (f)	—
Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Act 2001	49, 2001	21 June 2001	19 July 2001	s. 4 [see Endnote 3]
Royal Commissions and Other Legislation Amendment Act 2001	166, 2001	1 Oct 2001	1 Oct 2001	—
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Sch. 2 (items 120–123): 1 Jan 2003	—

## Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Royal Commissions Amendment Act 2006	52, 2006	14 June 2006	Schedule 1: 15 June 2006 Remainder: Royal Assent	Sch. 1 (item 9) [see Endnote 3]
Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006	86, 2006	30 June 2006	Schedule 1 (items 57–59): 30 Dec 2006	—
Royal Commissions Amendment (Records) Act 2006	167, 2006	12 Dec 2006	12 Dec 2006	Sch. 1 (item 3) [see Endnote 3]
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 4 (items 452–463): 4 July 2008	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 5 (items 184–187): 19 Apr 2011	—
Royal Commissions Amendment Act 2013	24, 2013	28 Mar 2013	Schedule 1 (items 1–37): Royal Assent	Sch. 1 (item 37) [see Endnote 3]

- (a) The *Royal Commissions Act 1902* was amended by Part XXXIV (sections 201–204) only of the *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982*, subsection 2(1) of which provides as follows:
- (1) Sections 1 and 2 and Parts VIII and XXXIV shall come into operation on the day on which this Act receives the Royal Assent.
- (b) The *Royal Commissions Amendment Act 1982* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1983*, subsection 2(12) of which provides as follows:
- (12) The amendment of section 8 of the *Royal Commissions Amendment Act 1982* made by this Act shall be deemed to have come into operation on 1 February 1983.
- (c) The *Royal Commissions Act 1902* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1983*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

### Endnote 1—Legislation history

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- (d) The *Royal Commissions Act 1902* was amended by Part XIII (sections 28–31) only of the *Director of Public Prosecutions (Consequential Amendments) Act 1983*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation, or shall be deemed to have come into operation, as the case requires, on the day on which the *Director of Public Prosecutions Act 1983* comes into operation.
- (e) The *Royal Commissions Act 1902* was amended by Part IX (sections 51 and 52) only of the *Crimes Legislation Amendment Act 1987*, subsection 2(2) of which provides as follows:
- (2) Parts II, VI, VII, VIII (other than section 47) and IX and Schedule 4 shall come into operation on the day on which this Act receives the Royal Assent.
- (f) The *Royal Commissions Act 1902* was amended by sections 53–56 only of the *Prime Minister and Cabinet (Miscellaneous Provisions) Act 1994*, subsection 2(1) of which provides as follows:
- (1) Except for subsection 15(1), this Act commences on the day on which it receives the Royal Assent.

## Endnote 2—Amendment history

**Endnote 2—Amendment history**

This endnote sets out the amendment history of the *Royal Commissions Act 1902*.

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<b>Part 1</b>	
Heading to Part 1 .....	ad. No. 24, 2013
s. 1A .....	ad. No. 4, 1912
	am. No. 73, 2008; No. 24, 2013
s. 1B .....	ad. No. 4, 1912
	am. No. 139, 1982; No. 33, 1994; No. 125, 2002; No. 52, 2006; No. 5, 2011; No. 24, 2013
s. 1C .....	ad. No. 49, 2001
<b>Part 2</b>	
Heading to Part 2 .....	ad. No. 24, 2013
s. 2 .....	am. No. 4, 1912; No. 216, 1973
	rs. No. 139, 1982
	am. No. 166, 2001; No. 52, 2006; No. 73, 2008; No. 24, 2013
s. 3 .....	rs. No. 139, 1982
	am. Nos. 49 and 166, 2001; No. 24, 2013
Note to s. 3(3) .....	ad. No. 49, 2001
s. 4 .....	rs. No. 139, 1982
	am. Nos. 49 and 166, 2001; No. 24, 2013
s. 5 .....	am. No. 4, 1912; No. 93, 1966
	rs. No. 139, 1982
	am. Nos. 49 and 166, 2001
s. 6 .....	am. No. 4, 1912; No. 93, 1966; No. 139, 1982; No. 49, 2001
s. 6AA .....	ad. No. 52, 2006
s. 6AB .....	ad. No. 52, 2006
	am. No. 24, 2013
s. 6A .....	ad. No. 4, 1912

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## Endnotes

### Endnote 2—Amendment history

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

Provision affected	How affected
	rs. No. 139, 1982
	am. No. 49, 2001
	rs. No. 166, 2001
	am. No. 52, 2006
s. 6B .....	ad. No. 4, 1912
	am. No. 139, 1982; No. 49, 2001; No. 73, 2008; No. 24, 2013
s. 6C .....	ad. No. 4, 1912
	am. Nos. 49 and 166, 2001; No. 24, 2013
s. 6D .....	ad. No. 4, 1912
	am. No. 1, 1933; No. 93, 1966; No. 139, 1982; Nos. 49 and 166, 2001; No. 24, 2013
Heading to s. 6DD .....	am. No. 49, 2001
	rs. No. 166, 2001
s. 6DD .....	ad. No. 4, 1912
	rs. No. 26, 1982; No. 166, 2001
	am. No. 52, 2006
s. 6E.....	ad. No. 4, 1912
	am. No. 93, 1966
	rep. No. 139, 1982
s. 6F.....	ad. No. 4, 1912
	am. No. 1, 1933
	rs. No. 139, 1982
	am. Nos. 91 and 114, 1983; No. 42, 1984; No. 33, 1994; No. 166, 2001; Nos. 52, 86 and 167, 2006; No. 73, 2008; No. 24, 2013
s. 6FA.....	ad. No. 1, 1933
	am. No. 139, 1982; No. 24, 2013
s. 6G .....	ad. No. 4, 1912
	am. No. 49, 2001; No. 73, 2008; No. 24, 2013
<b>Part 3</b>	
Heading to Part 3.....	ad. No. 24, 2013
s. 6H.....	ad. No. 4, 1912

