

Royal Commissions (Powers) Amendment Bill 2004

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Royal Commissions (Powers) Amendment
Bill 2004**

A Bill for

An Act to amend the —

- *Royal Commissions Act 1968*; and
- *Surveillance Devices Act 1998*.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Royal Commissions (Powers) Amendment Act 2004*.

5 **2. Commencement**

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

Part 2 — Amendments to *Royal Commissions Act 1968*

3. The Act amended

The amendments in this Part are to the *Royal Commissions Act 1968**.

5 [* Reprinted as at 14 September 2001.]

4. Section 4 amended

Section 4 is amended as follows:

- 10 (a) in the definition of “documents” by deleting “1906.” and inserting instead —
“ 1906; ”;
- (b) after the definition of “documents” by inserting —
“
15 **“officer of the Commission”**, in relation to a Commission, means —
(a) a person appointed by the Attorney General to assist the Commission; or
(b) any other person appointed, employed, seconded or engaged to assist the Commission.
20 ”.

5. Sections 8A and 8B inserted

After section 8 the following sections are inserted —

- 25 **8A. Power to obtain information from public authority or officer**
- (1) In this section —
“public authority” and **“public officer”** have the meanings given to those terms in section 3 of the *Corruption and Crime Commission Act 2003*.

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- (2) A Commission may, for the purposes of the inquiry, serve written notice on a public authority or public officer, requiring the authority or officer to produce a statement of information.
- 5 (3) A notice under this section must —
- (a) specify or describe the information required;
 - (b) fix a time and day by which the statement of information must be produced; and
 - 10 (c) specify the person (being the Commission or an officer of the Commission) to whom the production is to be made.
- (4) The notice —
- 15 (a) may provide that the requirement may be satisfied by some other person acting on behalf of the public authority or public officer; and
 - (b) may specify the person or class of persons who may so act.
- (5) The powers conferred by this section may be exercised despite —
- 20 (a) any rule of law which, in proceedings in a court, might justify an objection to the production of a statement of information on grounds of public interest;
 - 25 (b) any privilege of a public authority or public officer in that capacity which the authority or officer could have claimed in a court of law; or
 - (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public officer.
- 30 (6) Subsection (5) does not limit or otherwise affect the operation of the *Parliamentary Privileges Act 1891*.

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7. Section 12 repealed

Section 12 is repealed.

8. Sections 13 and 14 replaced by sections 12A to 15E

Sections 13 and 14 are repealed and the following sections are inserted instead —

5

“

12A. Contempt: failing to produce statement of information

A person who —

10

(a) fails, without reasonable excuse, to comply with a notice served on the person under section 8A; or

15

(b) in purported compliance with a notice served on the person or some other person under section 8A, furnishes information knowing it to be false or misleading in a material particular,

is in contempt of the Commission.

13. Contempt: failing to attend or produce documents

(1) A person who fails, without reasonable excuse, to —

20

(a) attend before a Commission or an officer of a Commission as required by a notice under section 8B; or

25

(b) produce any documents, books, writings or things to a Commission or an officer of a Commission as required by a notice under section 8B,

is in contempt of the Commission.

(2) A person who fails, without reasonable excuse, to —

30

(a) attend before a Commission as required by a summons under section 9 and by section 10; or

- (b) produce any documents, books, writings or things to a Commission as required by a summons under section 9,

is in contempt of the Commission.

- 5 (3) If a person released by order of a Commission under section 16A on condition that the person appear and report before the Commission in accordance with the terms of the order fails, without reasonable excuse, so to appear and report, the person is in contempt of the Commission.
- 10 (4) In this section —
“reasonable excuse” means an excuse that would excuse a similar failure by a witness, or a person summoned as a witness, before the Supreme Court but, despite section 31(2), in the case of failure to produce any documents, books, writings or things it does not include the excuse that their production —
 - 15 (a) might incriminate or tend to incriminate the person or render the person liable to a penalty; or
 - 20 (b) would be in breach of an obligation of the person not to disclose information, or not to disclose the existence or contents of a document, whether the obligation arose
 - 25 under an enactment or otherwise.

14. Contempt: failing to be sworn or to give evidence when summoned

- 30 (1) A person served with a summons under section 9 requiring the person to attend a Commission and give evidence who —
 - (a) refuses to be sworn or make an affirmation; or

- (b) fails to answer any question relevant to the investigation that the Commission requires the person to answer,

is in contempt of the Commission.

