

Royal Commissions Act 1923 No 29

[1923-29]



New South Wales

Status Information

Currency of version

Current version for 12 September 2013 to date (accessed 23 November 2024 at 22:16)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

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File last modified 12 September 2013

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Royal Commissions Act 1923 No 29



New South Wales

An Act to amend the law relating to Royal Commissions; to repeal the *Royal Commissioners Evidence Act 1901* and certain other Acts; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Royal Commissions Act 1923*.

2, 3 (Repealed)

4 Definitions

In this Act, unless a contrary intention appears:

Commission and **Royal Commission** means any commission of inquiry issued by the Governor by letters patent under the Public Seal, and includes a sole commissioner or a member or members of the commission sitting for the purposes of the inquiry.

Document includes any book, register or other record of information, however compiled, recorded or stored.

Reasonable excuse in relation to any act or omission by a witness or a person summoned as a witness before a commission means an excuse which would excuse an act or omission of a similar nature by a witness or a person summoned as a witness before a court of law.

Part 2 Commissions

Division 1 Commissions generally

5 Commissioners

(1) Whenever the Governor by letters patent under the Public Seal issues a Royal Commission to any person to make any inquiry, the provisions of this Act shall apply to and with respect to the inquiry.

(2) In this Division **chairperson** means the chairperson of a commission, and includes

(except in section 5A):

- (a) a deputy chairperson of a commission appointed by the letters patent or chosen by the other commissioners in accordance with the letters patent to act in the absence of the chairperson, and
- (b) a member of a commission acting in accordance with an authorisation under section 5A (3).

(3) In this Division **commissioner** includes any person to whom a commission is issued, whether as chairperson or as a member other than the chairperson, or as sole commissioner.

5A Commissioners authorised to sit for purposes of any part of inquiry

(1) A commissioner may sit for the purposes of any part of an inquiry if:

- (a) the commissioner is a sole commissioner, or
- (b) all the members, or a quorum of the members, of the commission are sitting for the purposes of that part of the inquiry, or
- (c) the commissioner is the chairperson of the commission, or
- (d) the commissioner is a member of the commission authorised by the chairperson to sit for the purposes of that part of the inquiry.

(2) More than one member may be authorised under subsection (1) (d) by the chairperson to sit for the purposes of a part of the inquiry, in which case the member designated by the chairperson is to preside.

(3) A member authorised under subsection (1) (d) or, if there is more than one member so authorised, the designated presiding member is authorised to exercise the powers of the chairperson of the commission under the other sections of this Division (unless the authorisation under subsection (1) (d) provides otherwise).

(4) If a member is authorised under subsection (1) (d), commissioners may sit concurrently for the purposes of an inquiry.

6 Protection of commissioners

Every commissioner shall in the exercise of the commissioner's duty as a commissioner have the same protection and immunity as a judge of the Supreme Court.

7 Right of appearance

(1) Any counsel or solicitor appointed by the Crown to assist the commission may appear at the inquiry.

- (2) Where it is shown to the satisfaction of the chairperson, or of the sole commissioner, as the case may be, that any person is substantially and directly interested in any subject-matter of the inquiry, or that the person's conduct in relation to any such matter has been challenged to the person's detriment, the chairperson or sole commissioner may authorise such person to appear at the inquiry, and may allow the person to be represented by counsel or solicitor.
- (3) Any counsel or solicitor so appointed and any person so authorised or the person's counsel or solicitor may with the leave of the chairperson or of the sole commissioner, as the case may be, examine or cross-examine any witness on any matter which the commissioner deems relevant to the inquiry, and any witness so examined or cross-examined shall have the same protection and be subject to the same liabilities as if examined by the commissioner.

8 Witnesses

The chairperson or the sole commissioner, as the case may be, may by notice in writing summon any person to attend the commission at a time and place named in the summons, and then and there to give evidence and to produce any documents or other things in the person's custody or control which the person is required by the summons to produce.

9 Oath or affirmation

- (1) Any of the commissioners may administer an oath to any person appearing as a witness before the commission, whether the witness has been summoned or appears without being summoned, and may examine the witness upon oath.
- (2) Where any witness to be examined before the commission conscientiously objects to take an oath the witness may make an affirmation that the witness conscientiously objects to take an oath, and that the witness will state the truth, the whole truth and nothing but the truth, to all questions that may be put to the witness.
- (3) An affirmation so made shall be of the same force and effect, and shall entail the same liabilities as an oath.

