

INTER-STATE COMMISSION.

No. 33 of 1912.

An Act relating to the Inter-State Commission.

[Assented to 24th December, 1912.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Inter-State Commission Act* 1912.

2. This Act is divided into Parts, as follows:—

Parts.

- Part I.—Preliminary.
- Part II.—The Inter-State Commission.
- Part III.—Investigations.
- Part IV.—Inter-State Traffic.
- Part V.—Judicial Powers of the Commission.
- Part VI.—Miscellaneous.

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

Definitions.

- “Commerce” includes trade and traffic of all descriptions by land or water :
- “The Commission” means the Inter-State Commission :
- “Commissioner” means a member of the Inter-State Commission :
- “Common carrier” includes the Railway Commissioners, and any persons or authorities controlling the railways, ferries, or other carrying agencies, of the Commonwealth or of a State :
- “External commerce” means commerce with other countries, and includes all commerce (whether or not under a common control, management, or arrangement, and whether or not by a continuous carriage or shipment) from any place in the Commonwealth to or through another country, or from another country to or through any place in the Commonwealth :
- “Inter-State commerce” means commerce among the States, and includes all commerce (whether or not under a common control, management, or arrangement, and whether or not by a continuous carriage or shipment) from one State or Territory of the Commonwealth to or through another State or Territory of the Commonwealth :

“ Goods ” includes animals of all descriptions :

“ Order ” includes adjudication, determination, decision, and award :

“ Party ” includes a State, or State authority, being a party :

“ Rate ” includes any rate, fare, toll, or charge for any service rendered in connexion with the transportation of passengers or goods, or in connexion with the receiving, delivering, storage, or handling of goods :

“ State Authority ” means any authority constituted under a State :

“ State Railway Authority ” includes the Railway Commissioners of a State, and any persons or authorities controlling any railways the property of a State :

“ The Minister ” means the Minister for Trade and Customs :

“ Traffic ” includes the transportation of passengers and of goods.

PART II.—THE INTER-STATE COMMISSION.

The Inter-State
Commission.

4.—(1.) The Commission shall consist of three members, of whom one shall be of experience in the law. It shall be a body corporate, with perpetual succession and a common seal, and capable of suing and being sued.

(2.) All courts, judges, and persons acting judicially shall take judicial notice of the seal of the Commission affixed to any document or notice, and shall presume that it was duly affixed.

Appointment of
Commissioners.

5.—(1.) The Governor-General shall, as soon as conveniently practicable, appoint three persons to be Commissioners, and on the happening of any vacancy in the office of Commissioner the Governor-General shall appoint a person to the vacant office.

(2.) Every such appointment shall, subject to the Constitution, be for a term of seven years ; and every person so appointed shall on the expiration of his term of office be eligible for re-appointment.

(3.) In case of the illness, suspension, or absence of any Commissioner, the Governor-General may appoint a person to act as a Deputy Commissioner during the illness, suspension, or absence, and the deputy shall whilst so acting have all the powers and perform all the duties of a Commissioner :

Provided that where the Commissioner is required by this Act to be of experience in the law, the deputy shall be of experience in the law.

The Chief
Commissioner.

6.—(1.) The Governor-General shall appoint one of the three Commissioners to be Chief Commissioner, and on the happening of any vacancy in the office of Chief Commissioner the Governor-General shall appoint a person to fill that office.

(2.) In case of the illness, suspension, or absence of the Chief Commissioner, the Governor-General shall appoint one of the other Commissioners to act as Chief Commissioner during the illness, suspension, or absence.

7.—(1.) The Chief Commissioner shall receive a salary of Two thousand five hundred pounds a year, and each of the other Commissioners shall receive a salary of Two thousand pounds a year.

Salaries and expenses of Commissioners.

(2.) There shall be paid to each Commissioner, on account of his expenses in travelling to discharge the duties of his office, such sums as are considered reasonable by the Governor-General.

8. Every member of the Commission shall, before proceeding to discharge the duties of his office, take an oath or affirmation of allegiance in the form of the Schedule to the Constitution, and also an oath or affirmation in the form following :—

Oath or affirmation of allegiance and office.

Cf. 1903, No. 6, s. 9.

I, *A.B.*, do swear that I will well and truly serve our Sovereign Lord the King in the office of a member of the Inter-State Commission, and I will do right to all manner of people according to law, without fear or favour, affection, or ill-will : So help me God.

or, I, *A.B.*, do solemnly and sincerely promise and declare that (*&c.*, as above, except the words “*So help me God*”).

