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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Parliamentary (Judicial Misbehaviour or
Incapacity) Commission Bill 2007**

No. , 2007

(Senator Kirk)

**A Bill for an Act to establish the Parliamentary
(Judicial Misbehaviour or Incapacity) Commission**

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1 **A Bill for an Act to establish the Parliamentary**
2 **(Judicial Misbehaviour or Incapacity) Commission**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**

5 **1 Short title**

6 This Act may be cited as the *Parliamentary (Judicial Misbehaviour*
7 *or Incapacity) Commission Act 2007*.

8 **2 Commencement**

- 9 (1) Sections 1, 2, 3, and 4 commence on the day on which this Act
10 receives the Royal Assent.
- 11 (2) The remaining provisions of this Act commence on the day on
12 which an Act which appropriates money for the remuneration and
13 allowances of members and any other expenses occasioned by the
14 operation of this Act receive the Royal Assent.

1 **3 Objects of Act**

2 The object of this Act is to establish the Parliamentary (Judicial
3 Misbehaviour or Incapacity) Commission.

4 **4 This Act binds the Crown**

5 This Act binds the Crown in each of its capacities.

6 **5 Definitions**

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

8 **Commission** means the Parliamentary (Judicial Misbehaviour or
9 Incapacity) Commission appointed in accordance with section 8.

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

12 **incapacity** has the same meaning as the word ‘incapacity’ in
13 section 72 of the Constitution.

14 **judge** means a judge of a court created by the Parliament or of the
15 Supreme Court of a State or Territory.

16 **justice of a federal court** means a Judge of the High Court or a
17 judge or magistrate of a court created by the Parliament.

18 **legal practitioner** means a barrister, a solicitor, a barrister and
19 solicitor, or a legal practitioner of the High Court or of the
20 Supreme Court of a State or Territory.

21 **member** means a member of the Commission.

22 **misbehaviour** has the same meaning as the word ‘misbehaviour’ in
23 section 72 of the Constitution: and, subject to that provision, is not
24 restricted to conduct which would constitute a criminal offence.

25 **presiding member** means the member of the Commission holding
26 an appointment under subsection 8(4) or 9(3).

27 **reasonable excuse**, in relation to any act or omission by a witness
28 or a person summoned as a witness before the Commission means,

1 unless declared otherwise by this Act, an excuse which would
2 excuse an act or omission of a similar nature by a witness or a
3 person summoned as a witness before a court of law.

4 *special circumstances scheme* includes any arrangement for
5 payment of financial assistance for legal costs and related expenses
6 by the Commonwealth in special circumstances in cases not
7 covered by extant statutory and non-statutory schemes.

8 **6 Administration**

9 The Attorney-General has the general administration of this Act.

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Part 2—Establishment of the Commission

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7 Establishment

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The Parliamentary (Judicial Misbehaviour or Incapacity)
Commission is established by this section.

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8 Members

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(1) The Commission consists of three members, two of whom are to be appointed jointly by the President of the Senate and the Speaker of the House of Representatives on the recommendation of the Prime Minister, and one of whom is to be appointed jointly by the President of the Senate and the Speaker of the House of Representatives on the recommendation of the Leader of the Opposition.

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(2) At least one member of the Commission must be a retired judge of the High Court or of a court created by the Parliament, or a judge or retired judge of a Supreme Court of a State or Territory.

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(3) A person must not be appointed as a member if the person is a justice of a federal court.

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(4) The Speaker and President must appoint jointly one of the members to be the presiding member.

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9 Vacancy in membership

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(1) If a member dies, becomes physically or mentally incapable of performing the functions of a member or, by notice in writing to the President of the Senate and the Speaker of the House of Representatives, resigns his or her appointment, the remaining members constitute the Commission until a replacement member is appointed, and this Act has effect as if subsection 8(1) required the appointment of two members.

