

ROYAL COMMISSIONS (AMENDMENT) BILL 1990*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Royal Commissions Act 1923 so as:

- * to provide for the release of reports of royal commissions when Parliament is not sitting; and
- * to provide that certain coercive powers which may presently be exercised only by commissioners who are Judges of certain superior courts may also be exercised by Queen's Counsel (subject to those powers being conferred in a particular case by letters patent); and
- * to establish new procedures for dealing with contempt of a commission, so that the alleged contempt will be dealt with by the Supreme Court, rather than being dealt with by the commissioner; and
- * to make other minor or consequential amendments.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a proclaimed day or days.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Royal Commissions Act 1923.

Clause 4 contains transitional provisions. Under these provisions, the amendments made by the proposed Act will apply to existing as well as future royal commissions, but the new contempt provisions will not have a retrospective effect.

* Amended in committee — see table at end of volume.

SCHEDULE 1 — AMENDMENTS

Release of reports of royal commissions (proposed section 14B)

Schedule 1(1) proposes that, if neither House of Parliament is sitting, a report, or portion of a report, made by a royal commission may be presented to the Clerk of either House. The report is then for all purposes to be taken to have been laid before the House and to be a document published by the House and it consequently attracts the defence of absolute privilege for publication conferred by the Defamation Act 1974. The report attracts the same privileges and immunities as if it had been laid before and published by the House.

The proposed provision does not apply to a report of a person or body under other existing legislation which applies provisions of the Royal Commissions Act 1923 unless and until the other legislation expressly applies the provision.

Exercise of coercive powers by Queen's Counsel (Part 2, Division 2 (sections 15 , 17 and 18))

Schedule 1 (2) is a consequential amendment. It changes the heading of Division 2 of Part 2 of the Act so as to encompass the proposed extension of the Division to cover Queen's Counsel (see Schedule 1 (3)).

Schedule 1 (3) proposes, if letters patent so provide, that, in addition to applying when the chairman of a commission or a sole commissioner is a Judge of a superior court, the Division applies when the chairman or sole commissioner holds an appointment as Queen's Counsel for New South Wales or another Australian jurisdiction. A consequential amendment is made to the definition of "commissioner".

Schedule 1 (4) is a consequential amendment, arising from the proposed extension of Division 2 of Part 2 to cover Queen's Counsel. The result will be that the power to compel witnesses to answer questions, or to produce documents or things, may apply to commissions constituted by Queen's Counsel as chairman or sole commissioner (as well as to commissions constituted by Judges) — but only if letters patent specifically declare that such powers are to be so exercisable.

Schedule 1 (5) proposes that the provision dealing with the powers of a commissioner under Division 2 of Part 2 be amended to remove the power of the commissioner to punish for contempt or for disobedience of any order or summons made or issued by the commissioner. The exercise of this power is now dealt with by proposed sections 18A–18D (see Schedule 1 (6)).

Contempt (proposed sections 18A–18D)

Schedule 1 (6) proposes the insertion of sections 18A–18D dealing with contempt of a commission. These provisions will appear in Division 2 of Part 2, and will therefore apply only to those commissions to which that Division expressly applies i.e. commissions headed by a Judge of the Supreme Court, and commissions headed by a Judge of an Australian superior court or Queen's Counsel to which the Division is applied by letters patent.

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Proposed section 18A provides that a person is guilty of contempt of a commission if the person conducts himself or herself in a manner which would constitute contempt of the Supreme Court or if the person disobeys any order or summons of the commissioner. The wording of the provision is consistent with the terminology of the existing section 18 (1) (d). The expression "offender" is defined as including a person alleged to have committed contempt.

Proposed section 18B provides for a commissioner to present to the Supreme Court a certificate setting out details of the alleged contempt and for the examination and punishment of the offender by the Supreme Court.

Proposed section 18C contains ancillary provisions in relation to dealing with cases of contempt. A commissioner may summon a person to show cause why the offender should not be dealt with for contempt, and a commissioner may have the offender arrested and brought before the Supreme Court.

Proposed section 18D states that an act or omission which is both contempt and an offence can be punished as either contempt or an offence but not both.
