

South Australia

Inquiries Bill 2021

A BILL FOR

An Act to provide for Royal Commissions and other forms of inquiry, to make related amendments to various other Acts, to repeal the *Royal Commissions Act 1917*, and for other purposes.

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The Parliament of South Australia enacts as follows:**Part 1—Preliminary****1—Short title**

This Act may be cited as the *Inquiries Act 2021*.

5 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

10 *authorised person*, in relation to an inquiry, means a person authorised in accordance with section 11;

commission of inquiry means an inquiry established under section 5(2);

core participant—see section 16;

establishment instrument means—

- 15 (a) an instrument referred to in section 5(1)(a); or
(b) an Order in Council referred to in section 5(2); or
(c) a notice referred to in section 5(3);

expert opinion means the opinion of an expert based on the specialised knowledge or skill of that expert;

government inquiry means an inquiry established under section 5(3);

20 *information*, in relation to the power of an inquiry to obtain or disclose information, includes matters of expert opinion as well as of fact;

inquiry means a public inquiry or a government inquiry;

member means a person appointed to be a member of an inquiry in accordance with section 6(1)(b);

officer of an inquiry means a person who is engaged to work for an inquiry;

public inquiry means—

- (a) a Royal commission; or
- (b) a commission of inquiry;

public sector agency has the same meaning as in the *Public Sector Act 2009*;

relevant department, in relation to an inquiry, means—

- (a) if an administrative unit is appointed, under the terms of reference for the inquiry, to be responsible for administrative matters relating to the inquiry—that administrative unit; or
- (b) in any other case—the Attorney-General's Department;

relevant Minister means—

- (a) in relation to a public inquiry—the Minister of the Crown who is responsible for the relevant department; or
- (b) in relation to a government inquiry—
 - (i) the Premier of South Australia; or
 - (ii) if another Minister of the Crown is authorised by the Premier to establish a government inquiry under section 5(3)—that other Minister of the Crown.

4—Application of Act

This Act applies outside South Australia to the full extent of the extraterritorial legislative power of the Parliament.

Part 2—Establishment and membership of inquiry

5—Types of inquiry

- (1) This Act applies to the following kinds of inquiry:
 - (a) Royal commissions established by the Governor by instrument under the public seal of the State;
 - (b) commissions of inquiry established in accordance with subsection (2);
 - (c) government inquiries established in accordance with subsection (3).
- (2) The Governor may, by Order in Council, establish a commission of inquiry for the purpose of inquiring into, and reporting on, any matter of public importance.
- (3) The Premier of South Australia, or another Minister of the Crown authorised by the Premier, may, by notice in the Gazette, establish a government inquiry for the purpose of inquiring into, and reporting on, any matter of public importance.

6—Establishment instruments

- (1) The establishment instrument for an inquiry must—
- (a) specify the matter of public importance that is the subject of the inquiry; and
 - (b) name the person or persons appointed to be members of the inquiry; and
 - 5 (c) if more than 1 person is appointed to the inquiry, name the person who is to be the chairperson of the inquiry; and
 - (d) specify the date when the inquiry may begin considering evidence.
- (2) If the terms of reference for an inquiry are not included in the establishment instrument—
- 10 (a) the terms of reference must be published, as soon as is reasonably practicable after the date of the establishment instrument, by notice in the Gazette by the relevant Minister; and
 - (b) the inquiry must not begin considering evidence before the terms of reference are so published.
- (3) The terms of reference may set out any matters relevant to the inquiry, including (without limitation)—
- 15 (a) any matters relevant to the scope and purpose of the inquiry; and
 - (b) any administrative or procedural matters; and
 - 20 (c) a reporting date, provisional reporting date, or process for determining a reporting date.
- (4) The terms of reference of an inquiry may be amended at any time by notice in the Gazette by the relevant Minister.
- (5) Before terms of reference may be published under subsection (2) or amended under subsection (4), the relevant Minister may consult the person appointed to the inquiry or appointed to be the chairperson of the inquiry.
- 25

7—Removal from office

- (1) The Governor may, by proclamation, remove any member of a public inquiry from office.
- (2) The relevant Minister may, by notice in the Gazette, remove any member of a
- 30 government inquiry from office.
- (3) A member of an inquiry may only be removed under this section for—
- (a) contravention of a condition of appointment; or
 - (b) misconduct; or
 - (c) failure or incapacity to carry out official duties satisfactorily.

8—Vacancy in office

- (1) If 1 or more members of an inquiry are, for any reason, unable to continue in office, the relevant Minister must consult with any remaining members of the inquiry as to how the inquiry should proceed.

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- (2) After consultation has been undertaken in accordance with subsection (1)—
- (a) the relevant Minister may require the inquiry to continue to perform its functions, despite the vacancy in its membership; or
 - (b) a person may be appointed to be a replacement member of the inquiry—
 - 5 (i) in the case of a public inquiry—by the Governor by proclamation; or
 - (ii) in the case of a government inquiry—by the relevant Minister by notice in the Gazette;
 - (c) the inquiry may be terminated—
 - 10 (i) in the case of a public inquiry—by the Governor by proclamation; or
 - (ii) in the case of a government inquiry—by the relevant Minister, by notice in the Gazette.
- (3) The power under subsection (2)(a) or (b) must not be exercised if to do so would be contrary to the principles of natural justice.

9—Inquiry functions may be performed by 1 or more members

- 15 The chairperson of an inquiry that is constituted of more than 1 member may (subject to the inquiry's establishment instrument) determine from time to time that any of the functions of the inquiry may be performed by 1 or more members separately.

10—Counsel to assist inquiry

- 20 (1) An inquiry may request the appointment of counsel to assist the inquiry in accordance with this section.
- (2) Before making a request under this section, the inquiry must consider and have regard to—
- 25 (a) the purpose of this Act and, in particular, the purpose of the Act to enable an inquiry to be carried out effectively, efficiently, and fairly; and
 - (b) the nature of the subject matter of the inquiry; and
 - (c) the procedures most appropriate for carrying out the terms of reference.
- (3) The Attorney-General must, if requested to do so, appoint counsel to assist an inquiry, but in doing so must—
- 30 (a) have regard to the matters specified in subsection (2); and
 - (b) consult the inquiry on—
 - (i) the proposed appointee; and
 - (ii) the terms and conditions to apply to the appointment.

