

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**RESOURCE ASSESSMENT COMMISSION BILL 1989**

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 3 May 1989

*(Minister for Primary Industries and Energy)*

## A BILL

FOR

### **An Act to establish a Resource Assessment Commission, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

#### **PART 1—PRELIMINARY**

##### **Short title**

- 5     **1.** This Act may be cited as the *Resource Assessment Commission Act 1989*.

##### **Commencement**

- 2.** This Act commences on the day on which it receives the Royal Assent.

10 **Interpretation**

- 3.** In this Act, unless the contrary intention appears:  
“Chairperson” means the Chairperson of the Commission;  
“Commission” means the Resource Assessment Commission established by section 5;

“Commissioner” means the Chairperson or a special Commissioner;

“Commonwealth authority” means:

(a) a body or an authority established for a public purpose by or under a law of the Commonwealth; or

(b) a body corporate: 5

(i) incorporated under a law of the Commonwealth or a State; and

(ii) in which the Commonwealth has a controlling interest;

“conservation” means the management of the human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations, and includes the preservation, maintenance, sustainable utilisation, restoration and enhancement of the environment; 10  
15

“development” means the modification of the biosphere to satisfy human needs and improve the quality of life;

“Division”, in relation to an inquiry, means the Chairperson and the special Commissioners (if any) for the inquiry;

“environment” includes all aspects of the surroundings of human beings, whether affecting human beings as individuals or in social groupings; 20

“evidence”, in relation to an inquiry, includes a submission to an inquiry, whether oral or written;

“inhabited external Territory” means:

(a) Norfolk Island; 25

(b) the Territory of Christmas Island; or

(c) the Territory of Cocos (Keeling) Islands;

“inquiry” means an inquiry held under paragraph 16 (2) (a);

“Judge” means:

(a) a Judge of a court created by the Parliament; 30

(b) a person who has the same designation and status as such a Judge; or

(c) a Judge of a court of a State;

“losses” includes costs;

“referral”, in relation to a resource matter, means a notice under subsection 16 (1) requiring the Commission to conduct an inquiry into that matter; 35

“report”, in relation to an inquiry, means the report of the inquiry required by paragraph 16 (2) (b);

“resource” means a biological, mineral or other material component, whether natural or not, of the environment (other than a human being), and includes a permanent or temporary combination or association of such components; 40

“resource matter” means any matter relating to the use of a resource and includes:

(a) a matter involving the question whether a use of a resource is compatible with another use of that resource or with a use of another resource and:

(i) where the uses are compatible—the question whether they should be allowed at the same time or sequentially and under what conditions; or

(ii) where the uses are not compatible—the question which of them should be allowed and under what conditions; and

(b) a matter involving the question of the nature or extent of the environmental, cultural, social, industry, economic or other effects of a use of a resource;

“special Commissioner” means a person referred to in paragraph 10 (b), and, in relation to an inquiry, means a special Commissioner appointed for the purposes of the inquiry;

“State” includes the Australian Capital Territory and the Northern Territory;

“use” includes proposed use, and, in relation to a resource, includes:

(a) use for, or by way of, conservation or development; and

(b) use of the resource before, during or after any processing.

#### **Application**

4. This Act extends to all external Territories.

## **PART 2—RESOURCE ASSESSMENT COMMISSION**

### ***Division 1—Establishment, Functions and Powers of Commission***

#### **Establishment**

5. There is established a Resource Assessment Commission.

#### **Functions**

6. The functions of the Commission are to hold inquiries, and make reports, in respect of resource matters in accordance with this Act.

#### **Commission to be guided by policy principles**

7. In the performance of its functions the Commission shall be guided by the policy principles that have been adopted by the Commonwealth Government for resolving competing claims for the use of resources, being the principles set out in Schedule 1.

#### **Matters to be addressed in performance of Commission’s functions**

8. In the performance of its functions in relation to a resource matter, the Commission shall, as far as practicable and subject to the terms of the referral of the matter:

- (a) identify the resource with which the matter is concerned and the extent of that resource;
- (b) identify the various uses that could be made of that resource;
- (c) identify:
  - (i) the environmental, cultural, social, industry, economic and other values of that resource or involved in those uses; and 5
  - (ii) the implications for those values of those uses, including implications that are uncertain or long-term;
- (d) assess the losses and benefits involved in the various alternative uses, or combinations of uses, of that resource, including: 10
  - (i) losses and benefits of an unquantifiable nature; and
  - (ii) losses and benefits that are uncertain or long-term; and
- (e) give consideration to any other aspect of the matter that it considers relevant.