- 5 (2) Despite section 31(2), a person required by the Commission to answer a question relevant to the inquiry is not excused from the requirement to answer the question on the ground that the answer might
10 incriminate or tend to incriminate the person or render the person liable to a penalty.

15. Contempt: hindering execution of search warrants

- (1) This section applies to a Commission to which section 18 applies.
- (2) In this section —
15 **“authorised person”** has the meaning given to that term in section 18(11).
- (3) A person who, without reasonable excuse —
 - (a) prevents or attempts to prevent an authorised person from exercising a power conferred by or
20 under section 18;
 - (b) hinders or obstructs an authorised person in the exercise of a power conferred by or under section 18;
 - (c) fails to comply with a direction or request of an authorised person under section 18(2)(b)
25 or (4)(d); or
 - (d) fails to comply with a condition imposed on the person under section 18(6)(b),

is in contempt of the Commission.

- 30 (4) Despite section 31(2), a person is not excused from producing documents, books, writings or things under

section 18(4)(d) on the ground that their production might incriminate or tend to incriminate the person or render the person liable to a penalty.

- 5 (5) A person who furnishes to an authorised person acting under a warrant issued under section 18 information that is false in a material particular is in contempt of the Commission.

15A. Other contempts

- 10 (1) A person who —
- (a) threatens or insults —
 - (i) a Commission;
 - (ii) a person appointed by the Attorney General to assist a Commission;
 - 15 (iii) any witness summoned to attend or appearing before a Commission; or
 - (iv) a person authorised by a Commission to appear before it for the purpose of representing any person;
 - 20 (b) interrupts the proceedings of a Commission without reasonable excuse;
 - (c) creates or continues or joins in creating or continuing, a disturbance in or near a place where a Commission is conducting an inquiry; or
 - 25 (d) does anything else at an inquiry conducted by the Commission or otherwise that would be contempt of court if the Commission were a Judge acting judicially,

is in contempt of the Commission.

- 30 (2) A Commission may order that a person who under subsection (1) is in contempt of the Commission at an

inquiry be excluded from the place where the inquiry is being conducted.

- 5 (3) An officer of the Commission, acting under the Commission's order, may exclude the person from the place and may use necessary and reasonable help and force to do so.

15B. Punishment of contempt of Commission

- 10 (1) In this section and sections 15C to 15E —
“defendant” means a person alleged to be in contempt of a Commission.

- 15 (2) Where a contempt of a Commission is alleged to have taken place, the Commission may present to the Supreme Court a certificate setting out the details of the act or omission that the Commission considers constitutes the alleged contempt.

- 20 (3) Unless the defendant has been —
(a) required under section 15C to show cause why the defendant should not be dealt with under section 15B for contempt of the Commission;
or
(b) apprehended under a warrant under section 15C(4),

25 the Commission is to give the defendant a written statement setting out the details of the alleged contempt.

- (4) A certificate presented under subsection (2) is prima facie evidence of the matters certified in it.
30 (5) Where a certificate is presented under subsection (2), the Supreme Court has jurisdiction as if the alleged contempt were a contempt of that Court.

- 5
- (6) A Commissioner cannot be compelled to attend before the Supreme Court to give evidence in proceedings for an alleged contempt of a Commission.
- (7) A record or transcript of the proceedings of a Commission is admissible in evidence in proceedings for an alleged contempt of the Commission.
- 10
- (8) A person is not liable to be punished for contempt under this section in respect of failure to comply with a summons served under section 9 if, in the case of a failure to produce any documents, books, writings or things, the person proves that the documents, books, writings or things were not relevant to the inquiry.
- 15
- (9) If the appointment of a Commission ends before a certificate has been presented under subsection (2) in relation to an alleged contempt, the alleged contempt may be dealt with on the motion of the Attorney General as if the person concerned were in contempt of the Supreme Court and the Supreme Court has jurisdiction accordingly.

20 **15C. General provisions regarding contempt**

- 25
- (1) The Chairman may cause a summons in writing under the Chairman's hand to be served on a defendant requiring the defendant to attend the Commission at a time and place named in the summons to show cause why the defendant should not be dealt with under section 15B for contempt of the Commission.
- 30
- (2) If the defendant fails to attend before the Commission in obedience to the summons, and no reasonable excuse to the satisfaction of the Commission is offered for the failure, the Chairman may, on proof of the service of the summons, issue a warrant for the defendant to be apprehended and brought before the

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Commission to show cause why the defendant should not be dealt with under section 15B for the contempt.