10 Continued attendance

Every witness who has been summoned to attend the commission shall appear and report from day to day unless the witness is excused from attendance or until the witness is released from further attendance by the chairperson or by the sole commissioner, as the case may be.

11 Answers and documents

- (1) A witness summoned to attend or appearing before the commission shall not be entitled, except as otherwise provided in this section and section 127 (Religious

confessions) of the *Evidence Act 1995*, to refuse:

- (a) to be sworn or to make an affirmation,
 - (b) to answer any question relevant to the inquiry put to the witness by any of the commissioners,
 - (c) to produce any document or other thing in the witness's custody or control which the witness is required by the summons to produce.
- (2) Nothing in this section shall make it compulsory for any witness:
- (a) to answer any question or produce any document or other thing if the witness has a reasonable excuse for refusing,
 - (b) to disclose any secret process of manufacture.
- (3) A witness summoned to attend or appearing before the commission shall have the same protection, and shall in addition to the penalties provided by this Act be subject to the same liabilities in any civil or criminal proceeding as a witness in any case tried in the Supreme Court.
- (4) If a commission obtains for the purposes of the inquiry any document or other thing or any information that is provided voluntarily by a person, subsection (3) applies to the person as if the person were a witness appearing before the commission.

12 Inspection and copies of documents

- (1) The commission may inspect any documents or other things produced before it, and may retain them for such reasonable period as it thinks fit, and, in the case of documents produced before it, may make copies of such matter as is relevant to the inquiry or take extracts from them.
- (2) The commission may employ such assistance as it deems proper for the carrying out of any inquiry or investigation, and may by writing authorise any person so employed to inspect and report to it upon any documents or other things, or (without affecting the generality of the foregoing) any accounts, it considers relevant to the subject matter of the inquiry.
- (3) When the retention of a document or other thing ceases to be reasonably necessary for the purposes of the inquiry to which it relates, the commission is required, if a person who appears to the commission to be entitled to the document or other thing so requests, to cause it to be delivered to that person.
- (4) The requirement under subsection (3) does not apply if the commission has furnished the document or other thing or proposes to furnish it to a person or body referred to in section 12A or the commission deals with it or proposes to deal with it otherwise according to law.

12A Communication of information etc

- (1) A commission may communicate any information or furnish any material (including evidence) that it obtains in the course of the inquiry conducted by it to a Commission of Inquiry, if the information or material relates or may relate to matters within the terms of reference of the Commission of Inquiry.
- (2) A commission may communicate any information or furnish any material (including evidence) that it obtains in the course of the inquiry conducted by it to a law enforcement agency, if the information or material relates or may relate to a breach of a law of the State, of another State or Territory or of the Commonwealth.
- (3) In this section:

Commission of Inquiry means a person or body holding a commission to inquire into and report on any matters and having:

- (a) powers under this Act, or
- (b) powers under another law of the State or under a law of another State or Territory or of the Commonwealth, being in either case a law that has the same or a similar purpose or effect as this Act (such as the [Royal Commissions Act 1902](#) of the Commonwealth).

law enforcement agency means a person or body with responsibilities for the enforcement of laws of the State, of another State or Territory or of the Commonwealth, including but not limited to any of the following:

- (a) the Attorney General of New South Wales, of another State or Territory or of the Commonwealth,
- (b) the Director of Public Prosecutions of New South Wales, of another State or Territory or of the Commonwealth,
- (c) the Commissioner of Police of New South Wales or the holder of a similar position in another State or Territory,
- (d) the Commissioner of Police in the Australian Federal Police,
- (e) the New South Wales Crime Commission,
- (f) the Independent Commission Against Corruption,
- (g) the Australian Crime Commission,
- (h) the Trade Practices Commission,
- (i) the Australian Securities Commission,

(j) a task force set up to investigate any matters relating to breaches of law and arising out of the inquiry conducted by the commission.

- (4) The reference in this section to a **task force** is limited to a State task force or a joint task force. A State task force is one set up by the State or an authority of the State. A joint task force is one set up jointly by the State or an authority of the State and by one or more other Australian jurisdictions or their authorities. An Australian jurisdiction is a State or Territory or the Commonwealth. Subject to the above provisions of this subsection, the expression “task force” includes a body of persons that is similar to a task force, however it is described.
- (5) Nothing in this section derogates from or affects any powers a commission has apart from this section, and it is not to be construed as limiting in any way any such power by implication or otherwise.

