

Queensland



ANNO TRICESIMO SEXTO

ELIZABETHAE SECUNDAE REGINAE

No. 59 of 1987

**An Act to amend The Commissions of Inquiry Acts 1950 to
1954 in certain particulars and for related purposes**

[ASSENTED TO 7TH OCTOBER, 1987]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short Title. This Act may be cited as the *Commissions of Inquiry Act Amendment Act 1987*.

2. Citation. (1) In this Act *The Commissions of Inquiry Act of 1950* as subsequently amended is referred to as the Principal Act.

(2) The Principal Act as amended by this Act may be cited as the *Commissions of Inquiry Act 1950-1987*.

3. Application of Principal Act as amended to existing Commissions.

(1) The provisions of the *Commissions of Inquiry Act 1950-1987* apply to and with respect to—

- (a) every Commission of Inquiry appointed after the commencement of this Act;
- and
- (b) every Commission of Inquiry appointed before the commencement of this Act that has not completed its inquiry at the commencement of this Act:

Provided that an act done or omission made before the commencement of this Act shall not constitute an offence by reason only of an amendment of the Principal Act made by this Act.

(2) In subsection (1) the expression "Commission of Inquiry" has the meaning assigned to the term "Commission" by the Principal Act.

4. Amendment of s. 3. Meaning of terms. Section 3 of the Principal Act is amended by inserting after the definition "Reasonable excuse" the following definition:—

"Record" means any collection of data in whatever form it may be held and includes data held on film, disc, tape, perforated roll or other device in which visual representations or sounds are embodied so as to be capable, with or without the aid of another process or instrument, of being reproduced therefrom;".

5. Amendment of s. 4A. When certain other inquiries not to be held. Section 4A of the Principal Act is amended by—

(a) omitting the note appearing in and at the beginning of the section and substituting the following note:—

"Interaction of Commission with courts etc.";

(b) omitting subsection (4) and substituting the following subsections:—

"(4) A Commission may continue to make and complete its inquiry and report and may do all such acts and things as are necessary or expedient for those purposes notwithstanding that

any other proceedings may be in or before any court, tribunal, warden, coroner, justice or other person and notwithstanding any order made by a court with respect thereto.

(5) The provisions of this section apply according to their terms whether the inquiry (other than that to be made by a Commission) or proceedings referred to therein commenced before or after the issue of the relevant Commission of Inquiry.”.

6. Repeal of and new s. 5. The Principal Act is amended by repealing section 5 and substituting the following section:—

“**5. Power to summon witness and require production of books etc.** (1) A chairman may, by writing under his hand—

(a) summon any person to attend before the Commission at a time and place named in the summons and then and there to give evidence;

and

(b) require any such person to produce to the Commission such books, documents, writings and records or property or things of whatever description in his custody or control as are specified in the writing.

(2) A person served with a writing under a chairman’s hand referred to in subsection (1) shall—

(a) comply in all respects with the summons and requirements contained in the writing;

or

(b) within the prescribed period satisfy the chairman that he has a reasonable excuse for not complying as required by paragraph (a),

unless he is not a person to whom this subsection applies.

Penalty: 200 penalty units or imprisonment for one year.

In paragraph (b), the expression “the prescribed period” means—

the period specified in the writing under the chairman’s hand within which the person served with the writing is to satisfy the chairman as referred to in that paragraph;

or

if no such period is specified, at any time before the date on which that person is required to attend before the Commission.

(3) Subsection (2) applies to—

(a) a person who is served in Queensland with a writing under a chairman’s hand, being such as is referred to in subsection (1);

and

(b) a person who is served outside Queensland with a writing under a chairman's hand, being such as is referred to in subsection (1), if that person was present in Queensland or was ordinarily resident in Queensland or had an asset in Queensland, at the time the Commission of Inquiry was issued or at any time thereafter.

(4) The fact that a person has been served outside Queensland with a writing under a chairman's hand shall not constitute reasonable excuse for the purposes of subsection (2), if that person is one to whom subsection (2) applies.”.