11—Authorised persons

- 35 (1) An inquiry may, by instrument in writing, authorise persons to exercise any functions or powers of the inquiry that, in accordance with this Act, may be exercised by an authorised person.
- (2) An authorisation under this section may be varied or revoked at any time by further instrument in writing.

Part 3—Conduct of inquiries

12—Inquiry must act independently, impartially, and fairly

In exercising its powers and performing its duties under this Act, an inquiry and each of its members must act independently, impartially, and fairly.

13—Manner of inquiry

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- (1) An inquiry may conduct its inquiry in any manner that it considers appropriate, subject to—
- (a) the requirements of procedural fairness; and
 - (b) the establishment instrument; and
 - 10 (c) this or any other Act or law.
- (2) In making a decision as to the procedure or conduct of an inquiry an inquiry must have regard to the need to avoid unnecessary delay or cost in relation to public funds, witnesses, or other persons participating in the inquiry.
- (3) If an inquiry proposes to make a finding that is adverse to any person, the inquiry must, using whatever procedure it may determine, be satisfied that the person—
- 15 (a) is aware of the matters on which the proposed finding is based; and
 - (b) has had an opportunity, at any time during the course of the inquiry, to respond on those matters.
- (4) A government inquiry may only take evidence in private.
- 20 (5) A public inquiry may take evidence in public or in private.

14—Practice directions, statements and notes

- (1) An inquiry may, from time to time, issue practice directions, statements or notes in relation to its inquiry.
- 25 (2) Practice directions, statements or notes issued under this section must not be inconsistent with the establishing instrument, this or any other Act or any regulations made under this or any other Act.

15—Participation and representation

- (1) An inquiry may allow, to the extent and in the manner determined by the inquiry, any person to participate or be legally represented in an inquiry.
- 30 (2) In allowing a person to be legally represented, the inquiry may have regard to the following matters:
- (a) the nature of the inquiry and the matters to which the inquiry relates;
 - (b) whether the person has any direct or special interest in the matters to which the inquiry relates;
 - 35 (c) the role that the person played in relation to the matters to which the inquiry relates;

- (d) the likelihood that the inquiry may make an adverse finding against the person;
- (e) the ability of the person to assist the inquiry;
- (f) the age of the person;
- 5 (g) any other matter the inquiry considers relevant.

16—Designation of core participants

- (1) At any time an inquiry may, by written notice, designate any person to be a core participant in the inquiry.
- 10 (2) In determining whether to designate a person as a core participant, an inquiry must have regard to the following matters:
 - (a) whether the person has a significant direct or special interest in a substantial aspect of the matters to which the inquiry relates;
 - (b) whether the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;
 - 15 (c) the likelihood that the inquiry may make an explicit or serious adverse finding against the person.
- (3) A person designated as a core participant has the right to—
 - (a) in the case of a public inquiry—give evidence and make submissions to the inquiry; or
 - 20 (b) in the case of a government inquiry—make submissions to the inquiry, subject to any directions of that inquiry as to the manner in which evidence is to be given or submissions made.
- 25 (4) A person designated as a core participant (or such a person's legal representative) may, with the leave of the inquiry and in accordance with any directions of the inquiry, examine or cross-examine any witness on any matter relevant to the inquiry (and such a witness will have the same protection and be subject to the same liabilities as if examined by the inquiry).

17—Postponement or temporary suspension

- 30 (1) An inquiry may, after consultation with the relevant Minister, postpone or temporarily suspend the inquiry if—
 - (a) another investigation is being, or is likely to be, carried out into matters relating to the inquiry; and
 - (b) the inquiry is satisfied that to commence or continue the inquiry would be likely to prejudice—
 - 35 (i) the investigation referred to in paragraph (a); or
 - (ii) any person interested in that investigation.
- (2) The inquiry must commence or continue when it is satisfied that to do so would no longer prejudice the other investigation or any person interested in it.

18—Referral of questions of law

An inquiry may, at any time, refer a question of law to the Supreme Court for determination.

19—Limits on findings of inquiry

- 5 (1) An inquiry has no power to determine the civil, criminal, or disciplinary liability of any person.
- (2) An inquiry may, however, in exercising its powers and performing its duties under this Act—
- 10 (a) make findings of fault; and
- (b) make recommendations that further steps be taken to determine liability; and
- (c) in the case of a public inquiry—refer matters directly to the Director of Public Prosecutions or another prosecution authority for possible prosecution.

20—Admissibility of answers, information, documents and other things

- 15 (1) An answer, information, document or other thing given or produced to an inquiry by a person and the fact that an answer, information, document or other thing was given or produced, is not admissible in evidence, or otherwise able to be used, against the person in other proceedings relating to the person, except in proceedings for—
- (a) an offence against this Act; or
- 20 (b) an offence against section 242 or 243 of the *Criminal Law Consolidation Act 1935* in relation to the inquiry.
- (2) Subsection (1) does not apply to a document or other thing if it was obtained, or could have been obtained, independently of its production to the inquiry, either before or after its production, by the person seeking to tender it in evidence, or otherwise to use it, in the other proceedings.
- 25 (3) In this section—
- other proceedings* means criminal, civil or administrative proceedings before a court, tribunal or person acting judicially or disciplinary proceedings, including proceedings that were pending when the answer, information, document or other thing was given or produced to the inquiry.

21—Reports and information

- 30 (1) An inquiry may publish information relating to, or obtained for the purposes of, the inquiry.
- (2) Every inquiry must, in accordance with any requirements of the terms of reference for the inquiry, prepare a final report and present it—
- 35 (a) in the case of a public inquiry, to the Governor; and
- (b) in the case of a government inquiry, to the relevant Minister.
- (3) The final report of an inquiry must set out—
- (a) the findings of the inquiry; and
- (b) any recommendations of the inquiry.

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- (4) A copy of the final report of a public inquiry must also be presented to the relevant Minister and the relevant Minister must, within 12 sitting days of receiving the final report, have copies of it laid before both Houses of Parliament.

Part 4—Powers

Division 1—Government inquiries

22—Recommendations as to action by public sector agencies

- (1) If a government inquiry determines that a matter arising out of the inquiry should be referred to a public sector agency for consideration or action, the government inquiry may prepare an interim report that includes that determination and the reasons for it and any recommendations that the inquiry thinks fit.
- (2) A copy of an interim report must be provided to—
- (a) the relevant Minister; and
 - (b) the Minister responsible for the public sector agency to which the interim report relates.
- (3) The principal officer of the public sector agency to which the interim report relates must, at the request of the government inquiry, report to the government inquiry within a time allowed in the request on what steps have been taken in respect of the matter dealt with by the interim report and, if no such steps have been taken, the reason for the inaction.
- (4) If it appears to the government inquiry that appropriate steps have not been taken in relation to the matter dealt with by the interim report, the government inquiry—
- (a) must include particulars of that failure in the final report presented under section 21; and
 - (b) may forward copies of the final report, or of any portions of the final report detailing the failure, to the Speaker of the House of Assembly and the President of the Legislative Council with a request that they be laid before their respective Houses.

