

## 5. A New Statutory Framework for Public Inquiries

**Recommendation 5–1** The *Royal Commissions Act 1902* (Cth) should be:

- (a) amended to provide for the establishment of two tiers of public inquiry—Royal Commissions and Official Inquiries;
- (b) renamed the *Inquiries Act*; and
- (c) updated to reflect modern drafting practices.

**Recommendation 5–2** The recommended *Inquiries Act* should set out the specific powers that are conferred on Royal Commissions and Official Inquiries.

**Recommendation 5–3** The recommended *Inquiries Act* should include a mechanism that allows the Australian Government, in accordance with other provisions of the Act:

- (a) with the consent of the Governor-General, to convert an Official Inquiry into a Royal Commission;
- (b) to convert an inquiry established other than under the recommended Act into an Official Inquiry; and
- (c) with the consent of the Governor-General, to convert an inquiry established other than under the recommended Act into a Royal Commission.

## 6. Establishment

**Recommendation 6–1** The Australian Government should develop and publish an *Inquiries Handbook* containing information for those responsible for establishing inquiries, inquiry members, inquiry participants and members of the general public on a range of matters relating to Royal Commissions and Official Inquiries, including the:

- (a) establishment of inquiries;
- (b) appointment of inquiry members;
- (c) administration of inquiries;
- (d) powers, protections and procedural aspects of inquiries; and
- (e) use and protection of national security information by inquiries.

**Recommendation 6–2** The recommended *Inquiries Handbook* should address when it is appropriate to establish a Royal Commission or Official Inquiry. This guidance should include a consideration of:

- (a) the level of public importance—matters of substantial public importance being more appropriate for Royal Commissions and matters of public importance being more appropriate for Official Inquiries;
- (b) whether powers are required and, if so, which powers are appropriate, having regard to the subject matter and scope of the inquiry;
- (c) whether the recommendations of a Royal Commission or Official Inquiry will facilitate government policy making; and
- (d) whether a Royal Commission or Official Inquiry is the best way to achieve the Australian Government's objectives, or whether it is more appropriate to achieve these objectives in another way—for example, through an inquiry by an existing body or through civil or criminal proceedings.

**Recommendation 6–3** The recommended *Inquiries Act* should provide that:

- (a) the Governor-General establishes Royal Commissions; and
- (b) ministers establish Official Inquiries.

**Recommendation 6–4** The recommended *Inquiries Act* should provide that:

- (a) the Letters Patent, or a copy of the Letters Patent certified by an inquiry member, is evidence of the establishment of a Royal Commission; and
- (b) the terms of reference, or a copy of the terms of reference certified by an inquiry member, is evidence of the establishment of an Official Inquiry.

**Recommendation 6–5** The recommended *Inquiries Act* should provide that Royal Commissions and Official Inquiries shall be independent in the exercise of their powers and in the performance of their duties and functions.

**Recommendation 6–6** The recommended *Inquiries Handbook* should provide guidance on the appointment of members of Royal Commissions and Official Inquiries. This guidance should include, having regard to the subject matter and scope of the inquiry, whether potential inquiry members:

- (a) have the skills, knowledge and experience to conduct the inquiry;
- (b) should have certain attributes (for example, gender or cultural attributes); and
- (c) should hold or obtain a security clearance.

**Recommendation 6–7** The recommended *Inquiries Act* should provide that both Royal Commissions and Official Inquiries may have more than one inquiry member.

**Recommendation 6–8** The recommended *Inquiries Act* should provide that, in consultation with members of Royal Commissions and Official Inquiries, the Attorney-General may appoint legal practitioners to assist inquiry members.

**Recommendation 6–9** The recommended *Inquiries Act* should provide that Royal Commissions and Official Inquiries may appoint an expert or experts in any field as an advisor to provide technical or specialist advice.

## 7. Reports and Recommendations

**Recommendation 7–1** The recommended *Inquiries Act* should provide that:

- (a) Royal Commissions report to the Governor-General; and
- (b) Official Inquiries report to the minister that established the Official Inquiry.

**Recommendation 7–2** The recommended *Inquiries Act* should provide that, within 15 sitting days of receiving the final report from a Royal Commission or Official Inquiry, the Australian Government should table in Parliament the report or, if a part of the report is not being tabled, a statement of reasons why the whole report is not being tabled.