## Endnote 2—Amendment history

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

Provision affected	How affected
	rs. No. 139, 1982
	am. No. 49, 2001; No. 24, 2013
s. 6I.....	ad. No. 4, 1912
	am. Nos. 49 and 166, 2001; No. 73, 2008
s. 6J .....	ad. No. 4, 1912
	am. Nos. 49 and 166, 2001
s. 6K .....	ad. No. 4, 1912
	rs. No. 139, 1982
	am. Nos. 49 and 166, 2001
s. 6L.....	ad. No. 4, 1912
	am. Nos. 49 and 166, 2001
s. 6M.....	ad. No. 4, 1912
	am. No. 93, 1966; No. 49, 2001
	rs. No. 166, 2001
s. 6N .....	ad. No. 4, 1912
	am. No. 93, 1966; Nos. 49 and 166, 2001
s. 6O .....	ad. No. 4, 1912
	am. No. 93, 1966; No. 19, 1979; No. 49, 2001; No. 73, 2008
<b>Part 4</b>	
Part 4 .....	ad. No. 24, 2013
<b>Division 1</b>	
s. 6OA .....	ad. No. 24, 2013
<b>Division 2</b>	
s. 6OB.....	ad. No. 24, 2013
s. 6OC.....	ad. No. 24, 2013
s. 6OE.....	ad. No. 24, 2013
s. 6OF .....	ad. No. 24, 2013
<b>Division 3</b>	
s. 6OG .....	ad. No. 24, 2013
s. 6OH .....	ad. No. 24, 2013

## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
s. 6OJ.....	ad. No. 24, 2013
s. 6OK .....	ad. No. 24, 2013
s. 6OL.....	ad. No. 24, 2013
s. 6OM.....	ad. No. 24, 2013
<b>Part 5</b>	
Heading to Part 5.....	ad. No. 24, 2013
s. 6P.....	ad. No. 139, 1982 am. Nos. 91 and 114, 1983; No. 42, 1984; No. 33, 1994; No. 166, 2001; No. 125, 2002; No. 86, 2006; No. 24, 2013
s. 7.....	am. No. 4, 1912; No. 139, 1982; No. 49, 2001
s. 7AA .....	ad. No. 139, 1982 am. No. 49, 2001
ss. 7A, 7B .....	ad. No. 26, 1982
Heading to s. 7C .....	am. No. 49, 2001
s. 7C .....	ad. No. 26, 1982
s. 7D .....	ad. No. 120, 1987
s. 8.....	am. No. 36, 1978; No. 49, 2001; No. 73, 2008; No. 5, 2011
Subhead. to s. 9(12).....	am. No. 24, 2013
s. 9.....	ad. No. 4, 1912 rep. No. 13, 1982 ad. No. 167, 2006 am. No. 24, 2013
Heading preceding s. 10 .....	ad. No. 4, 1912 rep. No. 24, 2013
s. 10.....	ad. No. 4, 1912 am. No. 19, 1979; No. 114, 1983
s. 11 .....	ad. No. 4, 1912 rep. No. 19, 1979
ss. 12–14.....	ad. No. 4, 1912 rep. No. 139, 1982
s. 15 .....	ad. No. 4, 1912

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Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted exp. = expired or ceased to have effect	
<b>Provision affected</b>	<b>How affected</b>
s. 16 .....	ad. No. 4, 1912 am. No. 26, 1982; No. 49, 2001; No. 73, 2008; No. 5, 2011; No. 24, 2013
s. 17 .....	ad. No. 139, 1982

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Endnote 3—Application, saving and transitional provisions

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**Endnote 3—Application, saving and transitional provisions**

This endnote sets out application, saving and transitional provisions for amendments of the *Royal Commissions Act 1902*.

Application, saving and transitional provisions prior to 21 June 2001 are not included in this endnote.

**Prime Minister and Cabinet Legislation Amendment (Application of Criminal Code) Act 2001 (No. 49, 2001)**

**4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

**Royal Commissions Amendment Act 2006 (No. 52, 2006)**

**Schedule 1**

**9 Application of amendments**

The amendments made by this Schedule apply, after the commencement of this Schedule, in relation to the proceedings of any Commission after that commencement, whether the Commission was established before or after that commencement.

**Royal Commissions Amendment (Records) Act 2006 (No. 167, 2006)**

**Schedule 1**

**3 Application of amendments**

The amendments made by this Schedule apply to the Royal Commission records of a Royal Commission even if the Royal Commission was established and reported before the commencement of this Act.

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Endnote 3—Application, saving and transitional provisions

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**Royal Commissions Amendment Act 2013 (No. 24, 2013)**

**Schedule 1**

**37 Application**

The amendments made by this Schedule (other than the amendments made by items 10, 30, 33 and 34 of this Schedule) apply in relation to any Royal Commission that conducts an inquiry after this Schedule commences, whether the Royal Commission is established before or after this Schedule commences.

Note: The amendments made by items 10, 30, 33 and 34 of this Schedule apply only in relation to the Child Sexual Abuse Royal Commission.

## Endnotes

### Endnote 4—Uncommenced amendments

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#### **Endnote 4—Uncommenced amendments**

This endnote sets out amendments of the *Royal Commissions Act 1902* that have not yet commenced.

There are no uncommenced amendments.

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Endnote 5—Misdescribed amendments

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**Endnote 5—Misdescribed amendments**

This endnote sets out amendments of the *Royal Commissions Act 1902* that have been misdescribed.

There are no misdescribed amendments.