Division 2—Public inquiries

23—Evidence

- (1) A public inquiry may, for the purposes of its inquiry—
- (a) receive any evidence that, in its opinion, may assist it to deal effectively with the subject of the inquiry, whether or not the evidence would be admissible in a court of law; and
 - (b) take evidence on oath or affirmation, and for that purpose an oath or affirmation may be administered by any member of the inquiry or by an authorised person; and
 - (c) permit a witness to give evidence by any means, including by written or electronic means, and require the witness to verify the evidence by—
 - (i) in the case of written evidence—statutory declaration; or

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Part 4—Powers

Division 2—Public inquiries

(ii) in any other case—oath or affirmation.

- (2) The inquiry may authorise 1 or more persons to exercise powers under subsection (1)(b) on behalf of the inquiry.

24—Issue of summons

(1) A public inquiry may summon a person to appear before the inquiry to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

(2) Before issuing a summons under subsection (1), the inquiry must be satisfied that it is reasonable in all the circumstances to do so.

(3) The inquiry must also record in writing the reasons for the issue of the summons.

25—Production of documents etc

(1) A public inquiry may, as it thinks appropriate for the purposes of the inquiry, do any of the following:

- (a) require a person to produce any documents or things in that person's possession or control or copies of those documents or things;
- (b) require a person to provide information to the inquiry, in a form approved by the inquiry;
- (c) require a person to verify by statutory declaration any written information, copies of documents, or representations of things provided to the inquiry;
- (d) examine or make copies of any document or thing that is produced or provided by a person.

(2) A public inquiry may, by instrument in writing given to a person, order a person to comply with a requirement of a kind specified in subsection (1).

(3) An authorised person may exercise powers under subsection (1)(d).

26—Power to remove people

(1) A public inquiry may—

- (a) require (whether orally or in writing) any person to leave a place being used for the purposes of the inquiry; and
- (b) if the person refuses or fails to comply with that requirement—remove the person (using such force as may be required in the circumstances).

(2) An authorised person may exercise powers under subsection (1)(b).

27—Warrants to enter land etc

(1) A magistrate may, on application under this section, issue a warrant authorising members of a public inquiry, or authorised persons, to enter and search any place or vehicle.

(2) An application may be made under this section by any member of a public inquiry.

(3) A warrant may only be issued if the magistrate is satisfied that the warrant is reasonably required in the circumstances for the purposes of the inquiry.

- (4) An application for a warrant may be made personally or, if, in the opinion of the applicant, the warrant is urgently required and there is not enough time to lodge a written application and attend in person, by fax, email or telephone in accordance with practices and procedures prescribed by rules of the Magistrates Court.
- 5 (5) The grounds of an application for a warrant must be verified by affidavit.
- (6) A warrant must—
- (a) specify the place or vehicle to which the warrant relates; and
 - (b) state whether entry is authorised at any time of the day or night or during specified hours of the day or night.
- 10 (7) A warrant authorises members of a public inquiry or authorised persons—
- (a) to enter and search and, if necessary, use reasonable force to break into or open—
 - (i) the place or vehicle to which the warrant relates; or
 - (ii) part of, or anything in or on, a place or vehicle to which the warrant
15 relates; and
 - (b) to give directions with respect to the stopping or movement of a vehicle to which the warrant relates; and
 - (c) in the course of executing the warrant—
 - (i) to take photographs, films or audio, video or other recordings; and
20 (ii) to examine, copy or take extracts from a document connected with the inquiry; and
 - (iii) to examine or test any thing connected with the inquiry, or cause or require it to be examined or tested.
- (8) In executing a warrant, the members of the public inquiry or authorised persons may
25 be assisted by such other persons as they consider necessary in the circumstances.
- (9) A member of the public inquiry or authorised person may require an occupier of a place or a person apparently in charge of a document or thing to give to the member or authorised person, or to a person assisting them, such assistance as is reasonably required by them for the effective execution of a warrant.
- 30 (10) A warrant, if not executed at the expiration of 1 month from the date of its issue, then expires.

28—Power to impose restrictions on access etc

- (1) A public inquiry may, at any time, make orders to—
- (a) prohibit access to, or publication of—
35
 - (i) the whole or any part of any evidence, submissions or information presented to the inquiry; or
 - (ii) any report or account of the evidence, submissions or information; or
 - (iii) the name or other particulars likely to lead to the identification of a
40 witness or other person participating in the inquiry (other than any counsel); or

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Part 4—Powers

Division 2—Public inquiries

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- (iv) any rulings of the inquiry; or
- (b) restrict public access to any part or aspect of the inquiry; or
- (c) hold the inquiry, or any part of it, in private.
- (2) Before making an order under subsection (1), an inquiry must take into account the following criteria:
- (a) the benefits of observing the principle of open justice;
- (b) the risk of prejudice to public confidence in the proceedings of the inquiry;
- (c) the need for the inquiry to ascertain the facts properly;
- (d) the extent to which public proceedings may prejudice the security, defence, or economic interests of this State or any other State or Territory or of the Commonwealth;
- (e) the privacy interests of any individual;
- (f) whether it would interfere with the administration of justice, including any person's right to a fair trial, if an order were not made under subsection (1);
- (g) any other countervailing interests.
- (3) If the instrument that establishes an inquiry restricts any part or aspect of the inquiry from public access, the inquiry must make such orders under subsection (1) as are necessary to give effect to the restrictions.
- (4) An order under this section stays in force for the period specified in the order or, if no period is specified, until a further order varying or revoking the order is made—
- (a) during the period of the inquiry—by the inquiry; or
- (b) after the inquiry has been completed (in the case of an order under subsection (1)(a)) —by the Supreme Court.
- (5) The Supreme Court may vary or revoke an order under subsection (1)(a), on an application made by an interested party at any time after completion of an inquiry, if satisfied that—
- (a) there is no reason for the order to continue in its original form; or
- (b) the material to which the order relates has been made publicly available elsewhere; or
- (c) each person or body whose interests were sought to be protected by the order consents to the variation or revocation; or
- (d) the public interest in disclosure of the material now outweighs the reasons for the order; or
- (e) it is otherwise in the interests of justice for the order to be varied or revoked.
- (6) In this section—
- interested party***, in relation to an application under subsection (5), means—
- (a) the Manager of State Records; or
- (b) any other person that the Supreme Court is satisfied has a genuine reason for making the application.