#### **Powers of Commission** 15

9. In addition to any other power conferred on it by this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

### ***Division 2—Constitution of Commission***

#### **Constitution of Commission** 20

10. The Commission consists of:
- (a) a Chairperson; and
  - (b) any special Commissioners appointed, from time to time, under this Act for the purposes of inquiries.

#### **Appointment of Commissioners** 25

11. (1) The Commissioners shall be appointed by the Governor-General.
- (2) A Commissioner shall be appointed on a full-time basis or on a part-time basis.

#### **Period of appointment of Chairperson**

12. The Chairperson shall be appointed for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment. 30

#### **Period of appointment of special Commissioners**

13. (1) A special Commissioner shall be appointed for the inquiry, or inquiries, specified in the instrument of appointment. 35
- (2) The Governor-General may, by written notice to a special Commissioner, appoint the Commissioner for an additional inquiry.



### **Selection of special Commissioners**

14. Before the appointment of a special Commissioner, the Minister shall consult:

- (a) the Chairperson; and
- 5 (b) the presiding members (however described) of the Australian Science and Technology Council and the Industries Assistance Commission; about suitable appointees.

### **Conditions of Commissioners**

10 15. The Commissioners hold office on such terms and conditions (if any) in respect of matters not provided for by this Part or Part 5 as are determined by the Minister in writing.

## **PART 3—REFERENCE OF RESOURCE MATTER TO COMMISSION**

### **Reference of resource matter to Commission**

15 16. (1) Where the Commonwealth Government or a Commonwealth authority may, in the exercise of its powers, make a decision in relation to a resource matter, the Minister may, by written notice to the Chairperson, require the Commission to conduct an inquiry into the matter.

20 (2) Where a resource matter is referred to the Commission, the Commission shall, in accordance with the referral of the matter:

- (a) hold an inquiry into the matter; and
- (b) prepare and give to the Minister a report of that inquiry.

25 (3) As soon as practicable after giving the notice, the Minister shall publish a copy of it in each State and inhabited external Territory in a newspaper circulating generally in the State or Territory.

### **Referral**

17. A referral of a resource matter:

- (a) shall set out:
  - 30 (i) a description of the matter;
  - (ii) the scope of the inquiry;
  - (iii) the date by which the report of the inquiry is to be given to the Minister;
  - (iv) any principles or other matters to be taken into account by the Commission; and
  - 35 (v) any priorities to be observed by the Commission in taking those matters into account;
- (b) may require the Commission to specify in the report the courses of action on the matter that it considers are available to the Commonwealth Government or the Commonwealth authority, as
- 40 the case requires; and

- (c) where the referral contains the requirement described in paragraph (b)—may require the Commission to make recommendations in the report on those courses of action.

#### **Notice varying or ending inquiry**

**18. (1)** At any time during an inquiry into a resource matter, the Minister may, by written notice to the Chairperson, amend or withdraw the referral of the matter. 5

**(2)** As soon as practicable after giving the notice, the Minister shall publish a copy of it in each State and inhabited external Territory in a newspaper circulating generally in the State or Territory. 10

### **PART 4—INQUIRIES**

#### ***Division 1—Preliminary***

##### **Notice of inquiries**

**19.** The Commission shall, as soon as practicable after receiving a referral of a resource matter, give reasonable notice in each State and inhabited external Territory, by advertisement in a newspaper circulating generally in the State or Territory, of: 15

- (a) the inquiry into the matter;
- (b) the subject of the inquiry;
- (c) when the inquiry is to begin; and 20
- (d) the address to which, and the date by which, written submissions to the inquiry may be sent.

