

(Reprint No. 1)

**SOUTH AUSTRALIA**

**ROYAL COMMISSIONS ACT, 1917**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 15 November 1991.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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# ROYAL COMMISSIONS ACT, 1917

being

Royal Commissions Act, 1917, No. 1272 of 1917 [Assented to 11 October 1917]

as amended by

Royal Commissions Act Amendment Act, 1980, No. 80 of 1980 [Assented to 27 November 1980]  
Royal Commissions Act Amendment Act, 1982, No. 87 of 1982 [Assented to 7 October 1982]  
Royal Commissions Act Amendment Act, 1988, No. 31 of 1988 [Assented to 21 April 1988]  
Royal Commissions (Summonses and Publication of Evidence) Amendment Act 1991 No. 8 of 1991 [Assented to 28 March 1991]

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.*

## **An Act to make further and better provision for facilitating inquiries by royal commissions.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

### **Short title**

1. This Act may be cited as the *Royal Commissions Act, 1917*.

### **Repeal of 20, 1873**

2. The *Witnesses on Commissions Oaths Act* is hereby repealed.

### **Interpretation**

3. In this Act—

“chairman” means chairman of the commission, and includes the person for the time being acting as such chairman, and, in cases where the commission is constituted of a sole commissioner, means such commissioner:

“secretary” means secretary to the commission:

“commission” means a commission of inquiry established by the Governor, by instrument under the public seal of the State:

“commissioner” means any person who is appointed by the Governor to constitute, or to be a member of, a commission:

“record” includes—

(a) information stored or recorded by a computer or other means;

and

- (b) a computer tape or disk or any other device on or by which information is stored or recorded.

#### **Constitution of commission**

4. (1) A commission may be constituted of a single commissioner or of two or more commissioners.

(2) Where a commission is constituted of two or more commissioners, the commissioners will sit jointly to conduct the inquiry unless the Governor authorizes individual commissioners to sit independently to conduct parts or aspects of the inquiry that are, by direction of the Governor or the chairman, to be dealt with independently by individual commissioners.

(3) Where a commissioner sits independently of other commissioners to conduct particular parts or aspects of an inquiry, the commissioner will have in relation to those proceedings the same powers as if appointed a sole commissioner.

(4) Where a commission is constituted of two or more commissioners, and the commissioners are to sit jointly for the purposes of the inquiry or any part or aspect of the inquiry, then, subject to any contrary direction by the Governor—

(a) a quorum of the commission consists of a number of commissioners equal to, or greater than, one-half the total number of commissioners;

(b) the chairman will determine questions of administration and procedure;

and

(c) any other question will be determined according to the opinion of a majority of the commissioners present at the sitting at which the question is to be determined.

#### *Proceedings of the Commission*

#### **Power to publish information**

5. The commission may publish such (if any) information obtained in the exercise of their functions as they think fit.

#### **Evidence may be taken in public or in private**

6. The commission may, in connection with the exercise of their functions, take evidence in public or in private.

#### **Commission not to be bound by rules as to procedure or evidence**

7. The commission, in the exercise of any of their functions or powers, shall not be bound by the rules or practice of any court or tribunal as to procedure or evidence, but may conduct their proceedings and inform their minds on any matter in such manner as they think proper; and, without limiting in any way the operation of this section, the commission may refer any technical matter to an expert and may accept his report as evidence.

#### **Power to sit at any time and place**

8. The commission may sit at any time and in any place for the purpose of exercising any of their powers or functions, and may adjourn their sittings from time to time and from place to place.

**Acts and proceedings of commission not liable to be reviewed or restrained**

9. No decision, determination, certificate, or other act or proceeding of the commission, or anything done or the omission of anything, or anything proposed to be done or omitted to be done, by the commission, shall, in any manner whatsoever, be questioned or reviewed, or be restrained or removed by prohibition, injunction, *certiorari*, or otherwise howsoever.

**Powers of commission**

10. The commission shall have the following powers, that is to say:—

- (1) They and each of them may by themselves, or by any person appointed by them to prosecute an inquiry, enter upon and inspect any land, building, place, or vessel, and inspect any goods and other things, the entry upon or inspection of which appears to them or him to be requisite:
- (2) They may require, by summons under the hand of the chairman or of the secretary acting under the direction of the chairman, the attendance of all such persons as they think fit to call before them, and may require answers or returns to such inquiries as they think fit to make:
- (3) They may require, by summons under the hand of the chairman or of the secretary acting under the direction of the chairman, the production of any books, papers, documents or records:
- (4) They may inspect any books, papers, documents and records produced before them, and retain them for such reasonable periods as they think fit, and may make copies of such matters therein as are relevant to the inquiry or take extracts of such matters:
- (5) They may examine witnesses on oath, affirmation, or declaration, which may be administered by any commissioner.