Division 3—Application of privileges and immunities in inquiries**29—Application of privileges and immunities generally**

- 5 (1) Except as provided in this Division, nothing in this Act affects or limits the application of legal professional privilege, the privilege against self-incrimination, statutory secrecy and confidentiality provisions and public interest immunity in inquiries under this Act.
- (2) Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.

30—Legal professional privilege does not apply in Royal commissions

- 10 (1) It is not a reasonable excuse for a person to refuse or fail to comply with a requirement under this Act to give information (including answering a question) or produce a document or other thing to a Royal commission that the information, document or other thing is the subject of legal professional privilege.
- 15 (2) Information or a document or other thing does not cease to be the subject of legal professional privilege only because it is given or produced to a Royal commission in accordance with a requirement to do so under this Act.

31—Privilege against self-incrimination does not apply in Royal commissions

- 20 (1) Subject to subsection (2), it is not a reasonable excuse for a person to refuse or fail to comply with a requirement under this Act to give information (including answering a question) or produce a document or other thing to a Royal commission that the information, document or other thing might tend to incriminate the person or make the person liable to a penalty.
- 25 (2) It is a reasonable excuse for a natural person to refuse or fail to comply with a requirement referred to in subsection (1) that the information, document or other thing might tend to incriminate the person, or make the person liable to a penalty, in relation to—
- (a) proceedings for an offence with which the person has been charged that have not finally been disposed of; or
- 30 (b) proceedings for the imposition or recovery of a penalty that have been commenced against the person but not finally disposed of.

32—Statutory secrecy and confidentiality provisions do not apply in Royal commissions

- 35 (1) It is not a reasonable excuse for a person to refuse or fail to comply with a requirement under this Act to give information (including answering a question) or produce a document or other thing to a Royal commission that another Act prohibits the person from giving the information or producing the document or other thing or imposes a duty of confidentiality on the person in relation to the information, document or other thing.
- 40 (2) The person is not subject to any criminal, civil, administrative or disciplinary proceedings or action only because the person complies with the requirement.

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Part 4—Powers

Division 3—Application of privileges and immunities in inquiries

- (3) Subsections (1) and (2) do not apply to—
- (a) a provision of another Act that specifically applies to the giving of information or the production of documents or other things to a Royal commission; or
 - (b) a provision of another Act that is prescribed by the regulations for the purposes of this section.
- (4) If a Royal commission receives information or a document or other thing referred to in this section, any provision of another Act that prohibits the disclosure of the information, document or other thing or imposes any other duty of confidentiality in relation to the information, document or other thing does not apply to the Royal commission.

33—Public interest immunity does not apply in Royal commissions

- (1) It is not a reasonable excuse for a person to refuse or fail to comply with a requirement under this Act to give information (including answering a question) or produce a document or other thing to a Royal commission that the information, document or other thing is the subject of public interest immunity.
- (2) Information or a document or other thing does not cease to be the subject of public interest immunity only because it is given or produced to a Royal commission in accordance with a requirement to do so under this Act.

Part 5—Enforcement and contempt**34—Offences**

- (1) A person commits an offence if the person intentionally—
 - (a) fails to attend a public inquiry in accordance with a summons given to the person;
 - (b) having been summoned to attend a public inquiry—refuses to be sworn or to affirm and give evidence;
 - (c) fails to produce any document or thing required by order of a public inquiry given to the person under section 25(2);
 - (d) destroys evidence or obstructs or hinders any authorised person who is examining, copying, or making a representation of a document or thing required by order of a public inquiry;
 - (e) fails to comply with a procedural order or direction of a public inquiry, including an order made under section 28(1);
 - (f) disrupts the proceedings of an inquiry;
 - (g) prevents a witness from giving evidence or threatens or seeks to influence a witness before an inquiry;
 - (h) provides false or misleading information to an inquiry;
 - (i) threatens or intimidates an inquiry, a member of an inquiry, or an officer of an inquiry.

Maximum penalty: \$10 000.

- (2) However, a person does not commit an offence under subsection (1)(a) to (e) if compliance would be prevented by a right, privilege or immunity that the person has in accordance with this Act.

35—Contempt of public inquiry

- 5 A person is in contempt of a public inquiry if the person—
- (a) when appearing as a witness who was summoned to appear at an inquiry—
 - 10 (i) refuses or fails to take an oath or affirmation when required to do so; or
 - (ii) refuses or fails to answer a question that the person is required to answer; or
 - (iii) refuses or fails to produce a document or other thing that the person was required to produce by the summons; or
 - (b) gives evidence that the person knows is false or misleading in a material particular; or
 - 15 (c) obstructs or hinders the inquiry; or
 - (d) disrupts a public inquiry; or
 - (e) threatens a person present at an inquiry.

36—Supreme Court to deal with contempt of public inquiry

- 20 (1) If a public inquiry is of the opinion that a person is in contempt of the inquiry, a member of the inquiry may apply to the Supreme Court for the person to be dealt with in relation to the contempt.
- (2) Before the application is made, the inquiry must inform the person that the inquiry proposes to make the application.
- 25 (3) The application must be accompanied by a certificate, signed by a member of the inquiry, that states—
- (a) the grounds for making the application; and
 - (b) evidence in support of the application.
- (4) A copy of the certificate must be given to the person before, or at the same time as, the application is made.
- 30 (5) Proceedings in relation to the application are, subject to this Act, to be instituted, carried on, heard and determined in accordance with the laws (including any rules of court) that apply in relation to the punishment of a contempt of the Supreme Court.
- (6) In proceedings in relation to the application, the certificate under subsection (3) is prima facie evidence of the matters specified in the certificate.
- 35 (7) If, after—
- (a) considering the matters specified in the certificate; and
 - (b) hearing or receiving any evidence or statements by or in support of the inquiry; and

- (c) hearing or receiving any evidence or statements by or in support of the person,

the Supreme Court finds that the person was in contempt of the inquiry, the Court may deal with the person as if the acts or omissions involved constituted a contempt of that Court.

