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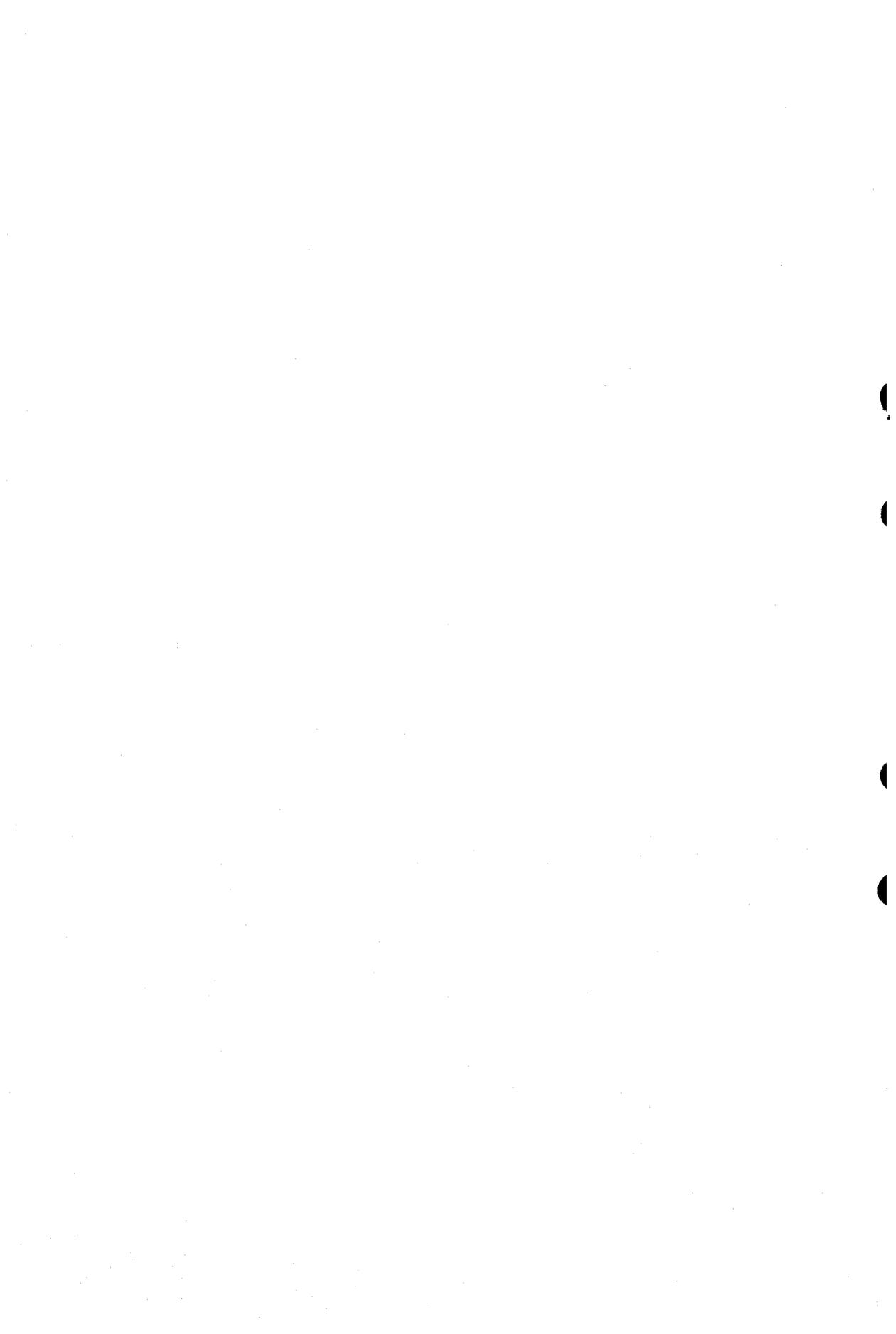
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

ROYAL COMMISSIONS AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by authority of Senator the Honourable
F.M. Chaney, Minister for Social Security, representing
the Acting Attorney-General)