##### **Constitution of Commission for purposes of inquiry**

**20. (1)** An inquiry shall be conducted by a Division of the Commission constituted by the Chairperson and the special Commissioners (if any) for the inquiry. 25

**(2)** A Division shall include at least 2 special Commissioners unless the Minister otherwise directs.

##### **Inquiries may be held at the same time**

**21.** The Commission may hold more than one inquiry at the same time. 30

##### **Delegation of Chairperson's powers**

**22.** The Chairperson may, by signed instrument, delegate to a special Commissioner for an inquiry all or any of the Chairperson's powers under this Act in relation to the conduct of meetings and hearings of the Division conducting the inquiry, but those powers shall only be exercised at meetings and hearings at which the Chairperson is not present. 35

##### **Protection of Commissioners and witnesses**

**23. (1)** A Commissioner has, in the performance of his or her duties as a Commissioner, the same protection and immunity as a Justice of the High Court. 40

(2) A person giving evidence to an inquiry has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

### **Division 2—Conduct of Inquiries**

#### **5 General conduct of inquiries**

24. Subject to this Division, in an inquiry:

- (a) the procedure shall be decided upon by the Chairperson; and
- (b) the Commission:

- 10 (i) may inform itself about any matter in any way the Chairperson thinks fit;
- (ii) may receive oral or written evidence;
- (iii) may consult with such persons as the Chairperson thinks fit;
- (iv) is not bound to act in a formal manner; and
- (v) is not bound by the rules of evidence.

#### **15 Meetings of Commissioners**

25. (1) Where there is at least one special Commissioner for an inquiry, the Chairperson shall convene such meetings of the Division conducting the inquiry as the Chairperson thinks necessary for the efficient conduct of the inquiry.

- 20 (2) The Chairperson shall determine the places at which the meetings are to be held.

#### **Hearings by Commission**

26. (1) The Commission shall hold such hearing or hearings as the Chairperson thinks necessary for the purposes of an inquiry.

- 25 (2) Before the Commission begins hearings for the purposes of an inquiry, the Commission shall give reasonable notice in each State and inhabited external Territory, by advertisement in a newspaper circulating generally in the State or Territory, of:

- 30 (a) the hearings;
- (b) the subject of the hearings; and
- (c) the time and place at which the hearings are to begin.

#### **Quorum for meetings and hearings**

- 35 27. (1) Subject to subsection (2), where there is at least one special Commissioner for an inquiry, the majority of the Commissioners constituting the Division for the inquiry constitute a quorum at a meeting or hearing of the Division.

(2) A quorum of a Division for an inquiry shall not be taken to be present unless the Chairperson or his or her delegate for the purposes of the inquiry is present.

**Presiding at meetings and hearings**

28. (1) The Chairperson shall preside at all meetings and hearings at which he or she is present.

(2) Where the Chairperson is not present at a meeting or hearing for the purposes of an inquiry, his or her delegate for the purposes of the inquiry shall preside at the meeting or hearing. 5

**Procedure at hearings**

29. (1) Subject to this section, a hearing shall be held in public.

(2) Where:

(a) a person appearing to give evidence at a hearing objects to doing so in public; and 10

(b) the Commission considers:

(i) that the evidence is of a confidential nature; and

(ii) the interest in confidentiality is greater than the interest in having the evidence taken in public; 15

the Commission may take the evidence in private.

(3) Where the Commission considers:

(a) that evidence to be given at a hearing is of a confidential nature even though the person appearing to give the evidence has not objected to doing so in public; and 20

(b) the interest in confidentiality is greater than the interest in having the evidence taken in public;

the Commission may take the evidence in private.

(4) The Commission may, if it thinks fit, permit or require a person who is to give evidence to the Commission to do so in writing. 25

(5) The Commission may, at a hearing, take evidence on oath or affirmation.

**Written evidence and documents to be made public**

30. Where a person:

(a) gives written evidence to an inquiry; or 30

(b) gives or produces a document to the Commission in connection with an inquiry;

the Commission shall, as soon as is practicable, make available to the public in any way it thinks fit the particulars of the evidence or the contents of the document, other than any matter where: 35

(c) the person objects to the matter being made public and the Commission considers that evidence of the matter would have been taken in private if it had been given orally at a hearing; or

- (d) the Commission considers that, even though the person does not object to the matter being made public, evidence of the matter would have been taken in private if it had been given orally at a hearing.

5 **Commission may prepare background papers etc.**

31. (1) In the course of an inquiry, the Commission may prepare for public consideration a background paper or issues paper in relation to the inquiry.

- 10 (2) The Commission shall, as soon as practicable, make copies of any background paper or issues paper available to the public.

**Draft reports**

32. (1) In the course of an inquiry, the Commission shall, unless the Minister otherwise directs, prepare for public consideration a draft report of the inquiry.

- 15 (2) The Commission shall, as soon as practicable, make copies of the draft report available to the public and shall provide opportunities for public comment on the draft report.

