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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Judicial Misbehaviour and Incapacity
(Parliamentary Commissions) Bill 2012**

No. , 2012

(Attorney-General)

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

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1 **A Bill for an Act to provide for parliamentary**
2 **commissions to investigate allegations of judicial**
3 **misbehaviour or incapacity, and for related**
4 **purposes**

5 The Parliament of Australia enacts:

6 **Part 1—Preliminary**
7

8 **1 Short title**

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

Section 2

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.
6

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.	
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.	

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

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

13 **3 Object of this Act**

14 (1) The object of this Act is to provide for a commission to be
15 established by the Houses of the Parliament to investigate, and
16 report to them on, alleged misbehaviour or incapacity of a
17 Commonwealth judicial officer, so they can be well-informed to
18 consider whether to pray for his or her removal under paragraph
19 72(ii) of the Constitution.

20 (2) To avoid doubt, subsection (1) does not imply that:

- 1 (a) an Act is needed for such a commission to be established; or
2 (b) such a commission is the only means by which the Houses of
3 the Parliament can be well-informed to consider whether to
4 pray for the removal of a Commonwealth judicial officer
5 under paragraph 72(ii) of the Constitution.

6 **4 Guide to this Act**

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

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

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

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

28 **5 Extension to external Territories**

29 This Act extends to every external Territory.

Section 6

1 **6 This Act binds the Crown**

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

5 **7 Definitions**

6 In this Act:

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

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

9 Territories.

10 *Australian law* means a law (whether written or unwritten) of the

11 Commonwealth, a State or a Territory.

12 *Commission* means a Commission established by force of

13 section 9.

14 *Commonwealth judicial officer* means:

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

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

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

21 *damage*, in relation to data, includes damage by erasure of data or

22 addition of other data.

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

24 *Federal Magistrate* means a Federal Magistrate of the Federal

25 Magistrates Court.

26 *incapacity* has (other than in section 73) the same meaning as in

27 section 72 of the Constitution.

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

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

2 **lawyer** means a barrister, a solicitor, a barrister and solicitor, or a
3 legal practitioner, of the High Court or of the Supreme Court of a
4 State or Territory.

5 **member** means a member of a Commission, and includes a
6 presiding member.

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

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

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

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

12 **parliamentary presiding officer** means:

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

15 **premises** includes the following:

- 16 (a) a structure, building, vessel, aircraft or vehicle;
17 (b) a place (whether or not enclosed or built on);
18 (c) a part of a thing referred to in paragraph (a) or (b).

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

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

23 **search warrant** means a search warrant issued under subsection
24 28(1).
25

Section 8

1 **Part 2—Establishment, functions and membership**
2 **etc. of Commissions**
3

4 **8 Guide to this Part**

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

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

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

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

21 **9 Establishment**

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

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

29 Note 2: A Commission might be established to investigate more than one
30 allegation of misbehaviour or incapacity of a specified

1 Commonwealth judicial officer (see paragraph 23(b) of the *Acts*
2 *Interpretation Act 1901*).

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

7 **10 Functions**

8 The functions of a Commission are:

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

14 **11 Powers**

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

18 **12 Commission has privileges and immunities of the Crown**

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

21 **13 Membership**

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

Section 14

1 **14 Appointment of members**

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

14 **15 Vacancy in membership**

- 15 If at any time a Commission is not properly constituted in
16 accordance with the requirements of section 13 because one or
17 more members have ceased to be a member then, despite
18 section 13:
19 (a) the Commission continues in existence (even if there are no
20 remaining members); and
21 (b) the Commission consists of the remaining members (if any);
22 and
23 (c) the provisions of this Act (other than this section) have effect,
24 at that time, as if the Commission were properly constituted
25 in accordance with the requirements of section 13; and
26 (d) the Houses of the Parliament must, as soon as practicable
27 after that time, each pass a resolution to appoint replacement
28 members, in accordance with the requirements of sections 13
29 and 14.

1 **16 When a Commission ceases to exist**

- 2 (1) The parliamentary presiding officers may jointly determine, in
3 writing, that a Commission is to cease to exist if the officers are
4 satisfied that:
5 (a) the Commission's functions have been performed; or
6 (b) the person in relation to whom an allegation of misbehaviour
7 or incapacity is being investigated by the Commission has
8 ceased to be a Commonwealth judicial officer (due to
9 retirement, resignation, death or any other reason).
- 10 (2) The Commission ceases to exist at the time specified in the
11 determination.
- 12 (3) A determination made under subsection (1) is not a legislative
13 instrument.
14

1 **Part 3—Investigations of Commissions**

2 **Division 1—General**

3 **17 Guide to this Division**

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

6 In particular, this Division provides the following:

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

13 **18 Decision of questions**

14 (1) A question for a Commission is decided in accordance with the
15 opinion of a majority of the members.