**Recommendation 7–3** The recommended *Inquiries Act* should provide that the Australian Government should publish an update on implementation of recommendations of an inquiry that it accepts: one year after the tabling of the final report of a Royal Commission or Official Inquiry; and periodically thereafter to reflect any ongoing implementation activity.

## 8. Administration and Records

**Recommendation 8–1** The recommended *Inquiries Handbook* should provide guidance on matters pertaining to the administration of inquiries, for example:

- (a) recruitment;
- (b) accommodation;
- (c) budget and finance;
- (d) information and communication technology; and
- (e) records management, including archiving.

**Recommendation 8–2** The Australian Government should allocate responsibility for the administration of Royal Commissions and Official Inquiries to a single Australian Government department. The role of that department should include responsibility for the following tasks:

- (a) assisting with matters preparatory to the formal establishment of the inquiry;
- (b) providing assistance to inquiry members and staff to ensure an efficient and expedited establishment process and conduct of the inquiry;
- (c) at the conclusion of the inquiry, facilitating the transfer of an archival copy of the records of the inquiry to the National Archives of Australia; and
- (d) monitoring and updating the recommended *Inquiries Handbook*.

**Recommendation 8–3** The recommended *Inquiries Act* should provide for the custody and use of records of Royal Commissions and Official Inquiries in terms equivalent to those in s 9 of the *Royal Commissions Act 1902* (Cth).

**Recommendation 8–4** Section 22 of the *Archives Act 1983* (Cth) should be amended to require the transfer of an archival copy of the records of Royal Commissions and Official Inquiries to the National Archives of Australia:

- (a) as soon as practicable after the conclusion of the inquiry, subject to any directions made by the minister to whose ministerial responsibilities the records most closely relate; and
- (b) in any event, within five years of the conclusion of the inquiry.

**Recommendation 8–5** The recommended *Inquiries Act* should provide that Royal Commissions and Official Inquiries comply with the standards determined, or record-keeping obligations imposed, by the National Archives of Australia.

## 9. Funding and Costs

**Recommendation 9–1** The recommended *Inquiries Act* should empower the Australian Government Attorney-General’s Department to determine, at any stage of a Royal Commission or Official Inquiry, that the costs of legal and related assistance to witnesses and other inquiry participants should, or should not, be met by the Australian Government in whole or in part. The factors to be considered by the Attorney-General’s Department in making such a recommendation should include:

- (a) whether the person has a valid reason to seek legal representation;
- (b) whether it would cause hardship or injustice for the person to bear the costs of legal representation or appear without legal representation;
- (c) the nature and possible effect of any allegations made about the person;
- (d) whether the person could be the subject of adverse findings; and
- (e) the nature and significance of the contribution that the person will, or is likely to, make to the inquiry.

**Recommendation 9–2** The recommended *Inquiries Act* should provide that individuals and organisations may claim a sum sufficient to meet their reasonable expenses for complying with notices to produce documents or other things. The Australian Government Attorney-General’s Department may, at any stage of the inquiry, determine the amount to be paid and the claimant is to be reimbursed accordingly.

**Recommendation 9–3** The recommended *Inquiries Act* should provide that individuals required to attend or appear before Royal Commissions and Official Inquiries may claim expenses in accordance with the *High Court Rules 2004* (Cth).

**Recommendation 9–4** The recommended *Inquiries Handbook* should include guidance on the engagement and remuneration of legal practitioners assisting an inquiry. These terms of engagement and remuneration should, as far as practicable, be negotiated on a commercially competitive basis. The *Inquiries Handbook* should set out the factors that may be relevant in negotiating these terms, for example:

- (a) the nature of the work to be performed, having regard to the subject matter and scope of the inquiry;
- (b) the skills and level of experience of individual legal practitioners;
- (c) having regard to the subject matter and scope of the inquiry, the appropriateness of applying:
  - (i) daily rates subject to fee caps; or
  - (ii) fee caps by reference to particular stages or events in the conduct of an inquiry;
- (d) the commercial rates of legal practitioners;
- (e) the volume of guaranteed work provided during the inquiry;
- (f) the impact that the engagement may have on a legal practitioner’s usual practice; and
- (g) any existing Australian Government policy on the procurement of legal services and the engagement of counsel, for example, Appendix D of the *Legal Services Directions 2005* (Cth).