**Participation in meetings etc.**

- 20 33. Nothing in this Part prevents the Chairperson from permitting a person to participate in, or a Commissioner to form part of a quorum at, a meeting or hearing by means of:

- (a) telephone;
- (b) closed circuit television; or
- (c) another method of communication.

25 **Powers of Chairperson**

34. (1) A power of the Chairperson under section 24, 25 or 33 in relation to an inquiry shall be exercised, as far as practicable, only after consultation with the special Commissioners (if any) for the inquiry.

- 30 (2) The Chairperson shall direct and control travel arrangements by Commissioners for the purpose of the performance of their duties.

***Division 3—Reports***

**Report to be tabled**

- 35 35. The Minister shall cause a copy of a report relating to an inquiry that is given to him or her to be laid before each House of the Parliament within 25 sitting days of that House after the day on which the Minister receives the report.

**Division 4—Evidence****Power to obtain information and documents**

**36. (1)** Where the Commission:

- (a) is conducting an inquiry; and
- (b) has reason to believe that a person is capable of giving information or producing documents relevant to the inquiry; 5

the Chairperson may give written notice to the person:

- (c) requiring him or her to appear at a hearing to give evidence or to produce the documents specified in the notice; or
- (d) requiring him or her to give to the Commission on or before a day specified in the notice: 10
  - (i) a statement signed by the person or, in the case of a body corporate, on behalf of the body corporate, setting out the information specified in the notice; or
  - (ii) the documents specified in the notice. 15

**(2)** Where documents are produced or given to the Commission under subsection (1), the Commission:

- (a) may take possession of, and may make copies of or take extracts from, the documents;
- (b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry to which the documents relate; and 20
- (c) during that period shall permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Commission. 25

**Allowances to witnesses**

**37.** A person who appears at a hearing because of a notice under subsection 36 (1) is entitled to be paid by the Commonwealth such allowances for the person's travelling and other expenses as are prescribed.

**PART 5—ADMINISTRATION**

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**Division 1—Office of Commissioner****Arrangements for appointment of Judge of State or Northern Territory**

**38. (1)** The Prime Minister may, for the purpose of the appointment as a Commissioner of a person who is a Judge of a State or of the Northern Territory, enter into such arrangement with the Premier of the State or the Chief Minister of the Territory, as the case may be, as is necessary to secure that person's services. 35

**(2)** The arrangement may provide for the Commonwealth to reimburse the State or the Territory with respect to the services of the person to whom the arrangement relates. 40

**Appointment of Judge as Commissioner not to affect tenure etc.**

5 39. (1) The appointment of a Federal Judge as a Commissioner, or service by a Federal Judge as a Commissioner, does not affect the person's tenure of his or her judicial office or the person's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, the person's service as a Commissioner shall be taken to be service as the holder of that judicial office.

(2) In this section:

10 "Federal Judge" means a Judge other than a Judge of a State;

"judicial office", in relation to a person, means the office because of which the person is a Federal Judge.

**Acting Chairperson**

40. (1) The Minister may appoint a person to act as the Chairperson:

15 (a) during a vacancy in the office of the Chairperson (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Chairperson is absent from Australia or is, for any other reason, unable to perform the functions of the office of the Chairperson;

20 but a person appointed to act during a vacancy shall not continue to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act as the Chairperson is not invalid on the ground that:

(a) the occasion for the person's appointment had not arisen;

25 (b) there was a defect or irregularity in connection with the person's appointment;

(c) the person's appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

**Acting special Commissioners**

30 41. (1) The Minister may appoint a person to act as a special Commissioner for an inquiry:

(a) in the place of a person who has ceased to be a special Commissioner for the inquiry; or

35 (b) during any period, or during all periods, when a special Commissioner for the inquiry:

(i) is absent from Australia;

(ii) is unable to take part in the inquiry because of or a direction under subsection 43 (4); or

40 (iii) is, for any other reason, unable to perform the function of a special Commissioner for the inquiry;

but a person appointed to act under paragraph (a) shall not continue to act for more than 6 months.

(2) In considering the persons suitable for appointment under subsection (1) for an inquiry, the Minister shall take into account the consultations under section 14 in relation to the inquiry.

(3) Anything done by or in relation to a person purporting to act as a special Commissioner is not invalid on the ground that: 5

- (a) the occasion for the person's appointment had not arisen;
- (b) there was a defect or irregularity in connection with the person's appointment;
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased. 10

### **Outside employment**

42. (1) A Commissioner shall not:

- (a) if appointed on a full-time basis—engage in paid employment outside the duties of the office of Commissioner except with the consent of the Minister; or 15
- (b) if appointed on a part-time basis—engage in paid employment that conflicts with the proper performance of the Commissioner's functions.

