

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

PARLIAMENTARY COMMISSION OF INQUIRY BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Honourable Lionel Bowen
Deputy Prime Minister and Attorney-General.)

PARLIAMENTARY COMMISSION OF INQUIRY BILL 1986

GENERAL OUTLINE

This Bill provides for the establishment of a Parliamentary Commission of Inquiry to inquire in accordance with clause 5 of the Bill, and advise the Parliament, whether any conduct of Mr Justice Lionel Keith Murphy has been such as to amount to, in the opinion of the Commission, proved misbehaviour within the meaning of section 72 of the Constitution.

The Commission will be constituted by 3 persons who are or have been Judges of a Superior Court. These persons will be appointed by resolution of the House of Representatives and the Senate.

The Commission will not call upon Mr Justice Murphy to give evidence unless the Commission is of the opinion that there is evidence of misbehaviour within the meaning of section 72 of the Constitution sufficient to require an answer and the Commission has given to Mr Justice Murphy particulars in writing of that evidence. The Commission is to base its findings on evidence admissible in a court of law.

The Commission may hold hearings for the purposes of its inquiry and shall, unless it thinks the circumstances require otherwise, conduct the whole of its inquiry in private.

The Commission will be vested with powers to summon witnesses and call for documents and other material similar to the powers of a Royal Commission under the Royal Commissions Act 1902 (hereinafter in this memorandum referred to as the 'RCA'). Other provisions concerning the powers of the Commission and offences concerning witnesses are also based on provisions of the RCA.

The Bill will appropriate the moneys necessary for the Commission's inquiry.

NOTES ON CLAUSES

Clause 1 - Short title

Formal

Clause 2

The Bill will come into operation on the day it receives the Royal Assent.

Clause 3 - Interpretation

This clause contains definitions of words used in the Bill.

Clause 4 - Establishment of Commission

This clause provides for the appointment of the 3 members of the Commission by resolution of the Senate and by resolution of the House of Representatives. Only a person who is or has been a Judge of a Superior Court may be appointed as a member of the Commission. The resolutions shall also appoint a member to be the Presiding Member.

Clause 5 - Functions

This clause sets out the terms of reference of the Commission to inquire, in accordance with the clause, and advise the Parliament, whether any conduct of Mr Justice Murphy has been such as to amount to, in the opinion of the Commission, proved misbehaviour within the meaning of section 72 of the Constitution. Clauses 5(2) and 5(3) require the Commission to consider only specific allegations made in precise terms and in doing so to have regard to the outcome of any previous inquiry

into that allegation and only consider it to the extent that the Commission considers necessary or desirable to do so. In addition, clause 5(4) requires the Commission not to reopen issues dealt with in the trials leading to the acquittal of Mr Justice Murphy except to the extent it is necessary to do so in order to examine other issues in the performance of its inquiry. This includes in particular the issue of guilt or innocence of the charges laid, and whether the conduct the subject of the charges was such as to constitute proved misbehaviour in any other way.

Clause 6 - Evidence

The terms of reference are to be read in the light of clause 6(1) by virtue of which Mr Justice Murphy is not to be required to give evidence before the Commission on a matter unless the Commission is of the opinion that there is before the Commission evidence of misbehaviour sufficient to require an answer and the Commission has given the Judge particulars in writing of that evidence. Provision is made in clause 6(2) for the Commission to base its findings on evidence admissible in a court of law.

Clause 7 - Conduct of proceedings

Under clause 7(1) the presumption is that the proceedings of the Commission will be conducted in private.

Clause 8 - Report to Parliament

The Commission is required to report to the President of the Senate and the Speaker of the House of Representatives its findings of fact and its conclusions whether any conduct of Mr Justice Murphy has been such as to amount, in the Commission's opinion, to proved misbehaviour within the meaning of section 72. The report is to be furnished on or by 30 September 1986 unless both Houses extend that date. The

President and Speaker are required, as soon as possible after they receive the report, to cause copies of the report to be laid before the Senate and the House of Representatives except that if the Commission has prepared a separate report under clause 8(4), the President and the Speaker shall not cause that separate report to be laid before the Houses of the Parliament.

Clause 9 - Death or incapacity of member

This clause provides that the Commission may be constituted by 2 members if one member dies or becomes physically or mentally incapable of performing the functions of a member or resigns his or her appointment.

