



New South Wales

# Special Commissions of Inquiry Amendment Act 1997 No 84

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New South Wales

## **Special Commissions of Inquiry Amendment Act 1997 No 84**

Act No 84, 1997

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An Act to amend the *Special Commissions of Inquiry Act 1983* in relation to the powers and duties of Special Commissions of Inquiry generally and in relation to the making of inquiries in connection with matters raised in a House of Parliament or a parliamentary committee; and for related purposes. [Assented to 24 September 1997]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Special Commissions of Inquiry Amendment Act 1997*.

**2 Commencement**

This Act commences on the date of assent.

**3 Amendment of Special Commissions of Inquiry Act 1983 No 90**

The *Special Commissions of Inquiry Act 1983* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Section 9 Limitations as to evidence

Omit “likely to be admitted into evidence in relevant criminal proceedings.” in section 9 (3).

Insert instead “likely to be admissible in evidence in civil proceedings.”.

### [2] Section 9 (4) and (5)

Insert after section 9 (3):

(4) Despite subsection (3), the Commissioner is required, when preparing a report in connection with the subject-matter of the commission, to disregard (in the context of dealing under section 10 with offences that may or may not have been committed) evidence that, in the opinion of the Commissioner, would not be likely to be admissible in evidence in relevant criminal proceedings.

(5) For the purposes of this section, in determining whether evidence is admissible, regard is not to be had to parliamentary privilege to the extent that that privilege is waived by or under this Act or otherwise.

### [3] Section 10 Reports

Insert “in connection with the subject-matter of the commission, and in particular” after “Governor” in section 10 (1).

**[4] Part 4A**

Insert after Part 4:

**Part 4A Inquiries concerning parliamentary proceedings**

**33A Definitions**

(1) In this Part:

*parliamentary privilege* means parliamentary privilege however arising, whether by statute or otherwise.

*parliamentary proceedings* means any debates or proceedings in Parliament or in a parliamentary committee, and includes all words spoken and acts done in the course of, or for the purposes of or incidental to, the transacting of the business of either House of Parliament or any parliamentary committee.

*relevant House* means the House of Parliament that passes a resolution under this Part and, in the case of a resolution that is passed by each House of Parliament, each such House.

(2) A reference in this Part to any act, matter or thing as specified in a resolution includes a reference to any act, matter or thing that is of a class or description as specified in the resolution.

**33B Parliamentary resolution for issue of Commission**

(1) A House of Parliament may, by resolution, authorise the Governor to issue a commission under section 4 authorising or requiring a person to inquire into and report to the Governor and the House on such matter relating to parliamentary proceedings within or before the House or one of its committees as is specified in the resolution.

- (2) Each House of Parliament may, by resolution, authorise the Governor to issue a commission under section 4 authorising or requiring a person to inquire into and report to the Governor and the House on such matter relating to parliamentary proceedings within or before a joint committee of both Houses as is specified in the resolution.
- (3) A resolution referred to in this section applies to the parliamentary proceedings specified in the resolution.
- (4) A resolution under this section authorises but does not require the issue of a commission, as contemplated by the resolution, under section 4 by the Governor on the recommendation of the Minister.
- (5) Without affecting the operation of any other provision of this Part, but subject to subsection (4), a resolution referred to in this section is effective to authorise the issue of the commission concerned.

### **33C Parliamentary resolution for existing commission**

- (1) A House of Parliament may, by resolution, authorise a Special Commission, already established, to inquire into and report to the Governor and the House on such matter relating to parliamentary proceedings within or before the House or one of its committees as is specified in the resolution.
- (2) Each House of Parliament may, by resolution, authorise a Special Commission, already established, to inquire into and report to the Governor and the House on such matter relating to parliamentary proceedings within or before a joint committee of both Houses as is specified in the resolution.
- (3) A resolution referred to in this section applies to the parliamentary proceedings specified in the resolution.

- (4) This section applies to a Special Commission, already established, whether or not a resolution under section 33B was passed in connection with it before it was established.

**33D Parliamentary resolution for waiver of parliamentary privilege**

- (1) A House of Parliament that passes a resolution under section 33B or 33C may, by the same or any later resolution, declare that parliamentary privilege is waived in connection with the Special Commission to such extent as is specified in the declaration.
- (2) Without affecting the operation of any other provision of this Part, a declaration by a House of Parliament under this section is effective to waive parliamentary privilege to the extent specified in the resolution concerned, and neither the Commissioner nor any other person is in contempt of Parliament in doing anything when relying on that waiver for the purposes of or in connection with the Special Commission.
- (3) However, a declaration by a House of Parliament under this section waiving parliamentary privilege:
- (a) does not operate to waive parliamentary privilege to the extent that it can be asserted by a member of either House of Parliament in relation to anything said or done by the member in parliamentary proceedings within or before a House of Parliament or a parliamentary committee, but
  - (b) operates to authorise the member to give evidence before the Special Commission if the member chooses to do so, unless the declaration provides otherwise.
- (4) Section 23 (1) cannot apply to a member in relation to parliamentary privilege, but the provisions of section 23 (2) and (3) apply to any evidence given by the member pursuant to subsection (3) (b) whether or not section 23 applies in relation to the Special Commission.

- (5) A reference in this section to the giving of evidence includes a reference to the giving of an answer to a question and the production of a book, document or writing.

### **33E Powers of Special Commission**

- (1) This section applies to the extent that a commission is issued in conformity with a resolution under section 33B or a Special Commission already established is the subject of a resolution under section 33C.
- (2) The Commissioner is required to furnish a report on the subject-matter of the commission to the relevant House (in addition to the Governor). The report may be furnished to the Clerk of the House for this purpose.
- (3) The Commissioner is empowered:
- (a) to inquire into and report to the Governor and the relevant House as authorised or required by the commission, and
  - (b) to exercise and perform any other powers, authorities, duties and functions under this Act in connection with the inquiry and report, and
  - (c) to take any other steps that are necessary or convenient to be taken in connection with the inquiry and report.

### **33F Provisions relating to resolutions**

- (1) A resolution of a House of Parliament does not have effect for the purposes of this Part unless it has been passed by at least two-thirds of the members of the House present and voting.
- (2) A resolution under this Part is not affected by the prorogation, dissolution or expiry of either or both of the Houses of Parliament.



- (3) A resolution may be amended or revoked by a subsequent resolution, but without affecting the validity of anything already done.

### **33G Operation of Part**

- (1) This Part has effect despite any other Act, any Imperial Act or any other law.
- (2) This Part does not limit any power that the Governor might have to issue a commission under section 4 apart from this Part.
- (3) This Part does not limit any power that a Special Commission might have apart from this Part.
- (4) This Part does not limit any power of Parliament, a House of Parliament or a member of either House to waive parliamentary privilege apart from this Part.
- (5) This Part extends to parliamentary proceedings occurring before the commencement of this Part.

### **33H Expiry of Part**

This Part expires at the end of the period of 6 months commencing on the date on which this Part commences.

[Minister's second reading speech made in—  
Legislative Assembly on 23 September 1997  
Legislative Council on 23 September 1997]