16 (2) If the members are not unanimous, each member's opinion on the
17 question must be recorded.

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

20 **19 How a Commission is informed**

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

23 *Previous official inquiries and investigations*

24 (2) In considering an allegation, a Commission must consider the
25 outcome of any previous official inquiry or official investigation

1 into the allegation so far as the Commission thinks it necessary or
2 desirable to do so.

3 (3) The Commission is not (subject to subsection (4)) precluded by:

4 (a) any other Australian law; or

5 (b) any privileges of either House of the Parliament;

6 from obtaining access to the records of evidence given at, or
7 findings made as a result of, such an inquiry or investigation.

8 (4) Subsection (3) is not intended to limit or otherwise affect the
9 operation of section 16 of the *Parliamentary Privileges Act 1987*.

10 *Official inquiries and investigations*

11 (5) Without limiting the meaning of ***official inquiry***, that expression
12 includes:

13 (a) a Royal Commission within the meaning of the *Royal*
14 *Commissions Act 1902*; and

15 (b) a Royal Commission of a State or a Territory; and

16 (c) a commission of inquiry of the Commonwealth, a State or a
17 Territory.

18 (6) Without limiting the meaning of ***official investigation***, that
19 expression includes:

20 (a) an investigation into a complaint about a Judge within the
21 meaning of the *Federal Court of Australia Act 1976*; and

22 (b) an investigation into a complaint about a Judge within the
23 meaning of the *Family Law Act 1975*; and

24 (c) an investigation into a complaint about a Federal Magistrate
25 within the meaning of the *Federal Magistrates Act 1999*; and

26 (d) the consideration of a matter by the Director of Public
27 Prosecutions of the Commonwealth, a State or a Territory;
28 and

29 (e) an investigation by the Australian Federal Police.

30 **20 Natural justice**

31 (1) A Commission must act in accordance with the rules of natural
32 justice.

Section 20

- 1 (2) Without limiting subsection (1), if an allegation of misbehaviour or
2 incapacity is being investigated by a Commission in relation to a
3 Commonwealth judicial officer:
4 (a) the Commission must:
5 (i) give the Commonwealth judicial officer particulars of
6 the allegation being investigated as soon as practicable;
7 and
8 (ii) offer the Commonwealth judicial officer a reasonable
9 opportunity to make an oral or written statement to the
10 Commission; and
11 (b) the Commission must offer the Commonwealth judicial
12 officer reasonable access to any documents or other things
13 (including documents, or other things, seized under a search
14 warrant) received by, produced before, delivered to, or
15 otherwise acquired by, the Commission for the purposes of
16 the investigation; and
17 (c) if the Commonwealth judicial officer does not attend, or
18 appear at, a hearing of the Commission, or otherwise give
19 evidence to the Commission—the Commission must not
20 draw any inferences adverse to the Commonwealth judicial
21 officer from that fact; and
22 (d) before the Commission gives a report under subsection 48(1)
23 or (6), the Commission must:
24 (i) give the Commonwealth judicial officer a draft of the
25 report; and
26 (ii) give the Commonwealth judicial officer a reasonable
27 opportunity to give comments to the Commission on the
28 draft report; and
29 (iii) consider any timely comments that the Commonwealth
30 judicial officer makes to the Commission on the draft
31 report.
32

1 **Division 2—Investigations**

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

3 **21 Guide to this Division**

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

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

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

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

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

1 **Subdivision B—Speed of investigations and openness of**
2 **hearings**

3 **22 Speed of investigations**

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

6 **23 Openness of hearings**

7 (1) A Commission must hold its hearings in public, but may direct that
8 part or all of its hearings be held in private if it is satisfied that it is
9 desirable to do so:

- 10 (a) because it believes the interests of justice so require; or
11 (b) because it believes the confidential nature of any evidence or
12 matter so requires; or
13 (c) for any other reason.

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

15 (2) In considering whether part or all of a hearing should be held in
16 private, the Commission must:

- 17 (a) take as the basis of its consideration the principle that it is
18 desirable that hearings should be held in public; but
19 (b) give due regard to any reasons given to the Commission why
20 the hearing should be held in private.

21 (3) Without limiting paragraph (2)(b), the Commission must have
22 regard to the effect of holding the hearing in public on the
23 following:

- 24 (a) the ability of the Commonwealth judicial officer to whom the
25 investigation relates to perform his or her duties as such an
26 officer;
27 (b) the independence of the judiciary;
28 (c) the confidence the public has in:
29 (i) the judiciary; and
30 (ii) the Commonwealth judicial officer.

