

# ROYAL COMMISSION ON ESPIONAGE.

No. 28 of 1954.

## An Act relating to the Royal Commission on Espionage.

[Assented to 14th August, 1954.]

**B**E it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

- Short title.** 1. This Act may be cited as the *Royal Commission on Espionage Act 1954*.
- Commencement.** 2. This Act shall come into operation on the day on which it receives the Royal Assent.
- Saving.** 3. Notwithstanding anything contained in this Act, a person is not, in respect of an act or omission occurring before the commencement of this Act, guilty of an offence of which he would not have been guilty, or liable to a penalty to which he would not have been liable, if this Act had not been enacted.
- Definitions.** 4. In this Act, unless the contrary intention appears—  
“reasonable excuse”, in relation to an act or omission by a person served with a summons to attend the Commission or appearing as a witness before the Commission, means, subject to section fourteen of this Act, an excuse that would excuse an act or omission of a similar nature by a person summoned as a witness, or appearing as a witness, before a court of law ;

“the Royal Commission on Espionage” or “the Commission” means the Commission of inquiry directed by the Letters Patent of which a copy is set forth in the Schedule to this Act, and includes the members of the Commission sitting for the purposes of the inquiry.

5. The Letters Patent of which a copy is set forth in the Schedule to this Act are hereby declared to be, and to have been at all times, authorized by the *Royal Commission Act 1954* and the Commission is hereby authorized and required, and is hereby declared to have been at all times authorized and required, to proceed with the inquiry directed by those Letters Patent.

Confirmation  
of Letters  
Patent.

6.—(1.) This Act applies, from and including the date of commencement of this Act, to the exclusion of the *Royal Commissions Act 1902–1933*, to and in relation to the Royal Commission on Espionage.

Application  
of Act.

(2.) Section three of the *Royal Commission Act 1954* is amended by omitting sub-section (2.).

(3.) The provisions of sub-section (2.) of section twenty-five of this Act, and the provisions of sections twenty-six and twenty-seven of this Act, shall be deemed to have been at all relevant times before the commencement of this Act applicable to and in relation to the Commission and, in the application of those provisions, the reference in paragraph (b) of sub-section (1.) of section twenty-six of this Act to section sixteen of this Act shall be read as a reference to section six D of the *Royal Commissions Act 1902–1933*.

7.—(1.) Where, before the commencement of this Act, a summons has been issued requiring a person to attend the Commission for the purpose of giving evidence, or of producing books, documents or writings and that person has not been released from further attendance—

Transitional  
provisions.

(a) the summons has the same force and effect, and this Act applies to and in relation to the summons, as if it had been issued under this Act; and

(b) service of the summons on a person, whether before or after the commencement of this Act, either personally or by its being left at his usual place of abode, shall be deemed to be service of the summons for the purposes of this Act.

(2.) A person who has, before the commencement of this Act, taken an oath or made an affirmation before the Commission shall, for the purposes of this Act, be deemed to have taken that oath or made that affirmation in pursuance of this Act.

(3.) Where, before the commencement of this Act, a person has done or omitted to do something and his act or omission amounted to an offence against section five or six of the *Royal Commissions Act 1902–1933* and, after the commencement of this Act, that person, in

contravention of section ten or thirteen of this Act, does or omits to do the same thing, the earlier act or omission does not prevent the later act or omission from amounting to an offence against section ten or thirteen of this Act.

(4.) Where, before the commencement of this Act, in pursuance of sub-section (3.) of section six D of the *Royal Commissions Act 1902-1933*, the Commission has directed that any evidence given before it, or the contents of any documents, books or writings, shall not be published, that direction shall, for the purposes of sub-section (4.) of section sixteen of this Act, be deemed to have been given under sub-section (3.) of that section.

Power to send  
for witnesses  
and documents.

8.—(1.) The Chairman of the Commission may, by writing under his hand, summon a 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 documents, books or writings in his custody or control which he is required by the summons to produce.

(2.) A summons under this section may be served personally or by being left at the usual place of abode of the person named in the summons.

Power to  
examine upon  
oath.

9.—(1.) Any member of the Commission may administer an oath to a person appearing as a witness before the Commission, whether the witness has been summoned or appears without being summoned, and that member or any other member of the Commission may examine the witness upon oath.

(2.) Where a witness to be examined before the Commission conscientiously objects to take an oath, he may make an affirmation that he so objects and that the evidence he will give will be the truth, the whole truth and nothing but the truth.