**Powers of commission in respect of witnesses**

11. (1) If any person—

- (a) who has been personally served with a summons to attend before the commission, and whose expenses, as provided in subsection (5) hereof, have been paid or tendered to him, neglects to attend in obedience to such summons: or
- (b) wilfully insults the commission, or any commissioner: or
- (c) by writing or speech uses words false and defamatory of the commission, or any commissioner: or
- (d) misbehaves himself before the commission: or
- (e) interrupts the proceedings of the commission: or
- (f) being called or examined as a witness in any inquiry or any matter pending before the commission, refuses to be sworn, or to affirm or declare, or refuses or neglects to produce any books, papers, documents or records as required by a summons personally served upon him, or prevaricates in his evidence, or refuses to answer any lawful question,

the chairman may commit such person to gaol for any term not exceeding three months or may impose on him a penalty not exceeding \$1 000, and in default of immediate payment of such penalty the chairman may commit the offender to gaol for any term not exceeding three months unless the penalty is sooner paid.

(2) In any of the cases aforesaid a warrant in the form or to the effect of the first schedule may be issued by the chairman, and such warrant shall be good and valid in law without any other warrant, order, or process whatsoever; and the Commissioner of Police and all members of the police force and the Sheriff and all gaolers may and shall obey the same.

(3) When any person who has been personally served with a summons to attend as a witness before the commission, and whose expenses, as provided in subsection (5) hereof, have been paid or tendered to him, fails to attend in obedience to such summons, and fails to give a reasonable excuse for his non-attendance, the chairman, upon proof that such person has been duly served with such summons and that such expenses have been paid or tendered to him may issue a warrant in the form or to the effect of the second schedule to bring such person before the commission to give evidence. The provisions of subsection (2) of this section shall apply to any such warrant.

(4) Where any person has on any day done or omitted to do something and his act amounts to an offence against any of the provisions of subsection (1) hereof, and also does or omits to do the same thing on some other day, each such act or omission shall be a separate offence, and shall be punishable accordingly under the provisions of this section.

(5) Every person required by the commission to attend before it shall be allowed such expenses as would be allowed to a witness attending on subpoena before the Supreme Court, and in case of dispute as to the amount to be allowed the same shall be referred to the Master of the Supreme Court, who, on request under the hand of the chairman, shall ascertain and certify the proper amount of such expenses.

#### **Issuing of summons or warrant by magistrate**

**11a.** (1) Without limiting the effect of any other provisions of this Act, a magistrate may, on application by the commission or a person appointed by the commission—

- (a) if satisfied that there are reasonable grounds to believe that a person has knowledge of matters, or possession or control of books, papers, documents or records, relevant to the inquiry, issue a summons requiring the person to appear before the commission and answer questions or produce the books, papers, documents or records;
- (b) if satisfied that a person has been served with such a summons and paid or tendered the person's expenses as provided in section 11(5) but has failed (without reasonable excuse) to appear or produce books, papers, documents or records in obedience to the summons, issue a warrant directed to all members of the police force for the person to be apprehended and brought before the commission.

(2) The grounds of an application for a summons or warrant must be verified by affidavit.

(3) A person who has disobeyed a summons and is brought before the commission in pursuance of a warrant issued under this section may be committed to gaol or otherwise dealt with in accordance with section 11.

#### **Duty of witness to continue in attendance**

**12.** (1) Every person who has been duly summoned to attend before the commission shall appear and report himself from day to day unless excused by the chairman, or until he is released from further attendance by the chairman.

(2) If any person fails to so report himself he shall be deemed to have neglected to attend before the commission in obedience to his summons, and shall be punishable accordingly.

**Right of audience**

13. Unless the commission otherwise directs, any person giving evidence before the commission may, subject to anything prescribed, be represented before the commission by counsel or solicitor.

**Witness need not disclose secret process**

14. Nothing in this Act shall make it compulsory for any witness giving evidence before the commission to disclose to the commission any secret process of manufacture.

**Punishment for false evidence**

15. Any person who, upon oath, affirmation, or declaration taken or made under this Act, wilfully and corruptly gives any false evidence before the commission is guilty of perjury.