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(2) Whenever a vacancy in membership of the Commission occurs, the Speaker and the President of the Senate, as soon as practicable, are

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to jointly appoint a replacement member. The requirements of subsections 9(1), (2) and (3) apply when appointments are made to fill any vacancy.

- (3) If the presiding member dies, becomes physically or mentally incapable of performing the functions of a member or, by notice in writing to the President of the Senate and the Speaker of the House of Representatives, resigns his or her appointment, another member shall be appointed jointly by the President of the Senate and the Speaker of the House of Representatives to be the presiding member.

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Part 3—Administrative provisions

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10 Remuneration of members

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(1) A member of the Commission is entitled to an honorarium while a member.

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(2) A member of the Commission is entitled to a daily payment while the Commission is considering a matter. For the purpose of this subsection the Commission is deemed to be considering a matter from the day it first meets after receiving a referral from a House of the Parliament until the day it submits its report on the matter.

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(3) Payments to members in accordance with subsections (1) and (2) are determined by the Remuneration Tribunal, but if no determination of that remuneration is in operation, the member is to be paid such remuneration as is prescribed.

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(4) A member is to be paid such allowances as are prescribed.

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(5) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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11 Staff of the Commission

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

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

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

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1 **12 Counsel assisting the Commission**

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

5 **13 Legal and financial assistance**

6 (1) A justice of a federal court who is the subject of inquiry by the
7 Commission is entitled to make an application to the
8 Attorney-General, under a special circumstances scheme, for the
9 provision of assistance under this section in respect of the costs of
10 his or her representation by a legal practitioner in relation to the
11 inquiry.

12 (2) The Attorney-General must approve an application under
13 subsection (1).

14 **14 Reimbursement of expenses of witnesses**

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

20 **15 Records of the Commission**

21 The Parliament is entitled to the possession of records kept by the
22 Commission that are no longer required for the purposes of the
23 Commission, and all such records are deemed to be records of the
24 Parliament for the purposes of the *Archives Act 1983*.

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2 **Part 4—Functions and reports of the Commission**

3 **16 Functions**

- 4 (1) The Commission must, in accordance with this section, inquire and
5 advise the Parliament when a matter relating to a federal justice has
6 been referred to it by a House of the Parliament, whether, in its
7 opinion, facts amounting to proved misbehaviour or incapacity
8 exist, as would warrant the removal of the justice from office by
9 means of the provisions of section 72 of the Constitution.
- 10 (2) In carrying out its inquiry, the Commission shall consider and give
11 advice about only specific allegations made in precise terms
12 contained in the matter referred by a House.

13 **17 Decision of questions**

- 14 (1) Questions arising before the Commission are to be decided in
15 accordance with the opinion of a majority of the members.
- 16 (2) Where the members are not unanimous in their opinion on a
17 question arising before the Commission, the particulars of the
18 opinions of each of the members on that question are to be
19 recorded.

20 **18 Reports**

- 21 (1) When a matter has been referred to the Commission, and the
22 Commission has inquired into the matter, the Commission must
23 report its findings on the matter to the Parliament as soon as
24 practical. The report is to be delivered to the President of the
25 Senate and to the Speaker of the House of Representatives.
- 26 (2) If the Commission concludes a report following the dissolution of
27 one or both Houses, it is to deliver the report to the President and
28 the Speaker as soon as practicable after the first sitting day of the
29 House of Representatives of the following Parliament.