(3.) An affirmation so made is of the same force and effect, and entails the same liabilities, as an oath.

Penalty for  
failing to  
attend or  
produce  
documents.

10.—(1.) A person served with a summons to attend the Commission shall not, without reasonable excuse—

(a) fail to attend the Commission; or

(b) fail to produce any document, book or writing in his custody or control which he was required by the summons to produce.

Penalty: Five hundred pounds or imprisonment for three months.

(2.) It is a defence in proceedings (whether under this section or under section eighteen of this Act) for failing without reasonable excuse to produce any document, book or writing if it is proved that the document, book or writing was not relevant to the inquiry.

Duty of  
witness to  
continue in  
attendance.

11. A person who has been summoned to attend the Commission as a witness shall appear and report himself from day to day unless excused by the Chairman of the Commission or until he is released from further attendance by the Chairman of the Commission.

Penalty: Five hundred pounds or imprisonment for three months.

12.—(1.) If a person who has been summoned to attend the Commission as a witness fails to attend or appear before the Commission as required by either of the last two preceding sections, the Chairman of the Commission may, on proof by statutory declaration of the service of the summons, issue a warrant for the apprehension of that person.

Arrest of witness failing to appear.

(2.) A warrant so issued authorizes the apprehension of the person and his being brought before the Commission and his detention in custody for that purpose until he is released by order of the Chairman of the Commission.

(3.) A warrant so issued may be executed by a person who is a member of the police force of a State or Territory of the Commonwealth or a Peace Officer holding office under the *Peace Officers Act* 1925, or by any person to whom it is addressed, and the person executing it has power to break and enter any place, building or vessel for the purpose of executing the warrant.

(4.) The apprehension of a person under this section does not relieve him from any liability incurred by him by reason of his failure to attend or appear before the Commission.

13.—(1.) A person appearing as a witness before the Commission shall not, without reasonable excuse—

Penalty for refusing to be sworn or to give evidence.

(a) refuse or fail to be sworn or to make an affirmation ; or

(b) refuse or fail to answer a question relevant to the inquiry put to him by a member of the Commission.

Penalty : Five hundred pounds or imprisonment for three months.

(2.) For the purposes of this section, a question put to a person by a barrister or solicitor appearing before the Commission, or by some other person authorized by the Commission to appear before it, not being a question disallowed by the Commission, shall be deemed to have been put by a member of the Commission.

14.—(1.) A person served with a summons to attend the Commission, or a person appearing as a witness before the Commission, is not entitled to refuse to produce a document, book or writing in his custody or control, or to refuse to answer a question, on the ground that the document, book or writing, or the answer to the question, may incriminate that person or that person's wife or husband.

Incriminating statements.

(2.) Except in proceedings for an offence against this Act or against Part III. of the *Crimes Act* 1914–1950, or in proceedings under section eighteen of this Act, evidence given by a person before the Commission is not admissible against that person or that person's wife or husband, in any civil or criminal proceedings against that person or that person's wife or husband, in any Federal or State Court or Court of a Territory of the Commonwealth.

Act or omission on different days to constitute separate offences.

15. Where a person has on any day done or omitted to do something and his act or omission amounts to an offence against section ten or thirteen of this Act, and does or omits to do the same thing at a meeting of the Commission held on some other day, each such act or omission is a separate offence.

Evidence may be taken in private.

16.—(1.) The Commission may, if it thinks proper, take evidence in private and no person who is not expressly authorized by the Commission to be present shall be present during the taking of that evidence.

(2.) Without affecting the generality of the last preceding sub-section, the Commission may take evidence in private upon the application of a witness on the ground that the taking of the evidence in public would be unfairly prejudicial to him.

(3.) The Commission may direct that any evidence given before it, or the contents of any document, book or writing produced at the inquiry, shall not be published.

(4.) A person shall not make a publication in contravention of a direction given under the last preceding sub-section.

Penalty : Five hundred pounds or imprisonment for three months.

Penalty in case of offence committed after previous conviction.

17.—(1.) Where a person who has been convicted of an offence against section ten or thirteen of this Act is subsequently convicted of an offence against either of those sections, being an offence committed by him after the first-mentioned conviction, he is liable to a penalty of not less than Five hundred pounds and not more than One thousand pounds, together with imprisonment for such period, not exceeding three months, as the court thinks fit to order.

(2.) For the purposes of this section, a person adjudged guilty of a contempt of the Commission under the next succeeding section by reason of his having contravened or failed to comply with any of the provisions of section ten or thirteen of this Act shall be deemed to have been convicted of an offence against section ten or thirteen of this Act, as the case may be.

