

1990
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Inquiries Bill 1990

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Inquiries Bill 1990

A BILL

FOR

An Act relating to inquiries

The Legislative Assembly for the Australian Capital Territory enacts
as follows:

PART I—PRELIMINARY

Short title

5 1. This Act may be cited as the *Inquiries Act 1990*.

Commencement

2. (1) Section 1 and this section commence on the day on which
this Act is notified in the *Gazette*.

10 (2) The remaining provisions commence on a day fixed by the
Minister by notice in the *Gazette*.

(3) If the remaining provisions have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

“authorised person” means a person or class of persons declared in writing by the Chairperson to be an authorised person or authorised class of persons for the purposes of this Act;

“Board”—

(a) means a Board of Inquiry appointed under section 5; and

(b) in relation to an inquiry, means the Board of Inquiry appointed to conduct that inquiry;

“Chairperson” means the Chairperson of a Board appointed under subsection 6 (1) or (3);

“legal practitioner” means a legal practitioner (however described) of the High Court, of another federal court or of the Supreme Court of the Territory, a State or another Territory;

“member”—

(a) in relation to a Board constituted by 1 person, means that person; or

(b) in relation to a Board constituted by 2 or more persons, means each of those persons;

“premises” includes—

(a) a building or other structure;

(b) an aircraft, vehicle or vessel; and

(c) a place, whether enclosed or built on, or not.

(2) In this Act, unless the context otherwise requires, a reference to the Chairperson of a Board shall, in relation to a Board constituted by 1 person, be read as a reference to that person.

Act binds Crown

4. This Act binds the Crown.

PART II—BOARDS OF INQUIRY

Appointment

5. The Executive may, by instrument, appoint 1 or more persons as a Board of Inquiry to inquire into a matter specified in the instrument of appointment.

Members

6. (1) Where a Board is constituted by 2 or more persons, the Executive shall appoint 1 of those persons to be the Chairperson.

(2) Where—

- 5 (a) a Board is constituted by 2 or more persons; and
(b) a member dies, resigns or is removed from office under section 11;

the remaining members shall constitute the Board.

(3) Where—

- 10 (a) a Board is constituted by more than 2 persons; and
(b) the Chairperson dies, resigns or is removed from office under section 11;

the Executive shall appoint 1 of the remaining members to be the Chairperson.

- 15 (4) The appointment of a member is not invalid because of a defect or irregularity in connection with the member's appointment.

Terms and conditions of appointment

7. (1) A person may be appointed as a full-time or part-time member.

- 20 (2) A member holds office on such terms and conditions in relation to matters not provided for by this Act as are determined in writing by the Executive.

Remuneration and allowances

- 25 8. (1) A member shall be paid such remuneration and allowances as are prescribed.

(2) Subsection (1) does not apply in relation to—

- 30 (a) remuneration if there is a subsisting determination relating to the remuneration to be paid to the member; or
(b) an allowance of a particular kind if there is a subsisting determination relating to an allowance of that kind to be paid to the member.

(3) In subsection (2)—

“determination” means a determination of the Remuneration Tribunal.

35 **Cessation of office**

9. A member ceases to hold office as a member when the Board's report of its inquiry has been submitted to the Chief Minister in accordance with section 14.

Resignation

10. A person may resign as a member or as the Chairperson by writing signed by the person and delivered to the Chief Minister.

Termination of appointment

11. The Executive may terminate the appointment of a member for misbehaviour or physical or mental incapacity. 5

Staff

12. (1) The staff of a Board shall be public servants made available to the Board by the Head of Administration.

(2) While a public servant is performing services for a Board, he or she shall perform those services in accordance with the directions of a member, and not otherwise. 10

PART III—INQUIRIES**Division 1—General****Conduct**

13. Except as otherwise provided by this Act, an inquiry shall be conducted in such manner as the Board determines. 15

Reports of Boards

14. (1) After completing an inquiry, a Board shall—

- (a) prepare a report of the inquiry; and 20
- (b) submit the report to the Chief Minister.

(2) A report shall be submitted to the Chief Minister—

- (a) where the Executive has fixed a date for submission of the report—on or before that date; or
- (b) where paragraph (a) does not apply—as soon as practicable after completion of the inquiry. 25

(3) When submitting a report to the Chief Minister, a Board shall commit any documents and things then in its possession to the custody of the Chief Minister for safe-keeping.