Penalty: imprisonment for four years.

**Statements made by witness not admissible in evidence against him**

16. A statement or disclosure made by any witness in answer to any question put to him by the commission or any of the commissioners shall not (except in proceedings for an offence against this Act) be admissible in evidence against him in any civil or criminal proceedings in any court.

**Orders in relation to evidence, etc.**

16a. (1) Where the Commission considers it desirable to exercise powers conferred by this section in the public interest, or in order to prevent undue prejudice or undue hardship to any person, it may, by order—

- (a) direct that any persons specified (by name or otherwise) absent themselves from the place in which the commission is conducting its inquiry during the whole or a specified part of the proceedings;
- (b) forbid the publication of specified evidence, or of any account or report of specified evidence, either absolutely or subject to conditions determined by the commission;

or

- (c) forbid the publication of the name of—
  - (i) a witness before the commission;
  - or
  - (ii) a person alluded to in the course of the inquiry,
 and of any other material tending to identify any such witness or person.

(2) The commission may vary or revoke an order under this section.

(3) A person who contravenes, or fails to comply with, an order under this section shall be guilty of an offence and liable to a penalty not exceeding two thousand dollars or imprisonment for six months.

\* \* \* \* \*

**Protection to commissioners and witnesses**

16b. (1) A commissioner has, in relation to the exercise of his functions as commissioner, the same protection and immunities as a judge of the Supreme Court.

(2) Subject to this Act, a witness before the commission has the same protection and immunities as a witness in proceedings before the Supreme Court.

(3) Counsel appearing before the commission has the same protection and immunities as counsel appearing in proceedings before the Supreme Court.

*Indictable Offences in connection with inquiries by the Commission*

**Bribery of witness**

17. Any person who—

- (a) gives, confers, or procures, or promises or offers to give or confer or to procure or attempt to procure, any property or benefit of any kind to, upon, or for any person upon any agreement or understanding that any person called or to be called as a witness before 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 or attempts to receive or obtain, any property or benefit of any kind for himself or any other person, upon any agreement or understanding that any person shall, as a witness before the commission, give false testimony or withhold true testimony,

is guilty of an offence.

Penalty: \$8 000 or imprisonment for two years.

**Fraud on witness**

18. Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness before the commission, with intent to affect the testimony of that person as a witness, is guilty of an offence.

Penalty: \$8 000 or imprisonment for two years.

**Destroying books, etc.**

19. Any person who, knowing that any book, document, paper or record is or may be required in evidence before the commission, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of an indictable offence.

Penalty: \$15 000 or imprisonment for four years.

**Preventing witness from attending**

20. Any person who wilfully prevents or endeavours to prevent any person who has been summoned to attend as a witness before the commission from attending as a witness, or from producing any evidence pursuant to the summons to attend, is guilty of an offence.

Penalty: \$8 000 or imprisonment for two years.

**Injury to witness**

21. Any person who uses, causes, inflicts, or procures any violence, punishment, damage, loss, or disadvantage to any person for or on account of his having appeared as a witness before the commission or for or on account of any evidence given by him before the commission, is guilty of an offence.

Penalty: \$4 000 or imprisonment for twelve months.

**Dismissal by employer of witness**

22. (1) Any employer who dismisses any employee from his employment, or prejudices any employee in his employment, for or on account of such employee's having appeared as a witness before the commission, or for or on account of such employee's having given evidence before the commission, is guilty of an offence.

Penalty: \$4 000 or imprisonment for twelve months.

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

*Regulations***Regulations**

23. (1) The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) prescribe the forms of summonses, subpoenas and notices to be used by the commission;
- (b) prescribe rules of practice and procedure;
- (c) prescribe expenses to be paid to commissioners;
- (d) prescribe penalties (not exceeding \$500) for breach of, or non-compliance with, a regulation.

*Evidence***Evidence of issue of commission**

24. In all legal proceedings the production—

- (a) of a document purporting to be a commission, and purporting to be signed by the Governor and to be sealed with the public seal of the State, and purporting to be directed to any person or persons, and to appoint him or them to be a commissioner or commissioners to make inquiry into any matter, or to authorize or require him or them to make inquiry into any matter, or
- (b) of a document purporting to be a copy of any such commission, and certified in writing by the person named therein as chairman of the commission or sole commissioner, as the case may be, to be a true copy of the commission,

shall be evidence that the Governor has issued the commission.