37—Person in contempt may be detained

- (1) If a member of a public inquiry proposes to make an application under section 36 in respect of a person, the member may, during any proceedings of the inquiry, direct a police officer to detain the person for the purpose of bringing the person before the Supreme Court for the hearing of the application.
- (2) If the person is detained under subsection (1)—
- (a) the member must apply to the Court as soon as practicable under section 36(1) in respect of the person; and
 - (b) the person must, subject to subsection (3), be brought before the Court as soon as practicable.
- (3) The Court may—
- (a) direct that the person be released from detention on condition that the person will appear before the Court in relation to the application; or
 - (b) order that the person continue to be detained until the application is determined.
- (4) The Court may also impose any other condition on the release, for example—
- (a) that the person surrenders his or her passport; or
 - (b) that the person gives an undertaking as to his or her living arrangements; or
 - (c) that the person reports as required to a law enforcement agency.
- (5) The Court may at any time vary or revoke a condition imposed under subsection (4).

38—Member may withdraw contempt application

- (1) A member of the public inquiry may at any time withdraw an application in relation to a person under section 36.
- (2) If—
- (a) an application is withdrawn in accordance with this section; and
 - (b) the person is in detention under section 37,
- the person must be released from detention immediately.

39—Conduct constituting both a contempt and an offence

If any act or omission of a person in relation to an inquiry constitutes both an offence against section 34 and also a contempt of the inquiry under section 35, the person may be either prosecuted for the offence or dealt with for the contempt, but nothing in this Act renders a person liable to be punished twice in respect of the same act or omission.

40—Application to other persons or bodies

5 If another Act provides that a person or body has, in exercising any function under that Act, the powers of a Royal commission or of a commission of inquiry under this Act, this Part applies in respect of the exercise of that function in the same way as it applies in respect of a Royal commission or commission of inquiry (as the case may be) and as if the person or body were the inquiry.

Part 6—Miscellaneous**41—Provision of counselling etc to witnesses**

10 If an inquiry is dealing with subject matter that is likely to cause distress or psychological harm to any witnesses or if any witnesses are children or other vulnerable persons, the inquiry must consider engaging or appointing a suitably qualified person or persons to provide counselling, support or assistance to such witnesses.

42—Delivery of records

- 15 (1) The records of a public inquiry must be delivered into the custody of State Records as soon as practicable after the conclusion of the inquiry (and in any case within 6 weeks after the final report of the inquiry has been presented as required by section 21).
- 20 (2) If any records of the inquiry are subject to an order under section 28(1)(a) prohibiting access to the records, those records must be delivered into the custody of State Records in a manner that is consistent with the requirements of the order and with a register containing details of the order and a summary of the reasons for the order.

43—Confidentiality

- 25 (1) A person who is, or has been, a member of, or otherwise engaged in official duties for, an inquiry must not, directly or indirectly, disclose information acquired by the person in the course of being engaged in such official duties except—
- (a) for the purposes of this Act; or
 - (b) for the purposes of referring a matter in accordance with this Act to another person or body; or
 - 30 (c) for the purposes of a criminal proceeding or a proceeding for the imposition of a penalty; or
 - (d) as otherwise required or authorised by this or another Act.

Maximum penalty: \$2 500 or imprisonment for 6 months.

- 35 (2) Subsection (1) does not apply to a disclosure of information by a person if the information is in the public domain at the time of the disclosure (unless the information is only in the public domain as a result of a disclosure that the person knows or ought to have known was unlawful).

44—Immunities and liability of inquiry

- (1) A member of an inquiry has the same protections, privileges and immunities from liability as a Judge of the Supreme Court.

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- (2) A person taking evidence on behalf of an inquiry has, in doing so, the same protections, privileges and immunities as a member of the inquiry.
- (3) A legal practitioner representing a person at an inquiry has the same protection and immunity as a legal practitioner has in representing a party in proceedings in the Supreme Court.
- (4) A person who appears as a witness before an inquiry or produces any documents or things to the inquiry has the same protection as a witness in proceedings before the Supreme Court.
- (5) No civil or criminal liability attaches to a person for an honest act or omission in the exercise or purported exercise of official powers or functions under this Act.
- (6) The Crown is also relieved of any liability that it might otherwise have had for a person having done anything as described in subsection (5).

45—Protection for compliance with Act

- (1) No civil or criminal liability attaches to a person for compliance, or purported compliance, in good faith, with a requirement of this Act.
- (2) In particular, if a person produced a document or thing as required under this Act, no civil liability attaches to the person for producing the document or thing, whether the liability would arise under a contract or otherwise.

46—Impersonation of members etc

A person must not falsely represent, by words or conduct, that he or she is a member of an inquiry or an authorised person.

Maximum penalty: \$5 000 or imprisonment for 1 year.

47—Victimisation

- (1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information or other assistance to an inquiry commits an act of victimisation.
- (2) Causing detriment on the ground that a person—
- (a) has made a false allegation; or
 - (b) has not acted in good faith,
- does not constitute an act of victimisation.
- (3) An act of victimisation under this Act may be dealt with—
- (a) as a tort; or
 - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*, but, if the victim commences proceedings in a court seeking a remedy in tort, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.

- 5 (4) If a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.
- 10 (6) A person who personally commits an act of victimisation under this Act is guilty of an offence.
Maximum penalty: \$20 000 or imprisonment for 2 years.
- (7) Proceedings for an offence against subsection (6) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.
- 15 (8) In this section—
detriment includes—
- (a) loss or damage (including damage to reputation); or
 - (b) injury or harm (including psychological harm); or
 - 20 (c) intimidation or harassment; or
 - (d) discrimination, disadvantage or adverse treatment in relation to a person's employment; or
 - (e) threats of reprisal.
- (9) For the purposes of this section, a *threat* of reprisal may be—
- 25 (a) express or implied; or
 - (b) conditional or unconditional,
- and in any proceedings dealing with an act of victimisation (including proceedings for an offence against subsection (6)) it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

30 **48—Service**

Subject to the regulations, a notice or other document required or authorised to be given to or served on a person under this Act may—

- (a) be given to the person personally; or
- 35 (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or
- 40 (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or

- (e) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.