Counsel assisting Boards

15. A Board may appoint a legal practitioner to assist the Board as counsel, either generally or in relation to a particular matter. 30

Protection of members etc.

16. (1) A member has, in the performance or exercise of any function or power as a member in relation to an inquiry, the same protection and immunity as a Judge of the Supreme Court in proceedings in that Court. 35

(2) A legal practitioner assisting a Board or appearing on a person's behalf at a hearing before a Board has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

5 (3) Subject to this Act, a person summoned to attend or appearing before a Board as a witness has the same protection and is subject to the same liabilities as a witness in proceedings in the Supreme Court.

Non-disclosure of information by members etc.

10 17. A person who is or has been a member, a member of the staff of a Board or counsel assisting a Board shall not, either directly or indirectly, except in the performance or exercise of a function or power under this Act—

15 (a) make a record of, or divulge or communicate to any person, any information acquired by the first-mentioned person by virtue of that person's office or employment under or for the purposes of this Act;

(b) make use of any such information; or

(c) produce to any person, or permit any person to have access to, a document furnished for the purposes of this Act.

20 Penalty: \$5,000 or imprisonment for 6 months, or both.

Procedure

18. In conducting an inquiry, a Board—

(a) is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate; and

25 (b) may do whatever the Board considers necessary or expedient for the fair and expeditious conduct of the inquiry.

Admissibility of evidence

30 19. A statement or disclosure made, or a document or other thing produced, by a witness in the course of giving evidence before a Board, or any information, document or thing obtained as a direct or indirect consequence of the making of the statement or disclosure, or of the production of the first-mentioned document or thing, is not (except in proceedings for an offence against this Act) admissible in evidence against that witness in any civil or criminal proceedings.

35 **Search warrants**

20. (1) The Chairperson may issue a search warrant where—

40 (a) the Chairperson has reasonable grounds for suspecting that there may be, at that time or within the next following 24 hours, in or on any premises, a thing of a particular kind connected with a matter into which the Board is inquiring (in this section referred to as a "thing of the relevant kind"); and

- (b) the Chairperson believes on reasonable grounds that, if a summons were not issued for the production of the thing, that thing might be concealed, lost, mutilated, destroyed or disposed of.

(2) A search warrant shall authorise a police officer or an authorised person named in the warrant with such assistance, and by such force, as is necessary and reasonable— 5

- (a) to enter the premises;
 (b) to search the premises for things of the relevant kind;
 (c) to seize any things of the relevant kind found in or on the premises; and 10
 (d) to deliver any thing so seized to the Board.

(3) A search warrant shall—

- (a) state the purpose for which it is issued;
 (b) specify particular hours during which the entry is authorised or state that the entry is authorised at any time of the day or night; 15
 (c) include a description of the kind of things in relation to which the powers under the warrant may be exercised; and
 (d) specify the date, being a date not later than 1 month after the date of issue of the warrant, on which the warrant ceases to have effect. 20

(4) A search warrant may be executed, in accordance with its terms, at any time during the period commencing on the date of issue of the warrant and ending at the expiration of the date specified for the purpose of paragraph (3) (d). 25

(5) If, in the course of searching under a search warrant for a thing of a relevant kind—

- (a) the person executing the warrant finds a thing that the person believes on reasonable grounds to be connected with the matter into which the Board is inquiring, although not of a kind specified in the warrant; and 30
 (b) the person believes on reasonable grounds that it is necessary to seize that thing in order to prevent its being concealed, lost, mutilated, destroyed or disposed of; 35

the person may seize that thing and shall deliver the thing so seized to the Board.

(6) A person executing a search warrant shall, on request by an occupant of the premises to which the warrant relates, show the warrant to that occupant. 40

(7) A reference in subsection (1) to the Chairperson shall be read as including a reference to a member authorised by the Chairperson to act under that subsection.

Division 2—Hearings

Power to hold

21. (1) For the purposes of conducting an inquiry, a Board may hold hearings.

5 (2) Subject to subsection (3), a hearing shall be in public.