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

2 **24 Hearings**

3 *Power to hold a hearing*

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

6 *Procedure at the hearing*

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

10 *Attendance by relevant Commonwealth judicial officer*

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

16 *Questioning of witness*

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

Section 25

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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.

Section 26

1 Note: Section 26 sets out additional requirements for notices.

2 *Evidence on oath or affirmation*

3 (3) A Commission may take evidence at a hearing on oath or
4 affirmation. For that purpose:

5 (a) a member may require a person appearing as a witness to
6 give evidence at the hearing to take an oath or make an
7 affirmation in a form approved in writing by the presiding
8 member; and

9 (b) a member, or a person authorised in writing by the presiding
10 member, may administer an oath or affirmation to a person
11 appearing as a witness at the hearing.

12 (4) A person is not entitled to give evidence to a Commission by a
13 statement that is not verified by oath or affirmation.

14 *Exemption of Commonwealth judicial officer etc.*

15 (5) Subsections (1), (3) and (4) do not apply to a person who is:

16 (a) a Commonwealth judicial officer; or

17 (b) a former Commonwealth judicial officer.

18 (6) To avoid doubt, despite subsection (5):

19 (a) a person who is a Commonwealth judicial officer or a former
20 Commonwealth judicial officer may elect to give evidence
21 after taking an oath or making an affirmation in a form
22 approved in writing by the presiding member; and

23 (b) a member, or a person authorised in writing by the presiding
24 member, may administer such an oath or affirmation to the
25 person.

26 **26 Additional requirements for notices**

27 (1) Before giving a notice under section 25, the member must be
28 satisfied that it is reasonable in all the circumstances to do so.

29 (2) A time specified in a notice given under section 25 must be at least
30 14 days after the day on which the person receives the notice.

Section 27

- 1 (3) A notice given under paragraph 25(1)(a) (requiring a person to
2 appear) must:
3 (a) state that a person giving evidence may have a lawyer
4 present; and
5 (b) set out the effect of the following provisions:
6 (i) section 27 (arrest of witness failing to appear);
7 (ii) section 51 (offence for failure of witness to appear);
8 (iii) section 52 (offence for failure of witness to produce
9 documents or other thing).
- 10 (4) A notice given under subparagraph 25(1)(a)(i) (requiring a person
11 to give evidence) must set out, so far as is reasonably practicable,
12 the general nature of the matters in relation to which the person is
13 to be questioned, unless the member giving the notice is satisfied
14 that, in the particular circumstances of the hearing to which the
15 notice relates, it would prejudice the effectiveness of the hearing to
16 do so.
- 17 Note: A person who is a Commonwealth judicial officer or a former
18 Commonwealth judicial officer cannot be given a notice under
19 section 25 (see subsection 25(5)).

20 **27 Arrest of witness failing to appear**

- 21 (1) If:
22 (a) a person is given a notice under section 25 requiring the
23 person to appear at a hearing of a Commission as a witness;
24 and
25 (b) the person fails to appear at the hearing in answer to the
26 notice;
27 the presiding member may, on proof by affidavit of the receipt of
28 the notice by the person, issue a warrant under this section for the
29 person's apprehension.
- 30 Note: A person who is a Commonwealth judicial officer or a former
31 Commonwealth judicial officer cannot be given a notice under
32 section 25 (see subsection 25(5)).
- 33 (2) The warrant is to authorise:
34 (a) the apprehension of the witness; and
35 (b) the witness being brought before the Commission; and
-

- 1 (c) the detention of the witness in custody for that purpose until
2 he or she is released by order of the presiding member.
- 3 (3) The warrant may be executed by a constable.
- 4 (4) If the constable executing the warrant believes on reasonable
5 grounds that the witness is on any premises, the constable may
6 (subject to subsection (5)) enter the premises, using such force as is
7 necessary and reasonable in the circumstances, at any time of the
8 day or night, for the purposes of executing the warrant.
- 9 (5) The constable executing the warrant must not enter a dwelling
10 house under subsection (4) at any time between 9 pm on a day and
11 6 am on the following day unless the constable believes on
12 reasonable grounds that it would not be practicable to apprehend
13 the witness, either at the dwelling house or elsewhere, at another
14 time.
- 15 (6) In this Act:
- 16 *conveyance* includes a vessel, aircraft or vehicle.
- 17 *dwelling house* includes a conveyance, and a room in a hotel,
18 motel, boarding house or club, in which people ordinarily retire for
19 the night.