- 1 (3) The report is to be comprehensive and must annexe a full transcript
2 of the Commission's proceedings. The report must state the
3 Commission's advice to the Parliament required by section 17 of
4 this Act. The opinions of all Commissioners, including any
5 dissenting opinion, must be included in the report.
- 6 (4) Subject to subsection (6), the President of the Senate and the
7 Speaker of the House of Representatives must, as soon as
8 practicable after they receive the report of the Commission and
9 transcript of proceedings, cause copies of the report and transcript
10 to be laid before the Senate and the House of Representatives.
- 11 (5) If the Commission is of the opinion that, if any of its findings or
12 conclusions, or any of the evidence given before the Commission,
13 were to be laid before the Houses of the Parliament:
- 14 (a) a person who has been or may be charged with an offence
15 may not receive a fair trial for the offence; or
- 16 (b) the conduct of an investigation of a breach or possible breach
17 of the law may be prejudiced; or
- 18 (c) the existence or identity of a confidential source of
19 information in relation to the enforcement or administration
20 of the law may be disclosed or a person may be able to
21 ascertain the existence or identity of that source; or
- 22 (d) there may be prejudice to the safety of a person;
23 the Commission may include those findings or conclusions, or that
24 evidence, in a separate report and deliver the report to the President
25 of the Senate and the Speaker of the House of Representatives,
26 together with a statement of its opinion.
- 27 (6) Where a separate report is prepared in accordance with
28 subsection (5), the President of the Senate and the Speaker of the
29 House of Representatives must cause that separate report to be
30 made available for inspection by members of the Parliament and by
31 the justice who is the subject of the inquiry by the Commission, but
32 the matters referred to in the report must not be otherwise
33 published except as may be specifically authorised by the
34 resolution of a House.

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Part 5—Powers and proceedings of the Commission

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19 Conduct of proceedings

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(1) The Commission must, unless it thinks the circumstances require otherwise, conduct the whole of its inquiry in public, but the Commission may, when in its opinion the interests of justice require, direct that part or all of its proceedings be conducted in private.

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

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20 Power to summon witnesses and take evidence

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(1) A member of the Commission may summon a person to appear before the Commission at a hearing to do either or both of the following:

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(a) to give evidence;

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(b) to produce the documents, or other things, specified in the summons.

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

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

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(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 presiding member; and

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(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 appearing at the hearing.

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- 1 (4) A member of the Commission may, by written notice served (as
2 prescribed) on a person, require the person to produce a document
3 or thing specified in the notice to a person, and at the time and
4 place, specified in the notice.
- 5 (5) In this section, a reference to a person who is an authorised person
6 in relation to the Commission is a reference to a person authorised
7 in writing, or a person included in a class of persons authorised in
8 writing, for the purposes of this section by the presiding member.
- 9 (6) No person, including a justice of a federal court the subject of
10 inquiry under section 17, has the right to give evidence to the
11 Commission by way of an unsworn statement.

12 **21 Search warrants**

- 13 (1) Where:
- 14 (a) the Commission has reasonable grounds for suspecting that
15 there may be, at that time or within the next following 24
16 hours, on any land or on or in any premises, vessel, aircraft
17 or vehicle, a thing or things of a particular kind connected
18 with the matter into which the Commission is inquiring (in
19 this section referred to as *things of the relevant kind*); and
20 (b) the Commission believes on reasonable grounds that, if a
21 summons were not issued for the production of the thing or
22 things, the thing or things might be concealed, lost, mutilated
23 or destroyed;
- 24 the Commission may issue a search warrant.
- 25 (2) A reference in subsection (1) to the Commission includes a
26 reference to a member authorised by the Commission to act under
27 that subsection.
- 28 (3) A search warrant issued under subsection (1) authorises a member
29 of the Australian Federal Police or of the Police Force of a State or
30 of the Northern Territory or any other person, named in the
31 warrant, with such assistance as that member or person thinks
32 necessary, and if necessary, by force:
- 33 (a) to enter on the land or on or into the premises, vessel, aircraft
34 or vehicle; and