9.—(1.) The Governor-General may suspend any Commissioner from office for misbehaviour or incapacity. The Minister shall, within seven days after the suspension, if the Parliament is then sitting, or if the Parliament is not then sitting, within seven days after the next meeting of the Parliament, cause to be laid before both Houses of the Parliament a full statement of the grounds of suspension.

Suspension of Commissioner.

(2.) A Commissioner who has been suspended shall be restored to office unless each House of Parliament within forty days after the statement has been laid before it, and in the same session, passes an address praying for his removal on the grounds of proved misbehaviour or incapacity.

10.—(1.) Subject to the regulations, the Commission may hold sittings in any part of the Commonwealth in such place or places as it may deem most convenient for the transaction of its business or proceedings, and shall keep minutes of its proceedings in the prescribed form.

Sittings of the Commission.

(2.) The Chief Commissioner shall preside as Chairman at all meetings of the Commission at which he is present, and in his absence the senior Commissioner present shall preside as Chairman.

11.—(1.) For the conduct of business any two Commissioners shall be a quorum, and shall have, subject to the next sub-section, all the powers of the Commission.

Quorum of Commission.

(2.) At a meeting of the Commission the decision of the majority shall prevail.

(3.) If, at any meeting of the Commission at which only two Commissioners are present, those Commissioners differ in opinion upon any matter, the determination of the matter shall be postponed until all the Commissioners are present.

Vacancy not to invalidate proceedings.

12. No act or proceeding of the Commission shall be invalidated or prejudiced by reason only of there being, at the time when the act or proceeding was done, taken, or commenced, a vacancy in the office of any one Commissioner.

Commissioners not to be interested in business of carrier.

13. A Commissioner shall not be in the employment of or hold any official relation to any common carrier, or be in any way concerned or interested in the business of a common carrier, or in any way participate or claim to be entitled to participate in any profit, benefit, or emolument arising from any such business.

Commissioner not to act where interested.

14. A Commissioner shall not exercise any power by this Act conferred upon him in any matter in which he is directly or indirectly interested.

Commissioners to devote whole time to their duties.

15. The Commissioners shall devote the whole of their time to the performance of their duties, and no Commissioner shall accept or hold any paid employment outside the duties of his office as a Commissioner, or be a director of a company.

PART III.—INVESTIGATIONS.

Commission to investigate certain matters.

16. The Commission shall be charged with the duty of investigating, from time to time, all matters which in the opinion of the Commission ought in the public interest to be investigated affecting—

- (a) the production of and trade in commodities ;
- (b) the encouragement, improvement, and extension of Australian industries and manufactures ;
- (c) markets outside Australia, and the opening up of external trade generally ;
- (d) the effect and operation of any Tariff Act or other legislation of the Commonwealth in regard to revenue, Australian manufactures, and industry and trade generally ;
- (e) prices of commodities ;
- (f) profits of trade and manufacture ;
- (g) wages and social and industrial conditions ;
- (h) labour, employment, and unemployment ;
- (i) bounties paid by foreign countries to encourage shipping or export trade ;
- (j) population ;
- (k) immigration ; and
- (l) other matters referred to the Commission by either House of the Parliament, by resolution, for investigation.

Investigations of river questions.

17.—(1.) The Commission may investigate all matters affecting—

- (a) the extent of diversions or proposed diversions, or works or proposed works for diversions, from any river and its tributaries, and their effect or probable effect on the navigability of rivers that by themselves or by their connexion with other waters constitute highways for inter-state trade and commerce ;

- (b) the maintenance and the improvement of the navigability of such rivers;
- (c) the abridgment by the Commonwealth by any law or regulation of trade or commerce of the rights of any State or the residents therein to the reasonable use of the waters of rivers for conservation or irrigation;
- (d) the violation by any State, or by the people of any State, of the rights of any other State, or the people of any other State, with respect to the waters of rivers.

(2.) In this section "diversions" includes obstructions, impoundings, and appropriations of water that diminish or retard the volume of flow of a river.

PART IV.—INTER-STATE TRAFFIC.

Rates and Preferences.

18. All rates fixed or made by any common carrier—

- (a) for any service rendered in respect of inter-state commerce; or
- (b) which affect inter-state commerce,

shall be reasonable and just, and every such rate which is unreasonable or unjust is hereby prohibited.

Rates to be reasonable.
I.S.C. Act (U.S.), s. 1.

Rates on State Railways.

19.—(1.) It shall not be lawful for any State, or for any State Railway Authority, to give or make upon any railway the property of the State, in respect of inter-state commerce, or so as to affect such commerce, any preference or discrimination which is undue and unreasonable, or unjust to any State.