GENERAL OUTLINE

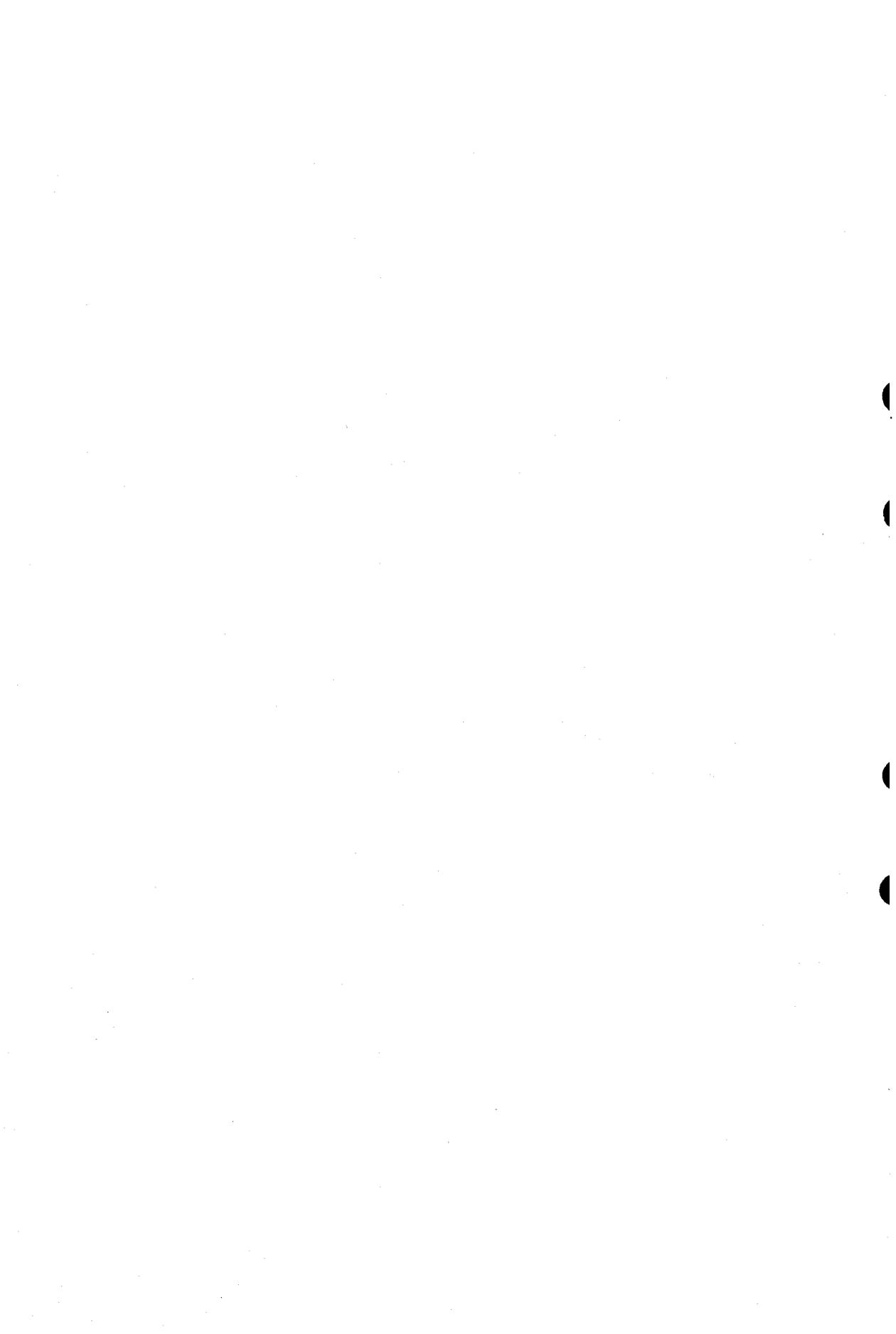
The purpose of the Bill is to make certain amendments to the Royal Commissions Act 1902.

The principal amendments made are to provide that those Royal Commissions whose Letters Patent so provide are to have certain additional powers.

First, there is to be a power to issue certificates that witnesses have refused or failed to comply with certain requirements. Where such a certificate is given, the Federal Court or a Supreme Court may, upon the application of the Attorney-General, inquire into the case and order the person to comply with the requirement. Second, the Commission may apply to a Judge of a prescribed court for the issue of a search warrant where, inter alia, it believes a thing connected with a matter in respect of which it is conducting an inquiry might be concealed or destroyed if a summons were issued for its production. In circumstances of urgency an application for a search warrant may be made by telephone.

Other major amendments made by the Bill deal with the privilege against self-incrimination, extend the power to issue summonses to require the production of non-documentary material and provide protection to counsel assisting or appearing before a Commission.

Royal Commissions will also be empowered to communicate information that relates to, or may relate to, the commission of an offence or afford evidence of the commission of an offence to various Commonwealth and State authorities. Provision is also made for functions or powers conferred by State authorities under State laws on a Commission to be performed or exercised in conjunction with the performance of its functions or powers under the Royal Commissions Act.



NOTES ON CLAUSES

Clause 1

Short title.