- 1 (b) to search the land, premises, vessel, aircraft or vehicle for
2 things of the relevant kind; and
3 (c) to seize any things of the relevant kind found on the land or
4 on or in the premises, vessel, aircraft or vehicle and deliver
5 things seized to the Commission.
- 6 (4) A warrant issued under this section must include:
7 (a) a statement of the purpose for which the warrant is issued,
8 which must include a reference to the matter into which the
9 Commission is inquiring and with which the things of the
10 relevant kind are connected; and
11 (b) whether entry is authorised to be made at any time of the day
12 or night or during specified hours of the day or night; and
13 (c) a description of the kind of things authorised to be seized;
14 and
15 (d) a date, not being later than one month after the date of issue
16 of the warrant, on which the warrant ceases to have effect.
- 17 (5) If, in the course of searching, in accordance with a warrant issued
18 under this section, for things of a particular kind connected with a
19 matter into which the Commission is inquiring, the person
20 executing the warrant finds:
21 (a) any thing of another kind that he or she believes on
22 reasonable grounds to be connected with that matter; or
23 (b) any thing that he or she believes on reasonable grounds to be
24 connected with another matter into which the relevant
25 Commission is inquiring;
26 and he or she believes on reasonable grounds that it is necessary to
27 seize that thing in order to prevent its concealment, loss, mutilation
28 or destruction, the warrant is deemed to authorise the person to
29 seize that thing.
- 30 (6) In this section, *thing* includes a document.

31 **22 Previous inquiries**

32 In considering any allegation, the Commission shall have regard to
33 the outcome of any previous official inquiry into that allegation,
34 and consider it to the extent that the Commission believes it

1 necessary or desirable to do so, and is not precluded by any other
2 law or by any privileges of either House of the Parliament from
3 obtaining access to the records of evidence given at, or findings
4 made as a result of, such an inquiry.

5 **23 Hearings**

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

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

9 (3) The presiding member shall preside at a hearing before the
10 Commission.

11 (4) At a hearing before the Commission, a justice of a federal court
12 who is the subject of inquiry by the Commission is entitled to
13 appear, and to be represented by a legal practitioner, at any time
14 during the hearing.

15 (5) Subject to subsection (4), in relation to such of the proceedings
16 before the Commission as may be conducted in private, the
17 Commission may give directions as to the persons who may be
18 present and whether such persons may be represented by a legal
19 practitioner.

20 (6) Nothing in this Act prevents the presence, when evidence is being
21 taken at a hearing, of a person representing the person giving
22 evidence or representing a person who, by reason of a direction
23 given by the Commission under subsection (5), is entitled to be
24 present.

25 (7) Where the Commission conducts some part of a hearing in private,
26 a person (other than a member, counsel assisting the Commission
27 or a member of the staff of the Commission approved by the
28 Commission) shall not be present at that hearing unless the person
29 is entitled to be present by virtue of a direction under
30 subsection (5) or by virtue of subsection (6).

31 (8) At a hearing before the Commission:

32 (a) counsel assisting the Commission; or

- 1 (b) any person authorised by the Commission or entitled to
2 appear before it at the hearing; or
3 (c) any legal practitioner authorised by the Commission to
4 appear before it for the purpose of representing a person at
5 the hearing pursuant to subsection (4);
6 may, so far as the Commission thinks appropriate, examine or
7 cross-examine any witness on any matter that the Commission
8 considers relevant to its inquiry.
- 9 (9) Subject to this Act, the procedure at a hearing before the
10 Commission is such as the Commission directs.
- 11 (10) The Commission may give directions that:
12 (a) evidence given before the Commission; or
13 (b) the contents of a document, or a description of a thing,
14 produced to the Commission or seized pursuant to a warrant
15 issued under section 21; or
16 (c) any information that might enable a person who has given
17 evidence before the Commission to be identified; or
18 (d) the fact that any person has given or may be about to give
19 evidence at a hearing;
20 must not be published, and the Commission must give such a
21 direction if not to do so might prejudice the safety of a person or
22 prejudice the fair trial of a person who has been or may be charged
23 with an offence.

24 **24 Arrest of witness failing to appear**

- 25 (1) If any person served with a summons to attend the Commission as
26 a witness fails to attend the Commission in answer to the
27 summons, the presiding member may, on proof by statutory
28 declaration of the service of the summons, issue a warrant for the
29 person's apprehension.
- 30 (2) The warrant authorises the apprehension of the witness and the
31 witness being brought before the Commission, and the witness's
32 detention in custody for that purpose until he or she is released by
33 order of the presiding member.