Undue preferences upon State railways.
See Constitution s. 102.

(2.) In deciding whether a lower charge or difference of treatment constitutes within the meaning of this section a preference or discrimination which is undue or unreasonable, or unjust to any State, the Commission shall have due regard to the financial responsibilities incurred by any State in connexion with the construction and maintenance of its railways.

20. Nothing in this Act shall render unlawful any rate for the carriage of goods upon a railway, the property of a State, if the rate is deemed by the Commission to be necessary for the development of the territory of the State, and if the rate applies equally to goods within the State and to goods passing into the State from other States.

Rates necessary for development.
See Constitution s. 104.

Carriers and State Authorities other than State Railway Authorities.

21. No common carrier or State Authority, other than a State Railway Authority, shall, in respect of inter-state commerce, or so as to affect such commerce—

- (a) make or give any undue or unreasonable preference or advantage to any particular person, State, locality, or description of traffic; or

- (b) subject any particular person, State, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage.

Carriers not to give undue preference.
17-8 Vic. c. 31 s. 2.
51-2 Vic. c. 25 s. 28.
I.S.C. Act (U.S.), s. 3.

Proof of undue preference.
51-2 Vic. c. 25
s. 27.

22.—(1.) Whenever it is shown that any common carrier or State Authority, other than a State Railway Authority, in respect of inter-state commerce, or so as to affect such commerce—

- (a) charges to any person or class of persons, or to the persons in any locality or State, lower rates for the same or similar goods, or for the same or similar services, than the carrier or authority charges to other persons or classes of persons, or to the persons in another locality or State ; or
- (b) makes any difference in treatment in respect of any such persons,

the burden of proving that the lower rate or difference in treatment is not an undue or unreasonable preference or advantage shall lie on the common carrier or authority.

(2.) In deciding whether a lower rate or difference of treatment constitutes an undue preference, the Commission may as far as it thinks reasonable, in addition to any other circumstances affecting the case, take into consideration whether the lower rate or difference of treatment is necessary for the purpose of securing in the interests of the public the traffic in respect of which it is made, and whether the inequality cannot be removed without unduly reducing the rates charged to the complainant.

PART V.—JUDICIAL POWERS OF THE COMMISSION.

Jurisdiction.

Commission a court of record.
Cf. 51-2 Vic.
c. 25 s. 2.

23. The Commission, in the exercise of its powers for the hearing or determination of any complaint, dispute, or question, or for the adjudication of any matter, shall be a court of record.

Jurisdiction of Commission.

24. The Commission shall have jurisdiction to hear and determine any complaint, dispute, or question, and to adjudicate upon any matter arising as to—

- (a) any preference, advantage, prejudice, disadvantage, or discrimination given or made by any State or by any State authority or by any common carrier in contravention of this Act, or of the provisions of the Constitution relating to trade and commerce or any law made thereunder ;
- (b) the justice or reasonableness of any rate in respect of inter-state commerce, or affecting such commerce ;
- (c) anything done or omitted to be done by any State or by any State Authority or by any common carrier or by any person in contravention of this Act or of the provisions of the Constitution relating to trade or commerce or any law made thereunder.

Application to Commission.
17-8 Vic. c. 31
s. 3.
I. S. C. Act
(U.S.), s. 16.

25. Any person complaining against any State, State Authority, common carrier, or person of anything done or left undone in contravention of this Act, or of the provisions of the Constitution relating to trade and commerce, or any law made thereunder, may apply to the Commission, and the Commission may hear and

determine the matter of the complaint according to equity and good conscience and in such manner as to do justice between the parties, and may for that purpose if it thinks fit direct and prosecute, in such mode and by such persons as it thinks proper, all such inquiries as it deems necessary.

26. Any of the following authorities, that is to say—

- (a) the Commonwealth ;
 - (b) any State, or any State Railway Authority ;
 - (c) any borough, municipality, or body politic ;
 - (d) any Harbor Board, Marine Board, or other State Authority ;
- or
- (e) any such association of traders or freighters, or chamber of commerce, manufactures, or agriculture, as is in the opinion of the Commission a proper body to make the complaint,

Provision for complaints by public authority.
51-2 Vic. c. 25 s. 7.
Cf. I.S.C. Act (U.S.), s. 13.

may make to the Commission any complaint which the Commission has jurisdiction to determine, and may do so without proof that the authority is directly aggrieved by the matter complained of, and any such authority may appear in opposition to any such complaint in any case where the authority, or the persons represented by it, appear to the Commission to be likely to be affected by any determination of the Commission upon the complaint.