*Legal Procedure***Summary proceedings for offences**

25. All proceedings in respect of offences against this Act (not being punishable by imprisonment) shall be disposed of summarily.

**Appeal**

26. There shall be an appeal in respect of proceedings in respect of offences against this Act.

**Special cases**

27. In the event of an appeal in respect of proceedings in respect of offences against this Act, a special case may be stated.

## Royal Commissions Act, 1917

### THE SCHEDULES

#### THE FIRST SCHEDULE

##### FORM OF WARRANT

##### *Royal Commissions Act, 1917*

To the Commissioner of Police and all members of the Police Force of South Australia, and to the Keeper of the Gaol at

These are to command you the Commissioner of Police and all members of the Police Force of South Australia to apprehend A.B. and to convey him to the above-mentioned gaol, and to deliver him to the keeper thereof, together with this warrant; and you the said keeper are hereby required to receive the said A.B. into your custody in the said gaol, and him there safely to keep for the term of \_\_\_\_\_ (unless the sum of \_\_\_\_\_ is sooner paid) I, the undersigned, chairman (or acting chairman) of the \_\_\_\_\_ Commission, having adjudged the said A.B. to be imprisoned (or pay a penalty of \_\_\_\_\_, and having further adjudged him to be imprisoned on the ground that he has made default in the immediate payment thereof), for the said term, for that he the said A.B. [*here state the offence to the following effect, as the case may require*].

That A.B. having been duly served with a summons to attend before the said commission and having had his expenses paid or tendered, neglected to attend before the said commission (or that A.B. wilfully insulted the said commission, or C.D., one of the members of the said commission, or that A.B. used words false and defamatory of the said commission, or of C.D., one of the members of the said commission, or that A.B. misbehaved himself before the said commission, or that A.B. interrupted the proceedings of the said commission, or that A.B., having been called or being examined as a witness in a certain inquiry or matter pending before the said commission, refused to be sworn or affirm or declare or to produce a certain document mentioned in the summons served on him, or was guilty of prevarications in his evidence or refused to answer a certain lawful question).

Given under my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord nineteen hundred and \_\_\_\_\_

[Signature]

Chairman (or Acting Chairman) of the

Commission.

#### THE SECOND SCHEDULE

##### FORM OF WARRANT

##### *Royal Commissions Act, 1917*

To the Commissioner of Police and all members of the Police Force of South Australia.

Whereas, pursuant to the provisions of the above-mentioned Act, it has this day been proved to me that \_\_\_\_\_ of \_\_\_\_\_ has been duly served with a summons to attend and give evidence before the \_\_\_\_\_ Commission, pursuant to the said Act, but has failed to attend in obedience to such summons:

This is to require you forthwith to apprehend the said \_\_\_\_\_ and to detain him in custody and bring him before the said commission to give evidence.

Given under my hand at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord nineteen hundred and \_\_\_\_\_

[Signature]

Chairman (or Acting Chairman) of the

Commission.

## APPENDIX

## Legislative History

|                 |  |
|-----------------|--|
| Section 3:      | definition of "the commission" repealed and definition of "commission" inserted in its place by 31, 1988, s. 2 |
|                 | definition of "commissioner" inserted by 31, 1988, s. 2  |
|                 | definition of "record" inserted by 8, 1991, s. 2   |
| Section 4:      | substituted by 31, 1988, s. 3  |
| Section 10(3):  | substituted by 8, 1991, s. 3(a)  |
| Section 10(4):  | amended by 8, 1991, s. 3(b)  |
| Section 11(1):  | amended by 31, 1988, s. 4; 8, 1991, s. 4   |
| Section 11a:    | inserted by 8, 1991, s. 5  |
| Section 15:     | amended by 31, 1988, s. 5  |
| Section 16a:    | inserted by 80, 1980, s. 3   |
| Section 16a(4): | repealed by 8, 1991, s. 6  |
| Section 16b:    | inserted by 87, 1982, s. 2   |
| Section 17:     | amended by 31, 1988, s. 6  |
| Section 18:     | amended by 31, 1988, s. 7  |
| Section 19:     | amended by 31, 1988, s. 8; 8, 1991, s. 7   |
| Section 20:     | amended by 31, 1988, s. 9  |
| Section 21:     | amended by 31, 1988, s. 10   |
| Section 22(1):  | amended by 31, 1988, s. 11   |
| Section 23:     | substituted by 31, 1988, s. 12   |
| Section 25:     | amended by 31, 1988, s. 13   |