- 1 (3) The warrant may be executed by any member of the Australian
2 Federal Police or of the Police Force of a State or of the Northern
3 Territory, or by any person to whom it is addressed, and the person
4 executing it has power to break and enter any place, building or
5 vessel for the purpose of executing it.
- 6 (4) The apprehension of any witness under this section does not relieve
7 him or her from any liability incurred by the witness by reason of
8 his or her non-compliance with the summons.

9 **25 Powers of Commission in relation to documents and other things**

- 10 (1) The Commission, a member or a person who is an authorised
11 person in relation to the Commission may:
- 12 (a) inspect any documents or other things produced before, or
13 delivered to, the Commission; and
- 14 (b) retain the documents or other things for so long as is
15 reasonably necessary for the purposes of the Commission's
16 inquiry; and
- 17 (c) in the case of documents produced before, or delivered to, the
18 Commission, make copies of matter contained in the
19 documents, being matter that is relevant to the Commission's
20 inquiry.
- 21 (2) Where the retention of a document or other thing by the
22 Commission ceases to be reasonably necessary for the purposes of
23 the Commission's inquiry, the Commission must, if a person who
24 appears to the Commission to be entitled to the document or other
25 thing so requests, cause the document or other thing to be delivered
26 to that person.
- 27 (3) In subsection (1), a reference to a person who is an authorised
28 person in relation to the Commission is a reference to a person
29 authorised in writing, for the purposes of that subsection, by the
30 presiding member.

31 **26 Standard of proof, admissibility of evidence and natural justice**

- 32 (1) Except as otherwise provided by this Act, in any proceeding the
33 Commission is to find that the facts necessary for deciding any

1 question arising under this Act have been proved if it is satisfied
2 that they have been proved on the balance of probabilities.

- 3 (2) In determining whether it is so satisfied, the matters that the
4 Commission must take into account include:
5 (a) the importance of the evidence in the proceeding; and
6 (b) the gravity of the matters alleged in relation to the question.

7 Note: This provision means that, while the criminal standard of proof shall
8 not apply, the more serious the allegation being considered is, the
9 higher must be the standard of proof.

- 10 (3) The Commission is not bound by rules of evidence and may be
11 informed on any matter in issue in any manner that it considers
12 appropriate.
13 (4) The Commission must act in accordance with the rules of natural
14 justice.

15 **27 Statements made by witness not admissible in evidence against** 16 **the witness**

- 17 (1) The following are not admissible in evidence against a natural
18 person in any civil or criminal proceedings in any court of the
19 Commonwealth, of a State or of a Territory:
20 (a) a statement or disclosure made by the person in the course of
21 giving evidence before the Commission;
22 (b) the production of a document or other thing by the person
23 pursuant to a summons, requirement or notice under
24 section 21.
25 (2) Subsection (1) does not apply to the admissibility of evidence in
26 proceedings for an offence against this Act.

27 **28 Protection of members, etc.**

- 28 (1) A member has, in the performance of the functions or the exercise
29 of the powers of a member, the same protection and immunity that
30 a Member of Parliament has in relation to the performance of the
31 functions or the exercise of the powers of a committee of the
32 Parliament.

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- (2) Subject to this Act, a person summoned to attend or appear before the Commission as a witness has the same protection as a witness before a committee of the Parliament.
- (3) A legal practitioner assisting the Commission or representing a person at a hearing before the Commission has the same protection and immunity as a legal practitioner has when performing the same function in relation to a committee of the Parliament.
- (4) Proceedings of the Commission must be considered to be proceedings in Parliament, and evidence before the Commission considered to be evidence before a committee of the Parliament, for the purposes of section 16 of the *Parliamentary Privileges Act 1987*.

