



# **Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012**

**No. 188, 2012**

**An Act to provide for parliamentary commissions  
to investigate allegations of judicial misbehaviour  
or incapacity, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012**

**No. 188, 2012**

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**An Act to provide for parliamentary commissions  
to investigate allegations of judicial misbehaviour  
or incapacity, and for related purposes**

*[Assented to 11 December 2012]*

The Parliament of Australia enacts:

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*Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012*      *No. 188, 2012*

*1*

Section 1

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## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	11 December 2012
2. Sections 3 to 83	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	12 April 2013 (see F2013L00644)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.



**3 Object of this Act**

- (1) The object of this Act is to provide for a commission to be established by the Houses of the Parliament to investigate, and report to them on, alleged misbehaviour or incapacity of a Commonwealth judicial officer, so they can be well-informed to consider whether to pray for his or her removal under paragraph 72(ii) of the Constitution.
- (2) To avoid doubt, subsection (1) does not imply that:
  - (a) an Act is needed for such a commission to be established; or
  - (b) such a commission is the only means by which the Houses of the Parliament can be well-informed to consider whether to pray for the removal of a Commonwealth judicial officer under paragraph 72(ii) of the Constitution.

**4 Guide to this Act**

Under this Act, the Houses of the Parliament may each pass a resolution, in the same session, establishing a Commission to investigate an allegation of misbehaviour or incapacity of a Commonwealth judicial officer (that is, a High Court judge, a judge of the Federal Court of Australia or the Family Court of Australia, or a Federal Magistrate).

The Commission is to investigate the allegation, and report to the Houses of the Parliament, on whether there is evidence that would let the Houses of the Parliament conclude that the alleged misbehaviour or incapacity is proved.

If the alleged misbehaviour or incapacity is proved, and both Houses of the Parliament pray for the removal of the judicial officer, the judicial officer may be removed by the Governor-General in Council in accordance with paragraph 72(ii) of the Constitution.

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A Commission is established by force of, and in accordance with, this Act, and the members of a Commission hold office on the terms and conditions provided by this Act. This Act also establishes the rules for an investigation by a Commission, and the requirement for it to report on its investigation to the Houses of the Parliament.

### 5 Extension to external Territories

This Act extends to every external Territory.

### 6 This Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

### 7 Definitions

In this Act:

***acquisition of property*** has the meaning given by section 43.

***Australia***, when used in a geographical sense, includes the external Territories.

***Australian law*** means a law (whether written or unwritten) of the Commonwealth, a State or a Territory.

***Commission*** means a Commission established by force of section 9.

***Commonwealth judicial officer*** means:

- (a) a Justice of the High Court; or
- (b) a judge or justice of a court created by the Parliament (other than the Federal Magistrates Court); or
- (c) a Federal Magistrate.

***Commonwealth or State judicial officer*** means:

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- (a) a Commonwealth judicial officer; or
- (b) a judge or justice of a court of a State or Territory.

**constable** has the same meaning as in the *Crimes Act 1914*.

**conveyance** has the meaning given by section 27.

**damage**, in relation to data, includes damage by erasure of data or addition of other data.

**dwelling house** has the meaning given by section 27.

**Federal Magistrate** means a Federal Magistrate of the Federal Magistrates Court.

**incapacity** has (other than in section 73) the same meaning as in section 72 of the Constitution.

Note: **Incapacity** has its ordinary meaning in section 73.

**just terms** has the meaning given by section 43.

**lawyer** 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 a Commission, and includes a presiding member.

**misbehaviour** has (other than in section 73) the same meaning as in section 72 of the Constitution.

Note: **Misbehaviour** has its ordinary meaning in section 73.

**official inquiry** has a meaning affected by section 19.

**official investigation** has a meaning affected by section 19.

**parliamentary presiding officer** means:

- (a) the President of the Senate; or
- (b) the Speaker of the House of Representatives.

**premises** includes the following:

- (a) a structure, building, vessel, aircraft or vehicle;

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- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

***presiding member*** means a member of a Commission appointed as the presiding member by force of subsection 14(3).

***proved***, in relation to misbehaviour or incapacity, has the same meaning as in section 72 of the Constitution.

***search warrant*** means a search warrant issued under subsection 28(1).

## **Part 2—Establishment, functions and membership etc. of Commissions**

### **8 Guide to this Part**

The Houses of the Parliament may each pass a resolution, in the same session, establishing a Commission to investigate an allegation of misbehaviour or incapacity of a Commonwealth judicial officer.

The Commission is to investigate the allegation, and report to the Houses of the Parliament, on whether there is evidence that would let the Houses of the Parliament conclude that the alleged misbehaviour or incapacity is proved.

If the alleged misbehaviour or incapacity is proved, and both Houses of the Parliament pray for the removal of the judicial officer, the judicial officer may be removed by the Governor-General in Council in accordance with paragraph 72(ii) of the Constitution.

A Commission is to consist of 3 members, who are nominated by the Prime Minister after consulting with the Leader of the Opposition.

### **9 Establishment**

- (1) A Commission is established by force of this section if each House of the Parliament passes, in the same session, a resolution that a Commission be established by this Act to investigate a specified allegation of misbehaviour or incapacity of a specified Commonwealth judicial officer.

Note 1: A separate Commission is established each time the Houses of the Parliament pass a resolution in relation to a specified allegation.

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Note 2: A Commission might be established to investigate more than one allegation of misbehaviour or incapacity of a specified Commonwealth judicial officer (see paragraph 23(b) of the *Acts Interpretation Act 1901*).

- (2) To avoid doubt, such a Commission may be established on or after this section commences to investigate and report in respect of misbehaviour or incapacity that is alleged to have occurred, or begun, before, on or after this section commences.

## 10 Functions

The functions of a Commission are:

- (a) to investigate an allegation referred to in section 9; and
- (b) to report to the Houses of the Parliament the Commission's opinion of whether or not there is evidence that would let the Houses of the Parliament conclude that the alleged misbehaviour or incapacity is proved.

## 11 Powers

A Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

## 12 Commission has privileges and immunities of the Crown

A Commission has the privileges and immunities of the Crown in right of the Commonwealth.

## 13 Membership

- (1) A Commission consists of 3 members appointed on the nomination of the Prime Minister.
- (2) Before nominating a member, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives.
- (3) At least one member of each Commission must be:
  - (a) a former Commonwealth judicial officer; or
  - (b) a former judge of the Supreme Court of a State or Territory.

**14 Appointment of members**

- (1) A member is appointed by force of this subsection if each House of the Parliament passes, in the same session, a resolution to appoint the member.
- (2) A person must not be appointed if he or she is a Commonwealth or State judicial officer.
- (3) A member is by force of this subsection appointed as the presiding member if:
  - (a) the Prime Minister nominates the member to be the presiding member; and
  - (b) each House of the Parliament passes, in the same session, a resolution to appoint the member as the presiding member.
- (4) A member is appointed on a part-time basis.