(2) Subject to subsection (3), a reference in this section to paid employment includes a reference to the performance by a person of a service for which it could reasonably be expected that the person would receive payment. 20

(3) For the purposes of this section, a person shall not be taken to engage in paid employment by reason only of being a Judge.

### **Disclosure of interests** 25

43. (1) The Chairperson shall give written notice to the Minister of all direct and indirect pecuniary interests that the Chairperson has or acquires in a business carried on in Australia or in a body corporate carrying on any such business.

(2) Where the Chairperson has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her functions during an inquiry: 30

- (a) he or she shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the interest to the Minister;
- (b) the Minister shall take such action as the Minister considers appropriate; and 35
- (c) the interest shall be disclosed in the report of the inquiry.

(3) Where a special Commissioner has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her functions during an inquiry: 40



- (a) he or she shall, as soon as practicable after the relevant facts have come to his or her knowledge, disclose the interest to the Minister; and
- (b) the special Commissioner shall resign under subsection 49 (2) as a special Commissioner for the inquiry.

(4) Where the Chairperson becomes aware that a special Commissioner has, in relation to an inquiry, an interest of the kind referred to in subsection (3), the Chairperson shall direct the special Commissioner not to take part in the inquiry.

#### 10 **Suspension and removal from office**

44. (1) The Governor-General may suspend a Commissioner, other than a Judge, from office on the ground of misbehaviour or physical or mental incapacity.

(2) Where the Governor-General suspends a Commissioner from office, the Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.

(3) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the Commissioner should be restored to office and, if each House so passes a resolution, the Governor-General shall terminate the suspension.

(4) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General may remove the Commissioner from office.

(5) If a Commissioner, other than a Judge:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;

(b) being a person holding office on a full-time basis:

(i) engages, except with the consent of the Minister, in paid employment outside the duties of his or her office; or

(ii) is absent from duty, except on leave granted by the Minister in accordance with section 48, for 14 consecutive days or for 28 days in any period of 12 months; or

(c) fails, without reasonable excuse, to comply with subsection 43 (1), (2) or (3) or with a direction under subsection 43 (4);

the Governor-General shall terminate the appointment of the Commissioner.

(6) If a person appointed as a Commissioner is a Judge and that person ceases to be a Judge, the Governor-General may terminate the appointment of that person.

(7) A Commissioner shall not be removed from office except as provided by this section.

(8) Where a Commissioner who is an eligible employee for the purposes of the *Superannuation Act 1976* is removed from office under subsection (4) on the ground of physical or mental incapacity, he or she shall be taken, for the purposes of that Act, to have been retired on the ground of invalidity on the day on which he or she was suspended from office. 5

(9) A Commissioner who is suspended from office under this section is not entitled to be paid any remuneration or allowances in respect of the period of suspension unless he or she is restored to office. 10

### ***Division 2—Conditions of Commissioners***

#### **Part-time Chairperson taken to be full-time**

45. Where:

- (a) the Chairperson has been appointed on a part-time basis; and
- (b) the Minister becomes satisfied that the Chairperson will not be able to perform the functions of Chairperson during a period otherwise than on a full-time basis; 15

the Minister shall, in writing specifying the period, direct that, for the purposes of paragraph 44 (5) (b) and sections 47 and 48, the Chairperson shall be taken to have been appointed on a full-time basis for that period. 20

#### **Part-time special Commissioner taken to be full-time**

46. Where:

- (a) a special Commissioner has been appointed on a part-time basis; and
- (b) the Chairperson becomes satisfied that the Commissioner will not be able to perform the functions of Commissioner during a period otherwise than on a full-time basis; 25

the Chairperson shall, in writing specifying the period, direct that, for the purposes of paragraph 44 (5) (b) and sections 47 and 48, the Commissioner shall be taken to have been appointed on a full-time basis for that period. 30

#### **Remuneration and allowances**

47. (1) Subject to this section, a Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) A Commissioner shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*. 35

(4) If a person who is a Judge is appointed as a Commissioner, the person is not entitled to remuneration under this Act while receiving salary or annual allowance as a Judge.