12B Direction as to non-publication or that part of inquiry to be held in private

- (1) A commissioner may give directions preventing or restricting the publication of evidence or information given, or of matters in documents produced, to or before the commission.
- (2) A commissioner may direct that any part of an inquiry is to take place in private.
- (3) If a commissioner directs that any part of an inquiry is to take place in private, the commissioner may give directions as to the persons who may be present at that part of the inquiry.
- (4) In this section, **commissioner** means the chairperson or sole commissioner, as the case may be.

13 Allowance to witnesses

- (1) The Governor may make regulations prescribing a scale of allowances to be paid to any witness summoned under this Act for the witness’s travelling expenses and maintenance while absent from the witness’s usual place of abode.
- (2) The claim to allowance of any such witness certified by the chairperson or by the sole commissioner, as the case may be, shall be paid by the Colonial Treasurer out of moneys to be provided by Parliament for the purposes of the commission.

14 Application of provisions of Act

If in the letters patent by which a commission is issued the Governor declares that all or any specified sections of this Act shall not be applicable for the purposes of the inquiry referred to in the letters patent the sections or the specified sections, as the case may be, shall not apply to or with respect to the inquiry.

14A (Repealed)

14B Release of reports when Parliament not sitting

- (1) If neither House of Parliament is sitting, the Minister may present to the Clerks of both Houses a report made by a commission.
- (2) When the report has been presented to and received by the Clerks:
 - (a) the report is for all purposes to be taken to have been laid before each House and to be a document published by order or under the authority of each House, and
 - (b) without limiting paragraph (a), the report attracts the same privileges and immunities as if it had been laid before each House and published by order or under the authority of each House, and
 - (c) the report may be printed by the authority of either or both of the Clerks.
- (3) Material may be omitted from such a report before its presentation to the Clerks of both Houses, on the recommendation of the commission or otherwise.
- (4) The report is required to be recorded in the Minutes of Proceedings or Votes and Proceedings of the House on the first sitting day after it was presented to and received by the Clerk of the House.
- (5) This section does not have effect in relation to a report of a person or body to whom some or all of the provisions of this Act are applied by other legislation enacted before the commencement of this section, unless and until the other legislation expressly provides that this section applies to the person or body.

Division 2 Special powers

15 Application of Division

- (1) The provisions of this Division have effect if the chairperson of a commission or the sole commissioner is a qualified person, namely:
 - (a) a Judge of the Supreme Court of the State or of any other State or Territory, a Judge of the Federal Court of Australia or a Justice of the High Court of Australia, or
 - (b) a former Judge or Justice of any such court, or
 - (c) a person qualified to be appointed as a Judge or Justice of any such court (but only if in the letters patent by which the commission is issued, or in other letters patent under the Public Seal, the Governor declares that this Division has effect in relation to the commission).
- (2) In this Division, **commissioner** means a chairperson or sole commissioner who is such a qualified person, and also includes a member of a commission who is such a qualified person and who has been authorised by the chairperson to exercise powers

under this Division (but only if the chairperson is also such a qualified person).

16 Warrant

- (1) If any person served with a summons to attend a commission as a witness fails to attend the commission in answer to the summons, the commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the witness's apprehension.
- (2) The warrant shall authorise the apprehension of the witness and the witness's being brought before the commission and the witness's detention and custody for that purpose until the witness is released by order of the commissioner.
- (3) The apprehension of any witness under this section shall not relieve the witness from any liability incurred by the witness by reason of the witness's non-compliance with the summons.

17 Answers and documents

- (1) A witness summoned to attend or appearing before the commission shall not be excused from answering any question or producing any document or other thing on the ground that the answer or production may criminate or tend to criminate the witness, or on the ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground.
- (1A) Subsection (1) prevails over any inconsistent provision of any other Act or law (whether the inconsistent provision is made before or after the commencement of this subsection) unless the inconsistent provision specifically states that it is to have effect despite this section.
- (2) An answer made, or document or other thing produced by a witness to or before the commission shall not, except as otherwise provided in this section, be admissible in evidence against that person in any civil or criminal proceedings.
- (3) Nothing in this section shall be deemed to render inadmissible:
 - (a) any answer, document or other thing in proceedings for an offence against this Act,
 - (b) any answer, document or other thing in any civil or criminal proceedings if the witness was willing to give the answer or produce the document or other thing irrespective of the provisions of subsection (1),
 - (c) any book, document, or writing in civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.
- (4) This section shall not have effect unless in the letters patent by which the commission is issued, or in other letters patent under the Public Seal, the Governor declares that

the section shall apply to and with respect to the inquiry.