## 10. Minimising Costs

**Recommendation 10–1** The recommended *Inquiries Act* should require the Australian Government to publish an expenditure statement setting out the costs of Royal Commissions and Official Inquiries within a reasonable time after the inquiry has concluded. The statement should include summary information about the costs of an inquiry, including:

- fees and allowances paid to inquiry members;
- fees and allowances paid to counsel assisting;
- fees and allowances paid to solicitors assisting;
- financial assistance provided to witnesses and other participants for legal and non-legal costs;
- staff costs;
- information and communication technology costs;
- office accommodation; and
- other administrative and operational expenditure.

## 11. Powers

**Recommendation 11–1** The recommended *Inquiries Act* should empower Royal Commissions and Official Inquiries to issue notices requiring a person to:

- (a) attend or appear before the inquiry; and

(b) produce documents or other things.

**Recommendation 11–2** The recommended *Inquiries Act* should empower Royal Commissions and Official Inquiries to require a person appearing before the inquiry to give evidence or answer questions to swear an oath or make an affirmation. An inquiry member, or a person authorised by an inquiry member, should be empowered to administer an oath or an affirmation to that person.

**Recommendation 11–3** The power in s 6B of the *Royal Commissions Act 1902* (Cth), which enables a Royal Commission to issue a warrant for the apprehension of a person who fails to appear before it, should be redrafted in the recommended *Inquiries Act*. Royal Commissions should be required to apply to a judge to issue a warrant for the apprehension and immediate delivery of a person to a police officer or judicial officer. This power should not be conferred on Official Inquiries.

**Recommendation 11–4** The recommended *Inquiries Act* should empower a member of a Royal Commission or Official Inquiry to issue a notice requiring a person to provide information in a form approved by the inquiry, failing which the member can require the person to attend the inquiry as if he or she had been issued with a notice to attend or appear before the inquiry.

**Recommendation 11–5** The recommended *Inquiries Act* should contain provisions, applicable to both Royal Commissions and Official Inquiries, equivalent to those in ss 7A, 7B, 7C, 16(2) and 16(3) of the *Royal Commissions Act 1902* (Cth), which concern the making of inquiries and taking of evidence outside Australia.

**Recommendation 11–6** The recommended *Inquiries Act* should empower Royal Commissions and Official Inquiries to inspect, retain and copy any documents or other things produced to an inquiry in terms equivalent to those in s 6F of the *Royal Commissions Act 1902* (Cth).

**Recommendation 11–7** The recommended *Inquiries Act* should contain provisions for a Royal Commission, but not an Official Inquiry, to apply to a judge for a warrant to exercise entry, search and seizure powers equivalent to those in ss 4 and 5 of the *Royal Commissions Act 1902* (Cth). The *Inquiries Act* should provide that, if an application for a warrant is made to a judge of a federal court, the judge issues the warrant in his or her personal capacity.

**Recommendation 11–8** The provisions in the *Telecommunications (Interception and Access) Act 1979* (Cth) that allow for the communication of intercepted information in certain circumstances should apply to Royal Commissions, but not Official Inquiries, established under the recommended *Inquiries Act*.

**Recommendation 11–9** The recommended *Inquiries Act* should empower Royal Commissions and Official Inquiries to communicate information that relates to a contravention, or evidence of contravention, of a law of the Commonwealth or of a state or territory, to bodies or persons responsible for the administration or enforcement of the law as prescribed by regulations under the Act.

**Recommendation 11–10** The recommended *Inquiries Act* should provide that Royal Commissions, but not Official Inquiries, may have concurrent functions and powers conferred under the Act and state and territory laws.

## 12. Protection from Legal Liability

**Recommendation 12–1** The recommended *Inquiries Act* should provide that no civil or criminal proceedings shall lie in respect of acts done, or omissions made, in good faith, in the exercise, or intended exercise, of powers or functions under the Act. This protection should apply to members of Royal Commissions and Official Inquiries, legal practitioners assisting inquiries, legal representatives of inquiry participants, and those employed or engaged by an inquiry.

**Recommendation 12–2** The recommended *Inquiries Act* should provide that civil proceedings shall not lie against a person for loss, damage or injury of any kind suffered by another person by reason of the provision of any information or the making of any statement to Royal Commissions or Official Inquiries, or acts done in preparation for such provision of information or making of statements.