49—Evidentiary

5 In any proceedings—

(a) a document—

- (i) purporting to be a commission, signed by the Governor and sealed with the public seal of the State, and to appoint any specified person as a member or commissioner, or any specified persons as members or commissioners, to make inquiry into any matter; or

- (ii) purporting to be a copy of any such commission, and certified in writing by the person named in the document as chairperson of the commission or sole commissioner, as the case may be, to be a true copy of the commission,

15 is proof, in the absence of proof to the contrary, that the Governor has issued the commission; and

(b) a document—

- (i) purporting to be an Order in Council made by the Governor establishing a public inquiry under section 5(2) and to appoint any specified person as a member, or any specified persons as members, to make inquiry into any matter; or

- (ii) purporting to be a copy of any such Order in Council and certified in writing by the person named in the document as chairperson of the inquiry or sole member, as the case may be, to be a true copy of the Order in Council,

25 is proof, in the absence of proof to the contrary, that the Order in Council was made by the Governor; and

- (c) a certificate apparently signed by a member of an inquiry and certifying that a person named in the certificate was, during a period specified in the certificate, an authorised person and was authorised by the inquiry to exercise powers and functions specified in the certificate during that period, is proof, in the absence of proof to the contrary, of the matters so certified.

50—Regulations and fee notices

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

(2) The regulations may—

(a) be of general or limited application; and

(b) make different provision according to the matters or circumstances to which they are expressed to apply; and

(c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act; and

- (d) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister or any other specified person or body.
- 5 (3) The Minister may prescribe fees for the purposes of this Act by fee notice under the *Legislation (Fees) Act 2019*.
- (4) A fee notice may provide for the waiver, reduction or remission of fees.

Schedule 1—Related amendments, repeals and transitional provisions

Part 1—Interpretation

10 **1—Amendment provisions**

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Related amendment of *Aboriginal Lands Trust Act 2013*

2—Amendment of section 54—Arbitration

15 Section 54(4)(b)—delete "*Royal Commissions Act 1917*" and substitute:
Inquiries Act 2021

Part 3—Related amendment of *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981*

3—Amendment of section 20—Mining operations on the lands

20 Section 20(12)(a)—delete "*Royal Commissions Act 1917*" and substitute:
Inquiries Act 2021

Part 4—Related amendment of *Children and Young People (Oversight and Advocacy Bodies) Act 2016*

4—Amendment of section 16—Powers

25 Section 16(1)—delete "as defined in the *Royal Commissions Act 1917* and that Act applies as if—" and paragraphs (a) and (b) and substitute:
of inquiry under the *Inquiries Act 2021*.

Part 5—Related amendment of *Constitution Act 1934*

5—Amendment of section 84—Application of Inquiries Act

- 30 (1) Section 84—delete "*Royal Commissions Act 1917* shall" and substitute:
Inquiries Act 2021 will
- (2) Section 84(a)—delete "commission to whom a commission of inquiry had been issued by the Governor under his or her hand and the public seal of the State" and substitute:
commission of inquiry under that Act

(3) Section 84(b)—delete "chairman" and substitute:

chairperson

(4) Section 84(c)—delete paragraph (c)

Part 6—Related amendment of *Cross-border Justice Act 2009*

5 6—Amendment of section 103—Bringing prisoner or detainee in another participating jurisdiction before judicial body of State

Section 103(1), definition of *judicial body*, (a)—delete "Royal Commission under the *Royal Commissions Act 1917*" and substitute:

Royal commission under the *Inquiries Act 2021*

10 Part 7—Related amendment of *Freedom of Information Act 1991*

7—Amendment of section 39—External review

Section 39(5)(a)—delete ", including the powers of a commission as defined in the *Royal Commissions Act 1917*"

15 8—Amendment of Schedule 2—Exempt agencies

Schedule 2, paragraph (e)—delete paragraph (e) and substitute:

(e) all public inquiries within the meaning of the *Inquiries Act 2021*;

Part 8—Related amendment of *Judicial Conduct Commissioner Act 2015*

20 9—Amendment of section 24—Powers of panel

Section 24(1)—delete subsection (1) and substitute:

(1) For the purposes of an inquiry under this Part, a judicial conduct panel has the powers of a commission of inquiry under the *Inquiries Act 2021*.

25 Part 9—Related amendment of *Maralinga Tjarutja Land Rights Act 1984*

10—Amendment of section 21—Mining operations on the lands

Section 21(14)(a)—delete "*Royal Commissions Act 1917*" and substitute:

Inquiries Act 2021

Part 10—Related amendment of *Ombudsman Act 1972***11—Substitution of sections 19 to 20**

Sections 19, 19A and 20—delete the sections and substitute:

19—Powers of Ombudsman

- 5
- (1) The Ombudsman has the powers necessary to carry out the Ombudsman's functions under this and any other Act.
 - (2) Without limiting subsection (1), the Ombudsman may exercise any of the powers specified in Schedule 1.

19A—Admissibility of answers, information, documents and other things

- 10
- (1) An answer, information, document or other thing given or produced to the Ombudsman by a person and the fact that an answer, information, document or other thing was given or produced, is not admissible in evidence, or otherwise able to be used, against the person in other proceedings relating to the person, except in proceedings for—
 - 15 (a) an offence against this Act; or
 - (b) an offence against section 242 or 243 of the *Criminal Law Consolidation Act 1935* in relation to the investigation.
 - 20 (2) Subsection (1) does not apply to a document or other thing if it was obtained, or could have been obtained, independently of its production to the Ombudsman, either before or after its production, by the person seeking to tender it in evidence, or otherwise to use it, in the other proceedings.
 - 25 (3) In this section—

other proceedings means criminal, civil or administrative proceedings before a court, tribunal or person acting judicially or disciplinary proceedings, including proceedings that were pending when the answer, information, document or other thing was given or produced to the Ombudsman.
- 30

12—Substitution of sections 23 and 24

Sections 23 and 24—delete the sections and substitute:

23—Offences

- 35
- (1) A person commits an offence if the person intentionally—
 - (a) fails to appear before the Ombudsman in accordance with a summons given to the person;
 - (b) having been summoned to appear before the Ombudsman—refuses to be sworn or to affirm and give evidence;

- (c) fails to produce any document or thing required by order of the Ombudsman given to the person under Schedule 1 clause 3;
- (d) destroys evidence or obstructs or hinders the Ombudsman, or any other person acting in the exercise of powers under this Act, who is examining, copying, or making a representation of a document or thing required by order of the Ombudsman;
- (e) fails to comply with a procedural order or direction of the Ombudsman, including an order made under Schedule 1 clause 6(1);
- (f) disrupts any proceedings of the Ombudsman;
- (g) prevents a witness from giving evidence or threatens or seeks to influence a witness before the Ombudsman;
- (h) provides false or misleading information to the Ombudsman or any other person acting in the exercise of powers under this Act;
- (i) threatens or intimidates the Ombudsman or any other person acting in the exercise of powers under this Act.