**15 Vacancy in membership**

If at any time a Commission is not properly constituted in accordance with the requirements of section 13 because one or more members have ceased to be a member then, despite section 13:

- (a) the Commission continues in existence (even if there are no remaining members); and
- (b) the Commission consists of the remaining members (if any); and
- (c) the provisions of this Act (other than this section) have effect, at that time, as if the Commission were properly constituted in accordance with the requirements of section 13; and
- (d) the Houses of the Parliament must, as soon as practicable after that time, each pass a resolution to appoint replacement members, in accordance with the requirements of sections 13 and 14.

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### **16 When a Commission ceases to exist**

- (1) The parliamentary presiding officers may jointly determine, in writing, that a Commission is to cease to exist if the officers are satisfied that:
  - (a) the Commission's functions have been performed; or
  - (b) the person in relation to whom an allegation of misbehaviour or incapacity is being investigated by the Commission has ceased to be a Commonwealth judicial officer (due to retirement, resignation, death or any other reason).
- (2) The Commission ceases to exist at the time specified in the determination.
- (3) A determination made under subsection (1) is not a legislative instrument.



## **Part 3—Investigations of Commissions**

### **Division 1—General**

#### **17 Guide to this Division**

This Division contains rules relating to how a Commission is to conduct its investigations.

In particular, this Division provides the following:

- (a) a Commission decides a question in accordance with the majority of members;
- (b) a Commission is not bound by the rules of evidence;
- (c) a Commission must act in accordance with the rules of natural justice.

#### **18 Decision of questions**

- (1) A question for a Commission is decided in accordance with the opinion of a majority of the members.
- (2) If the members are not unanimous, each member's opinion on the question must be recorded.

Note: If the members are not unanimous, each member's opinion is included in the report given under section 48.

#### **19 How a Commission is informed**

- (1) A Commission is not bound by the rules of evidence and may be informed on any matter in any manner it thinks fit.

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*Previous official inquiries and investigations*

- (2) In considering an allegation, a Commission must consider the outcome of any previous official inquiry or official investigation into the allegation so far as the Commission thinks it necessary or desirable to do so.
- (3) The Commission is not (subject to subsection (4)) precluded by:
  - (a) any other Australian law; or
  - (b) 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 or investigation.
- (4) Subsection (3) is not intended to limit or otherwise affect the operation of section 16 of the *Parliamentary Privileges Act 1987*.

*Official inquiries and investigations*

- (5) Without limiting the meaning of **official inquiry**, that expression includes:
  - (a) a Royal Commission within the meaning of the *Royal Commissions Act 1902*; and
  - (b) a Royal Commission of a State or a Territory; and
  - (c) a commission of inquiry of the Commonwealth, a State or a Territory.
- (6) Without limiting the meaning of **official investigation**, that expression includes:
  - (a) an investigation into a complaint about a Judge within the meaning of the *Federal Court of Australia Act 1976*; and
  - (b) an investigation into a complaint about a Judge within the meaning of the *Family Law Act 1975*; and
  - (c) an investigation into a complaint about a Federal Magistrate within the meaning of the *Federal Magistrates Act 1999*; and
  - (d) the consideration of a matter by the Director of Public Prosecutions of the Commonwealth, a State or a Territory; and
  - (e) an investigation by the Australian Federal Police.

## **20 Natural justice**

- (1) A Commission must act in accordance with the rules of natural justice.
- (2) Without limiting subsection (1), if an allegation of misbehaviour or incapacity is being investigated by a Commission in relation to a Commonwealth judicial officer:
  - (a) the Commission must:
    - (i) give the Commonwealth judicial officer particulars of the allegation being investigated as soon as practicable; and
    - (ii) offer the Commonwealth judicial officer a reasonable opportunity to make an oral or written statement to the Commission; and
  - (b) the Commission must offer the Commonwealth judicial officer reasonable access to any documents or other things (including documents, or other things, seized under a search warrant) received by, produced before, delivered to, or otherwise acquired by, the Commission for the purposes of the investigation; and
  - (c) if the Commonwealth judicial officer does not attend, or appear at, a hearing of the Commission, or otherwise give evidence to the Commission—the Commission must not draw any inferences adverse to the Commonwealth judicial officer from that fact; and
  - (d) before the Commission gives a report under subsection 48(1) or (6), the Commission must:
    - (i) give the Commonwealth judicial officer a draft of the report; and
    - (ii) give the Commonwealth judicial officer a reasonable opportunity to give comments to the Commission on the draft report; and
    - (iii) consider any timely comments that the Commonwealth judicial officer makes to the Commission on the draft report.

## **Division 2—Investigations**

### **Subdivision A—Guide to this Division**

#### **21 Guide to this Division**

This Division contains rules relating to a Commission's investigation into an allegation of misbehaviour or incapacity of a Commonwealth judicial officer.

A Commission must conduct its investigation as quickly as proper consideration of the allegation permits. Generally, it must also hold any hearings in public.

A Commission has various powers of investigation, such as the power to do the following:

- (a) hold a hearing;
- (b) require a witness to appear at a hearing, and arrest a person who fails to appear;
- (c) require the production of a document or other thing;
- (d) issue search warrants.

The Commonwealth is liable for the reasonable costs of legal representation for a Commonwealth judicial officer in relation to whom an investigation is being conducted. Witnesses are entitled to be reimbursed for their expenses.

## **Subdivision B—Speed of investigations and openness of hearings**

### **22 Speed of investigations**

A Commission must conduct its investigation as quickly as proper consideration of the matters before the Commission permits.

### **23 Openness of hearings**

- (1) A Commission must hold its hearings in public, but may direct that part or all of its hearings be held in private if it is satisfied that it is desirable to do so:
  - (a) because it believes the interests of justice so require; or
  - (b) because it believes the confidential nature of any evidence or matter so requires; or
  - (c) for any other reason.

Note: For the power to hold a hearing, see section 24.

- (2) In considering whether part or all of a hearing should be held in private, the Commission must:
  - (a) take as the basis of its consideration the principle that it is desirable that hearings should be held in public; but
  - (b) give due regard to any reasons given to the Commission why the hearing should be held in private.
- (3) Without limiting paragraph (2)(b), the Commission must have regard to the effect of holding the hearing in public on the following:
  - (a) the ability of the Commonwealth judicial officer to whom the investigation relates to perform his or her duties as such an officer;
  - (b) the independence of the judiciary;
  - (c) the confidence the public has in:
    - (i) the judiciary; and
    - (ii) the Commonwealth judicial officer.