Contempt of the Commission.

18.—(1.) A person who contravenes or fails to comply with any of the provisions of section ten, eleven, thirteen, sixteen or twenty-four of this Act is, in addition to being guilty of an offence, also guilty of a contempt of the Commission.

(2.) A contempt of the Commission under this section is punishable by the High Court, upon application made by the Attorney-General, as if it were a contempt of the High Court and jurisdiction is, by this section, conferred on the High Court to hear and determine proceedings in respect of such a contempt.

(3.) Subject to this section, proceedings in respect of such a contempt shall be instituted, carried on, heard and determined in accordance with the laws applicable to and in relation to the punishment of contempts of the High Court.

(4.) In so far as any such law is incapable of application, whether by reason of the Constitution or otherwise, a Justice of the High Court may give a direction as to the manner of instituting, carrying on, hearing or determining a proceeding referred to in the last preceding sub-section and in that case the proceeding shall be instituted, carried on, heard or determined, as the case may be, in accordance with the direction.

(5.) The penalty which the High Court is empowered to impose in respect of a contempt of the Commission is the penalty which would have been applicable in respect of the offence constituting the contempt if proceedings in respect of the offence had been taken otherwise than under this section.

(6.) A person guilty of an offence referred to in sub-section (1.) of this section may be punished either under this section or otherwise but shall not be punished twice for the same offence.

19. The Commission, a member of the Commission or a person thereto authorized in writing by the Chairman of the Commission may inspect any documents, books or writings produced before the Commission and may retain them for such reasonable period as it or he thinks fit and may make copies, or take extracts from them, of such matters as are relevant to the inquiry.

Power of Commission in relation to documents produced.

20. A barrister or solicitor appointed by the Attorney-General to assist the Commission, a barrister or solicitor authorized by the Commission to appear before it for the purpose of representing any person, or any other person authorized by the Commission to appear before it may, so far as the Commission thinks proper, examine or cross-examine any witness on any matter which the Commission deems relevant to the inquiry and a witness so examined or cross-examined has the same protection and is subject to the same liabilities as if he were examined by a member of the Commission.

Examination of witnesses by counsel, &c.

21.—(1.) A person summoned to appear as a witness, or appearing as a witness, before the Commission shall be paid such expenses in respect of his attendance as the Chairman of the Commission determines, or, in the absence of a determination, as are provided by the scale of allowances payable to witnesses summoned under the *Royal Commissions Act 1902-1933*.

Expenses of witnesses.

(2.) The claim to allowance of any such person, certified by the Chairman of the Commission, shall be paid by the Treasurer out of moneys provided by the Parliament for the purpose.

22. A person shall not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to a person for or on account of that person having appeared as a witness before the Commission or for or on account of any evidence given by that person before the Commission.

Injury to witness.

Penalty: Five hundred pounds or imprisonment for one year.

Dismissal by  
employers of  
witnesses.

**23.**—(1.) An employer shall not dismiss an employee from his employment, or prejudice an 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.

Penalty : Five hundred pounds or imprisonment for one year.

(2.) In proceedings for an offence against this section, it lies upon the employer to prove that an employee shown to have been dismissed or prejudiced in his employment was dismissed or prejudiced for some reason other than a reason mentioned in the last preceding sub-section.

Offences  
against the  
Commission.

**24.** A person shall not—

- (a) wilfully insult or disturb the Commission ;
- (b) interrupt the proceedings of the Commission ;
- (c) use insulting language towards the Commission or a member of the Commission ;
- (d) by writing or speech use words false and defamatory of the Commission or of a member of the Commission ;
- (e) by writing or speech use words calculated—
  - (i) to influence improperly a person in relation to evidence which he may give before the Commission ;
  - (ii) to influence improperly a witness before the Commission ; or
  - (iii) to bring the Commission or a member of the Commission into disrepute ; or
- (f) in any manner commit a wilful contempt of the Commission, not being a contempt which is a contravention of or failure to comply with any of the provisions of section ten, eleven, thirteen or sixteen of this Act.

Penalty : One hundred pounds or imprisonment for three months.

Protection of  
Commissioners,  
barristers and  
witnesses.

**25.**—(1.) Each member of the Commission has, in the exercise of his duty as a member of the Commission, the same protection and immunity as a Justice of the High Court.