- 5
- (3) If a contempt of a Commission is committed in the face or hearing of the Commission, no summons need be served on the defendant, but the defendant may be —
- (a) taken into custody in a prison or elsewhere then and there by a member of the Police Force or a person authorised for the purpose by the Commission; and
- 10 (b) called on to show cause why the defendant should not be dealt with under section 15B for the contempt.
- (4) The Chairman may issue a warrant for the apprehension of the defendant while the defendant (whether or not already in custody under this section) is before the Commission and for the defendant to be brought before the Supreme Court as soon as is practicable.
- 15
- (5) A warrant under subsection (4) authorises the apprehension of the defendant and the defendant being brought before the Supreme Court and detained in custody in a prison or elsewhere for that purpose.
- 20
- (6) The warrant is to be accompanied by either the instrument by which the Commission certifies the contempt to the Supreme Court or a written statement setting out the details of the alleged contempt.
- 25
- (7) The Commission may revoke the warrant at any time before the defendant is brought before the Supreme Court.
- (8) When the defendant is brought before the Supreme Court, the Court may, pending determination of the matter, direct that the defendant be kept in such
- 30

custody as the Court may determine or direct that the defendant be released.

15D. Conditional release of defendant

- 5 (1) At any time before a defendant detained under section 15C is brought before the Supreme Court the Commission may by order release the defendant on condition that the defendant appear before the Supreme Court.
- 10 (2) The release of a defendant under subsection (1) may (but need not) be made subject to —
- 15 (a) one or more conditions for the purpose of ensuring the attendance of the defendant before the Supreme Court (for example, the provision of sureties by the defendant, the surrender of any passport held by the defendant, a requirement as to where the defendant is to live and regular reporting by the defendant to the Commission); and
- 20 (b) any other condition that the Commission thinks appropriate.
- (3) The Commission may by order amend, revoke or add to the conditions to which the release of a defendant under subsection (1) is subject.
- 25 (4) A defendant who without reasonable excuse fails to comply with a condition to which the release of the defendant under subsection (1) is subject is guilty of an offence.

Penalty: Imprisonment for 2 years and a fine of \$24 000.

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15E. Conduct that is both a contempt and an offence

- (1) An act or omission may be punished as a contempt of a Commission even though it could be punished as an offence.
- 5 (2) An act or omission may be punished as an offence even though it could be punished as a contempt of a Commission.
- (3) If an act or omission constitutes both an offence and a contempt of a Commission the defendant is not liable to be punished twice.
- 10

”

9. Section 16 amended

- (1) Section 16(2) is repealed and the following subsections are inserted instead —
- 15 “
- (2) The Chairman may issue a warrant for the apprehension of a person whose evidence is desired and is necessary and relevant to the Commission’s inquiry if the Chairman is satisfied by evidence on oath or affirmation that it is probable that the person —
- 20 (a) will not attend before the Commission to give evidence without being compelled to do so; or
- (b) is about to or is making preparation to leave the State and the person’s evidence will not be obtained by the Commission if the person
- 25 departs.
- (2a) A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.
- 30 (2b) A warrant may be issued under subsection (2) after the issue of a summons to the person whose evidence is

desired, even though the time specified in the summons for the person to attend has not yet passed.

- (2c) A warrant under this section authorises the apprehension of the person and the person being promptly brought before the Commission and detained in custody for that purpose in a prison or elsewhere until released by order of the Commission.

”.

- (2) Section 16(3) is amended by deleting “pursuant to subsections (1) and (2)” and inserting instead —
“ under this section ”.

10. Section 17 replaced by sections 16A and 17

Section 17 is repealed and the following sections are inserted instead —

“
16A. Conditional release of a witness

- (1) At any time before a person detained under section 16 is brought before the Commission, the Commission may by order release the person on condition that the person appear and report before the Commission unless excused from attendance or until released from further attendance by the Commission.
- (2) The release of a person under subsection (1) may (but need not) be made subject to —
- (a) one or more conditions for the purpose of ensuring the further attendance of the person before the Commission (for example, the provision of sureties by the person, the surrender of any passport held by the person, a requirement as to where the person is to live and regular reporting by the person to the Commission); and

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- (b) any other condition that the Commission thinks appropriate.
- (3) The Commission may by order amend, revoke or add to the conditions to which the release of a person under subsection (1) is subject.
- (4) A person who without reasonable excuse fails to comply with a condition to which the release of the person under subsection (1) is subject is guilty of an offence.
Penalty: Imprisonment for 2 years and a fine of \$24 000.