**Subdivision C—Powers in relation to investigations**

**24 Hearings**

*Power to hold a hearing*

- (1) For the purposes of its investigation, a Commission may hold a hearing at any place in Australia determined by the Commission.

*Procedure at the hearing*

- (2) Subject to this Act, the procedure at the hearing is as the Commission directs.
- (3) The presiding member must preside at the hearing.

*Attendance by relevant Commonwealth judicial officer*

- (4) The Commonwealth judicial officer in relation to whom an allegation of misbehaviour or incapacity is being investigated by the Commission may:
  - (a) attend and participate in the hearing; and
  - (b) be represented by a lawyer at the hearing.

*Questioning of witness*

- (5) At the hearing:
  - (a) counsel assisting the Commission; and
  - (b) the Commonwealth judicial officer in relation to whom the allegation is being investigated by the Commission; and
  - (c) a lawyer representing that Commonwealth judicial officer; and
  - (d) anyone else authorised by the Commission;may, so far as the Commission thinks appropriate, question a witness on a matter the Commission thinks relevant to its investigation.
- (6) If a person who is a Commonwealth judicial officer or a former Commonwealth judicial officer is questioned under subsection (5), the person is not required to answer.

*Private hearing*

- (7) If the Commission holds all or part of a hearing in private, a person must not be present at the hearing or part unless the person:
- (a) is a member of the Commission; or
  - (b) is counsel assisting the Commission; or
  - (c) is the Commonwealth judicial officer in relation to whom the allegation is being investigated by the Commission; or
  - (d) is a person whom the Commission has authorised to be present; or
  - (e) is a lawyer representing someone described in paragraph (c) or (d).

**25 Power to summon witnesses, take evidence and obtain documents or other things etc.**

- (1) A member may, by notice, require a person to do any of the following:
- (a) to appear at a hearing of the Commission, at a specified time and place, to do either or both of the following:
    - (i) give evidence;
    - (ii) produce the documents or other things specified in the notice;
  - (b) if the person is appearing as a witness at a hearing—to produce a specified document or other thing to a specified member of staff of the Commission at a specified time;
  - (c) in any case—to produce a specified document or other thing to a specified member of staff of the Commission at a specified time and place.

Note 1: For self-incrimination, see section 54.

Note 2: For protections for those given a notice under this section, see sections 65 and 66.

- (2) The notice must:
- (a) be in writing; and
  - (b) be given to the person; and
  - (c) be, and be given, in accordance with any requirements prescribed by the regulations.

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Note: Section 26 sets out additional requirements for notices.

*Evidence on oath or affirmation*

- (3) A Commission may take evidence at a hearing on oath or affirmation. For that purpose:
  - (a) a member may require a person appearing as a witness to give evidence at the hearing to take an oath or make an affirmation in a form approved in writing by the presiding member; and
  - (b) a member, or a person authorised in writing by the presiding member, may administer an oath or affirmation to a person appearing as a witness at the hearing.
- (4) A person is not entitled to give evidence to a Commission by a statement that is not verified by oath or affirmation.

*Exemption of Commonwealth judicial officer etc.*

- (5) Subsections (1), (3) and (4) do not apply to a person who is:
  - (a) a Commonwealth judicial officer; or
  - (b) a former Commonwealth judicial officer.
- (6) To avoid doubt, despite subsection (5):
  - (a) a person who is a Commonwealth judicial officer or a former Commonwealth judicial officer may elect to give evidence after taking an oath or making an affirmation in a form approved in writing by the presiding member; and
  - (b) a member, or a person authorised in writing by the presiding member, may administer such an oath or affirmation to the person.

**26 Additional requirements for notices**

- (1) Before giving a notice under section 25, the member must be satisfied that it is reasonable in all the circumstances to do so.
- (2) A time specified in a notice given under section 25 must be at least 14 days after the day on which the person receives the notice.



- (3) A notice given under paragraph 25(1)(a) (requiring a person to appear) must:
- (a) state that a person giving evidence may have a lawyer present; and
  - (b) set out the effect of the following provisions:
    - (i) section 27 (arrest of witness failing to appear);
    - (ii) section 51 (offence for failure of witness to appear);
    - (iii) section 52 (offence for failure of witness to produce documents or other thing).
- (4) A notice given under subparagraph 25(1)(a)(i) (requiring a person to give evidence) must set out, so far as is reasonably practicable, the general nature of the matters in relation to which the person is to be questioned, unless the member giving the notice is satisfied that, in the particular circumstances of the hearing to which the notice relates, it would prejudice the effectiveness of the hearing to do so.

Note: A person who is a Commonwealth judicial officer or a former Commonwealth judicial officer cannot be given a notice under section 25 (see subsection 25(5)).

## **27 Arrest of witness failing to appear**

- (1) If:
- (a) a person is given a notice under section 25 requiring the person to appear at a hearing of a Commission as a witness; and
  - (b) the person fails to appear at the hearing in answer to the notice;

the presiding member may, on proof by affidavit of the receipt of the notice by the person, issue a warrant under this section for the person's apprehension.

Note: A person who is a Commonwealth judicial officer or a former Commonwealth judicial officer cannot be given a notice under section 25 (see subsection 25(5)).

- (2) The warrant is to authorise:
- (a) the apprehension of the witness; and
  - (b) the witness being brought before the Commission; and

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- (c) the detention of the witness in custody for that purpose until he or she is released by order of the presiding member.
- (3) The warrant may be executed by a constable.
- (4) If the constable executing the warrant believes on reasonable grounds that the witness is on any premises, the constable may (subject to subsection (5)) enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night, for the purposes of executing the warrant.
- (5) The constable executing the warrant must not enter a dwelling house under subsection (4) at any time between 9 pm on a day and 6 am on the following day unless the constable believes on reasonable grounds that it would not be practicable to apprehend the witness, either at the dwelling house or elsewhere, at another time.
- (6) In this Act:

*conveyance* includes a vessel, aircraft or vehicle.

*dwelling house* includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

## 28 Search warrants

### *Power to issue search warrant*

- (1) A Commission, or a member authorised in writing by a Commission, may issue a search warrant if:
  - (a) the Commission or member has reasonable grounds for suspecting that there may be, at that time or within the next 24 hours, on or in any premises, one or more documents, or other things, of a particular kind (*documents or other things of the relevant kind*) connected with the matter the Commission is investigating; and
  - (b) the Commission or member believes on reasonable grounds that, if a notice were given requiring the production of the documents or other things of the relevant kind, any of the

documents or things might be concealed, lost, mutilated or destroyed.

Note: The Commission must record the reasons for that suspicion and belief (see section 80).