**Recommendation 12–3** The recommended *Inquiries Handbook* should address liability for defamation and other court action in the case of electronic publications.

**Recommendation 12–4** The recommended *Inquiries Act* should provide that members of Royal Commissions and Official Inquiries are not compellable to give evidence about those inquiries, unless the court gives leave.

### 13. National Security

**Recommendation 13–1** The recommended *Inquiries Act* should contain provisions dealing specifically with the use and protection of national security information in the conduct of Royal Commissions and Official Inquiries.

**Recommendation 13–2** Royal Commissions and Official Inquiries should retain the ultimate discretion to determine the procedures that will apply in a particular inquiry. The recommended *Inquiries Act* should empower inquiry members to make directions on their own motion, or at the request of a person or body affected by or involved in the conduct of the inquiry, in relation to the use and protection of national security information, including, but not limited to, the following:

- (a) determinations of the relevance of any national security information, including any claims for public interest immunity, and the use to which that information may be put in the conduct of the inquiry;
- (b) the provision by persons involved with the inquiry of lists of all national security information that those persons reasonably anticipate will be used in the course of the inquiry. The chair of an inquiry may make such directions as he or she thinks fit in relation to the specificity with which national security information is to be described in these lists, the people to whom these lists are to be given, the use that may be made of the information and the degree of protection that must be given;
- (c) the form in which any national security information may be produced or otherwise used in the conduct of the inquiry. Such directions may involve:
  - (i) the redaction, editing or obscuring of any part of a document containing or adverting to national security information;
  - (ii) replacing the national security information with summaries, extracts or transcriptions of the evidence sought to be used, or by a statement of facts, whether agreed by the parties or persons involved in the inquiry or not;
  - (iii) replacing the national security information with evidence to similar effect obtained through unclassified means or sources;
  - (iv) concealing the identity of any witness or person identified in, or whose identity might reasonably be inferred from, national security information or from its use in the conduct of the inquiry (including oral evidence), and concealing the identity of any person who comes into contact with national security information;
  - (v) the use of written questions and answers during evidence which would otherwise be given orally;
  - (vi) the use of technical means by which the identity of witnesses and contents of national security information may be protected, for example, through the use of closed-circuit television, computer monitors and headsets;
  - (vii) restrictions on the people to whom any national security information may be given or to whom access to that information may be given. Such restrictions may include limiting access to certain material to people holding security clearances to a specified level;
  - (viii) restrictions on the use that can be made by a person with access to any national security information; and
  - (ix) restrictions on the extent to which any person who has access to any national security information may reproduce or disclose that information.

**Recommendation 13–3** The recommended *Inquiries Act* should provide that members of Royal

Commissions and Official Inquiries do not require a security clearance to access national security information.

**Recommendation 13–4** The recommended *Inquiries Act* should empower inquiry members, in determining the use or disclosure of information in the conduct of an inquiry, to request advice or assistance from the Inspector-General of Intelligence and Security concerning:

- (a) the damage or prejudice to national security that would, or could reasonably be expected to, result from the use or disclosure; and
- (b) whether giving access to the information would divulge any matter communicated in confidence by, or on behalf of, a foreign government, an authority of a foreign government or an international organisation to the Australian Government.

**Recommendation 13–5** Section 34A of the *Inspector-General of Intelligence and Security Act 1986* (Cth), which relates to information and documents that may be given to the Commission of Inquiry into matters relating to the Australian Secret Intelligence Service (1995), should be repealed.

**Recommendation 13–6** The recommended *Inquiries Handbook* should include information on the handling and storage of national security information by inquiries. The information should be developed in consultation with relevant government departments or agencies such as the Protective Security Policy Committee and the Australian Intelligence Community and may incorporate, as appropriate, the standards and procedures in the *Australian Government Protective Security Manual*.

**Recommendation 13–7** If requested by members of Royal Commissions and Official Inquiries, the Australian Government should assign appropriately trained personnel to advise the inquiry on the handling and storage of national security information.

## 14. Inquiries and Courts

**Recommendation 14–1** The recommended *Inquiries Act* should provide that Royal Commissions and Official Inquiries may refer a question of law to the Federal Court, either on their own motion or pursuant to the request of a participant.