20 **28 Search warrants**

21 *Power to issue search warrant*

- 22 (1) A Commission, or a member authorised in writing by a
23 Commission, may issue a search warrant if:
- 24 (a) the Commission or member has reasonable grounds for
25 suspecting that there may be, at that time or within the next
26 24 hours, on or in any premises, one or more documents, or
27 other things, of a particular kind (*documents or other things*
28 *of the relevant kind*) connected with the matter the
29 Commission is investigating; and
- 30 (b) the Commission or member believes on reasonable grounds
31 that, if a notice were given requiring the production of the
32 documents or other things of the relevant kind, any of the

Section 28

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

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

5 *Effect of search warrant*

6 (2) The search warrant is to authorise a constable, named in the
7 warrant, with such assistance as that constable thinks necessary and
8 if necessary by such force as is necessary and reasonable:

9 (a) to enter the premises; and

10 (b) to search the premises for documents or other things of the
11 relevant kind; and

12 (c) to seize any documents or other things of the relevant kind
13 found on or in premises and deliver them to the Commission.

14 *Content of search warrant*

15 (3) The search warrant must state:

16 (a) the purpose for which the warrant is issued, which must
17 include a reference to the matter the Commission is
18 investigating and with which the documents or other things
19 of the relevant kind are connected; and

20 (b) whether entry is authorised to be made at any time of the day
21 or night or during specified hours of the day or night; and

22 (c) a description of the kind of documents or things authorised to
23 be seized; and

24 (d) the date, not more than 7 days after the date of issue of the
25 warrant, the warrant ceases to have effect; and

26 (e) the effect of section 33 (occupier to provide facilities and
27 assistance).

28 *Extra effect of search warrant*

29 (4) The search warrant also authorises the constable executing the
30 warrant to seize a document or other thing of another kind if:

31 (a) the constable finds it in the course of searching for
32 documents or other things of the relevant kind under the
33 warrant; and

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

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

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

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

13 **29 Operating electronic equipment**

- 14 (1) A constable executing a search warrant in relation to premises
15 may:
16 (a) operate electronic equipment on the premises; and
17 (b) use a disk, tape or other storage device that:
18 (i) is on the premises; and
19 (ii) can be used with the equipment or is associated with it;
20 if the constable has reasonable grounds for suspecting that the
21 electronic equipment, disk, tape or other storage device is, or
22 contains material, connected with the matter the Commission is
23 investigating.
- 24 (2) The constable executing the search warrant may:
25 (a) seize the equipment and the disk, tape or other storage device
26 if the constable has reasonable grounds for suspecting that it
27 is, or contains material, connected with the matter the
28 Commission is investigating; and
29 (b) operate electronic equipment on the premises to put the
30 material in documentary form and remove the documents so
31 produced from the premises; and
32 (c) operate electronic equipment on the premises to transfer the
33 material to a disk, tape or other storage device that:

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- 1 (i) is brought to the premises for the exercise of the power;
2 or
3 (ii) is on the premises and the use of which for that purpose
4 has been agreed in writing by the occupier of the
5 premises;
6 and remove the disk, tape or other storage device from the
7 premises.

- 8 (3) The constable executing the search warrant may operate electronic
9 equipment as mentioned in subsection (1) or (2) only if the
10 constable believes on reasonable grounds that the operation of the
11 equipment can be carried out without damage to the equipment.

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

- 13 (4) The constable executing the search warrant may seize equipment
14 or a disk, tape or other storage device as mentioned in
15 paragraph (2)(a) only if:
16 (a) it is not practicable to put the material in documentary form
17 as mentioned in paragraph (2)(b) or to transfer the evidential
18 material as mentioned in paragraph (2)(c); or
19 (b) possession of the equipment or the disk, tape or other storage
20 device by the occupier could constitute an offence against a
21 law of the Commonwealth.

22 **30 Expert assistance to operate electronic equipment**

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

26 *Securing equipment*

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

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

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

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

12 *Period equipment may be secured*

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

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

18 *Extensions*

- 19 (5) The constable may apply to the Commission, or a member
20 authorised in writing by the Commission, for an extension of the
21 24-hour period if the constable believes on reasonable grounds that
22 the equipment needs to be secured for more than that period.
- 23 (6) Before making the application, the constable must give notice to
24 the occupier of the premises, or another person who apparently
25 represents the occupier, of the constable's intention to apply for an
26 extension. The occupier or other person is entitled to be heard in
27 relation to that application.
- 28 (7) The 24-hour period may be extended more than once.

29 **31 Securing other things**

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

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

16 *Extensions*

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

26 **32 Occupier entitled to observe execution of search warrant**

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

- 1 (2) The right to observe the execution of the search warrant ceases if
2 the occupier or other person impedes that execution.
- 3 (3) This section does not prevent the execution of the search warrant in
4 2 or more areas of the premises at the same time.