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Part 6—Offences

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29 Application of the *Criminal Code*

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

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

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30 Unauthorised presence at hearing or publication of evidence

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A person who:

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(a) is present at a hearing in contravention of subsection 23(7);

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or

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(b) makes a publication in contravention of subsection 23(10) or subsection 18(6);

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is guilty of an offence punishable, on summary conviction, by a fine not exceeding \$100,000 or imprisonment for a period not exceeding 6 months.

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31 Failure of witnesses to attend or produce documents

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

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(a) fail to attend as required by the summons; or

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(b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Commission.

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Penalty: \$100,000 or imprisonment for 6 months.

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(2) Subsection (1) is an offence of strict liability.

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

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

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(4) A person appearing as a witness at a hearing before the Commission must not fail to produce a document or other thing

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1 that the person was required to produce by a summons under this
2 Act served on him or her as prescribed or that the person was
3 required to produce by the presiding member.

4 Penalty: \$100,000 or imprisonment for 6 months.

5 (5) Subsection (4) is an offence of strict liability.

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

7 (6) Subsection (4) does not apply if the person has a reasonable
8 excuse.

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

13 Note: A defendant bears an evidential burden in relation to the matters in
14 subsections (3), (6) and (7) (see subsection 13.3(3) of the *Criminal*
15 *Code*).

16 (8) A person served with a notice under subsection 20(4) must not
17 refuse or fail to produce a document or other thing that the person
18 was required to produce in accordance with the notice.

19 Penalty: \$100,000 or imprisonment for 6 months.

20 (9) Subsection (8) does not apply if the person has a reasonable
21 excuse.

22 (10) It is a defence to a prosecution for an offence against subsection (8)
23 constituted by a refusal or failure to produce a document or other
24 thing if the document or other thing was not relevant to the matters
25 into which the Commission was inquiring.

26 Note: A defendant bears an evidential burden in relation to the matters in
27 subsections (9) and (10) (see subsection 13.3(3) of the *Criminal*
28 *Code*).

29 **32 Penalty for refusing to be sworn or to give evidence**

30 (1) If any person appearing as a witness before the Commission
31 refuses to be sworn or to make an affirmation or to answer any

1 question relevant to the inquiry put to him or her by any member,
2 the person is guilty of an offence.

3 (2) The penalty for an offence under subsection (1) is a fine not
4 exceeding \$100,000 or imprisonment for a period not exceeding
5 6 months.

6 (3) Subsection (1) is an offence of strict liability.

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

8 **33 Acts or omissions on different days to constitute separate offences**

9 Where any person has on any day done or omitted to do something,
10 and the person's act or omission amounts to an offence against
11 section 31, 32 or 33, and does or omits to do the same thing at any
12 meeting of the Commission held on some other day, each such act
13 or omission is a separate offence.

14 **34 Self-incrimination**

15 (1) It is not a reasonable excuse for the purposes of section 32 for a
16 person to refuse or fail to produce a document or other thing that
17 the person was required to produce at a hearing before the
18 Commission that the production of the document or other thing
19 might tend to incriminate the person or make the person liable to a
20 penalty.

21 (2) A person is not entitled to refuse or fail to answer a question that
22 the person is required to answer by the presiding member on the
23 ground that the answer to the question might tend to incriminate
24 the person or make the person liable to a penalty.

25 **35 Excuse of other legislation**

26 (1) It is not a reasonable excuse for the purposes of section 32 for a
27 person to refuse or fail to produce a document or other thing that
28 the person was required to produce at a hearing before the
29 Commission that the answering of the question or the production of
30 the document or thing is prohibited by or under any Act.

- 1 (2) A person is not entitled to refuse or fail to answer a question that
2 the person is required to answer by the presiding member on the
3 ground that the answer to the question is prohibited by or under
4 any Act.
- 5 (3) The answering of a question or the production of a document or
6 thing, when required by the Commission, does not constitute a
7 breach of a provision made by or under any Act prohibiting the
8 disclosure of information of a kind contained in that answer,
9 document or thing.

