

ROYAL COMMISSION (POLICE) BILL 2002

CLAUSE NOTES

Part 1 – Preliminary

Clause 1. Short title

The Act may be cited as the *Royal Commission (Police) Act 2002*.

Clause 2. Commencement

The Act comes into operation on the day on which it receives Royal Assent, except that section 38 comes into operation on a day to be fixed by proclamation, and section 41 comes into operation on a day to be fixed by proclamation.

Clause 3. Interpretation

Sub-clause (1) defines terms used in this Act.

Sub-clause (2) — for the purposes of this Act, the Royal Commission into the Police is taken to have ended when the Commission delivers its final report.

Clause 4. Relationship with *Royal Commissions Act 1968*

Establishes the relationship of this Act to the *Royal Commissions Act 1968*. The Act is to be read as if it formed part of the *Royal Commissions Act*.

Part 2 – Obtaining information, documents and other things

Clause 5. Power to obtain information

Confers power on the Commissioner to issue a written notice requiring a public authority or public officer (as defined in clause 3) to produce a statement of information and sets out the procedure to be followed.

A person must comply with such a notice. A person who fails to do so, or who in purported compliance knowingly provides false or misleading information, is guilty of contempt of the Commission.

A statement of information produced in compliance with a notice is not admissible in evidence in any civil or criminal proceedings except in contempt proceedings, proceedings for an offence against this Act or the *Royal Commission Act 1968*, or in disciplinary proceedings.

Clause 6. Power to obtain documents etc.

Confers power on the Commissioner to require a person to attend before the Commission or an officer of the Commission (as defined in clause 3) and produce a document or other thing specified in the notice to attend. The procedure to be followed is set out.

A person who fails to comply with such a notice is guilty of contempt of the Commission (subject to the provisions of section 44 relating to the procedure to be followed in respect of allegations of contempt).

Clause 7. Power to enter public premises

Confers powers on the Commissioner to authorise entry and inspection of premises of a public authority or public officer, inspection of any document or thing in or on the premises, and taking of copies of any document found there.

A public authority or public officer must facilitate exercise of these powers.

Clause 8. Legal professional privilege

A person required to produce a statement of information, document or thing or make facilities available may claim legal professional privilege as a reason for non-compliance, except in relation to any privilege of a public authority or public officer in that capacity.

Part 3 – Attendance before the Commission

Clause 9. Arrest of witness

Confers powers on the Commissioner to issue a warrant for the apprehension of person whose evidence is desired by the Commission. The Commissioner must first be satisfied that the person will not attend before the Commission without being compelled to do so, or is about to leave the State and the person's evidence will not be obtained if the person departs.

Sets out the circumstances under which these powers may be exercised, actions authorised by a warrant issued under this section (including apprehension of the person, bringing the person before the Commission, and detaining the person in custody until released by order of the Commission), and how the warrant may be executed.

A witness arrested under this section may still be dealt with for contempt for non-compliance with a summons.

Clause 10. Conditional release of witness

Sets out conditions which the Commission may apply to the release of a detained witness under section 10(6), and provides for the Commissioner to amend, revoke or add to those conditions.

A witness who without reasonable excuse fails to comply with a condition which has been applied commits an offence and is liable to imprisonment for 2 years and a fine of \$8,000.

Clause 11. Review by Supreme Court

Enables a witness who has not been released by the Commission under section 10(6) or who has been released subject to a certain condition/s to apply to the Supreme Court for a review of the decision or condition/s.

The Court may affirm or set aside a decision of or a condition set by the Commission, and make any order that the Commission may make in respect of the detention or release of the witness.

Part 4 – Secrecy, disclosure and admissibility

Clause 12. Restriction on publication of evidence

Confers on the Commissioner the power to prevent or restrict the publication of — any evidence given to the Commission; the contents of documents or descriptions of things given to or seized by the Commission; information which could lead to the identification of location of a person who has given or may give evidence; and the fact that a person has given or may give evidence.

A person who publishes in contravention of a direction under this section is liable to imprisonment for 12 months and a fine of \$4,000.

Clause 13. Restriction on disclosure

Enables the Commissioner to include a restriction on disclosure in a notice to produce a statement of information (section 5(1)), or a notice to attend and produce a document or thing (section 6(1)), or a summons to attend the Commission.

A person who fails to comply with such a restriction is liable to 12 months imprisonment and a fine of \$4,000, except in limited circumstances where the disclosure may be necessary.

Clause 14. Application of ACC Act

Excludes the Commissioner & officers of the Commission from requirements to comply with — section 14 of the *Anti-Corruption Commission Act 1988* (notification of the Anti-Corruption Commission of conduct or involvement to which that Act might apply); and other provisions of the ACC Act which might otherwise prevent the Commissioner or an officer of the Commission from providing, divulging, communicating, or producing evidence, information or documents for the purposes of the Commission.

Clause 15. Disclosure of information and giving of evidence by Parliamentary Commissioner

Permits the State Ombudsman to disclose to the Commission information obtained in the course of or for the purposes of the *Parliamentary Commissioner Act 1971* or any other Act, and to give evidence and produce documents to the Commission.