Clause 10 - Decisions on questions

This clause provides that normally questions arising before the Commission shall be decided in accordance with the opinion of the majority and provision is made for the inclusion in the report of the opinions of individual members where the members are not unanimous.

Clause 11 - Power to summon witnesses and take evidence

This clause authorises the Commission to summon witnesses and take evidence and is based on section 2 of the RCA.

Clause 12 - Search warrants

This clause authorises the Commission to issue search warrants on grounds based on those in section 4 of the RCA.

Clause 13 - Access to certain material held by National Crime Authority

This clause authorises the Presiding Member to require the National Crime Authority to produce to the Commission documents and other materials in the possession of the Authority relating to the inquiry conducted by the Stewart Royal Commission into Alleged Telephone Interceptions.

Clause 14 - Hearings

This clause authorises the Commission to hold hearings at such places within Australia as the Commission determines. The Presiding Member is to preside at a hearing. Mr Justice Murphy is entitled to appear and to be represented by a legal practitioner at all times during the hearing. The Commission has a discretion to permit the examination or cross-examination of any witness by counsel assisting, any person authorized by the Commission or entitled to appear at a hearing or any legal practitioner authorized to appear before the Commission for the purpose of representing a person. Subject to the Act, the procedure at a hearing shall be such as the Commission directs. The Commission may direct that evidence given before it or other information acquired by it shall not be published.

Clause 15 - Counsel assisting the Commission

This clause authorises the Commission to appoint counsel to assist the Commission.

Clause 16 - Statement made by witness not admissible in evidence

Whilst clause 27 provides that a person may not refuse or fail to answer a question or produce a document that might tend to incriminate that person, this clause provides that a statement

or disclosure made by a witness in the course of giving evidence is not (except in proceedings for an offence against the Act) admissible in evidence against the witness in any court in Australia.

Clause 17 - Arrest of witness failing to appear

This clause authorises the Presiding Member to issue a warrant for the apprehension of a person who fails to attend in accordance with a summons to attend served on that person.

Clause 18 - Powers of Commission in relation to documents and other things

This clause confers powers on the Commission similar to those conferred by section 6F of the RCA.

Clause 19 - Remuneration and allowances

This clause provides for the remuneration and allowances of members of the Commission. This clause also provides that a member ceases to hold office as a member when the report of the Commission has been laid before each House of the Parliament.

Clause 20 - Staff of the Commission

Clause 20(1) provides that, subject to clause 20(2), the staff of the Commission are to be made available to the Commission by the President of the Senate and the Speaker of the House of Representatives.

Clause 21 - Protection of members &c

This clause affords protection to members of the Commission, legal practitioners and persons summoned to attend or appearing before the Commission as witnesses and is based on section 7 of the RCA.

Clause 22 - Legal and financial assistance

This clause provides a mechanism for a person who is appearing or is about to appear before the Commission or who is entitled to appear before the Commission to obtain such legal or financial assistance in respect of the appearance of that person before the Commission as the President of the Senate and the Speaker of the House of Representatives determine.

Clause 23 - Reimbursement of expenses of witnesses

This clause provides for the reimbursement of expenses of witnesses and is based on section 6G of the RCA.

Clauses 24-33 - Offences

These clauses are based on provisions in the RCA concerning failure of witnesses to attend or produce documents (RCA, s.3), penalty for refusing to be sworn or give evidence (RCA, s.6), acts or omissions on different days to constitute separate offences (RCA, s.6C), self-incrimination (RCA, s.6A - the exclusion in s.6A where there are current charges is not included in clause 27 of the Bill), false or misleading evidence (RCA, s.6H), destroying documents or other things (RCA, s.6K), intimidation or dismissal of witnesses (RCA, s.6M and 6N), preventing witnesses from attending (RCA, s.6L), bribery of witness (RCA, s.6I) and fraud on witness (RCA, s.6J). Clause 27 of the Bill provides that nothing in the clause applies to, or in relation to, anything done by a person under, or for the purposes of, section 72 of the Constitution.

Clause 34 - Commission may communicate information

This clause provides for the Commission to communicate information to certain persons and is based on section 6P of the RCA.

Clause 35 - Contempt

This clause penalizes contempts of the Commission and is based on section 60 of the RCA.

Clause 36 - Appropriation

This clause provides the money necessary for the Commission's inquiry.

Clause 37 - Regulations

This clause provides for the making of Regulations by the Governor-General.