Maximum penalty: \$10 000.

- (2) However, a person does not commit an offence under subsection (1)(a) to (e) if compliance would be prevented by a right, privilege or immunity that the person has in accordance with this Act.

13—Amendment of section 26—Confidentiality, disclosure of information and publication of reports

Section 26(1)(a)—delete "the *Royal Commissions Act 1917*" and substitute:

the proceedings of a Royal commission (in accordance with the *Inquiries Act 2021*)

14—Insertion of Part 3A

After section 28 insert:

Part 3A—Application of privileges and immunities

28A—Interpretation

A reference in this Part to the *Crown* includes—

- (a) an agency to which this Act applies; and
- (b) a public authority; and
- (c) a public official.

28B—Application of privileges and immunities generally

- 5
- (1) Except as provided in this Part, nothing in this Act affects or limits the application of legal professional privilege, the privilege against self-incrimination, statutory secrecy and confidentiality provisions and public interest immunity in investigations under this Act.
 - (2) Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.

28C—Legal professional privilege does not apply to Crown

- 10
- (1) It is not a reasonable excuse for a person to refuse or fail to comply with a requirement under this Act to give information (including answering a question) or produce a document or other thing to the Ombudsman that the information, document or other thing is the subject of legal professional privilege belonging to the Crown.
 - 15 (2) Information or a document or other thing does not cease to be the subject of legal professional privilege only because it is given or produced to the Ombudsman in accordance with a requirement to do so under this Act.

28D—Privilege against self-incrimination does not apply to Crown

- 20
- (1) Subject to subsection (2), it is not a reasonable excuse for a person to refuse or fail to comply with a requirement under this Act to give information (including answering a question) or produce a document or other thing to the Ombudsman that the information, document or other thing might tend to incriminate the Crown or make the Crown liable to a penalty.
 - 25 (2) It is a reasonable excuse for a natural person to refuse or fail to comply with a requirement referred to in subsection (1) that the information, document or other thing might tend to incriminate the person, or make the person liable to a penalty, in relation to—
 - 30 (a) proceedings for an offence with which the person has been charged that have not finally been disposed of; or
 - (b) proceedings for the imposition or recovery of a penalty that have been commenced against the person but not finally disposed of.
 - 35

28E—Statutory secrecy and confidentiality provisions do not apply

- 40
- (1) It is not a reasonable excuse for a person to refuse or fail to comply with a requirement under this Act to give information (including answering a question) or produce a document or other thing to the Ombudsman that another Act prohibits the person from giving the information or producing the document or other thing or imposes a duty of confidentiality on the person in relation to the information, document or other thing.

- (2) The person is not subject to any criminal, civil, administrative or disciplinary proceedings or action only because the person complies with the requirement.
- (3) Subsections (1) and (2) do not apply to—
- 5 (a) a provision of another Act that specifically applies to the giving of information or the production of documents or other things to the Ombudsman; or
- (b) a provision of another Act that is prescribed by the regulations for the purposes of this section.
- 10 (4) If the Ombudsman receives information or a document or other thing referred to in this section, any provision of another Act that prohibits the disclosure of the information, document or other thing or imposes any other duty of confidentiality in relation to the information, document or other thing does not apply to the Ombudsman.

15 **28F—Public interest immunity does not apply**

- (1) It is not a reasonable excuse for a person to refuse or fail to comply with a requirement under this Act to give information (including answering a question) or produce a document or other thing to the Ombudsman that the information, document or other thing is the subject of public interest immunity.
- 20 (2) Information or a document or other thing does not cease to be the subject of public interest immunity only because it is given or produced to the Ombudsman in accordance with a requirement to do so under this Act.

25 **15—Insertion of Schedule 1**

After section 33 insert:

Schedule 1—Powers

1—Evidence

30 The Ombudsman may, for the purposes of an investigation under this Act—

- (a) receive any evidence that, in the opinion of the Ombudsman, may assist the Ombudsman to deal effectively with the subject of the investigation, whether or not the evidence would be admissible in a court of law; and
- 35 (b) take evidence on oath or affirmation (and for that purpose an oath or affirmation may be administered by the Ombudsman or any staff of the Ombudsman appointed under section 12 of this Act and authorised by the Ombudsman for this purpose); and
- 40 (c) permit a witness to give evidence by any means, including by written or electronic means, and require the witness to verify the evidence by—

- (i) in the case of written evidence—statutory declaration; or
- (ii) in any other case—oath or affirmation.

2—Issue of summons

- 5 (1) The Ombudsman may, for the purposes of an investigation, summon a person to appear before the Ombudsman to give evidence and to produce such documents or other things (if any) as are referred to in the summons.
- 10 (2) Before issuing a summons under subclause (1), the Ombudsman must be satisfied that it is reasonable in all the circumstances to do so.
- (3) The Ombudsman must also record in writing the reasons for the issue of the summons.

3—Production of documents etc

- 15 (1) The Ombudsman may, as the Ombudsman thinks appropriate for the purposes of the investigation, do any of the following:
 - (a) require a person to produce any documents or things in that person's possession or control or copies of those documents or things;
 - 20 (b) require a person to provide information to the Ombudsman, in a form approved by the Ombudsman;
 - (c) require a person to verify by statutory declaration any written information, copies of documents, or representations of things provided to the Ombudsman;
 - 25 (d) examine or make copies of any document or thing that is produced or provided by a person.
- (2) The Ombudsman may, by instrument in writing given to a person, order a person to comply with a requirement of a kind specified in subclause (1).

4—Entry and inspection

- 30 (1) For the purposes of an investigation, the Ombudsman or a person authorised by the Ombudsman may, at any time, enter and inspect any place or vehicle occupied by an agency to which this Act applies and anything in or on the place or vehicle.
- 35 (2) A magistrate may, on application under this section, issue a warrant authorising the Ombudsman or a person authorised by the Ombudsman to enter and inspect any place or vehicle (not being a place or vehicle to which subclause (1) applies).
- 40 (3) An application may be made under this section by the Ombudsman or a person authorised by the Ombudsman.