*Effect of search warrant*

- (2) The search warrant is to authorise a constable, named in the warrant, with such assistance as that constable thinks necessary and if necessary by such force as is necessary and reasonable:
- (a) to enter the premises; and
  - (b) to search the premises for documents or other things of the relevant kind; and
  - (c) to seize any documents or other things of the relevant kind found on or in premises and deliver them to the Commission.

*Content of search warrant*

- (3) The search warrant must state:
- (a) the purpose for which the warrant is issued, which must include a reference to the matter the Commission is investigating and with which the documents or other things of the relevant kind are connected; and
  - (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; and
  - (c) a description of the kind of documents or things authorised to be seized; and
  - (d) the date, not more than 7 days after the date of issue of the warrant, the warrant ceases to have effect; and
  - (e) the effect of section 33 (occupier to provide facilities and assistance).

*Extra effect of search warrant*

- (4) The search warrant also authorises the constable executing the warrant to seize a document or other thing of another kind if:
- (a) the constable finds it in the course of searching for documents or other things of the relevant kind under the warrant; and

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- (b) the constable believes on reasonable grounds that:
  - (i) the document or thing is connected with the matter the Commission is investigating; and
  - (ii) it is necessary to seize the document or thing in order to prevent its concealment, loss, mutilation or destruction.

Note: A constable can also secure things under section 31.

*No search of premises occupied by Commonwealth judicial officer etc.*

- (5) This section does not apply to any premises occupied by a person who is:
  - (a) a Commonwealth judicial officer; or
  - (b) a former Commonwealth judicial officer.

**29 Operating electronic equipment**

- (1) A constable executing a search warrant in relation to premises may:
  - (a) operate electronic equipment on the premises; and
  - (b) use a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it;if the constable has reasonable grounds for suspecting that the electronic equipment, disk, tape or other storage device is, or contains material, connected with the matter the Commission is investigating.
- (2) The constable executing the search warrant may:
  - (a) seize the equipment and the disk, tape or other storage device if the constable has reasonable grounds for suspecting that it is, or contains material, connected with the matter the Commission is investigating; and
  - (b) operate electronic equipment on the premises to put the material in documentary form and remove the documents so produced from the premises; and
  - (c) operate electronic equipment on the premises to transfer the material to a disk, tape or other storage device that:

- (i) is brought to the premises for the exercise of the power;  
or
  - (ii) is on the premises and the use of which for that purpose  
has been agreed in writing by the occupier of the  
premises;
- and remove the disk, tape or other storage device from the  
premises.
- (3) The constable executing the search warrant may operate electronic  
equipment as mentioned in subsection (1) or (2) only if the  
constable believes on reasonable grounds that the operation of the  
equipment can be carried out without damage to the equipment.  

Note: For compensation for damage to electronic equipment, see section 40.
- (4) The constable executing the search warrant may seize equipment  
or a disk, tape or other storage device as mentioned in  
paragraph (2)(a) only if:
  - (a) it is not practicable to put the material in documentary form  
as mentioned in paragraph (2)(b) or to transfer the evidential  
material as mentioned in paragraph (2)(c); or
  - (b) possession of the equipment or the disk, tape or other storage  
device by the occupier could constitute an offence against a  
law of the Commonwealth.

### **30 Expert assistance to operate electronic equipment**

- (1) This section applies if a constable executing a search warrant in  
relation to premises enters such premises to search for material  
connected with the matter the Commission is investigating.

#### *Securing equipment*

- (2) The constable may do whatever is necessary to secure any  
electronic equipment that is on the premises if the constable  
believes on reasonable grounds that:
  - (a) there is material connected with the matter the Commission is  
investigating on the premises; and
  - (b) the material may be accessible by operating the electronic  
equipment; and

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- (c) expert assistance is required to operate the equipment; and
- (d) the material may be destroyed, altered or otherwise interfered with if the constable does not take action under this subsection.

The equipment may be secured by locking it up, placing a guard or any other means.

- (3) The constable must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:
  - (a) the constable's intention to secure the equipment; and
  - (b) the fact that the equipment may be secured for up to 24 hours.

*Period equipment may be secured*

- (4) The equipment may be secured until the earlier of the following happens:
  - (a) the 24-hour period ends;
  - (b) the equipment has been operated by the expert.

Note: For compensation for damage to electronic equipment, see section 40.

*Extensions*

- (5) The constable may apply to the Commission, or a member authorised in writing by the Commission, for an extension of the 24-hour period if the constable believes on reasonable grounds that the equipment needs to be secured for more than that period.
- (6) Before making the application, the constable must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the constable's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The 24-hour period may be extended more than once.

**31 Securing other things**

- (1) A constable who enters premises under a search warrant may secure a thing for a period not exceeding 24 hours if:

- (a) the thing is found in or on the premises in the course of searching for documents or other things of the relevant kind under the warrant; and
  - (b) the constable believes on reasonable grounds that the thing is:
    - (i) relevant to an indictable offence; or
    - (ii) evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act); and
  - (c) the constable believes on reasonable grounds that it is necessary to secure the thing in order to prevent it from being concealed, lost, mutilated or destroyed before a warrant to seize the thing is obtained.
- (2) The constable may do whatever is necessary to secure the thing, including lock it up, place a guard or secure the thing by any other means.

*Extensions*

- (3) If the constable believes on reasonable grounds that the thing needs to be secured for more than 24 hours, the constable may apply to the Commission, or a member authorised in writing by the Commission, for an extension of that period.
- (4) The constable must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (5) The 24-hour period may be extended more than once.

**32 Occupier entitled to observe execution of search warrant**

- (1) The occupier of premises to which a search warrant relates, or another person who apparently represents the occupier, is entitled to observe the execution of the warrant if the occupier or other person is present at the premises while the warrant is being executed.

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- (2) The right to observe the execution of the search warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the search warrant in 2 or more areas of the premises at the same time.

**33 Occupier to provide constable with facilities and assistance**

The occupier of premises to which a search warrant relates, or another person who apparently represents the occupier, must provide the constable executing the warrant with all reasonable facilities and assistance for the effective exercise of the constable's powers.

Note: A person who breaches this section might commit an offence (see section 62).

**34 Details of search warrant to be given to occupier, etc.**

If:

- (a) a search warrant in relation to premises is being executed; and
- (b) either:
  - (i) if the premises are a vessel, aircraft or vehicle—a person is present who is apparently in control of the vessel, aircraft or vehicle; or
  - (ii) otherwise—the occupier of the premises, or a person who apparently represents the occupier, is present at the premises;

the constable executing the warrant must make available a copy of the warrant, and identify himself or herself, to the occupier, person who apparently represents the occupier, or person apparently in control.