(2.) A barrister or solicitor appearing before the Commission, and every other person authorized by the Commission to appear before it, has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3.) Subject to this Act, a witness summoned to attend or appearing before the Commission has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities in any civil or criminal proceeding, as a witness in proceedings in the High Court.

Proceedings  
for defamation  
not to lie.

**26.**—(1.) No action or proceeding, civil or criminal, lies—

- (a) against the Commonwealth, against a Minister, or against a servant or agent of the Commonwealth, in respect of the printing or publishing of—
  - (i) a transcript of proceedings of the Commission ;
  - or
  - (ii) a report of the Commission ; or

(b) in respect of the publication in a newspaper, or by means of broadcasting, of—

- (i) a fair and accurate report of proceedings of the Commission ; or
- (ii) a report of the Commission, not being a publication in contravention of section sixteen of this Act.

(2.) This section does not limit or abridge any privilege existing apart from this Act.

27.—(1.) Where evidence of proceedings before the Commission (including questions asked of witnesses and answers given or statements made by witnesses) is admissible in any Federal or State Court or Court of a Territory of the Commonwealth, the evidence may be given by the production of a document certified under the hand of the person who is or was the Chairman of the Commission to be a transcript of the proceedings.

Evidence of proceedings.

(2.) Judicial notice shall be taken of the signature of the person who is or was the Chairman of the Commission, and of the fact that he is or was the Chairman.

28. The proceedings of the Commission are a judicial proceeding for the purposes of Part III. of the *Crimes Act* 1914–1950 and the Commission is a tribunal for the purposes of that Part.

Application of Part III. of Crimes Act.

## THE SCHEDULE.

Sections 4 and 5.

### LETTERS PATENT.

#### COMMONWEALTH OF AUSTRALIA.

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Australia and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith :

*To Our Trusty and Well-beloved—*

- The Honourable WILLIAM FRANCIS LANGER OWEN, a Judge of the Supreme Court of New South Wales ;
- The Honourable ROSLYN FOSTER BOWIE PHILP, a Judge of the Supreme Court of Queensland ; and
- The Honourable GEORGE COUTTS LIGERTWOOD, a Judge of the Supreme Court of South Australia,

*Greeting :*

KNOW YE THAT We do by these Our Letters Patent, issued in Our name by Our Governor-General in and over Our Commonwealth of Australia, acting with the advice of Our Federal Executive Council, and in pursuance of the Constitution of Our said Commonwealth, the *Royal Commission Act* 1954, and all other powers him thereunto enabling, appoint you to be Commissioners to inquire into and report upon—

- (a) the information given to the Commonwealth by Vladimir Mikhailovich Petrov as to the conduct of espionage and related activities in Australia and matters related to or arising from that information ;
- (b) whether espionage has been conducted or attempted in Australia by representatives or agents of the Union of Soviet Socialist Republics and, if so, by whom and by what methods ;



THE SCHEDULE—*continued.*

- (c) whether any persons or organizations in Australia have communicated information or documents to any such representative or agent unlawfully or to the prejudice or possible prejudice of the security or defence of Australia ; and
- (d) whether any persons or organizations in Australia have aided or abetted any such espionage or any such communication of information or documents,

and, generally, the facts relating to and the circumstances attending any such espionage or any such communication of information or documents :

AND WE DO DECLARE that, for the purposes of these Our Letters Patent, the expression " representatives or agents of the Union of Soviet Socialist Republics " includes other persons or organizations acting, directly or indirectly, for or in the interests of the Union of Soviet Socialist Republics :

AND WE APPOINT YOU the said WILLIAM FRANCIS LANGER OWEN to be the Chairman of the said Commissioners :

AND WE REQUIRE YOU with as little delay as possible, to report to Our Governor-General in and over Our said Commonwealth the result of your inquiries into the matters entrusted to you by these Our Letters Patent.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Our said Commonwealth to be hereunto affixed.

WITNESS Our Trusty and Well-beloved SIR WILLIAM JOSEPH SLIM, Knight Grand Cross of the Most Honourable Order of the Bath, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Grand Cross of the Royal Victorian Order, Knight Grand Cross of the Most Excellent Order of the British Empire, Companion of the Distinguished Service Order, upon whom has been conferred the Decoration of the Military Cross, Knight of the Venerable Order of Saint John of Jerusalem, Governor-General in and over Our Commonwealth of Australia, this third day of May, in the year of our Lord One thousand nine hundred and fifty-four, and in the third year of Our Reign.

W. J. SLIM  
Governor-General.

By His Excellency's Command,

ROBERT G. MENZIES  
Prime Minister.

---