10 **36 False or misleading evidence**

- 11 (1) A person must not, at a hearing before the Commission, give
12 evidence that is, to the knowledge of the person, false or
13 misleading with respect to any matter, being a matter that is
14 material to the inquiry being made by the Commission.
- 15 (2) A contravention of subsection (1) is an indictable offence and,
16 subject to this section, is punishable by a fine not exceeding
17 \$500,000 or by imprisonment for a period not exceeding 5 years.
- 18 (3) Notwithstanding that an offence against subsection (1) is an
19 indictable offence, a court of summary jurisdiction may hear and
20 determine proceedings in respect of such an offence if the court is
21 satisfied that it is proper to do so and the defendant and prosecutor
22 consent.
- 23 (4) Where, in accordance with subsection (3), a court of summary
24 jurisdiction convicts a person of an offence against subsection (1),
25 the penalty that the court may impose is a fine not exceeding
26 \$200,000 or imprisonment for a period not exceeding 1 year.

27 **37 Destroying documents or other things**

- 28 (1) A person commits an offence if:
29 (a) the person acts or omits to act; and
30 (b) the act or omission results in a document or other thing
31 being:
32 (i) concealed, mutilated or destroyed; or

- 1 (ii) rendered incapable of identification; or
2 (iii) in the case of a document, rendered illegible or
3 indecipherable; and
4 (c) the person knows, or is reckless as to whether, the document
5 or thing is one that:
6 (i) is or may be required in evidence before the
7 Commission; or
8 (ii) a person has been, or is likely to be, required to produce
9 pursuant to a summons, requirement or notice under
10 section 20.
- 11 (2) An offence under subsection (1) is an indictable offence and,
12 subject to this section, is punishable on conviction by
13 imprisonment for a period not exceeding 2 years or by a fine not
14 exceeding \$200,000.
- 15 (3) Notwithstanding that an offence under subsection (1) is an
16 indictable offence, a court of summary jurisdiction may hear and
17 determine proceedings in respect of such an offence if the court is
18 satisfied that it is proper to do so and the defendant and the
19 prosecutor consent.
- 20 (4) Where, in accordance with subsection (3), a court of summary
21 jurisdiction convicts a person of an offence under subsection (1),
22 the penalty that the court may impose is a fine not exceeding
23 \$100,000 or imprisonment for a period not exceeding 12 months.

24 **38 Injury to witness**

- 25 (1) Any person who uses, causes or inflicts, any violence, punishment,
26 damage, loss or disadvantage to any person for or on account of:
27 (a) the person having appeared as a witness before the
28 Commission; or
29 (b) any evidence given by him or her before the Commission; or
30 (c) the person having produced a document or thing pursuant to
31 a summons, requirement or notice under section 20;
32 is guilty of an indictable offence.
33 Penalty: \$100,000, or imprisonment for 1 year.

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

4 **39 Dismissal by employers of witness**

5 (1) Any employer who dismisses any employee from his or her
6 employment, or prejudices any employee in his or her
7 employment, for or on account of the employee having:
8 (a) appeared as a witness before the Commission; or
9 (b) given evidence before the Commission; or
10 (c) produced a document or thing pursuant to a summons,
11 requirement or notice under section 20;
12 is guilty of an indictable offence.

13 Penalty: \$100,000, or imprisonment for 1 year.

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

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

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

22 **40 Preventing witnesses from attending or producing document**

23 (1) Any person who intentionally prevents any person who has been
24 summoned to attend as a witness before the Commission from
25 attending as a witness or from producing anything in evidence
26 pursuant to the summons to attend is guilty of an indictable
27 offence.

28 Penalty: Imprisonment for 1 year.

29 (2) Any person who intentionally prevents any person who is required
30 to produce a document or other thing pursuant to a notice under
31 subsection 20(4) from producing that document or thing in
32 accordance with the notice is guilty of an indictable offence.

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Penalty: Imprisonment for 1 year.