**Leave of absence**

5 48. (1) Subject to arrangements under section 38 and to section 39, where a Commissioner is appointed on a full-time basis, the Minister may grant the Commissioner leave of absence on such terms and conditions as to remuneration and otherwise as the Minister determines.

(2) The Minister may, in writing, delegate to the Chairperson the powers under subsection (1) in relation to special Commissioners.

**Resignation of Commissioners**

10 49. (1) The Chairperson may resign by signed instrument delivered to the Governor-General.

(2) A special Commissioner may resign as a special Commissioner for an inquiry by signed instrument delivered to the Governor-General.

**Retirement from office**

15 50. The Governor-General may, with the consent of the Commissioner, retire a Commissioner on the ground of invalidity.

**PART 6—OFFENCES**

**Offences relating to administration of Act**

20 51. (1) A person shall not hinder, obstruct, molest or interfere with:  
(a) a Commissioner participating in an inquiry; or  
(b) a person acting on behalf of the Commission for the purposes of an inquiry.

Penalty: \$3,000.

25 (2) A person who:  
(a) refuses to employ another person;  
(b) dismisses, or threatens to dismiss, another person from the other person's employment;  
(c) prejudices, or threatens to prejudice, another person in the other person's employment; or  
30 (d) intimidates or coerces, imposes any pecuniary or other penalty upon, or takes any other disciplinary action in relation to, another person;

because the other person:

35 (e) has given, or proposes to give, any information or documents to the Commission or to a person acting on behalf of the Commission; or  
(f) has given or proposes to give evidence before the Commission or to a person acting on behalf of the Commission;

is guilty of an offence.

Penalty: Imprisonment for 6 months.

**Failure to comply with requirement**

- 52. (1) A person who, after having been given notice under subsection 36 (1), without reasonable excuse:
  - (a) refuses or fails to comply with the notice; or
  - (b) when appearing at a hearing because of the notice refuses or fails:
    - (i) to take an oath or make an affirmation; or
    - (ii) to answer a question that is required by the Commissioner presiding at the hearing to be answered;

is guilty of an offence.

Penalty: \$3,000. 10

- (2) A person who, after having been given notice under subsection 36 (1) requiring the person to appear at a hearing, without reasonable excuse, refuses or fails to attend from day to day unless excused, or released from further attendance, by the Commissioner presiding at the hearing is guilty of an offence. 15

Penalty: \$3,000.

- (3) It is a reasonable excuse for the purposes of subsection (1) for a person to refuse or fail to answer a question, give information or produce a document that the answer, the information or the production of the document might tend to incriminate the person or make the person liable to forfeiture or a penalty. 20

**False or misleading evidence or information**

- 53. (1) A person shall not:
  - (a) give to the Commission information, or documents, that the person knows to be false or misleading in a material particular; or 25
  - (b) at a hearing, give evidence, or produce a document, that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply to a document if, at the time when the person gives it to the Commission, produces it at a hearing or gives it to the Commission, the person informs the Commission that it is false or misleading in a material particular and specifies in what respect it is, to the person's knowledge, false or misleading in a material particular. 30

**Conduct of directors, servants and agents**

- 54. (1) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show: 35

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and 40
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) Where it is necessary to establish, for the purposes of this Act or the regulations, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her apparent authority shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

## PART 7—MISCELLANEOUS

### Relationship of this Act to other laws

55. The provisions of this Act are in addition to, and not in substitution for, the requirements of the *Environment Protection (Impact of Proposals) Act 1974* or any other law of the Commonwealth.

**Annual report**

56. (1) The Chairperson shall, not later than 31 December in each year commencing with the year 1990, prepare and give to the Minister a report on the Commission's activities during the period of 12 months that ended on the preceding 30 June. 5

(2) A report may contain comments on issues arising from inquiries conducted by the Commission.

(3) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 25 sitting days of that House after the day on which the Minister received the report. 10

**Regulations**

57. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act. 15

**PART 8—ARRANGEMENTS IF THE HONOURABLE  
D. G. STEWART APPOINTED FIRST CHAIRPERSON**

**Principal Act**

58. In this Part, "Principal Act" means the *National Crime Authority (Status and Rights of Chairman) Act 1984*. 20

**Amendments of Principal Act**

59. (1) The Principal Act is amended as set out in Schedule 2.