7. New s. 5A. The Principal Act is amended by inserting after section 5 the following section:—

“5A. Procedure upon non-compliance with s. 5 (2). (1) Upon an *ex parte* application made by or on behalf of a chairman and upon production in the matter of the application of the chairman's certificate that he is satisfied a prima facie case exists that a person has failed to comply with section 5 (2) and thereby has committed an offence against this Act a Stipendiary Magistrate to whom the application is made shall forthwith issue a warrant for the apprehension of that person.

(2) A warrant issued under subsection (1) shall authorize the apprehension of the person and his detention in custody for the purposes of—

(a) answering a charge of the offence constituted by the failure to comply with section 5 (2);

and

(b) securing his attendance before the Commission as required pursuant to section 5,

until he be admitted to bail or released, conditionally or otherwise, by order of the chairman or a judge of the Supreme Court.

(3) If a warrant issued under subsection (1) is to be executed in Queensland it may be executed by any member of the Police Force or by any person to whom it is addressed and the person executing the warrant, and every person acting in aid of him, is authorized to break and enter any place, building, vehicle, aircraft or vessel for the purpose of executing the warrant, using such force as is necessary.

(4) The issue of a warrant under subsection (1) or the apprehension, detention or punishment of the person for whose apprehension the warrant is issued does not relieve that person from any other liability had by him to be punished for his failure to comply with the writing under a chairman's hand served on him or excuse him from complying with section 5 (2) in respect of that writing.”.

8. New s. 5B. The Principal Act is amended by inserting after section 5A the following section:—

“5B. Attendance of prisoner before Commission. (1) Where a chairman requires the attendance before a Commission of a prisoner or security patient, the chairman may, by writing under his hand served on the appropriate superintendent, direct the superintendent to produce the prisoner or security patient named or described in the writing at the time and place stated therein.

(2) A direction served under subsection (1) is sufficient warrant or authority to the superintendent for producing such prisoner or security patient, who shall be produced accordingly.

(3) In this section the term “prisoner”, the term “security patient” and the term “superintendent” has the meaning assigned to the term by the *Prisons Act 1958-1974*.”.

9. Amendment of s. 7. Duty of witness to continue in attendance. Section 7 of the Principal Act is amended by omitting the words “been served with a summons to attend before a Commission as a witness shall appear” and substituting the words “attended before a Commission pursuant to a summons shall thereafter appear”.

10. Amendment of s. 8 (2). Warrant in the first instance or before return of summons. Section 8 of the Principal Act is amended in subsection (2) by—

(a) omitting the words “is necessary and” and substituting the words “may be”;

(b) omitting the word “will” where it secondly occurs and substituting the word “may”.

11. Amendment of s. 9 (2). Further contempts of a Commission. Section 9 of the Principal Act is amended in subsection (2) by—

(a) omitting paragraph (i) and substituting the following paragraph:—

“(i) Having been served with a summons or other writing under the hand of a chairman requiring production by him to a Commission of any book, document, writing, record, property or thing of whatever description fails to produce as required that which is in his custody or control;”;

(b) in paragraph (ii), inserting after the words “any commissioner” the words “, which the chairman is satisfied is”;

(c) omitting paragraph (iii) and substituting the following paragraph:—

“(iii) Wilfully threatens or insults—

a Commission;

any commissioner;

any barrister, solicitor or other person appointed, engaged or seconded to assist a Commission;

any witness or person summoned to attend before a Commission;

or

any barrister, solicitor or other person having leave to appear before a Commission;”.

(d) in paragraph (ix), omitting the words “or writing” and substituting the words “writing or record”.

12. Amendment of s. 14. Answers and documents. Section 14 of the Principal Act is amended by—

(a) in subsection (1), omitting the words “or writing” and substituting the words “writing or record or property or thing of whatever description”.