## 15. Procedures: General Aspects

**Recommendation 15–1** The recommended *Inquiries Act* should provide that reports of Royal Commissions and Official Inquiries should not make any finding that is adverse to a person, unless the inquiry has taken all reasonable steps to give notice of proposed adverse findings or the risk or likelihood of adverse findings, and disclosed the relevant material relied upon and the reasons on which such a finding might be based. Further, the inquiry should take all reasonable steps to give that person an opportunity to respond to the proposed finding, and the inquiry should properly consider any response given.

**Recommendation 15–2** The recommended *Inquiries Act* should provide that Royal Commissions and Official Inquiries may allow any person or a person's legal representative to participate in an inquiry to the extent that inquiry members consider appropriate. In making that decision, inquiry members may have regard to factors including:

- (a) any direct or special interest a person may have in the matters relevant to an inquiry;
- (b) the probability that an inquiry may make a finding adverse to that person's interests; and
- (c) the ability of a person to assist an inquiry.

**Recommendation 15–3** The recommended *Inquiries Act* should include a provision that, when an inquiry gives an opportunity to a person to respond to potential adverse findings made against him or her in a report, that response, or where appropriate a summary of it, should be published, at the request of that person.

**Recommendation 15–4** The recommended *Inquiries Act* should provide that Royal Commissions and Official Inquiries may conduct inquiries and gather information as members consider appropriate,

subject to any other provisions in the Act and the requirements of procedural fairness. For example, an inquiry may:

- (i) conduct interviews;
- (ii) hold hearings;
- (iii) call witnesses;
- (iv) obtain and receive information in any manner it sees fit;
- (v) allow or restrict the questioning of witnesses; and
- (vi) adjourn an inquiry.

**Recommendation 15–5** The recommended *Inquiries Handbook* should address the suitability and use of different kinds of procedures that may be employed by inquiries. For example, the *Inquiries Handbook* may address the manner in which hearings are conducted, the ways in which people may participate in an inquiry, the provision of information to inquiry participants about procedures, and how to accord procedural fairness in the context of different types of inquiry.

## 16. Procedures: Specific Aspects

**Recommendation 16–1** The recommended *Inquiries Act* should provide that members of Royal Commissions and Official Inquiries may:

- (a) make directions prohibiting or restricting:
  - (i) public access to a hearing;
  - (ii) publication of any information that might enable a person to identify a person giving information to the inquiry; and
  - (iii) publication of any information provided to the inquiry; and
- (b) exercise the power to prohibit or restrict public access or publication on the following grounds:
  - (i) prejudice or hardship to an individual;
  - (ii) the nature and subject matter of the information that may be involved;
  - (iii) the potential for prejudice to legal proceedings;
  - (iv) the efficient and effective conduct of an inquiry; and
  - (v) any other matter that an inquiry considers appropriate.

**Recommendation 16–2** The recommended *Inquiries Act* should provide that, if a Royal Commission or Official Inquiry is inquiring into matters that may have a significant effect on Indigenous peoples, the inquiry should consult with Indigenous groups, individuals or organisations to inform the development of appropriate procedures for the conduct of the inquiry.

**Recommendation 16–3** The recommended *Inquiries Act* should provide that, if a person is asked to provide information to a Royal Commission or Official Inquiry, the inquiry must:

- (a) comply with a request for an interpreter unless it considers that the person is sufficiently proficient in English; or
- (b) appoint an interpreter if the inquiry considers that the person is not sufficiently proficient in English, even though the person has not requested an interpreter.

**Recommendation 16–4** The recommended *Inquiries Act* should provide that the Australian Government make public:

- (a) the results of any disciplinary, civil or criminal proceedings, initiated as a consequence of recommendations or findings of a Royal Commission or Official Inquiry; or
- (b) any decision not to initiate, or to discontinue, such proceedings.

## 17. Privileges and Public Interest Immunity

**Recommendation 17–1** (a) The recommended *Inquiries Act* should empower Royal Commissions, but not Official Inquiries, to require a person to answer a question, or produce a document or thing, notwithstanding such answer or production might incriminate that person or expose the person to a penalty.

(b) The recommended *Inquiries Act* should provide that a Royal Commission must not require a person to answer a question, or produce a document or other thing, about a matter if that person has been charged with an offence, or is subject to proceedings for the imposition or recovery of a penalty in respect of that matter.