27. The Commission may of its own motion summon before it any State authority, common carrier, or person who it has reason to believe has done anything or left anything undone in contravention of this Act, or of the provisions of the Constitution relating to trade and commerce or any law made thereunder, and shall have jurisdiction to hear and determine the matter and may make such orders in relation thereto as if complaint had been made to it of the contravention.

Jurisdiction without complaint.

28. Any complaint, dispute, question, or difference whatever relating to external or inter-state commerce may, upon the application of the parties, and with the consent of the Commission, be referred to the Commission for decision ; and the Commission shall thereupon have the same jurisdiction to hear and determine the complaint, dispute, question, or difference, and the decision of the Commission thereon may be carried into effect in the same way, as in other matters in which the Commission has jurisdiction.

References to Commission.
36-7 Vic. c. 48 s. 9.

Relief.

29. The Commission, in any matter in which it has jurisdiction, shall have power to grant and shall grant, either absolutely or on such terms and conditions as may be just, all relief to which any of the parties are entitled in respect of any claim properly brought forward by them in the matter ; so that as far as possible all matters in controversy between the parties regarding the matter of complaint, or arising out of or connected with it, may be completely and finally determined, and all multiplicity of proceedings concerning any of such matters may be avoided.

General relief.
Cf. 1903, No. 6, s. 32.

Power to award
damages.
51-2 Vic. c. 25
s. 12.

30.—(1.) Where the Commission has jurisdiction to hear and determine any matter, it may, in addition to or in substitution for any other relief, award to any complaining party who is aggrieved such damages as it finds him to have sustained :

Provided that damages shall not be awarded unless complaint has been made to the Commission within one year from the discovery by the party aggrieved of the matter complained of.

(2.) The Commission may ascertain the amount of the damages either by trial before itself, or by directing an inquiry to be taken before one or more of the Commissioners or before some officer of the Commission.

Injunction.
Cf. 17-18 Vic.
c. 31 s. 3.
T.S.C. Act (U.S.)
s. 16.

31. If it appears to the Commission, on the hearing of any complaint, that anything has been done or left undone by any party in contravention of this Act or of the provisions of the Constitution relating to trade and commerce, or any law made thereunder, the Commission may order that the party be restrained by injunction or other proper process mandatory or otherwise from further continuing the contravention.

Avoidance of
State
Regulation.

32. If it appears to the Commission, on the hearing of any complaint, that anything done or left undone in contravention of this Act, or of the provisions of the Constitution relating to trade and commerce, or any law made thereunder, has been so done or left undone in pursuance of any regulation made by any State or by any State Authority, the Commission may declare the regulation, or any part thereof, to be void, and thereupon the same shall cease to have any effect.

Power to
prescribe future
action.
Cf. I.S.C. Act
(U.S.), s. 15.

33.—(1.) If it appears to the Commission, on the hearing of any complaint, that anything has been done or left undone by any party in contravention of this Act, or of the provisions of the Constitution relating to trade and commerce, or any law made thereunder, it may, by the order made on the hearing or by any subsequent order, declare the thing which the party is required to do or not to do for the future to bring himself into conformity with this Act or with the Constitution or with any such law and for that purpose it shall have power—

- (a) to name a maximum rate for any service ;
- (b) to name both a maximum and a minimum rate, when that is necessary to prevent an unlawful preference or discrimination ;
- (c) to name a maximum or minimum of difference between two rates, when that is necessary to prevent an unlawful preference or discrimination ;
- (d) to determine the apportionment between carriers of a joint rate and the terms and conditions under which business shall be interchanged when that is necessary to the execution of the provisions of this Act or of the Constitution or of any such law ; and

(e) to require any such amendment in the rules and regulations for the movement of traffic as is required to bring them into conformity with the provisions of this Act or of the Constitution or of any such law.

(2.) The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of any order under the provisions of this Act.

34.—(1.) When the Commission makes an order in pursuance of the powers conferred by this Part, it may by the same or a subsequent order fix pecuniary penalties, or maximum pecuniary penalties, or maximum and minimum pecuniary penalties, for disobedience of the order or any part thereof.

Penalty for disobedience of order.

(2.) A penalty so fixed shall not exceed Two hundred pounds; or, in the case of a continuing disobedience, Two hundred pounds for each day during which the disobedience continues.

(3.) Any party or person who disobeys any order of the Commission shall be guilty of an offence, and shall be liable on summary conviction to the penalty so fixed, or to a penalty within the limits so fixed, as the case may be; and where no penalty has been so fixed, shall be liable to a penalty not exceeding One hundred pounds; or, in the case of a continuing disobedience, One hundred pounds for each day during which the disobedience continues.