Clause 2

This clause provides that the Act is to come into operation on a date to be fixed by Proclamation.

Clause 3

This clause amends section 1B of the Act by inserting several new definitions.

Clause 4

This clause provides for the repeal of sections 2, 3, 4 and 5 of the Act and the substitution of new sections.

New section 2 replaces existing sections 2, 3 and 4 of the Act. Under new sub-section 2(1) the power to summons will now extend to non-documentary material. In addition new sub-section 2(2) provides that a Commission may require a person appearing at a hearing to produce documents or other things.

New section 2 as well as consolidating existing sections 2, 3 and 4, brings the language used into line with current concepts and in particular, removes the requirement in existing sub-section 4(1) that an affirmation may only be made where the witness conscientiously objects to taking an oath.

New section 3 replaces existing sections 5 and 6A of the Act, and prescribes penalties for the failure of witnesses to attend or to produce documents or other things required to be produced by summons.

New section 4 empowers certain Commissions, i.e. those whose Letters Patent so provide, to apply to a Judge of a prescribed court for the issue of a search warrant where the Commission has reasonable grounds for suspecting that there may be on premises at that time or within the next 24 hours a thing connected with a matter into which the Commission is inquiring and if the Commission believes on reasonable grounds that if a summons were issued for the production of that thing it might be concealed, lost or destroyed. The section also lays down other conditions relevant to the application for, and execution of, the warrant.

New section 5 enables the Commission, in circumstances of urgency, to make an application by telephone for a search warrant.

Clause 5

This clause amends the penalty in section 6 of the Act.

Clause 6

This clause repeals section 6A of the Act. New section 6A provides that a person may not refuse or fail to produce a document or thing he is required by summons to produce or to answer a question he is required to answer by the Commission on the ground of self-incrimination.

New sub-clause 6A(3) provides that the section does not apply where the offence in respect of which the production of the document etc. or answer to the question might tend to incriminate a person is an offence with which he has been charged and the charge has not been finally dealt with by a court or otherwise disposed of.

Clause 7

This clause amends section 6B of the Act in consequence of the Australian Federal Police Act 1979.

Clause 8

This clause repeals section 6C of the Act. New section 6C empowers certain Commissions, i.e. those whose Letters Patent so provide, to certify a refusal or failure to comply with a requirement to produce documents or other things, to take an oath or affirmation or to answer questions put by the Commission, to the Federal Court or a Supreme Court which may inquire into the case and may order compliance with the requirement.

Clause 9

This clause amends section 6D of the Act to take account of the extension of the summons power (new section 2) to non-documentary material. Sub-section (3) is also extended to publication of information which might enable a person who has given evidence to be identified. The scope of the directions as to non-publication has also been extended.

Clause 10

This clause repeals section 6E of the Act which is considered unnecessary in view of the upgrading of the penalties in new sub-section 3(1) and 3(2).

Clause 11

This clause repeals section 6F of the Act. New section 6F takes account of the extension of the summons power to non-documentary material and also provides for return of documents and things produced or seized under search warrant after the retention of that material becomes no longer necessary, unless the material has been furnished to a person or body referred to in section 6P of the Act.

Clause 12

This clause amends section 6FA in the light of the new definition of "legal practitioner".

Clause 13

This clause repeals section 6H of the Act. New section 6H now provides for an offence of knowingly giving false or misleading evidence respecting any matter material to the Commission's inquiry. The new section also includes a "step-down" provision to allow offences under the section to be dealt with by a court of summary jurisdiction.

Clause 14

This clause repeals section 6K of the Act. New section 6K extends the offence created in the former provision to concealment, mutilation or loss of a document or other thing. The new section also includes a "step-down" provision to allow offences under the section to be dealt with by a court of summary jurisdiction.

Clause 15

This clause inserts new section 6P which provides that where a Commission obtains information that relates to, or may relate to, the commission of an offence or afford evidence of the commission of an offence, the Commission may communicate the information, or furnish the evidence, to certain persons or bodies specified.

Clause 16

This clause amends section 7 of the Act to provide for protection of counsel assisting or appearing before a Commission.

Clause 17

This clause inserts new section 7AA which provides that powers and functions conferred by a State authority on a Commission may be exercised concurrently with the performance of the powers and functions of the Commission under the Royal Commissions Act.

Clause 18

This clause repeals sections 9, 12, 13 and 14 of the Act. Section 9 is considered unnecessary in view of section 13 of the Crimes Act and the remaining sections are unnecessary in view of section 18A of the Crimes Act.

Clause 19

This clause inserts new section 17 which provides for a regulation-making power.