Clause 16. Application of *Telecommunications (Interception) Western Australia Act 1996*

Disclosure to the Commission of any information or record obtained through the use of an authorised telephone intercept is not prevented by section 22 of the *Telecommunications (Interception) Western Australia Act 1996*.

Part 5 – Investigation of police complaints by the Commission

Clause 17. Interpretation

Defines the term “police complaint” for the purposes of this Act to mean an allegation or complaint of corrupt or criminal conduct by a person who is or has been a member of the Police Force of Western Australia.

Clause 18. Termination of police investigation

Requires the Commissioner of Police not to commence or to discontinue investigation of a “police complaint” if so directed by the Commissioner, and absolves the Commissioner for Police and other police officers of any duty to investigate the matter or bring the offender before the courts.

However, this provision does not apply to a special constable who is an officer of the Commission, or prevent a matter from being investigated under an arrangement between the Commission and the Commissioner for Police.

An investigation may be commenced or resumed by the Commissioner of Police upon notification by the Royal Commissioner, or after the end of the Commission.

Clause 19. Termination of Parliamentary Commissioner investigation

Provides for the non-commencement or discontinuation of investigations by the State Ombudsman in similar to terms to those applying to police investigations (clause 19 above).

Clause 20. This Part does not require information to be disclosed to the Commission

Nothing in Part 5 of this Act requires the Commission to disclose information to the Commissioner of Police or the Ombudsman.

Part 6 – Assumed identities

Clause 21. Interpretation

The terms “agency”, “chief employee”, “chief executive officer” and “organisation” have the same meanings as in the *Public Sector Management Act 1994*.

Clause 22. Approval for assumed identity

Confers on the Commissioner the power to approve the acquisition and use of an assumed identity or identities by an officer of the Commission. Sets out the procedures and conditions which apply to the granting, variance or cancellation of such an approval.

Clause 23. What an approval authorises

Sets out what an assumed identity approval authorises the officer to whom it applies to do. This includes — acquisition and use of the assumed identity or identities specified in the approval; the making of false representations by the officer (or the Commissioner) in connection with the false identity or identities; & the obtaining of evidence in support of the identity or identities.

Clause 24. Duties of agencies and organisations

Authorises and requires the chief executive officers and employees of agencies or organisations to provide to the Commissioner or an officer of the Commission documents providing evidence of the assumed identity, and to cancel any evidence of the assumed identity when directed to do so by the Commissioner.

Clause 25. Identity of certain officers not to be disclosed in legal proceedings

Requires that the identify of an officer in respect of whom an assumed identity approval is or was in force must not to be disclosed in legal proceedings unless the court considers that the interests of justice require it.

A person who discloses information in contravention of an order in force under this section is liable to 5 years imprisonment and a fine of \$100,000.

Clause 26. Protection from liability

Protects an officer of the Commission who acquires and uses an assumed identity under Part 6 of this Act from criminal liability for any act done by the officer in good faith, and likewise protects a chief executive officer or chief employee who engages in conduct in response to an approval under this Part.

Also affords protection to the Commissioner, a chief executive officer or chief employee from any action, claim, liability or demand in respect of any conduct undertaken in good faith for the purpose of executing this Part.

Clause 27. Report to Attorney General

Provides that the Commissioner may provide a report to the Attorney General on approvals and other matters relating to approvals of assumed identities under this Part, and requires the Attorney General to table any such report before each House of Parliament as soon as practicable.

Part 7 – Controlled operations and integrity of testing programmes

Clause 28. Interpretation

Defines the terms “controlled activity” and “controlled operation” — a “controlled activity” is an activity which, but for section 33 of the Bill would be unlawful; a “controlled operation” is an operation in which one or members of the Commission participate to obtain evidence of corrupt or criminal police conduct, and which involves or may involve a controlled activity.

Clause 29. Authorisation of controlled operation

Confers on the Commissioner the power to authorise a controlled operation, and to vary or cancel such an authorisation.

Sets out how the authorisation is to be made, and the information required to be specified in the authorisation including — the responsible officer of the Commission; the names of those authorised to participate; the nature of the controlled activities; the period of the authorisation; and when the authorisation comes into force.

Clause 30. Commissioner may authorise integrity testing programmes

Confers on the Commissioner the power to authorise an officer of the Commission or another person to conduct a programme to test the integrity of any particular police officer or class of police officers.

Such a programme may involve an act or omission by an authorised participant that provides the police officer whose integrity is being tested the

opportunity to engage in lawful or unlawful behaviour which contravenes the principles of integrity required of a police officer.

The manner in which the authorisation is to be made and the information required to be specified in the authorisation are similar to those for a controlled operation.

Clause 31. Effect of authorisation

Specifies what each person who has been authorised to participate in a controlled operation or integrity testing programme is permitted to do.

In criminal proceedings evidence is not to be excluded or proceedings stayed on the grounds that a person who participated in an authorised controlled operation or authorised integrity testing programme was not authorised to participate.

Clause 32. Protection from liability

A person authorised to participate in an authorised controlled operation or authorised integrity testing programme is protected from criminal liability.