**35 Completing execution of a search warrant after temporary cessation**

- (1) This section applies if a constable who is executing a search warrant in relation to premises temporarily ceases its execution and leaves the premises.



- (2) The constable may complete the execution of the search warrant if:
- (a) the warrant is still in force; and
  - (b) the constable is absent from the premises:
    - (i) for not more than 1 hour; or
    - (ii) if there is an emergency situation—for not more than 12 hours or such longer period as is allowed by the presiding member under subsection (5); or
    - (iii) for a longer period if the occupier of the premises consents in writing.

*Application for extension in emergency situation*

- (3) A constable may apply to the Commission, or a member authorised in writing by the Commission, for an extension of the 12-hour period mentioned in subparagraph (2)(b)(ii) if:
- (a) there is an emergency situation; and
  - (b) the constable believes on reasonable grounds that the constable will not be able to return to the premises within that period.
- (4) If it is practicable to do so, before making the application, the constable must give notice to the occupier of the premises of his or her intention to apply for an extension.

*Extension in emergency situation*

- (5) The presiding member may extend the period during which the constable may be away from the premises if:
- (a) an application is made under subsection (3); and
  - (b) the presiding member is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
  - (c) the extension would not result in the period ending after the search warrant ceases to be in force.

### **36 Completing execution of search warrant stopped by court order**

A constable may complete the execution of a search warrant that has been stopped by an order of a court if:

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- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

**37 Copies of seized things to be provided**

- (1) This section applies if:
  - (a) a search warrant is being executed in relation to premises; and
  - (b) one or more of the following is seized from the premises:
    - (i) a document, film, computer file or other thing that can be readily copied;
    - (ii) a storage device, the information in which can be readily copied.
- (2) The occupier of the premises, or another person who apparently represents the occupier and who is present when the search warrant is executed, may request the constable executing the warrant to give a copy of the thing or the information to the occupier or other person.
- (3) The constable executing the search warrant must comply with the request as soon as practicable after the seizure.
- (4) However, the constable executing the warrant is not required to comply with the request if possession of the thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

**38 Receipts for seized documents or other things**

- (1) The constable executing a search warrant must provide a receipt for any document or other thing that is seized under the warrant.
- (2) One receipt may cover 2 or more documents or other things seized.

**39 Return of seized documents or other things**

- (1) The Commission may retain any document or other thing that is seized under a search warrant if it is reasonably necessary for the Commission's investigation.

*Return of seized things*

- (2) The Commission must return the document or thing to the person from whom it was seized or, if that person is not the owner of the document or thing, to the person who appears to the Commission to be entitled to possession of it, at the earlier of the following:
- (a) the earliest time it is not reasonably necessary for the Commission to retain the document or thing for the Commission's investigation;
  - (b) 60 days after the document or thing was seized.

**40 Compensation for damage to electronic equipment**

- (1) This section applies if:
- (a) as a result of electronic equipment being operated as mentioned in this Division:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.

Note: For the definition of *damage*, see section 7.

- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

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- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia or another court of competent jurisdiction for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

**41 Powers of Commission in relation to documents or other things**

- (1) A Commission, a member, or a person authorised in writing by the presiding member, may:
  - (a) inspect any documents or other things produced before, or delivered to, the Commission; and
  - (b) retain the documents or things as long as reasonably necessary for the Commission's investigation; and
  - (c) copy matter that is contained in such a document and is relevant to the Commission's investigation.
- (2) If the retention of a document or other thing by the Commission ceases to be reasonably necessary for the Commission's investigation, the Commission must, if a person who appears to the Commission to be entitled to the document or thing requests, cause the document or thing to be delivered to that person.
- (3) Subsection (2) does not limit subsection 39(2).

**42 Disposal of documents or other things**

- (1) The presiding member of a Commission may dispose of a document or other thing seized under this Division if:
  - (a) a member of staff of the Commission has taken reasonable steps to return the document or thing to a person; and
  - (b) either:
    - (i) the member of staff of the Commission has been unable to locate the person; or

- (ii) the person has refused to take possession of the document or thing.
- (2) The presiding member may dispose of the document or thing in such manner as the presiding member thinks appropriate.

#### **43 Compensation for acquisition of property**

- (1) If the operation of section 42 would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia or another court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this Act:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

#### **44 Commission may direct that certain information not be published etc.**

##### *Directions not to publish*

- (1) A Commission may direct in writing that any of the following not be published:
  - (a) evidence given before the Commission;
  - (b) the contents of a document, or a description of a thing, produced before or delivered to the Commission or seized under a search warrant;
  - (c) any information that might enable a person who has given evidence before the Commission to be identified;

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- (d) the fact that any person has given or may be about to give evidence at a hearing of the Commission.
- (2) The Commission must give such a direction if not doing so might prejudice:
  - (a) the safety of a person; or
  - (b) the fair trial of a person who has been or may be charged with an offence against an Australian law.

*When direction ceases to apply*

- (3) If:
  - (a) a record (within the meaning of the *Archives Act 1983*) contains any of the things referred to in paragraphs (1)(a) to (d) of this section; and
  - (b) a direction has been given under subsection (1) not to publish that thing; and
  - (c) the record is made available for public access under subsection 31(5) of the *Archives Act 1983*, as that subsection applies because of a modification prescribed under subclause 9.6 of the Schedule to the Archives (Records of the Parliament) Regulations;then the direction ceases to apply in relation to that thing.

**Subdivision D—Costs and expenses of Commonwealth judicial officer and witnesses**

**45 Costs of legal representation for Commonwealth judicial officer**

- (1) The Commonwealth is liable to pay for the reasonable costs of legal representation for the Commonwealth judicial officer in relation to whom an allegation of misbehaviour or incapacity is being investigated under this Act.
- (2) No other person is liable under any Act of the Commonwealth to pay for such costs.

#### **46 Reimbursement of expenses of witnesses**

- (1) The Commonwealth is liable to pay for the following amount of expenses of a witness who is required to appear, or is appearing, at a hearing of a Commission:
  - (a) the amount worked out under the regulations;
  - (b) if there are no regulations for that purpose, and the Commission has determined an amount in writing in relation to that particular witness—the amount determined by the Commission.
- (2) Subsection (1) does not apply in relation to the Commonwealth judicial officer in relation to whom the allegation of misbehaviour or incapacity is being investigated by the Commission.
- (3) A determination made under paragraph (1)(b) is not a legislative instrument.

## Division 3—Report

### 47 Guide to this Division

A Commission gives its report into its investigation of an allegation of misbehaviour or incapacity under this Division.

The report is given to the Speaker of the House of Representatives and the President of the Senate for presentation to the Parliament.

A Commission may give a separate report (which is not tabled) in relation to sensitive matters.