17. Review by Supreme Court

- (1) A person who has not been released by the Commission under section 15D or 16A may apply to the Supreme Court for a review of the decision not to release the person.
- (2) A person who has been released under section 15D or 16A may apply to the Supreme Court for a review of the terms of a condition to which the release is subject.
- (3) The Supreme Court may do either or both of the following —
 - (a) affirm or set aside a decision by the Commission not to release the person or any condition imposed by the Commission to which the release is subject;
 - (b) make any order that the Commission may make in relation to the detention or release of the person.
- (4) The Supreme Court may also exercise its powers under subsection (3) where the Commission has not made a decision within a reasonable time on the release of a person under section 15D or 16A.

- (5) An order under subsection (3) is taken to be an order of the Commission.

”.

11. Section 18 amended

5 Section 18(7) to (10) are repealed.

12. Section 19B replaced

Section 19B is repealed and the following section is inserted instead —

“

10 **19B. Restrictions on recording and publication of proceedings**

- (1) In this section —

“**publishes**” includes broadcasts;

15 “**visual recording**” means any recording on any medium from which a moving image may be produced by any means, and includes the accompanying sound track.

- (2) A person who makes a sound recording of proceedings of a Commission is in contempt of the Commission unless the recording is made —

20

(a) for the purpose of a fair report of the proceedings; or

(b) with the leave of the Commission.

- (3) Subsection (2)(a) does not apply if the Commission has directed that a sound recording of the proceedings is not to be made.

25

- (4) A person who photographs or makes a visual recording of proceedings of a Commission without the leave of the Commission is in contempt of the Commission.

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- (5) A person who, without the leave of a Commission, publishes —
- (a) a sound recording of proceedings of the Commission made under subsection (2)(a);
 - 5 (b) a photograph or visual recording of proceedings of the Commission;
 - 10 (c) a written record or transcript of proceedings of the Commission, or of evidence given before the Commission, which the Commission has directed not to be published; or
 - (d) any documents, books or writings produced to or obtained by the Commission which the Commission has directed not to be published,
- is in contempt of the Commission.
- 15 (6) If the appointment of a Commission has ended, the Governor may give the leave referred to in subsection (5) and that subsection applies as if leave had been given by the Commission.
- 20 (7) If a contravention of subsection (5) occurs after the appointment of a Commission has ended, the contravention may be dealt with on the motion of the Attorney General as if the person concerned were in contempt of the Supreme Court and the Supreme Court has jurisdiction accordingly.
- 25 ”.

13. Section 32 amended

Section 32 is amended by deleting “Crown in right of the” in both places where it occurs.

14. Amendments as to offences and penalties

Sections 24, 25, 26, 27, 28, 29 and 30(1) are amended as follows:

- 5 (a) by deleting “misdemeanour.” and inserting instead —
 “crime.”;
- (b) by deleting the penalty and inserting instead —
 “
- Penalty: Imprisonment for 5 years.
- Summary conviction penalty: Imprisonment for 2 years
10 and a fine of \$24 000.
- ”.

Part 3 — Amendments to *Surveillance Devices Act 1998*

15. The Act amended

The amendments in this Part are to the *Surveillance Devices Act 1998**.

5 [* *Reprint 1 as at 12 September 2003.*
For subsequent amendments see *Western Australian Legislation Information Tables for 2003, Table 1, p. 382 and s. 3(3) of Act No. 10 of 2002.*]

16. Section 3 amended

10 (1) Section 3(1) is amended in the definition of “authorised person” as follows:

- (a) after paragraph (aa) by deleting “and”;
- (b) before paragraph (c) by inserting —

“

15 (b) in the case of a designated Commission, a person authorised for the purpose by the designated Commission; and

”.

20 (2) Section 3(1) is amended in the definition of “emergency authorisation” by inserting before “or a member” —

“ , an officer of a designated Commission ”.

(3) Section 3(1) is amended in the definition of “law enforcement officer” by inserting before paragraph (c) —

“

25 (b) an officer of a designated Commission;

”.