(4.) For the purposes of this section, an act, omission, or failure of an officer, servant, agent, or other person acting for or employed by a party, within the scope of his employment, shall be deemed to be the act, omission, or failure of the party as well as of the person.

Cf. *Elkins Act*, (U.S.) s. 1.

35.—(1.) Any order made by the Commission for the purpose of carrying into effect any provision of this Act or of the Constitution or of any law may be made a rule or order of the High Court, and shall be enforced in like manner as any rule or order of the High Court.

Enforcement of orders. See 36-7 Vic. c. 48 s. 26.

(2.) For the purpose of carrying this section into effect, the Justices of the High Court, or such of them as may make Rules of Court in other cases, may make general rules and orders in the same manner as they may make general rules and orders with respect to any other proceedings in the High Court.

Powers and Proceedings.

36. For the purposes of this Part of this Act, the Commission shall have full jurisdiction to hear and determine all matters, whether of law or of fact, and shall, as respects the attendance and examination of witnesses, the production and inspection of documents, the entry on and inspection of property, and all other matters whatsoever necessary or proper for the due exercise of its jurisdiction under this Part or otherwise for carrying this Part into effect, have all such powers rights and privileges as are vested in the High Court.

General powers. 51-2 Vic. c. 25 s. 18.

Assessors.36-7 Vic. c. 48
s. 23.

37.—(1.) The Commission may, in the exercise of any jurisdiction conferred on it by this Part, call in the aid of one or more assessors, who shall be persons of engineering commercial or other technical knowledge.

(2.) There shall be paid to the assessors such remuneration as the Minister upon the recommendation of the Commission directs.

Appearance in person or by counsel.51-2 Vic. c. 25
s. 50.**Findings to be evidence.**

38. In any proceedings under this Act any party may appear before the Commission either in person or by barrister or solicitor.

39. Every finding of fact made by the Commission in respect of any complaint shall, in any other complaint before the Commission, be evidence of each and every fact found.

Costs.See 51-2 Vic. c.
26 s. 19.

40. The costs of and incidental to any proceedings before the Commission shall be in the discretion of the Commission, which may order by whom and to whom they are to be paid and by whom they are to be taxed.

Power to review orders.51-2 Vic. c. 25
s. 13 (2).

41. The Commission may review and rescind or vary any order made by it, but save as is by this Act provided every order of the Commission shall be final.

*Appeals.***Appeals to the High Court on questions of law.**51-2 Vic. c. 25
s. 17.

42.—(1.) No appeal shall lie from the Commission except an appeal to the High Court on questions of law only.

(2.) An appeal shall not be brought except in conformity with such rules of court as may be made in relation to such appeals by the Justices of the High Court, or such of them as have power to make rules of court in other cases.

(3.) On the hearing of an appeal the High Court may draw all such inferences as are not inconsistent with the facts expressly found and are necessary for determining the question of law, and shall have all such powers for that purpose as if the appeal were an appeal from a judgment of a Justice exercising the original jurisdiction of the High Court, and may make any order which the Commission could have made and also such further or other orders as may be just.

(4.) The costs of and incidental to an appeal shall be in the discretion of the High Court, but no Commissioner shall be liable to costs by reason or in respect of any appeal.

(5.) The operation of any order of the Commission shall not be stayed pending the decision of an appeal unless the Commission or the High Court otherwise orders.

Commission may state a case.36-7 Vic. c. 48
s. 26.

43.—(1.) The Commission may, if it thinks fit, in any proceeding before it under this Act, at the instance of any party to the proceeding, and upon such security being given by the appellant as the Commission may direct, state a case in writing for the opinion of the High Court upon any question which in the opinion of the Commission is a question of law.

(2.) The High Court shall hear and determine the questions of law arising thereon, and shall thereupon affirm, reverse, or amend the order in respect of which the case has been stated, or remit the

matter to the Commission with the opinion of the High Court thereon, or may make such other order in relation to the matter, and such order as to costs, as it thinks fit.

44. Save as provided by this Act, an order or proceeding of the Commission shall not be questioned or reviewed, and shall not be restrained or removed by prohibition, injunction, *certiorari*, or otherwise either at the instance of the Crown or otherwise.

Orders of Commission not to be otherwise reviewed.
See 51-2 Vic. c. 25 s. 17.

PART VI.—MISCELLANEOUS.