### 48 Report

*Giving report to parliamentary presiding officers for presentation to the Parliament*

- (1) As soon as practicable after a Commission finishes its investigation, the Commission must give a report to the parliamentary presiding officers for presentation to the Parliament.
- (2) If the Commission finishes its report after the dissolution of the House of Representatives and before the next sitting of the House, the Commission must give the report to the parliamentary presiding officers as soon as practicable after the next sitting day of the House.

*Content of report*

- (3) The report must:
  - (a) describe the Commission's investigation; and
  - (b) include a full transcript of the Commission's hearings (subject to subsections (4) and (5)); and
  - (c) state the Commission's opinion of whether or not there is evidence that would let the Houses of the Parliament



conclude that the alleged misbehaviour or incapacity investigated by the Commission is proved; and

- (d) include a record of all evidence before the Commission as it thinks may be relevant for the Houses of the Parliament to consider in determining whether the alleged misbehaviour or incapacity is proved; and
  - (e) if the members are not unanimous—state the opinion of each member of the Commission of whether or not there is evidence that would let the Houses of the Parliament conclude that the alleged misbehaviour or incapacity investigated by the Commission is proved.
- (4) If a Commission holds all or part of a hearing in private, the Commission must determine whether any or all evidence given during that private hearing is included under paragraph (3)(b) in the full transcript of the Commission's hearings.
- (5) If any such evidence is personal information (within the meaning of the *Privacy Act 1988*), then the Commission may include that evidence in the full transcript only with the consent of the person to whom the information relates.

*Separate report on sensitive matters*

- (6) If the Commission believes that if any of its findings or conclusions, or any of the evidence 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 against an Australian law may not receive a fair trial for the offence; or
  - (b) an investigation of a breach, or possible breach, of an Australian law may be prejudiced; or
  - (c) the existence or identity of a confidential source of information in relation to the enforcement or administration of an Australian law may be disclosed; or
  - (d) a person may be enabled to ascertain the existence or identity of a confidential source of information in relation to the enforcement or administration of an Australian law; or
  - (e) there may be prejudice to the safety of a person; or

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- (f) those findings or conclusions, or that evidence, would be scandalous or highly personal;

the Commission may include those findings or conclusions, or that evidence, in a separate report, and give that report to the parliamentary presiding officers with a statement of the Commission's belief.
- (7) If the parliamentary presiding officers are given a separate report under subsection (6), they:
  - (a) must not cause a copy of it to be laid before the Senate or the House of Representatives; and
  - (b) must make it available for inspection by Senators, members of the House of Representatives, and the person in relation to whom the allegation was investigated by the Commission; and
  - (c) subject to section 82, must not produce, or disclose, the report to any other person.
- (8) Except where it is necessary to do so for the purposes of giving effect to this Act, a person is not to be required:
  - (a) to produce, or disclose, a separate report given under subsection (6) to a court or tribunal; or
  - (b) to produce, or disclose, a separate report given under subsection (6) under any other Australian law.

## **Division 4—Offences relating to investigations**

### **49 Guide to this Division**

This Division contains offences in relation to investigations conducted by a Commission.

The offences include:

- (a) failing to comply with a requirement of a Commission (such as a requirement to appear, produce a document or other thing, or be sworn or affirm); and
- (b) offences in relation to private hearings (such as being present at such a hearing or publishing material from such a hearing); and
- (c) giving false or misleading evidence to a hearing; and
- (d) interfering with witnesses, or otherwise obstructing a Commission.

### **50 Unauthorised presence at hearing**

A person commits an offence if:

- (a) the person is present at a hearing of a Commission; and
- (b) the person's presence contravenes subsection 24(7).

Penalty: Imprisonment for 6 months.

### **51 Failure of witness to appear**

- (1) A person commits an offence if:

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- (a) the person has been required under a notice given under paragraph 25(1)(a) to appear at a hearing of a Commission; and
- (b) the person:
  - (i) fails to appear as required by the notice; or
  - (ii) fails to attend from day to day.

Penalty: Imprisonment for 6 months.

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

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

- (3) Subparagraph (1)(b)(ii) does not apply if a member of the Commission has excused or released the person from further attendance.

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

## 52 Failure of witness to produce document or other thing

### *Failure to produce when appearing at a hearing of a Commission*

- (1) A person commits an offence if:
- (a) the person is required to produce a document or other thing at a hearing of a Commission under a notice given under paragraph 25(1)(a) or (b); and
  - (b) the person appears at the hearing; and
  - (c) the person fails to produce the document or thing as required.

Penalty: Imprisonment for 6 months.

### *Failure to produce as required by paragraph 25(1)(c) notice*

- (2) A person given a notice under paragraph 25(1)(c) must not refuse or fail to produce a document or other thing that the person is required by the notice to produce.

Penalty: Imprisonment for 6 months.

*Exception to subsections (1) and (2)*

- (3) Subsection (1) or (2) does not apply if:
- (a) the person has a reasonable excuse; or
  - (b) the document or other thing was not relevant to the matter the Commission was investigating.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: For self-incrimination, see section 54.

**53 Refusal to be sworn or to give evidence**

- (1) A person who is required to appear, or is appearing, at a hearing of a Commission as a witness must not:
- (a) refuse to be sworn or to make an affirmation; or
  - (b) refuse to answer a question that is asked at the hearing and is relevant to the Commission's investigation.

Penalty: Imprisonment for 6 months.

*Exemption of Commonwealth judicial officer etc.*

- (2) Subsection (1) does not apply to a person who is:
- (a) a Commonwealth judicial officer; or
  - (b) a former Commonwealth judicial officer.

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

**54 Self-incrimination**

- (1) A person is not excused from:
- (a) producing a document or other thing as required by a notice given under section 25; or
  - (b) answering a question at a hearing of the Commission that is relevant to a Commission's investigation;
- on the ground that the production of the document or thing, or the answering of the question, might tend to incriminate the person or expose the person to a penalty.

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- (2) However, in the case of an individual, none of the following:
- (a) the document or thing produced or the answer given;
  - (b) producing the document or thing or answering the question;
  - (c) any information, document or thing obtained as a direct or indirect consequence of producing the document or thing or answering the question;
- is admissible in evidence against the individual in civil or criminal proceedings in any court or tribunal of the Commonwealth, a State or a Territory other than proceedings for:
- (d) an offence against this Act or Division 3 of Part III of the *Crimes Act 1914*; or
  - (e) an offence against any of the following provisions, being an offence that relates to this Act or Division 3 of Part III of the *Crimes Act 1914*:
    - (i) section 6 of the *Crimes Act 1914* (accessory after the fact);
    - (ii) section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) of the *Criminal Code*;
    - (iii) section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents);
    - (iv) section 149.1 of the *Criminal Code* (obstruction of Commonwealth public officials).