- (4) Section 3(1) is amended by inserting in the appropriate alphabetical positions —

“

5 **“designated Commission”** means a Royal
Commission under the *Royal Commissions Act 1968* to which, by the terms of appointment or in an instrument made by the Governor, this Act is expressly declared to apply;

“officer of a designated Commission” means —

- 10 (a) a person appointed by the Attorney General to assist a designated Commission; or
 (b) any other person appointed, employed, seconded or engaged to assist a designated Commission;

15

”.

- (5) After section 3(2) the following subsections are inserted —

“

(3) For the purposes of a designated Commission this Act operates as if —

- 20 (a) a reference in section 5(3)(b) or 6(3)(b)(ii) to a suspected criminal offence included a reference to suspected misconduct;
 (b) a reference in section 13(1)(a) or (b), (2)(a) or (8)(a) or 17(1)(a) or (b) to an offence included a reference to an act of misconduct; and
25 (c) a reference in section 13(1)(b) or (8)(a) or 17(1)(b) to a suspected offence included a reference to suspected misconduct.

(4) In subsection (3) —

30 **“misconduct”** has the meaning given to that term by section 4 of the *Corruption and Crime Commission Act 2003*.

”.

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17. Section 9 amended

After section 9(2)(a)(iii) the following subparagraph is inserted —

- “
- 5 (iiia) to a designated Commission or to any person or persons authorised for the purpose by a designated Commission;
- ”.

18. Section 11 amended

10 Section 11 is amended by inserting before “or a member” —

“ , an officer of a designated Commission ”.

19. Section 15 amended

(1) Section 15(1) is amended as follows:

- 15 (a) after paragraph (aa) by deleting “or”;
- (b) before paragraph (c) by inserting —
- “
- (b) in the case of a designated Commission, a person authorised by the designated Commission; or
- 20 ”.

(2) Section 15(3) is amended as follows:

- (a) before paragraph (c) by inserting —
- “
- 25 (b) in the case of an application by an officer of a designated Commission, is required to attach an authorisation of the designated Commission or a person delegated by the designated Commission for the action proposed;
- ”.

(b) in paragraph (f)(i) by inserting before “or member” —
“ , an officer of a designated Commission ”.

20. Section 16 amended

Section 16(4) is amended by inserting before “or a member” —
5 “ , an officer of a designated Commission ”.

21. Section 17 amended

Section 17(2)(d)(ii) is amended by inserting before “or the
member” —
“ , the officer of a designated Commission ”.

10 **22. Section 20 amended**

Section 20 is amended as follows:

- (a) by inserting before “or a member” —
“ , an officer of a designated Commission ”;
- (b) by inserting before “or the member” —
15 “ , the officer of a designated Commission ”.

23. Section 31 amended

Before section 31(3)(b)(iii) the following subparagraph is
inserted —

“
20 (ii) a designated Commission;
”.

24. Section 37 amended

Section 37(2)(b) is amended by inserting after “(a)” —
“ , (aa) ”.

s. 25

25. Section 40 amended

(1) Section 40(1)(a) and (b) are amended by deleting “Crown” and inserting instead —

“ State ”.

5 (2) Section 40(3) is amended by inserting before “or any member” —

“ , any officer of a designated Commission ”.

26. Section 41 amended

(1) Section 41(1) is amended as follows:

10 (a) by inserting before “and the” —

“ , a designated Commission ”;

(b) in paragraph (a), by inserting before “or a member” —

“ , an officer of the designated Commission ”.

(2) Section 41(2) is amended by inserting before “or the” —

15 “ , the designated Commission ”.

(3) Section 41(3) is amended by inserting before “and the” —

“ , a designated Commission ”.

27. Section 43A inserted

After section 43 the following section is inserted —

20 “

43A. Reports by Royal Commissions

(1) A designated Commission may furnish to the Attorney General a report containing information relating to —

25 (a) applications for warrants and extensions of warrants, including the number of such applications and the orders made in respect of such applications;

- 5 (b) applications for emergency authorisations,
including the number of such applications and
the authorisations issued in respect of such
applications; and
- 5 (c) such other matters relating to the use of
surveillance devices and the administration of
this Act as the designated Commission
considers appropriate.
- 10 (2) The Attorney General shall cause a report furnished by
a designated Commission under subsection (1) to be
laid before each House of Parliament as soon as is
practicable.

”.

28. Section 44 amended

15 Section 44(1)(f) is amended by inserting after “report” —
“
or to enable a designated Commission to
furnish a report under section 43A

”.

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