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- (4) A warrant may only be issued if the magistrate is satisfied that the warrant is reasonably required in the circumstances for the purposes of the investigation.
 - (5) An application for a warrant may be made personally or, if, in the opinion of the applicant, the warrant is urgently required and there is not enough time to lodge a written application and attend in person, by fax, email or telephone in accordance with practices and procedures prescribed by rules of the Magistrates Court.
 - (6) The grounds of an application for a warrant must be verified by affidavit.
 - (7) A warrant must—
 - (a) specify the place or vehicle to which the warrant relates; and
 - (b) state whether entry is authorised at any time of the day or night or during specified hours of the day or night.
 - (8) A warrant authorises the Ombudsman or any person authorised by the Ombudsman—
 - (a) to enter and search and, if necessary, use reasonable force to break into or open—
 - (i) the place or vehicle to which the warrant relates; or
 - (ii) part of, or anything in or on, a place or vehicle to which the warrant relates; and
 - (b) to give directions with respect to the stopping or movement of a vehicle to which the warrant relates; and
 - (c) in the course of executing the warrant—
 - (i) to take photographs, films or audio, video or other recordings; and
 - (ii) to examine, copy or take extracts from a document connected with the investigation; and
 - (iii) to examine or test any thing connected with the investigation, or cause or require it to be examined or tested.
 - (9) In executing a warrant, the Ombudsman or person authorised by the Ombudsman may be assisted by such other persons as they consider necessary in the circumstances.
 - (10) The Ombudsman or person authorised by the Ombudsman may require an occupier of a place or a person apparently in charge of a document or thing to give them, or a person assisting them, such assistance as is reasonably required by them for the effective execution of a warrant.
 - (11) A warrant, if not executed at the expiration of 1 month from the date of its issue, then expires.

5—Ombudsman may issue direction in relation to administrative act

- (1) If the Ombudsman is of the opinion that an administrative act by an agency is—
- 5 (a) likely to prejudice an investigation or proposed investigation or the effect or implementation of a recommendation that the Ombudsman might make as a result of an investigation or proposed investigation; or
- (b) likely to cause serious hardship to a person,
- 10 the Ombudsman may, by notice in writing, direct an agency to which this Act applies to refrain from performing the administrative act as specified in the notice for any period specified in the notice.
- (2) However—
- (a) a notice must not be issued if compliance with the notice by the agency would result in the agency breaching a contract or other legal obligation or cause any third parties undue hardship; and
- 15 (b) a notice or notices issued under this clause must not require an agency to refrain from performing an administrative act for more than 45 days in aggregate.
- 20 (3) The Ombudsman may, at any time, revoke a notice and must do so if of the opinion that the notice should not have been issued.
- (4) If an agency that has received a notice under this clause fails to comply with the terms of the notice, the following provisions apply:
- 25 (a) the principal officer of the agency must, at the request of the Ombudsman, report to the Ombudsman within the time allowed in the request on the reasons for the agency's failure to comply with the notice;
- (b) if, following receipt of the principal officer's report, the Ombudsman is of the opinion that the agency's failure to comply with the notice was unjustified or unreasonable, the Ombudsman may make a report on the matter to the Premier;
- 30 (c) the Ombudsman may forward copies of any report to the Premier to the Speaker of the House of Assembly and the President of the Legislative Council with a request that they be laid before their respective Houses.
- 35 (5) This clause does not apply in relation to the sheriff.

6—Power to impose restrictions on access etc

- 40 (1) The Ombudsman may, at any time, make orders to prohibit access to, or publication of—
- (a) the whole or any part of any evidence, submissions or information presented to the Ombudsman; or

- (b) any report or account of the evidence, submissions or information; or
- (c) the name or other particulars likely to lead to the identification of a witness or other person participating in the investigation (other than any counsel); or
- (d) any rulings of the Ombudsman.
- (2) Before making an order under subclause (1), the Ombudsman must take into account the following criteria:
- (a) the risk of prejudice to public confidence in the investigative procedures of the Ombudsman;
- (b) the need for the Ombudsman to ascertain the facts properly;
- (c) the extent to which access to, or publication of, the material may prejudice the security, defence, or economic interests of this State or any other State or Territory or of the Commonwealth;
- (d) the privacy interests of any individual;
- (e) whether it would interfere with the administration of justice, including any person's right to a fair trial, if an order were not made under subclause (1);
- (f) any other countervailing interests.
- (3) An order under this clause stays in force for the period specified in the order or, if no period is specified, until a further order varying or revoking the order is made by the Ombudsman.

Part 11—Related amendment of *Police Act 1998*

16—Amendment of section 74A—Special provisions relating to criminal intelligence

Section 74A(6)—delete "*Royal Commissions Act 1917*" and substitute:

Inquiries Act 2021

Part 12—Related amendment of *Police Complaints and Discipline Act 2016*

17—Amendment of section 44—Limitation on requirement to divulge information

Section 44(b)—delete "proceedings under the *Royal Commissions Act 1917*" and substitute:

a Royal commission in accordance with the *Inquiries Act 2021*

Part 13—Related amendment of *Remuneration Act 1990*

18—Substitution of section 11

Section 11—delete the section and substitute:

11—Tribunal to have powers of a commission of inquiry

5 The Tribunal has the powers of a commission of inquiry under the
Inquiries Act 2021.

Part 14—Related amendment of *South Australian Local Government Grants Commission Act 1992*

19—Amendment of section 16—Inquiries and investigations

10 Section 16(2)—delete subsection (2) and substitute:

- (2) For the purpose of an inquiry the Commission has the powers of a commission of inquiry under the *Inquiries Act 2021*.

Part 15—Repeal of *Royal Commissions Act 1917*

20—Repeal of Act

15 The *Royal Commissions Act 1917* is repealed.

Part 16—Savings and transitional provisions

21—Inquiries established before commencement

- (1) Except as provided in subclause (2), this Act does not apply to a Royal commission or any other form of inquiry established before the commencement of this Act.
- 20 (2) This Act applies, on and after its commencement, to the Royal commission established by the Governor by Letters Patent issued and entered in the Register of Commissions, Patents, Etc., on 20 June 2019 (the *Disability Royal Commission*) and for that purpose—
- 25 (a) those Letters Patent (and any subsequent amending Letters Patent issued by the Governor in relation to the Disability Royal Commission), will be taken to constitute the establishment instrument for the inquiry and to have been issued in accordance with Part 2 of this Act; and
- 30 (b) any summons, warrant or other instrument or order issued by the Disability Royal Commission will be taken to have been issued in accordance with this Act.