5 **33 Occupier to provide constable with facilities and assistance**

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

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

13 **34 Details of search warrant to be given to occupier, etc.**

- 14 If:
- 15 (a) a search warrant in relation to premises is being executed;
16 and
- 17 (b) either:
- 18 (i) if the premises are a vessel, aircraft or vehicle—a
19 person is present who is apparently in control of the
20 vessel, aircraft or vehicle; or
- 21 (ii) otherwise—the occupier of the premises, or a person
22 who apparently represents the occupier, is present at the
23 premises;
- 24 the constable executing the warrant must make available a copy of
25 the warrant, and identify himself or herself, to the occupier, person
26 who apparently represents the occupier, or person apparently in
27 control.

28 **35 Completing execution of a search warrant after temporary**
29 **cessation**

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

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

10 *Application for extension in emergency situation*

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

21 *Extension in emergency situation*

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

30 **36 Completing execution of search warrant stopped by court order**

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

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

4 **37 Copies of seized things to be provided**

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

24 **38 Receipts for seized documents or other things**

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

Section 39

1 **39 Return of seized documents or other things**

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

5 *Return of seized things*

6 (2) The Commission must return the document or thing to the person
7 from whom it was seized or, if that person is not the owner of the
8 document or thing, to the person who appears to the Commission
9 to be entitled to possession of it, at the earlier of the following:

- 10 (a) the earliest time it is not reasonably necessary for the
11 Commission to retain the document or thing for the
12 Commission's investigation;
13 (b) 60 days after the document or thing was seized.

14 **40 Compensation for damage to electronic equipment**

15 (1) This section applies if:

- 16 (a) as a result of electronic equipment being operated as
17 mentioned in this Division:
18 (i) damage is caused to the equipment; or
19 (ii) the data recorded on the equipment is damaged; or
20 (iii) programs associated with the use of the equipment, or
21 with the use of the data, are damaged or corrupted; and
22 (b) the damage or corruption occurs because:
23 (i) insufficient care was exercised in selecting the person
24 who was to operate the equipment; or
25 (ii) insufficient care was exercised by the person operating
26 the equipment.

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

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

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

10 **41 Powers of Commission in relation to documents or other things**

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

25 **42 Disposal of documents or other things**

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

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

5 **43 Compensation for acquisition of property**

- 6 (1) If the operation of section 42 would result in an acquisition of
7 property from a person otherwise than on just terms, the
8 Commonwealth is liable to pay a reasonable amount of
9 compensation to the person.
- 10 (2) If the Commonwealth and the person do not agree on the amount
11 of the compensation, the person may institute proceedings in the
12 Federal Court of Australia or another court of competent
13 jurisdiction for the recovery from the Commonwealth of such
14 reasonable amount of compensation as the court determines.
- 15 (3) In this Act:
- 16 *acquisition of property* has the same meaning as in paragraph
17 51(xxxi) of the Constitution.
- 18 *just terms* has the same meaning as in paragraph 51(xxxi) of the
19 Constitution.

20 **44 Commission may direct that certain information not be published**
21 **etc.**

22 *Directions not to publish*

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

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

8 *When direction ceases to apply*

- 9 (3) If:
10 (a) a record (within the meaning of the *Archives Act 1983*)
11 contains any of the things referred to in paragraphs (1)(a) to
12 (d) of this section; and
13 (b) a direction has been given under subsection (1) not to publish
14 that thing; and
15 (c) the record is made available for public access under
16 subsection 31(5) of the *Archives Act 1983*, as that subsection
17 applies because of a modification prescribed under subclause
18 9.6 of the Schedule to the Archives (Records of the
19 Parliament) Regulations;
20 then the direction ceases to apply in relation to that thing.

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

23 **45 Costs of legal representation for Commonwealth judicial officer**

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

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1 **46 Reimbursement of expenses of witnesses**

2 (1) The Commonwealth is liable to pay for the following amount of
3 expenses of a witness who is required to appear, or is appearing, at
4 a hearing of a Commission:

5 (a) the amount worked out under the regulations;

6 (b) if there are no regulations for that purpose, and the
7 Commission has determined an amount in writing in relation
8 to that particular witness—the amount determined by the
9 Commission.

10 (2) Subsection (1) does not apply in relation to the Commonwealth
11 judicial officer in relation to whom the allegation of misbehaviour
12 or incapacity is being investigated by the Commission.