(3) Where a Board is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter, or for any other reason, the Board may—

10 (a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present;

(b) give directions prohibiting or restricting the publication of evidence given at a hearing (whether in public or private) or of matters contained in documents lodged with, or received in evidence by, the Board; and

15 (c) give directions prohibiting or restricting the disclosure to some or all of the persons present at a hearing of evidence given before, or the contents of a document lodged with or received in evidence by, the Board.

20 (4) In considering whether to give a direction under subsection (3), a Board shall take as the basis of its consideration the principle that it is desirable that hearings be in public and that evidence given before, or the contents of documents lodged with or received in evidence by, the Board should be made available to the public and to all persons present at the hearing, but shall pay due regard to any reasons given to the Board why the hearing should be held in private or why publication or disclosure of the evidence or the matter contained in the document should be prohibited or restricted.

Person presiding

30 22. The Chairperson shall preside at a hearing.

Conduct

23. Except as otherwise provided by this Act, the procedure at a hearing shall be determined by the Board.

Presence of persons at private hearings

35 24. Where a hearing is being held in private, a person shall not be present at the hearing unless the person is—

(a) a member;

(b) a member of the staff of the Board directed to be present;

(c) counsel assisting the Board;

40 (d) giving evidence before the Board; or

- (e) entitled by virtue of a direction under paragraph 21 (3) (a) to be present.

Examination of witnesses

25. At a hearing—

- (a) counsel assisting the Board; or 5
 (b) any other person present who is permitted by the Chairperson to do so;

may, so far as the Board thinks appropriate, examine or cross-examine a witness on any matter that the Board considers relevant to its inquiry.

Power to summon witnesses and take evidence 10

26. (1) For the purposes of a hearing before a Board, the Chairperson, or a member authorised by the Chairperson, may summon a person to appear before the Board—

- (a) on a date specified in the summons to produce the documents and other things referred to in the summons; or 15
 (b) at the hearing—
 (i) to give evidence; or
 (ii) to give evidence and produce the documents and other things referred to in the summons.

(2) A person shall be taken to have complied with a summons of the kind referred to in paragraph (1) (a) if the person delivers the documents and things to the Board before the date specified in the summons. 20

(3) A summons shall be—

- (a) in writing; and 25
 (b) served on the person named in the summons.

(4) At a hearing, the Board may take evidence on oath or affirmation and, for that purpose—

- (a) a member may require a witness at the hearing either to take an oath or to make an affirmation; and 30
 (b) a member or authorised person may administer an oath or affirmation to a witness at the hearing.

(5) At a hearing, the Chairperson may—

- (a) require a witness to answer a question put to the witness; and
 (b) require a person appearing at the hearing pursuant to a summons to produce a document specified in the summons. 35

PART IV—OFFENCES

Failure of witnesses to attend or produce documents

27. (1) A person served with a summons to appear as a witness at a hearing before a Board shall not, without reasonable excuse—

- 5 (a) fail to appear before the Board as required by the summons; or
(b) fail to attend from day-to-day unless excused, or released from further attendance, by a member.

Penalty: \$5,000 or imprisonment for 6 months.

10 (2) A person shall not, without reasonable excuse, refuse or fail to produce a document or other thing that the person was required to produce—

- (a) by a summons under this Act served on the person; or
(b) if the person appears as a witness at a hearing before a Board—
by the Chairperson.

15 Penalty: \$5,000 or imprisonment for 6 months.

(3) It is a defence to a prosecution for an offence against subsection (2) that the document or other thing was not relevant to the matter into which the Board was inquiring.

20 (4) It is not a reasonable excuse for the purposes of subsection (2) for a person to refuse or fail to produce a document or other thing on the ground that the production of the document or thing might tend to incriminate the person.

Refusal to be sworn or give evidence

25 28. (1) A person appearing as a witness at a hearing before a Board shall not, without reasonable excuse, refuse or fail—

- (a) to comply with a requirement under paragraph 26 (4) (a) to take an oath or make an affirmation; or
(b) to answer a question that the person is required by the Chairperson to answer.

30 Penalty: \$5,000 or imprisonment for 6 months.

(2) Where a person has on any day done or omitted to do something, being an act or omission that constitutes an offence against subsection (1), and the person does or omits to do the same thing at a hearing of the Board held on some other day, each such act or omission constitutes a separate offence.

35 (3) It is not a reasonable excuse for the purposes of paragraph (1) (b) for a person to refuse or fail to answer a question on the ground that the answer to the question might tend to incriminate the person.