45. The Commission shall once in every year make a report to the Minister containing a summary of the work done and investigations made and proceedings taken by the Commission during the preceding year, and such information and data collected by the Commission as it may deem of value for the determination of questions connected with any matter dealt with by the Commission under this Act, together with such recommendations as to further legislation as the Commission thinks expedient.

Annual report of Commission.
36-7 Vict. c. 48 s. 31.
I.S.C. Act (U.S.) s. 21.

46. The Commission shall from time to time forward to the Minister reports concerning investigations and proceedings made or taken by the Commission.

Reports of investigations.

47. The Minister shall cause the yearly report and all reports concerning investigations and proceedings received by him from the Commission to be laid before both Houses of the Parliament within thirty days after the receipt thereof if the Parliament is then sitting, and if not within thirty days after the next meeting of the Parliament.

Reports to be laid before Parliament.

48. The Commission may publish such information relating to any matter investigated by it as it thinks fit.

Power to publish information.

49. The Commission may, in connection with any investigation or proceeding, take evidence in public or in private, but it shall only take evidence in private where it considers that it is desirable in the public interest that the evidence should be taken in private.

Evidence may be taken in public or private.

50. The Chief Commissioner may by writing under his hand summon any person to attend the Commission at a time and place named in the summons, and then and there to give evidence and to produce any books documents or writings in his custody or control which he is required by the summons to produce.

Power to send for witnesses and documents.
Cf. No. 4, 1912, s. 2.

51. Every witness who has been summoned to attend the Commission shall appear and report himself from day to day unless excused by the Chief Commissioner or Chairman or until he is released from further attendance by the Chief Commissioner or Chairman.

Duty of witness to continue in attendance.
No. 4, 1912, s. 7.

52. Any of the Commissioners may administer an oath to any person appearing as a witness before the Commission, whether the witness has been summoned or appears without being summoned, and may examine the witness upon oath.

Power to examine upon oath.

Affirmation in lieu of oath.

53.—(1.) Where any witness to be examined before the Commission conscientiously objects to take an oath, he may make an affirmation that he conscientiously objects to take an oath, and that he will state the truth, the whole truth, and nothing but the truth, to all questions that may be asked him.

(2.) An affirmation so made shall be of the same force and effect, and shall entail the same liabilities, as an oath.

Arrest of witness failing to appear.

No. 4, 1912, s. 7.

54.—(1.) If any person served with a summons to attend the Commission as a witness fails to attend the Commission in answer to the summons, the Chief Commissioner or Chairman may, on proof by statutory declaration of the service of the summons, issue a warrant for his apprehension.

(2.) The warrant shall authorize the apprehension of the witness and his being brought before the Commission, and his detention in custody for that purpose until he is released by order of the Chief Commissioner or Chairman.

(3.) The warrant may be executed by any member of the police force of the Commonwealth or of a State or Territory, or by any person to whom it is addressed, and the person executing it shall have the power to break and enter any place building or vessel for the purpose of executing it.

(4.) The apprehension of any witness under this section shall not relieve him from any liability incurred by him by reason of his non-compliance with the summons.

Penalty for failing to attend or produce documents.

No. 4, 1912, s. 4.

55.—(1.) If any person served with a summons to attend the Commission, when the summons is served personally, fails without reasonable excuse to attend the Commission, or to produce any documents, books, or writings in his custody or control which he was required by the summons to produce, he shall be guilty of an offence.

Penalty : Five hundred pounds.

Cf. No. 4, 1912, s. 5.

(2.) It shall be a defence to a prosecution under this section for failing without reasonable excuse to produce any documents, books, or writings, if the defendant proves that the documents, books, or writings were not relevant to the investigation or proceeding.

Penalty for refusing to be sworn or to give evidence.

No. 4, 1912, s. 6.

56. If any person appearing as a witness before the Commission refuses to be sworn or to make an affirmation or to answer any question relevant to the investigation or proceeding put to him by any of the Commissioners he shall be guilty of an offence.

Penalty : Five hundred pounds.

Acts or omissions on different days to constitute separate offences.

No. 4, 1912, s. 7.

57.—(1.) Where any person has on any day done or omitted to do something, and his act or omission amounts to an offence against either of the last two preceding sections, and does or omits to do the same thing at any meeting of the Commission held on some other day, each such act or omission shall be a separate offence.

Penalty for offence committed after a previous conviction.

No. 4, 1912, s. 7.

(2.) Where any person, who has been convicted of any offence against either of the last two preceding sections, is subsequently convicted on information by the Attorney-General of any offence against either of

those sections, committed by him after the first mentioned conviction and in relation to the same investigation or proceeding, he shall be liable to a penalty of not less than Five hundred pounds and not more than One thousand pounds, and to imprisonment for such period not exceeding three months as the Court thinks fit to order.