13 (3) A determination made under paragraph (1)(b) is not a legislative
14 instrument.
15

1 **Division 3—Report**

2 **47 Guide to this Division**

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

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

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

9 **48 Report**

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

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

20 *Content of report*

- 21 (3) The report must:
- 22 (a) describe the Commission's investigation; and
23 (b) include a full transcript of the Commission's hearings
24 (subject to subsections (4) and (5)); and
25 (c) state the Commission's opinion of whether or not there is
26 evidence that would let the Houses of the Parliament
27 conclude that the alleged misbehaviour or incapacity
28 investigated by the Commission is proved; and

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- 1 (d) include a record of all evidence before the Commission as it
2 thinks may be relevant for the Houses of the Parliament to
3 consider in determining whether the alleged misbehaviour or
4 incapacity is proved; and
- 5 (e) if the members are not unanimous—state the opinion of each
6 member of the Commission of whether or not there is
7 evidence that would let the Houses of the Parliament
8 conclude that the alleged misbehaviour or incapacity
9 investigated by the Commission is proved.
- 10 (4) If a Commission holds all or part of a hearing in private, the
11 Commission must determine whether any or all evidence given
12 during that private hearing is included under paragraph (3)(b) in
13 the full transcript of the Commission’s hearings.
- 14 (5) If any such evidence is personal information (within the meaning
15 of the *Privacy Act 1988*), then the Commission may include that
16 evidence in the full transcript only with the consent of the person to
17 whom the information relates.
- 18 *Separate report on sensitive matters*
- 19 (6) If the Commission believes that if any of its findings or
20 conclusions, or any of the evidence before the Commission, were
21 to be laid before the Houses of the Parliament:
- 22 (a) a person who has been or may be charged with an offence
23 against an Australian law may not receive a fair trial for the
24 offence; or
- 25 (b) an investigation of a breach, or possible breach, of an
26 Australian law may be prejudiced; or
- 27 (c) the existence or identity of a confidential source of
28 information in relation to the enforcement or administration
29 of an Australian law may be disclosed; or
- 30 (d) a person may be enabled to ascertain the existence or identity
31 of a confidential source of information in relation to the
32 enforcement or administration of an Australian law; or
- 33 (e) there may be prejudice to the safety of a person; or
- 34 (f) those findings or conclusions, or that evidence, would be
35 scandalous or highly personal;

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- 1 the Commission may include those findings or conclusions, or that
2 evidence, in a separate report, and give that report to the
3 parliamentary presiding officers with a statement of the
4 Commission's belief.
- 5 (7) If the parliamentary presiding officers are given a separate report
6 under subsection (6), they:
- 7 (a) must not cause a copy of it to be laid before the Senate or the
8 House of Representatives; and
- 9 (b) must make it available for inspection by Senators, members
10 of the House of Representatives, and the person in relation to
11 whom the allegation was investigated by the Commission;
12 and
- 13 (c) must not produce, or disclose, the report to any other person.
- 14 (8) Except where it is necessary to do so for the purposes of giving
15 effect to this Act, a person is not to be required:
- 16 (a) to produce, or disclose, a separate report given under
17 subsection (6) to a court or tribunal; or
- 18 (b) to produce, or disclose, a separate report given under
19 subsection (6) under any other Australian law.
20

Section 49

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

2 **49 Guide to this Division**

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

5 The offences include:

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

17 **50 Unauthorised presence at hearing**

18 A person commits an offence if:

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

21 Penalty: Imprisonment for 6 months.

22 **51 Failure of witness to appear**

23 (1) A person commits an offence if:

- 24 (a) the person has been required under a notice given under
25 paragraph 25(1)(a) to appear at a hearing of a Commission;
26 and

- 1 (b) the person:
2 (i) fails to appear as required by the notice; or
3 (ii) fails to attend from day to day.

4 Penalty: Imprisonment for 6 months.

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

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

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

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

14 **52 Failure of witness to produce document or other thing**

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

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

22 Penalty: Imprisonment for 6 months.

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

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

27 Penalty: Imprisonment for 6 months.

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

- 29 (3) Subsection (1) or (2) does not apply if:
-

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

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

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

7 **53 Refusal to be sworn or to give evidence**

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

13 Penalty: Imprisonment for 6 months.

14 *Exemption of Commonwealth judicial officer etc.*

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

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

20 **54 Self-incrimination**

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

- 29 (2) However, in the case of an individual, none of the following:
30 (a) the document or thing produced or the answer given;
31 (b) producing the document or thing or answering the question;

- 1 (c) any information, document or thing obtained as a direct or
2 indirect consequence of producing the document or thing or
3 answering the question;
4 is admissible in evidence against the individual in civil or criminal
5 proceedings in any court or tribunal of the Commonwealth, a State
6 or a Territory other than proceedings for:
7 (d) an offence against this Act or Division 3 of Part III of the
8 *Crimes Act 1914*; or
9 (e) an offence against any of the following provisions, being an
10 offence that relates to this Act or Division 3 of Part III of the
11 *Crimes Act 1914*:
12 (i) section 6 of the *Crimes Act 1914* (accessory after the
13 fact);
14 (ii) section 11.1 (attempt), 11.4 (incitement) or 11.5
15 (conspiracy) of the *Criminal Code*;
16 (iii) section 137.1 or 137.2 of the *Criminal Code* (false or
17 misleading information or documents);
18 (iv) section 149.1 of the *Criminal Code* (obstruction of
19 Commonwealth public officials).