### **55 Acts or omissions on different days constitute separate offences**

If:

- (a) a person's act or omission on a day constitutes an offence against section 50, 51, 52 or 53; and
  - (b) the person does or omits to do the same thing in relation to a hearing the Commission holds on another day;
- each of the acts or omissions constitutes a separate offence.

### **56 False or misleading evidence**

A person must not, at a hearing of a Commission, intentionally 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 Commission's investigation.

Penalty: Imprisonment for 2 years.

### **57 Injury to witness**

A person commits an offence if the person:

- (a) uses violence against; or
  - (b) inflicts punishment on; or
  - (c) causes damage, loss or disadvantage to;
- another person for or on account of the person having produced a document or other thing under a notice given under section 25.

Penalty: Imprisonment for 12 months.

### **58 Preventing witnesses from producing document or other thing**

A person (the *first person*) commits an offence if:

- (a) another person is required by notice given under section 25 to produce a document or other thing; and
- (b) the first person prevents the other person from producing the document or thing as required.

Penalty: Imprisonment for 12 months.

### **59 Bribery of witness**

(1) A person (the *first person*) commits an offence if:

- (a) the first person:
  - (i) asks for, receives or obtains any property, or benefit, of any kind for himself or herself or another person; or
  - (ii) agrees to receive or to obtain any property, or benefit, of any kind for himself or herself or another person; and
- (b) the first person does so upon an agreement or understanding that any person required to produce a document or other thing under a notice given under section 25 will not produce the document or thing.

Penalty: Imprisonment for 5 years.

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- (2) A person commits an offence if the person attempts by any means to induce a person required to produce a document or other thing under a notice given under section 25 not to produce the document or thing.

Penalty: Imprisonment for 5 years.

### 60 Fraud on witness

- (1) A person (the ***first person***) commits an offence if:
- (a) the first person practises fraud or deceit on another person; and
  - (b) the other person is required to produce a document or other thing under a notice given under section 25; and
  - (c) the first person practises the fraud or deceit with the intention that the other person will not produce the document or thing as required.

Penalty: Imprisonment for 2 years.

- (2) A person (the ***first person***) commits an offence if:
- (a) the first person makes or exhibits any statement, representation, token, or writing to another person; and
  - (b) the other person is required to produce a document or other thing under a notice given under section 25; and
  - (c) the first person makes or exhibits the statement, representation, token, or writing with the intention that the other person will not produce the document or thing as required.

Penalty: Imprisonment for 2 years.

### 61 Obstruction of a Commission

- A person commits an offence if the person:
- (a) insults or disturbs a Commission; or
  - (b) interrupts the hearings of a Commission; or
  - (c) uses any insulting language towards a Commission; or



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- (d) by writing or speech uses words false and defamatory of a Commission; or
- (e) engages in conduct that is intended, or likely, to amount to an improper interference with:
  - (i) the free exercise by a Commission of its authority or functions; or
  - (ii) the free performance by a member of the member's duties as a member.

Penalty: Imprisonment for 6 months.

**62 Failure to provide facilities and assistance**

A person commits an offence if:

- (a) the person is subject to section 33 (occupier to provide constable with facilities and assistance); and
- (b) the person fails to comply with that section.

Penalty: 30 penalty units.

**63 Unauthorised publication of material**

A person commits an offence if:

- (a) the person publishes material; and
- (b) the publication contravenes a direction given under subsection 44(1) (Commission directing that information not be published); and
- (c) the direction has not ceased to apply under subsection 44(3) in relation to the material.

Penalty: Imprisonment for 6 months.

## **Division 5—Protections**

### **64 Guide to this Division**

This Division deals with the protections that are provided to those who are connected with a Commission (such as members of the Commission, and witnesses and lawyers who appear at a hearing of a Commission).

The Division also deals with the treatment of hearings and evidence of a Commission under the *Parliamentary Privileges Act 1987*.

### **65 Protection of members, witnesses and lawyers**

- (1) A member has, in the performance of the functions or the exercise of the powers of a member, the same protection and immunity that a member of a House of the Parliament has in relation to the performance of the functions or the exercise of the powers of a committee of a House of the Parliament.
- (2) Subject to this Act, a person who:
  - (a) is required to:
    - (i) appear at a hearing of a Commission; or
    - (ii) produce a document or other thing;  
under a notice given under section 25; or
  - (b) is appearing as a witness at a hearing of a Commission;  
has the same protection and immunity as a witness before a committee of a House of the Parliament.
- (3) Counsel assisting a Commission, or a lawyer representing a person at a hearing of a Commission, has the same protection and immunity as a witness before a committee of a House of the Parliament.

## **66 Protection in relation to contraventions of prohibitions**

### *Protection for answering question*

- (1) A person who:
  - (a) is required to appear, or is appearing, at a hearing of a Commission; and
  - (b) answers a question at the hearing;is not liable for a contravention of a prohibition by or under another Australian law on the answer.

### *Protection for producing document or other thing*

- (2) A person who is required to produce, or who produces, a document or other thing to a member of the staff of, or to a member of, a Commission is not liable for a contravention of a prohibition by or under another Australian law on the production of the document or thing.

## **67 Hearings and evidence of a Commission**

- (1) For the purposes of section 10, and subsections 16(3), (4) and (6), of the *Parliamentary Privileges Act 1987*:
  - (a) proceedings of a Commission, and the formulation, making or publication of a report, and the report itself, are taken to be proceedings in Parliament; and
  - (b) evidence before a Commission is taken to be evidence before a committee of a House of the Parliament; and
  - (c) this Act is taken to be an Act establishing a committee.
- (2) Subsection 10(2) of the *Parliamentary Privileges Act 1987* applies as if the reference to section 13 of that Act were a reference to section 63 of this Act.
- (3) This section is not intended to limit or otherwise affect the operation of section 16 of the *Parliamentary Privileges Act 1987*.

## **Part 4—Terms and conditions of membership**

### **68 Guide to this Part**

This Part sets out the terms and conditions of a member of a Commission, such as his or her remuneration, and rules relating to resigning, terminating or ceasing an appointment.

In addition to the terms and conditions provided for specifically by this Part, the parliamentary presiding officers may jointly determine other terms and conditions.

### **69 Terms and conditions generally**

A member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are jointly determined in writing by the parliamentary presiding officers.

### **70 Other employment**

A member must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

### **71 Remuneration**

- (1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (2) A member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**72 Resignation**

- (1) A member may resign his or her appointment by giving a parliamentary presiding officer a written resignation for presentation to the Parliament.
- (2) The resignation takes effect on the day it is received by the parliamentary presiding officer or, if a later day is specified in the resignation, on that later day.
- (3) If a parliamentary presiding officer is given a written resignation, the parliamentary presiding officer must, as soon as practicable, give a copy of it to the other parliamentary presiding officer.