58. Nothing in this Act shall make it compulsory for any witness before the Commission to disclose to the Commission any secret process of manufacture.

Witness need not disclose secret process.
No. 4, 1912, s. 7.

59. A statement or disclosure made by any witness in answer to any question put to him by the Commission or any of the Commissioners shall not (except in proceedings for an offence against this Act) be admissible in evidence against him in any civil or criminal proceedings in any Commonwealth or State Court or any Court of any Territory of the Commonwealth.

Statements made by witness not admissible in evidence against him.
No. 4, 1912, s. 7.

60. The Commission may inspect any documents, books, or writings produced before it, and may retain them for such reasonable period as it thinks fit, and may make copies of such matter as is relevant to the inquiry or take extracts from them.

Power of Commission in relation to documents produced.
No. 4, 1912, s. 7.

61. Any witness before the Commission who knowingly gives false testimony touching any matter, material to any investigation or proceeding before the Commission, shall be guilty of an indictable offence.

Giving false testimony.
No. 4, 1912, s. 7.

Penalty : Imprisonment for five years.

62. Any person who—

(a) gives, confers, or procures, or promises or offers to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, upon, or for, any person, upon any agreement or understanding that any person called or to be called as a witness before the Commission shall give false testimony or withhold true testimony, or

Bribery of witness.
No. 4, 1912, s. 7.

(b) attempts by any means to induce a person called or to be called as a witness before the Commission to give false testimony, or to withhold true testimony, or

(c) asks, receives or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself, or any other person, upon any agreement or understanding that any person shall as a witness before the Commission give false testimony or withhold true testimony,

shall be guilty of an indictable offence.

Penalty : Imprisonment for five years.

63. Any person who practises any fraud or deceit, or knowingly makes or exhibits any false statement, representation, token, or writing, to any person called or to be called as a witness before the Commission, with intent to affect the testimony of that person as a witness, shall be guilty of an indictable offence.

Fraud on witness.
No. 4, 1912, s. 7.

Penalty : Imprisonment for two years.

Destroying
books or
documents.

No. 4, 1912, s. 7.

64. Any person who, knowing that any book, document, or writing is or may be required in evidence before the Commission, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, shall be guilty of an indictable offence.

Penalty : Imprisonment for two years.

Preventing
witness from
attending.

No. 4, 1912, s. 7.

65. Any person who wilfully prevents or wilfully endeavours to prevent any person who has been summoned to attend as a witness before the Commission from attending as a witness or from producing anything in evidence pursuant to the summons to attend shall be guilty of an indictable offence.

Penalty : Imprisonment for one year.

Injury to
witness.

No. 4, 1912, s. 7.

66. Any person who uses, causes, inflicts, or procures, any violence, punishment, damage, loss, or disadvantage to any person for or on account of his having appeared as a witness before the Commission, or for or on account of any evidence given by him before the Commission, shall be guilty of an indictable offence.

Penalty : Five hundred pounds, or imprisonment for one year.

Dismissal by
employers of
witness.

No. 4, 1912, s. 7.

67.—(1.) Any employer who dismisses any employee from his employment, or prejudices any employee in his employment, for or on account of the employee having appeared as a witness before the Commission, or for or on account of the employee having given evidence before the Commission, shall be guilty of an indictable offence.

Penalty : Five hundred pounds, or imprisonment for one year.

(2.) In any proceeding for any offence against this section it shall lie upon the employer to prove that any employee shown to have been dismissed or prejudiced in his employment was so dismissed or prejudiced for some reason other than the reasons mentioned in sub-section (1.) of this section.

Contempt of
Commission.
Cf. Act No. 13
1904, s. 88.

No. 4, 1912, s. 7.

68.—(1.) Any person who wilfully insults or disturbs the Commission, or interrupts the proceedings of the Commission, or uses any insulting language towards the Commission, or by writing or speech uses words false and defamatory of the Commission, or is in any manner guilty of any wilful contempt of the Commission, shall be guilty of an offence.

Penalty : One hundred pounds, or imprisonment for three months.

(2.) When the Commission is sitting in the exercise of its powers under Part V. of this Act, the Chief Commissioner or Chairman shall, in relation to any offence against sub-section (1.) of this section committed in the face of the Commission, have all the powers of a Justice of the High Court sitting in open Court in relation to a contempt committed in face of the Court, except that any punishment inflicted shall not exceed the punishment provided by sub-section (1.) of this section.

Protection to
Commissioners.

No. 4, 1912, s. 7.