41 Bribery of witness

A person who:

- (a) gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, on, or for, any person, on any agreement or understanding that any person called or to be called as a witness before the Commission shall give false testimony or withhold true testimony; or
- (b) attempts by any means to induce a person called or to be called as a witness before the Commission to give false testimony, or to withhold true testimony; or
- (c) asks, receives or obtains, or agrees to receive or obtain any property or benefit of any kind for himself, or any other person, on any agreement or understanding that any person will as a witness before the Commission give false testimony or withhold true testimony;

is guilty of an indictable offence.

Penalty: Imprisonment for 5 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, on, or for, any person, on 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 20 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 20 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 any other person, on any agreement or understanding that any person who is required to produce a document or other thing

1 pursuant to a summons, requirement or notice under
2 section 20 will not comply with the requirement;
3 is guilty of an indictable offence.

4 Penalty: Imprisonment for 5 years.

5 **42 Fraud on witness**

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

11 Penalty: Imprisonment for 2 years.

12 (2) Any person who practises any fraud or deceit, or intentionally
13 makes or exhibits any statement, representation, token or writing,
14 knowing it to be false, to any person with intent that any person
15 who is required to produce a document or other thing pursuant to a
16 summons, requirement or notice under section 20 will not comply
17 with the requirement, is guilty of an indictable offence.

18 Penalty: Imprisonment for 2 years.

19 **43 Commission may communicate information**

20 (1) Where, in the course of inquiring into a matter, the Commission
21 obtains information that relates, or that may relate, to a
22 contravention of a law, or evidence of a contravention of a law, of
23 the Commonwealth, of a State or of a Territory, the Commission
24 may, if in the opinion of the Commission it is appropriate to do so,
25 communicate the information or furnish the evidence, as the case
26 may be, to:

27 (a) the Attorney-General of the Commonwealth, of a State, of
28 the Australian Capital Territory or of the Northern Territory;
29 or

30 (b) the Director of Public Prosecutions; or

31 (c) a Special Prosecutor appointed under the *Special Prosecutors*
32 *Act 1982*; or

- 1 (d) the Commissioner of the Australian Federal Police or of the
2 Police Force of a State or of the Northern Territory; or
3 (e) the authority or person responsible for the administration or
4 enforcement of that law.
- 5 (2) A reference in subsection (1) to a contravention of a law is a
6 reference to a contravention for which a person may be liable to:
7 (a) a criminal penalty; or
8 (b) a civil or administrative penalty.
- 9 (3) Where, in the course of inquiring into a matter, the Commission:
10 (a) obtains information; or
11 (b) takes evidence; or
12 (c) receives a document or thing;
13 that, in the opinion of the Commission, relates or may relate to a
14 matter into which a Royal Commission is required or authorised to
15 inquire, the Commission may, if in its opinion it is appropriate to
16 do so, communicate the information or furnish the evidence,
17 document or thing, as the case may be, to the Royal Commission.
- 18 (4) Where, in the course of inquiry into a matter, the Commission:
19 (a) obtains information; or
20 (b) takes evidence; or
21 (c) receives a document or thing;
22 that, in the opinion of the Commission, relates or may relate to the
23 performance of the functions of the Australian Crime Commission,
24 the Commission may, if in its opinion it is appropriate to do so,
25 communicate the information or furnish the evidence, document or
26 thing, as the case may be, to the Chief Executive Officer of the
27 Australian Crime Commission.
- 28 (5) A reference in subsection (3) or (4) to the furnishing of a document
29 or thing includes a reference to the furnishing of the contents of the
30 document or a description of the thing.

31 **44 Contempt of Commission**

32 Any person who intentionally insults or disturbs the Commission,
33 or interrupts the proceedings of the Commission, or uses any

1 insulting language towards the Commission, or by writing or
2 speech uses words false and defamatory of the Commission, or is
3 in any manner guilty of any intentional contempt of the
4 Commission, is guilty of an offence.

5 Penalty: \$10,000 or imprisonment for 3 months.

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Part 7—Miscellaneous

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45 Regulations

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

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(a) required or permitted by this Act to be prescribed; or

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(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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