(b) inserting after subsection (1) the following subsection:—

“(1A) A person attending before a Commission is not entitled—

(a) to remain silent with respect to any matter relevant to the Commission’s inquiry upon the chairman’s requiring him to give evidence with respect to that matter;

(b) to refuse or fail to answer any question that he is required by the chairman to answer;

or

(c) to refuse or fail to produce any book, document, writing, record, property or thing that he has been summoned to produce or required by the chairman to produce,

on the ground that to do otherwise would or might tend to incriminate him.”;

(c) in subsection (3), adding at the end thereof the following paragraph:—

“Nothing in this subsection shall be construed to prejudice the operation of subsection (1A).”.

13. Amendment of s. 16 (1). Power to prohibit publication of evidence. Section 16 of the Principal Act is amended in subsection (1) by omitting the words “or writing” and substituting the words “writing or record”.

14. Amendment of s. 19. Power of Commission as to inspection and copies of documents, etc. and to inspect land. Section 19 of the Principal Act is amended by—

(a) in subsection (1),—

(i) omitting the words “or writings” where they firstly occur and substituting the words “writings, records, property or thing”;

(ii) omitting the words “or writings” where they secondly occur and substituting the words “writings or records”;

(b) in subsection (2), inserting after the word “place,” the words “vehicle, aircraft”.

15. New ss. 19A and 19B. The Principal Act is amended by inserting after section 19 the following sections:—

“**19A. Search for and seizure of evidence.** (1) If a chairman is satisfied, by evidence upon oath (or by affirmation or declaration instead of upon oath where, if the evidence were given by a witness before the Commission, such evidence may be given by affirmation or declaration instead of upon oath), which oath, affirmation or declaration the chairman is hereby authorized to administer or take, as the case may be, that there is reasonable ground for suspecting that there is in any place, building, vehicle, aircraft or vessel—

(a) any book, document, writing or record or property or thing of whatever description relevant to the Commission’s inquiry, with respect to which an offence has been or is suspected on reasonable grounds to have been committed;

or

(b) any book, document, writing or record or property or thing of whatever description relevant to the Commission’s inquiry, whether animate or inanimate and whether living or dead, as to which there are reasonable grounds for believing that it would, of itself, or by or on scientific examination, afford evidence of the commission of an offence;

or

(c) any book, document, writing or record or property or thing of whatever description relevant to the Commission’s inquiry as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing an offence,

the chairman may issue his warrant addressed to all members of the Police Force or to any member or members thereof named in the warrant, which shall authorize each person to whom it is addressed to enter (using such force as is necessary) and to search such place, building, vehicle, aircraft or vessel and all persons found therein and to seize any such book, document, writing or record or property or thing found therein and to bring it before the Commission.

(2) A warrant issued under subsection (1) shall be executed only by day unless the warrant expressly authorizes it to be executed by night, in which case it may be executed at any time.

(3) A person who seizes or takes any book, document, writing, record, property or thing for the purposes of a Commission, whether under a warrant or otherwise, shall forthwith bring it before the chairman.

19B. Commission's custody of books etc. (1) The chairman may cause any book, document, writing or record or property or thing of whatever description produced to a Commission, whether or not it is tendered in evidence, to be kept in such custody as he directs (he, taking reasonable care for its preservation)—

(a) until the Commission has completed its inquiry and report and thereafter for a time reasonable for the purpose of establishing whether paragraph (b) is or is likely to be relevant to the case;

and

(b) if a person is committed for trial for an offence committed with respect to such book, document, writing, record, property or thing or an offence committed in such circumstances that the book, document, writing, record, property or thing would be likely to afford evidence at the trial, until it is produced in evidence at the trial.

(2) If no person is committed for trial for an offence referred to in paragraph (b) of subsection (1) the book, document, writing, record, property or thing kept in custody pursuant to a chairman's direction shall be returned to the person from whom it was seized or taken unless the chairman acting under authority conferred on him by law directs that it be disposed of otherwise.”.

16. **New s. 19C.** The Principal Act is amended by inserting after section 19B the following section:—

19C. Authority to use listening devices. (1) Section 43 (1) of the *Invasion of Privacy Act 1971-1981* does not apply to or in relation to the use of a listening device within the meaning of that Act by a person, authorized in writing to use a listening device by a chairman, under and in accordance with an approval in writing given by a judge of the Supreme Court in relation to any particular matter specified in the approval.