20 **55 Acts or omissions on different days constitute separate offences**

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

27 **56 False or misleading evidence**

28 A person must not, at a hearing of a Commission, intentionally
29 give evidence that is to the knowledge of the person false or
30 misleading with respect to any matter, being a matter that is
31 material to the Commission's investigation.

32 Penalty: Imprisonment for 2 years.

Section 57

1 **57 Injury to witness**

2 A person commits an offence if the person:
3 (a) uses violence against; or
4 (b) inflicts punishment on; or
5 (c) causes damage, loss or disadvantage to;
6 another person for or on account of the person having produced a
7 document or other thing under a notice given under section 25.

8 Penalty: Imprisonment for 12 months.

9 **58 Preventing witnesses from producing document or other thing**

10 A person (the *first person*) commits an offence if:
11 (a) another person is required by notice given under section 25 to
12 produce a document or other thing; and
13 (b) the first person prevents the other person from producing the
14 document or thing as required.

15 Penalty: Imprisonment for 12 months.

16 **59 Bribery of witness**

17 (1) A person (the *first person*) commits an offence if:
18 (a) the first person:
19 (i) asks for, receives or obtains any property, or benefit, of
20 any kind for himself or herself or another person; or
21 (ii) agrees to receive or to obtain any property, or benefit, of
22 any kind for himself or herself or another person; and
23 (b) the first person does so upon an agreement or understanding
24 that any person required to produce a document or other
25 thing under a notice given under section 25 will not produce
26 the document or thing.

27 Penalty: Imprisonment for 5 years.

28 (2) A person commits an offence if the person attempts by any means
29 to induce a person required to produce a document or other thing

1 under a notice given under section 25 not to produce the document
2 or thing.

3 Penalty: Imprisonment for 5 years.

4 **60 Fraud on witness**

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

- 6 (a) the first person practises fraud or deceit on another person;
7 and
8 (b) the other person is required to produce a document or other
9 thing under a notice given under section 25; and
10 (c) the first person practises the fraud or deceit with the intention
11 that the other person will not produce the document or thing
12 as required.

13 Penalty: Imprisonment for 2 years.

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

- 15 (a) the first person makes or exhibits any statement,
16 representation, token, or writing to another person; and
17 (b) the other person is required to produce a document or other
18 thing under a notice given under section 25; and
19 (c) the first person makes or exhibits the statement,
20 representation, token, or writing with the intention that the
21 other person will not produce the document or thing as
22 required.

23 Penalty: Imprisonment for 2 years.

24 **61 Obstruction of a Commission**

25 A person commits an offence if the person:

- 26 (a) insults or disturbs a Commission; or
27 (b) interrupts the hearings of a Commission; or
28 (c) uses any insulting language towards a Commission; or
29 (d) by writing or speech uses words false and defamatory of a
30 Commission; or

Section 62

- 1 (e) engages in conduct that is intended, or likely, to amount to an
2 improper interference with:
3 (i) the free exercise by a Commission of its authority or
4 functions; or
5 (ii) the free performance by a member of the member's
6 duties as a member.

7 Penalty: Imprisonment for 6 months.

8 **62 Failure to provide facilities and assistance**

9 A person commits an offence if:

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

13 Penalty: 30 penalty units.

14 **63 Unauthorised publication of material**

15 A person commits an offence if:

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

22 Penalty: Imprisonment for 6 months.
23

1 **Division 5—Protections**

2 **64 Guide to this Division**

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

7 The Division also deals with the treatment of hearings and
8 evidence of a Commission under the *Parliamentary Privileges Act*
9 *1987*.

10 **65 Protection of members, witnesses and lawyers**

11 (1) A member has, in the performance of the functions or the exercise
12 of the powers of a member, the same protection and immunity that
13 a member of a House of the Parliament has in relation to the
14 performance of the functions or the exercise of the powers of a
15 committee of a House of the Parliament.

16 (2) Subject to this Act, a person who:

17 (a) is required to:

18 (i) appear at a hearing of a Commission; or

19 (ii) produce a document or other thing;

20 under a notice given under section 25; or

21 (b) is appearing as a witness at a hearing of a Commission;

22 has the same protection and immunity as a witness before a
23 committee of a House of the Parliament.

24 (3) Counsel assisting a Commission, or a lawyer representing a person
25 at a hearing of a Commission, has the same protection and
26 immunity as a witness before a committee of a House of the
27 Parliament.