**Recommendation 17–2** The recommended *Inquiries Act* should provide that statements or disclosures made by a person to a Royal Commission are not admissible in evidence against that person in criminal proceedings, or proceedings for the imposition or recovery of a penalty, in any court of the Commonwealth, of a state or of a territory ('use immunity'). This use immunity should:

- (a) apply to statements or disclosures to a Royal Commission, whether in oral or written form;
- (b) apply to the fact of the production of a document or other thing to a Royal Commission;
- (c) apply to information provided to an officer or member of a Royal Commission in connection with, or in preparation for, giving evidence to a Royal Commission; and
- (d) exclude pre-existing documents or things that were not created in order to comply with a notice of the Royal Commission.

**Recommendation 17–3** The use immunity referred to in Recommendation 17–2 should not apply to a proceeding in a federal, state or territory court:

- (a) in respect of offences under the recommended *Inquiries Act*, or proceedings for enforcement under the *Inquiries Act*;
- (b) in respect of the falsity or the misleading nature of the evidence; or
- (c) for offences prohibiting interference with evidence or witnesses in relation to Royal Commission proceedings.

## 18. Statutory Exemptions from Disclosure

**Recommendation 18–1** Section 6D(1) of the *Royal Commissions Act 1902* (Cth), which provides that a person may refuse to disclose a secret process of manufacture, should be repealed.

**Recommendation 18–2** The recommended *Inquiries Act* should provide that Royal Commissions or Official Inquiries may require a person to answer questions or produce documents or other things, notwithstanding any secrecy provision if the inquiry specifies that the requirement is made notwithstanding that secrecy provision. This power should not apply in the case of:

- (a) secrecy provisions that specifically govern the disclosure of information to Royal Commissions or Official Inquiries; and
- (b) secrecy provisions as prescribed in regulations under the recommended *Inquiries Act*.

**Recommendation 18–3** The recommended *Inquiries Act* should provide that if a person is required to answer questions or produce documents or other things to a Royal Commission or Official Inquiry notwithstanding a secrecy provision, that person is not subject to any criminal, civil, administrative or disciplinary proceedings as a result of providing that information.

## 19. Offences

**Recommendation 19–1** The recommended *Inquiries Act* should provide, with respect to Royal Commissions and Official Inquiries, that a person commits an offence if the person, without reasonable excuse, intentionally refuses or fails to:

- (a) swear an oath or make an affirmation when required to do so by an inquiry member;
- (b) answer a question when required by do so by an inquiry member, or a person authorised by an inquiry member to ask the question;
- (c) comply with a notice requiring a person to attend or appear; or
- (d) comply with a notice requiring a person to produce a document or other thing, in the custody or control of that person.

**Recommendation 19–2** The recommended *Inquiries Act* should provide that a notice requiring a person to attend or appear before, or requiring a person to produce a document or other thing to, a Royal Commission or Official Inquiry should include:

- (a) the consequences of not complying;
- (b) what is a reasonable excuse for not complying, as provided in the Act;
- (c) the time and date for compliance; and
- (d) the manner in which the person should comply with a notice requiring the production of a document or other thing.

**Recommendation 19–3** The recommended *Inquiries Act* should provide that the offence of refusing or failing to answer a question is committed only if the person refuses or fails to answer after being informed that it is an offence to do so.

**Recommendation 19–4** The recommended *Inquiries Act* should provide that it is a reasonable excuse to refuse or fail to comply with a notice to attend or appear before, or to produce a document or other thing to, a Royal Commission or Official Inquiry if an inquiry member determines that it is impossible or impracticable for the person to comply, for example, for physical or practical reasons.

**Recommendation 19–5** The recommended *Inquiries Act* should provide that a reasonable excuse to refuse or fail to produce a document or other thing, or answer a question, includes the fact that the document, thing, or answer:

- (a) is protected by client legal privilege, the privilege against self-incrimination, parliamentary privilege, or public interest immunity, subject to the provisions of the recommended Act;
- (b) is prohibited from being disclosed by the provision of another Act, subject to the provisions of the recommended Act;
- (c) is prohibited from disclosure by an order of a court; or
- (d) would have the tendency to interfere with the administration of justice, if disclosed.