The Commissioner and a participant in an authorised controlled operation or authorised integrity testing programme are protected from any action, claim, liability or demand in respect of conduct undertaken in good faith and for the purpose of this Part.

Clause 33. Evidence

A certificate signed by the Commissioner is admissible in any legal proceedings and is conclusive evidence of the matters relating to the authorised controlled operation or authorised integrity testing programme specified in the certificate.

Clause 34. Report to Attorney General

The Commissioner may provide a report to the Attorney General on authorisations issued and other matters relating to authorised controlled operations or authorised integrity testing programmes under Part 7. The Attorney General must table any such report before each House of Parliament as soon as practicable.

Part 8 – *Surveillance Devices Act 1998* amended

Clause 35. The Act amended

This Part amends the *Surveillance Devices Act 1998*.

Clause 36. Section 4B inserted

Section 4B is inserted into the *Surveillance Devices Act 1998*. The inserted section allows the Commission to apply to a court for a warrant to use a surveillance device under the *Surveillance Devices Act 1998* in the same way that the Anti-Corruption Commission may do so.

The Commission may provide a report to the Attorney General relating to applications for surveillance warrants, applications for emergency authorisations, and other matters relating to the use of surveillance devices

The Attorney General must table any such report before each House of Parliament as soon as practicable.

Clause 37. Section 4B repealed

Provides for the repeal of the new Section 4B (upon completion of the Royal Commission). Section 38 comes into operation on a day fixed by proclamation (clause 2(2) above).

**Part 9 – Telecommunications (Interception)
Western Australia Act 1996 amended**

Clause 38. The Act amended

This Part amends the *Telecommunications (Interception) Western Australia Act 1996*.

Clause 39. Section 3A inserted

Inserts a new section 3A into the *Telecommunications (Interception) Western Australia Act 1996*. The inserted section makes the Commission an “eligible authority” of the State and, as a consequence of this, will attract the obligations under the *Telecommunications (Interception) Act 1979* (Cth) in relation to the recording, keeping and reporting of telecommunications intercepts, and facilitate its access to relevant telecommunications obtained by agencies under the *Telecommunications (Interception) Act 1979* (Cth). The Commission will then be eligible to make use of telephone intercepts under the latter Act.

Clause 40. Section 3A repealed

Provides for the repeal of the new Section 3A (upon completion of the Royal Commission). Section 41 comes into operation on a day fixed by proclamation (clause 2(3) above).

Part 10 – Prisons Act 1981 amended

Clause 41. The Act amended

This Part amends the *Prisons Act 1981*.

Clause 42. Section 22 amended

Enables a prisoner whose presence is required for the purposes of a Royal Commission to be brought up by written order for those purposes to the place named in the order.

Part 11 – Miscellaneous

Clause 43. Contempt

Prescribes procedures for dealing with allegations of contempt of the Commission. The Commission may present a certificate to the Supreme Court setting out details of the alleged contempt and the Supreme Court has jurisdiction as if the contempt were against that Court.

Defences available are outlined. It is a defence against an allegation of contempt that there was a “reasonable excuse” for the act or omission concerned, or that the document or thing required to be produced under section 6 was not relevant to the inquiry. However, “reasonable excuse” does not include that compliance with the Commission’s notice might incriminate or tend to incriminate the person or render the person liable to a penalty, or that production of the document or other thing would be in breach of a non-disclosure obligation of the person.

Clause 44. Victimisation

Creates an offence of victimising (threatening, intimidating, harassing etc) a person because that person has assisted, will or may assist the Commission, or has provided, will or may provide information to the Commission. Penalty prescribed for the offence is imprisonment for 5 years and a fine of \$100,000.

Clause 45. Secrecy

Requires that officers of the Commission not disclose information acquired for the purposes of the Commission. Penalty for non-compliance is imprisonment for 2 years and a fine of \$8,000.

The Commissioner and officers of the Commission cannot be compelled to produce or divulge in any court documents or information acquired for the purposes of the Commission except for the purposes of prosecution in respect of corrupt or criminal conduct or disciplinary.

Clause 46. Delegation

Permits the Commissioner to delegate certain of the Commission’s functions to obtain information, documents and other things to the person appointed as Senior Counsel Assisting the Commission, but only when the Commissioner is ill or absent from Perth or the State.

Clause 47. Protection from liability

Affords personal protection from liability to the Commissioner and any person acting under the direction of the Commission for any act done in good faith for the purposes of facilitating the Commission’s inquiry. This extends to protection from criminal or civil liability of any person who complies or purportedly complies in good faith with any requirement under this Act.

Clause 48. Matter exempt from access

Makes clear that matter created or maintained for the purposes of Part 6 or 7 of this Act is exempt matter for the purposes of the *Freedom of Information Act 1992*.

Clause 49. Powers do not extend beyond end of Commission

Provides that the powers of the Commission into the Police conferred by this Act cannot be exercised after the end of the Commission.

Clause 50. Regulations

Enables the making of regulations prescribing matters required, permitted, necessary or convenient to give effect to the purposes of this Act.