**73 Termination, or cessation, of appointment**

- (1) A member's appointment may be terminated on any of the following grounds:
  - (a) the member's misbehaviour or physical or mental incapacity (within the ordinary meaning of those words);
  - (b) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors;
  - (c) the member engages in paid employment that conflicts or may conflict with the proper performance of his or her duties (see section 70);
  - (d) the member fails, without reasonable excuse, to comply with section 74 (disclosure of interests by members).
- (2) A member's appointment is terminated by force of this subsection if:
  - (a) each House of the Parliament passes, in the same session, a resolution on a ground referred to in subsection (1); and
  - (b) the ground on which the member's appointment is to be terminated is the same in each resolution.

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*Member who becomes Commonwealth or State judicial officer*

- (5) If a member becomes a Commonwealth or State judicial officer, he or she ceases to be a member at the same time.

**74 Disclosure of interests by members**

If a member of a Commission has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties in relation to the Commission's investigation and report:

- (a) he or she must disclose the interest to all the persons and bodies recognised by the Commission as parties to the investigation; and
- (b) except with the written consent of all those persons and bodies, he or she must not take part in the investigation or preparation of the report.

## Part 5—Administrative provisions

### 75 Guide to this Part

This Part contains administrative provisions relating to Commissions, such as:

- (a) the staff, consultants and counsel who are to assist a Commission; and
- (b) when information, evidence or documents obtained by a Commission in the course of investigating an allegation of misbehaviour or incapacity may be disclosed; and
- (c) rules relating to the records of a Commission.

### 76 Staff of a Commission

- (1) The staff of a Commission must be persons:
  - (a) who are made available to the Commission by a parliamentary presiding officer; or
  - (b) whose services are made available to the Commission under an arrangement made under subsection (2).

*APS employees to be made available to a Commission*

- (2) The parliamentary presiding officers may jointly arrange with an Agency Head (as defined in the *Public Service Act 1999*) for the services of APS employees in the Agency Head's Agency (as defined in that Act) to be made available to a Commission.
- (3) While a person is performing services for a Commission under an arrangement under subsection (2):
  - (a) he or she is taken to be:
    - (i) engaged under the *Parliamentary Service Act 1999*; and

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- (ii) on leave without pay from his or her employment under the *Public Service Act 1999*; and
  - (b) he or she must perform his or her functions and duties in accordance with the directions of the presiding member (subject to subsection (4)).
- (4) A direction of a presiding member under paragraph (3)(b) is subject to any direction of the Secretary of the Department that the Commission is taken to be part of under section 79 in relation to:
  - (a) the performance of the Secretary's functions; and
  - (b) the exercise of the Secretary's powers;under the *Financial Management and Accountability Act 1997* and the *Parliamentary Service Act 1999*.

### 77 Consultants

A Commission may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Commission's functions.

### 78 Counsel assisting a Commission

On behalf of the Commonwealth, a Commission may appoint a lawyer to assist the Commission as counsel, either generally or in relation to a particular matter or matters.

### 79 Commission to be part of Department of House of Representatives or Senate

For the purposes of the *Financial Management and Accountability Act 1997* and the *Parliamentary Service Act 1999*, a Commission is taken to be part of the Department of the House of Representatives, or the Department of the Senate, established by the *Parliamentary Service Act 1999*, as agreed by the parliamentary presiding officers.



**80 Commission must prepare and keep statements of reasons about search warrants**

- (1) A Commission must prepare and keep a written statement of reasons in relation to each search warrant issued by the Commission or a member of the Commission.
- (2) The statement of reasons must set out the following:
  - (a) the reasons the Commission or member suspects that each document or other thing to which the search warrant relates is connected with the matter the Commission is investigating;
  - (b) the reasons the Commission or member suspects that each document or other thing may be on or in particular premises;
  - (c) the reasons the Commission or member believes that, if a notice were given requiring the production of each document or other thing, it may be concealed, lost, mutilated or destroyed.

**81 Commission may give information, evidence, documents etc.**

- (1) This section applies (subject to subsection (6)) to information, evidence, a document or other thing obtained by a Commission in the course of investigating an allegation.

*Giving to law enforcement authorities*

- (2) If the information relates or may relate to a contravention of a law described in subsection (3), or the evidence is of such a contravention, the Commission may give the information or evidence to one or more of the following:
  - (a) the Attorney-General of the Commonwealth, a State, the Australian Capital Territory or the Northern Territory;
  - (b) the Director of Public Prosecutions of the Commonwealth, a State or a Territory;
  - (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;

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- (e) the authority or person responsible for the administration or enforcement of that law.
- (3) Subsection (2) applies in relation to a contravention of a law if:
  - (a) the law is a law of the Commonwealth, a State or a Territory; and
  - (b) the contravention is punishable by a criminal, civil or administrative penalty.

### *Giving to Royal Commissions*

- (4) The Commission may give:
  - (a) a Royal Commission within the meaning of the *Royal Commissions Act 1902*; or
  - (b) a Royal Commission of a State or a Territory;the information, evidence, document or other thing, or the content of the document or a description of the thing, if the Commission believes it relates or may relate to a matter the Royal Commission is required or permitted to inquire into.

### *Giving to the Australian Crime Commission*

- (5) The Commission may give the Chief Executive Officer of the Australian Crime Commission the information, evidence, document or other thing, or the content of the document or a description of the thing, if the Commission believes it is or may be relevant to the performance of the functions of the Australian Crime Commission.

### *No limit on the Parliamentary Privileges Act 1987*

- (6) This section is not intended to limit or otherwise affect the operation of section 16 of the *Parliamentary Privileges Act 1987*.

## **82 Records of a Commission**

- (1) A Commission must give a House of the Parliament possession of the Commission's records that it no longer needs.
- (1A) If:

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- (a) a Commission gives records to a House of the Parliament under subsection (1); and
  - (b) the parliamentary presiding officers have been given a separate report under subsection 48(6) that they no longer need;

then the parliamentary presiding officers must give the separate report to the House of the Parliament referred to in paragraph (a).
- (2) A record given under subsection (1) or (1A) is taken to be a Class A record for the purposes of:
  - (a) the *Archives Act 1983*; and
  - (b) any regulations made under, or for the purposes of, that Act.

## Part 6—Miscellaneous

### 83 Regulations

The Governor-General may make regulations 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.

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*[Minister's second reading speech made in—  
House of Representatives on 14 March 2012  
Senate on 12 September 2012]*

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(260/11)  
54 *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012* No.  
188, 2012