**Recommendation 19–6** The recommended *Inquiries Act* should provide that it is a defence to a prosecution for a refusal or failure to answer a question, or produce a document or other thing, if the answer, document or other thing was not relevant to the matters into which the Royal Commission or Official Inquiry was inquiring.

**Recommendation 19–7** The recommended *Inquiries Act* should provide that, upon receiving a notice requiring attendance or production of documents or other things, a person may make a claim to a member of a Royal Commission or Official Inquiry that he or she has a reasonable excuse for not complying. If the member considers that the claim has been made out, the member may vary or revoke the notice in his or her discretion.

**Recommendation 19–8** The recommended *Inquiries Act* should provide that a person commits an offence by contravening a direction of a Royal Commission or Official Inquiry, where that person knew of, or was reckless as to, the existence of that direction. The offence should apply to directions made under the Act concerning national security information, the prohibition or restriction of public access to a hearing, and the prohibition or restriction of publication.

**Recommendation 19–9** The recommended *Inquiries Act* should include a legislative note indicating that the following offences apply to Royal Commissions and Official Inquiries:

- (a) offences under Part III of the *Crimes Act 1914* (Cth) that prohibit interference with evidence and witnesses;
- (b) offences under Parts 7.6 and 7.8 of the *Criminal Code* (Cth) that prohibit certain conduct in relation to Commonwealth public officials; and
- (c) offences in the *Crimes Act 1914* (Cth) that restrict the disclosure of information by Royal Commissions and Official Inquiries.

## 20. Contempt

**Recommendation 20–1** The recommended *Inquiries Act* should provide that if a person is disrupting the proceedings of an inquiry, a member of a Royal Commission or Official Inquiry may exclude that person from those proceedings, and authorise a person to use necessary and reasonable force in excluding that person.

**Recommendation 20–2** The recommended *Inquiries Act* should provide that, where a person fails to comply with a notice or a direction of a Royal Commission or Official Inquiry, or threatens to do so, the chair of the inquiry may refer the matter to the Federal Court. The Court, after hearing any evidence or representations on the matter certified to it, may enforce such a notice or direction as if the matter had arisen in proceedings before the Court.

**Recommendation 20–3** The recommended *Inquiries Act* should provide that a person is not liable to be punished twice for the same act or omission, if the act or omission would constitute both an offence under the recommended Act and, if enforced by the Federal Court, contempt of court.

**Recommendation 20–4** The recommended *Inquiries Act* should provide that it is an offence to cause substantial disruption to the proceedings of a Royal Commission or Official Inquiry, with the intention to disrupt the proceedings, or recklessness as to whether the conduct would have that result.

**Recommendation 20–5** Section 60 of the *Royal Commissions Act 1902* (Cth), dealing with contempt of Royal Commissions, should be repealed.

## 21. Penalties, Proceedings and Costs

**Recommendation 21–1** The recommended *Inquiries Act* should provide that, in the case of Royal Commissions and Official Inquiries, the maximum penalty for the offences of refusing or failing to swear or affirm, answer a question, or comply with notices requiring attendance or the production of documents or things, is six months imprisonment or 30 penalty units.

**Recommendation 21–2** The recommended *Inquiries Act* should provide that, in the case of Royal Commissions and Official Inquiries, the maximum penalty for the offence of contravening a direction concerning the prohibition or restriction of public access to a hearing, or the prohibition or restriction of publication, is 12 months imprisonment or 60 penalty units.

**Recommendation 21–3** The recommended *Inquiries Act* should provide that, in the case of Royal

Commissions and Official Inquiries, the maximum penalty for the offence of contravening a direction concerning national security information is two years imprisonment or 120 penalty units.

**Recommendation 21–4** The recommended *Inquiries Act* should provide that, in the case of Royal Commissions and Official Inquiries, the maximum penalty for the offence of causing substantial disruption is six months imprisonment or 30 penalty units.

**Recommendation 21–5** The recommended *Inquiries Act* should include a provision dealing with the institution of proceedings for offences under the Act in equivalent terms to s 10 of the *Royal Commissions Act 1902* (Cth).

**Recommendation 21–6** The recommended *Inquiries Act* should provide for the award of costs in criminal proceedings in terms equivalent to those in s 15 of the *Royal Commissions Act 1902* (Cth), but the part of s 15 dealing with the recovery of penalties for offences under the *Royal Commissions Act* should be repealed.