(2) The amendments made by subsection (1) only apply if the Honourable Donald Gerard Stewart is appointed the first Chairperson but, if they do so: 25

- (a) the amendments of subsection 7 (2) of the Principal Act shall be taken to have applied before he ceased to be Chairman of the National Crime Authority; and
- (b) he shall not be taken to have become entitled to a payment referred to in subsection 7 (4) of the Principal Act because of his so ceasing. 30

**SCHEDULE 1**

Section 7

**POLICY PRINCIPLES FOR RESOLVING COMPETING CLAIMS  
FOR THE USE OF RESOURCES**

1. There should be an integrated approach to conservation and development by taking both conservation and development aspects into account at an early stage.

2. Resource use decisions should seek to optimise the net benefits to the community from the nation's resources, having regard to efficiency of resource use, environmental considerations and an equitable distribution of the return on resources.

3. Commonwealth decisions, policies and management regimes may provide for additional uses that are compatible with the primary purpose values of the area, recognising that in some cases both conservation and development interests can be accommodated concurrently or sequentially, and, in other cases, choices must be made between alternative uses or combinations of uses.

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**SCHEDULE 2**

Section 59

**AMENDMENTS OF THE NATIONAL CRIME AUTHORITY  
(STATUS AND RIGHTS OF CHAIRMAN) ACT 1984**

**Long title:**

Omit "present", substitute "former".

**Short title:**

Before "*Chairman*" insert "*Former*".

**Paragraph 5 (a):**

Omit "and".

**After paragraph 5 (a):**

Insert the following paragraph:

"(aa) during the period of his service in the office of Chairperson of the Resource Assessment Commission; and".

**After subsection 6 (1):**

Insert the following subsection:

"(1A) Section 47 of the *Resource Assessment Commission Act 1989* does not apply in relation to the Honourable Donald Gerard Stewart but he shall be paid:

(a) in respect of his holding the office of Chairperson of the Resource Assessment Commission—the same remuneration as is payable from

**SCHEDULE 2—continued**

time to time to a Judge of the Supreme Court of New South Wales in respect of the holding of an office of Judge of that Court; and

- (b) in respect of expenses of travel in the performance of his duties as the Chairperson of the Commission—such allowances as would be payable to him if this Act had not been enacted.”.

**Subsection 6 (2):**

After “(1)” insert “or (1A)”.

**After subsection 7 (1):**

Insert the following subsection:

“(1A) Notwithstanding the *Resource Assessment Commission Act 1989*, during the term of office of the Honourable Donald Gerard Stewart as Chairperson of the Resource Assessment Commission, the conditions of service (including entitlement to leave) applicable to him shall be, with appropriate changes, the same as those applicable to a Judge of the Supreme Court of the Australian Capital Territory.”.

**Subsection 7 (2):**

Omit “Chairman of the National Crime Authority”, substitute “Chairperson of the Resource Assessment Commission”.

**Paragraph 7 (2) (b):**

Omit “Chairman of that Authority”, substitute “Chairperson of that Commission, as Chairman of the National Crime Authority”.

**After paragraph 8 (a):**

Insert the following paragraph:

“(aa) service by him as Chairperson of the Resource Assessment Commission shall be taken, for the purposes of the *Judges’ Pensions Act 1968*, to be service as a Judge;”.

**Subparagraph 8 (c) (i):**

Omit “Chairman of the National Crime Authority”, substitute “Chairperson of the Resource Assessment Commission”.

**Subparagraph 8 (c) (ii):**

Omit “Chairman”, substitute “Chairperson”.

**Paragraph 9 (a):**

Omit “and” (last occurring).

**After paragraph 9 (b):**

Insert the following word and paragraph:

“; and (c) he may continue to hold office as a full-time Deputy President notwithstanding that he holds the office of Chairperson of the Resource Assessment Commission.”.



**SCHEDULE 2—continued**

**Subsection 9 (2):**

After “Authority”, insert “then, while he holds the second-mentioned office,”.

**After subsection 9 (2):**

Insert the following subsection:

“(3) If the Honourable Donald Gerard Stewart holds office as a full-time Deputy President of the Administrative Appeals Tribunal while he holds the office of Chairperson of the Resources Assessment Commission, then, while he holds both offices, he is not entitled to receive any remuneration in respect of his office of Deputy President except to the extent (if any) to which the remuneration that, but for this subsection, would be payable to him in respect of his office of Deputy President exceeds the remuneration payable to him in respect of his office of Chairperson.”.

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**NOTE**

1. No. 105, 1984, as amended. For previous amendments, see No. 66, 1988.













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