False evidence

29. A person shall not, at a hearing before a Board, knowingly give evidence that is false or misleading in a material particular.

Penalty: \$50,000 or imprisonment for 5 years.

Improper dealings with documents

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30. A person, knowing or having reasonable grounds for believing that a document or other thing is or may be required in evidence before a Board, shall not wilfully—

(a) conceal, mutilate, destroy or alter the document or other thing;

(b) render the document or other thing incapable of identification; 10
or

(c) in the case of a document—render it illegible or indecipherable.

Penalty: \$20,000 or imprisonment for 2 years.

Intimidation or dismissal of witnesses

31. (1) A person shall not use, cause, inflict or procure any violence, 15
punishment, damage, loss or disadvantage on or to a person—

(a) because the person appeared or is to appear as a witness before a Board; or

(b) because of any evidence given by the person before a Board.

Penalty: \$50,000 or imprisonment for 5 years. 20

(2) An employer shall not dismiss an employee from employment or prejudice an employee in employment—

(a) because the employee appeared or is to appear as a witness before a Board; or

(b) because of any evidence given by the employee before a Board. 25

Penalty: \$50,000 or imprisonment for 5 years.

(3) If all the elements of an offence against subsection (2) other than the reason for the employer's action are proved, the onus of proving that the dismissal or prejudice was not because the employee appeared or was to appear as a witness or gave evidence is on the 30
employer.

Preventing witnesses from attending

32. A person shall not wilfully prevent a person who has been summoned to attend before a Board—

(a) from so attending; 35

(b) from answering a question that the person is required by the Chairperson to answer; or

(c) from producing a document or other thing referred to in the summons.

Penalty: \$10,000 or imprisonment for 1 year. 40

Bribery of witnesses

33. A person shall not—

- 5 (a) give, confer or procure, or promise or offer to give, confer or procure any property or benefit of any kind to, on or for, any person on any agreement or understanding that any person called or to be called as a witness before a Board will give false testimony or withhold true testimony;
- 10 (b) induce a person called or to be called as a witness before a Board to give false testimony or to withhold true testimony; or
- (c) ask for, receive or obtain, or agree to receive or obtain, any property or benefit of any kind, whether for the person or for another person, on any agreement or understanding that any person called or to be called as a witness before a Board will give false testimony or withhold true testimony.

15 Penalty: \$50,000 or imprisonment for 5 years.

Fraud on witnesses

34. A person shall not practise any fraud or deceit, or knowingly make or exhibit any false statement, representation, token or writing, to any person called or to be called as a witness before a Board with intent to affect the testimony of that person as a witness.

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Penalty: \$20,000 or imprisonment for 2 years.

Contempt of Boards

35. A person shall not—

- 25 (a) wilfully insult or disturb a Board;
- (b) wilfully interrupt the proceedings of a Board;
- (c) use insulting language towards a Board;
- (d) make a statement that is false and defamatory of a Board; or
- (e) commit a wilful contempt of a Board.

Penalty: \$10,000 or imprisonment for 1 year.

30 **Dealing with certain offences summarily**

36. (1) Notwithstanding that an offence against section 29 or 30 is an indictable offence, proceedings in respect of such an offence may be heard and determined by a court of summary jurisdiction where—

- 35 (a) the court is satisfied that it is proper to do so; and
- (b) the defendant and prosecution both consent to the offence being so dealt with.

(2) Where a person is convicted of an offence that has been dealt with pursuant to subsection (1), the penalty that the court may impose is a fine not exceeding \$10,000 or imprisonment for a period not exceeding 1 year.

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PART V—MISCELLANEOUS**Delegation of powers**

37. A Board may, with the written consent of the Chief Minister, by instrument delegate any of its powers under this Act.

Publication of proceedings protected

38. No action or proceeding, civil or criminal, lies against a person in respect of the publication of a fair and accurate report of the proceedings of a hearing before a Board (except a publication in contravention of a direction under subsection 21 (3)).

Reimbursement of expenses of witnesses

39. A witness appearing before a Board is entitled to be paid by the Territory in respect of the expenses of the attendance of the witness an amount authorised in accordance with the Supreme Court scale of costs.

Regulations

40. The Executive may make regulations, not inconsistent with this Act, prescribing matters—

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