Section 66

1 **66 Protection in relation to contraventions of prohibitions**

2 *Protection for answering question*

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

9 *Protection for producing document or other thing*

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

15 **67 Hearings and evidence of a Commission**

- 16 (1) For the purposes of section 10, and subsections 16(3), (4) and (6),
- 17 of the *Parliamentary Privileges Act 1987*:
- 18 (a) proceedings of a Commission, and the formulation, making
- 19 or publication of a report, and the report itself, are taken to be
- 20 proceedings in Parliament; and
- 21 (b) evidence before a Commission is taken to be evidence before
- 22 a committee of a House of the Parliament.
- 23 (2) Subsection 10(2) of the *Parliamentary Privileges Act 1987* applies
- 24 as if the reference to section 13 of that Act were a reference to
- 25 section 63 of this Act.
- 26 (3) This section is not intended to limit or otherwise affect the
- 27 operation of section 16 of the *Parliamentary Privileges Act 1987*.
- 28

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

- (1) A member must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.
- (2) Subsection (1) does not apply to a member who is a judge of the Supreme Court of a State or Territory.

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*.

Section 72

- 1 (4) A member who is a judge of the Supreme Court of a State or
2 Territory is not, while receiving salary or annual allowance as such
3 a judge, entitled to remuneration in accordance with this Act.

4 **72 Resignation**

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

14 **73 Termination, or cessation, of appointment**

15 *Members who are not Supreme Court judges*

- 16 (1) A member's appointment may be terminated on any of the
17 following grounds:
- 18 (a) the member's misbehaviour or physical or mental incapacity
19 (within the ordinary meaning of those words);
- 20 (b) the member:
- 21 (i) becomes bankrupt; or
- 22 (ii) applies to take the benefit of any law for the relief of
23 bankrupt or insolvent debtors; or
- 24 (iii) compounds with his or her creditors; or
- 25 (iv) makes an assignment of his or her remuneration for the
26 benefit of his or her creditors;
- 27 (c) the member engages in paid employment that conflicts or
28 may conflict with the proper performance of his or her duties
29 (see section 70);
- 30 (d) the member fails, without reasonable excuse, to comply with
31 section 74 (disclosure of interests by members).

- 1 (2) A member's appointment is terminated by force of this subsection
 2 if:
 3 (a) each House of the Parliament passes, in the same session, a
 4 resolution on a ground referred to in subsection (1); and
 5 (b) the ground on which the member's appointment is to be
 6 terminated is the same in each resolution.

7 *Supreme Court judges*

- 8 (3) Subsections (1) and (2) do not apply to a member who is a judge of
 9 the Supreme Court of a State or Territory.
 10 (4) If a member who is a judge of the Supreme Court of a State or
 11 Territory ceases to be such a judge, he or she ceases to be a
 12 member at the same time.

13 *Member who becomes Commonwealth judicial officer*

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

16 **74 Disclosure of interests by members**

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

- 21 (a) he or she must disclose the interest to all the persons and
 22 bodies recognised by the Commission as parties to the
 23 investigation; and
 24 (b) except with the written consent of all those persons and
 25 bodies, he or she must not take part in the investigation or
 26 preparation of the report.
 27

1 **Part 5—Administrative provisions**
2

3 **75 Guide to this Part**

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

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

13 **76 Staff of a Commission**

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

19 *APS employees to be made available to a Commission*

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

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

77 Consultants

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

78 Counsel assisting a Commission

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

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

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

Section 80

1 **80 Commission must prepare and keep statements of reasons about**
2 **search warrants**

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

16 **81 Commission may give information, evidence, documents etc.**

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

20 *Giving to law enforcement authorities*

- 21 (2) If the information relates or may relate to a contravention of a law
22 described in subsection (3), or the evidence is of such a
23 contravention, the Commission may give the information or
24 evidence to one or more of the following:
- 25 (a) the Attorney-General of the Commonwealth, a State, the
26 Australian Capital Territory or the Northern Territory;
- 27 (b) the Director of Public Prosecutions of the Commonwealth, a
28 State or a Territory;
- 29 (c) a Special Prosecutor appointed under the *Special Prosecutors*
30 *Act 1982*;
- 31 (d) the Commissioner of the Australian Federal Police or of the
32 police force of a State or of the Northern Territory;

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

8 *Giving to Royal Commissions*

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

17 *Giving to the Australian Crime Commission*

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

24 *No limit on the Parliamentary Privileges Act 1987*

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

27 **82 Records of a Commission**

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

Part 5 Administrative provisions

Section 82

- 1 (2) A record given under subsection (1) is taken to be a Class A record
2 for the purposes of:
3 (a) the *Archives Act 1983*; and
4 (b) any regulations made under, or for the purposes of, that Act.
5

1 **Part 6—Miscellaneous**
2

3 **83 Regulations**

4 The Governor-General may make regulations prescribing matters:

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