(2) An application for such an approval—

(a) shall be made by or on behalf of the chairman and shall be accompanied by his certificate that he is satisfied by evidence upon oath (or by affirmation or declaration instead of upon oath where, if the evidence were given by a witness before the Commission, such evidence may be given by affirmation or declaration instead of upon oath), which oath, affirmation, or declaration the chairman is hereby authorized to administer or take, as the case may be, that there are reasonable grounds for suspecting that the use of a listening device may produce information relevant to the Commission's inquiry with respect to any offence;

and

- (b) shall be made *ex parte* and be heard in the judge's chambers.

No notice or report relating to the application shall be published and no record of the application or of any approval or order given or made thereon shall be available for search by any person except by direction of a judge of the Supreme Court.

(3) In considering such an application a judge of the Supreme Court shall have regard to—

- (a) the gravity of the matters being investigated;
(b) the extent to which the privacy of any person is likely to be interfered with;
and
(c) the extent to which the prevention or detection of the offence in question is likely to be assisted,

and the judge may grant his approval subject to such conditions, limitations and restrictions, and may grant such powers and authorities including an authority to enter any place, building, vehicle, aircraft or vessel, using such force as is necessary, as are, in his opinion, necessary in the public interest and as are specified in his approval.

(4) A person who uses a listening device under and in accordance with an approval given under this section to overhear, record, monitor or listen to any private conversation to which he is not a party shall not communicate or publish the substance or meaning of that private conversation other than to the chairman who authorized him to use the device or other person nominated by the chairman to receive such information.

Information obtained by the use of a listening device under and in accordance with an approval given under this section shall not be used for any purpose, including the Commission's inquiry in connexion with which the approval was obtained, without the chairman's approval or a further approval of a judge of the Supreme Court obtained in the same manner as is prescribed by subsections (2) and (3).

(5) As soon as is practicable after a record (in writing or in any other form) has been made of information obtained by the use of a listening device under and in accordance with an approval given under this section the chairman shall cause so much of the record to be destroyed as does not relate, directly or indirectly, to the commission of an offence or to any other matter relevant to the Commission's inquiry."

17. Amendment of s. 20. Protection of commissioners. Section 20 of the Principal Act is amended by—

(a) omitting the note appearing in and at the beginning of the section and substituting the following note:—

"Protection for participants in Commissions.";

- (b) numbering the provisions thereof as subsection (1);
- (c) adding at the end of the section the following subsection:—

“(2) Without limiting the protection and immunity given a commissioner by subsection (1), a commissioner or any barrister, solicitor or other person appointed, engaged or seconded to assist a Commission shall not incur any liability on account of any act or thing that he does or purports in good faith to do—

- (a) in pursuance of the Commission of Inquiry issued by the Governor in Council;
- (b) in or in relation to the inquiry or in respect of any matter arising in or out of the inquiry;
- (c) in or in relation to any report or recommendation made by the Commission;
- or
- (d) in or in connexion with the efficient conduct of the Commission’s inquiry.”.

18. New ss. 25 and 26. The Principal Act is amended by adding at the end thereof the following sections:—

“**25. Offences.** (1) A person who contravenes or fails to comply with any provision of this Act, for which contravention or failure to comply this Act prescribes a penalty, commits an offence against this Act.

(2) A person who commits an offence against this Act may be punished therefor by way of summary proceedings upon the complaint of a chairman or a person authorized in that behalf by a chairman.

(3) In any summary proceedings the description in the complaint of the complainant as a chairman or a person authorized by a chairman to lay the complaint shall be sufficient proof thereof.

(4) Nothing in this section relates to an act, refusal, failure or omission of any person that constitutes and is dealt with as a contempt of a Commission.

26. Regulations. The Governor in Council may from time to time make regulations not inconsistent with this Act with respect to all matters that in his opinion are necessary or expedient for achieving the objects and purposes of this Act or that may be convenient for the proper administration of this Act or the proper conduct of Commissions generally or of a particular Commission.”.