69.—(1.) Each Commissioner shall in the exercise of his duty as Commissioner have the same protection and immunity as a Justice of the High Court.

(2.) Every witness summoned to attend or appearing before the Commission shall have the same protection, and shall in addition to the penalties provided by this Act be subject to the same liabilities in any civil or criminal proceeding, as a witness in any case tried in the High Court.

Protection to and liability of witnesses.

(3.) Where the expenses allowable to a witness summoned under this Act, for travelling from the place where the summons is served to the place at which he is summoned to attend, exceed five shillings, the amount of such expenses shall be tendered to him before the journey.

70.—(1.) The Governor-General may make regulations prescribing a scale of allowances to be paid to any witness summoned under this Act for his travelling and other expenses.

Allowances to witness.

(2.) The claim to allowance of any such witness, certified by the Chief Commissioner or Chairman, shall be paid by the Treasurer out of moneys to be provided by the Parliament for the purposes of the Commission.

71. Proceedings for the commitment for trial of any person charged with an indictable offence against this Act may be instituted by any person.

Institution of proceedings for indictable offences.

No. 4, 1912, s. 9.

72.—(1.) Proceedings in respect of any offence against this Act (other than an indictable offence) may be instituted by action, information, or other appropriate proceeding, in the High Court by the Attorney-General in the name of the King, or by information or other appropriate proceeding by any person in any court of summary jurisdiction.

Institution of proceedings in respect of other offences.

No. 4, 1912, s. 9.

(2.) Any proceedings in the High Court under this section may be heard and determined by a single Justice of the High Court sitting without a jury.

73. Proceedings in the High Court under the last preceding section may be commenced, prosecuted, and proceeded with in accordance with the practice and procedure of the Court applicable to Crown suits for the recovery of penalties, or in accordance with the directions of the Court or a Justice.

Procedure in cases instituted in the High Court.

No. 4, 1912, s. 9.

74. Where any pecuniary penalty is adjudged to be paid by any person convicted of an offence against this Act the Court may—

Powers of court on conviction as regards pecuniary penalties.

No. 4, 1912, s. 9.

- (a) commit the offender to gaol until the penalty is paid ; or
- (b) release the offender upon his giving security for the payment of the penalty ; or
- (c) exercise for the enforcement and recovery of the penalty any power of distress or execution possessed by the Court for the enforcement and recovery of penalties in any other case.

75. The powers of distress and execution for the enforcement and recovery of penalties may be exercised in the case of any pecuniary penalty adjudged to be paid by any offender, notwithstanding that he has been committed to gaol until the penalty is paid.

Levy of execution notwithstanding committal of offender.

No. 4, 1912, s. 9.

Release of
offender.
No. 4, 1912, s. 9.

76. The gaoler of any gaol to which any offender has been committed for non-payment of any penalty shall discharge him—

- (a) on payment, by the offender to him, of the penalty adjudged ; or
- (b) on a certificate from the proper officer of the Court that the penalty has been paid or realized ; or
- (c) if the penalty adjudged to be paid is not paid or realized, according to the following table :—

Amount of Penalty.	Period after commencement of Imprisonment at the expiration of which Defendant is to be discharged.
£2 or under	Seven days
Over £2 and not more than £5	Fourteen days.
Over £5 and not more than £20	One month.
Over £20 and not more than £50	Two months.
Over £50 and not more than £100	Three months.
Over £100 and not more than £200	Six months.
Over £200	One year.

Costs.
No. 4, 1912 s. 9.

77. In any proceedings for an offence against this Act (other than proceedings for the commitment for trial of a person charged with an indictable offence) the Court may award costs against any party, and all provisions of this Act relating to the recovery of penalties, except as to commitment to gaol, shall extend to the recovery of any costs adjudged to be paid.

Application of
moneys.

78. All fees, fines, and penalties paid or recovered under this Act shall be paid to the Consolidated Revenue Fund.

Regulations.

79. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or are necessary or convenient to be prescribed, for giving effect to this Act, and in particular for any of the following purposes :—

- (a) for prescribing the procedure and practice of the Commission under this Act ;
- (b) for enabling the Commission in cases to be specified in such regulations to exercise its jurisdiction by any one Commissioner :

Provided that any person aggrieved by any order or decision made in any such case may require a rehearing by all the Commissioners ;

- (c) for prescribing the fees to be taken and scales of costs to be allowed in relation to any proceedings before the Commission ;
- (d) for imposing penalties (not exceeding in the case of a pecuniary penalty One hundred pounds and in the case of imprisonment a period of three months) for any breach of the regulations.