- (5) A declaration under section 15 that the provisions of this Division are to have effect is not sufficient to apply this section unless the declaration specifically states that this section shall apply to and with respect to the inquiry.

18 Powers of commissioner

- (1) For the purposes of the inquiry the commissioner shall have all such powers, rights, and privileges as are vested in the Supreme Court or in any judge thereof in or in relation to any action or trial, in respect of the following matters:
- (a) compelling the attendance of witnesses,
 - (b) compelling witnesses to answer questions which the commissioner deems to be relevant to the inquiry,
 - (c) compelling the production of documents and other things.
 - (d) (Repealed)
- (2) Nothing in this or any other section of this Division shall limit the powers, rights, and privileges of the commissioner under any other provision of this Act.

18A Contempt

- (1) A person is guilty of contempt of a commission if the person does or omits to do anything which would, if the commission were the Supreme Court, be contempt of that Court or if the person disobeys any order or summons made or issued by the commissioner.
- (2) For the purposes of this Division, **offender** means a person guilty or alleged to be guilty of contempt of a commission.

18B Punishment of contempt

- (1) A contempt of a commission may be punished in accordance with this section.
- (2) The commissioner may present to the Supreme Court a certificate setting out the details which the commissioner considers constitute the contempt.
- (3) If the commissioner presents such a certificate to the Supreme Court:
- (a) the Supreme Court shall thereupon inquire into the alleged contempt, and
 - (b) after hearing any witnesses who may be produced against or on behalf of the person charged with the contempt, and after hearing any statement that may be offered in defence, the Supreme Court (if satisfied that the person is guilty of the contempt) may punish or take steps for the punishment of the person in like

manner and to the like extent as if the person had committed that contempt in or in relation to proceedings in the Supreme Court, and

(c) the provisions of the *Supreme Court Act 1970* and the rules of court of the Supreme Court shall, with any necessary adaptations, apply and extend accordingly.

- (4) Such a certificate is prima facie evidence of the matters certified.
- (5) Neither liability to be punished nor punishment under this section for contempt consisting of failure to attend before the commission as a witness in obedience to a summons excuses the offender from such attendance, and the commissioner may enforce attendance by warrant under section 16 or by exercise of any other available power.
- (6) A contempt of a commission may not be punished by a commissioner under section 18.

18C General provisions regarding contempt

- (1) In the case of any alleged contempt of a commission, the commissioner may summon the offender to appear before the commission at a time and place named in the summons to show cause why the offender should not be dealt with under section 18B for the contempt.
- (2) If the offender fails to attend before the commission in obedience to the summons, and no reasonable explanation to the satisfaction of the commissioner is offered for the failure, the commissioner may, on proof of the service of the summons, issue a warrant to arrest the offender and bring the offender before the commissioner to show cause why the offender should not be dealt with under section 18B for the contempt.
- (3) If a contempt of the commission is committed in the face or hearing of the commission, no summons need be issued against the offender, but the offender may be taken into custody then and there by a police officer and called upon to show cause why the offender should not be dealt with under section 18B for the contempt.
- (4) The commissioner may issue a warrant to arrest the offender while the offender (whether or not already in custody under this section) is before the commission and to bring the offender forthwith before the Supreme Court.
- (5) The warrant is sufficient authority to detain the offender in a prison or elsewhere, pending the offender's being brought before the Supreme Court.
- (6) The warrant is to be accompanied by the certificate in which the commissioner sets out the details of the alleged contempt.
- (7) The commissioner may revoke the warrant at any time before the offender is brought

before the Supreme Court.

- (8) When the offender is brought before the Supreme Court, the Court may, pending determination of the matter, direct that the offender be kept in such custody as the Court may determine or direct that the offender be released.

18D Act or omission that is both an offence and contempt

- (1) An act or omission may be punished as a contempt of a commission even though it could be punished as an offence.
- (2) An act or omission may be punished as an offence even though it could be punished as a contempt of a commission.
- (3) If an act or omission constitutes both an offence and a contempt of a commission, the offender is not liable to be punished twice.

Part 3 Offences

19 Failure to attend or produce documents or other things

- (1) If any person served with a summons to attend a commission, whether the summons is served personally or by being left at the person's usual place of abode, fails without reasonable excuse to attend the commission or to produce any documents or other things in the person's custody or control which the person was required by the summons to produce, the person shall be guilty of an offence, and shall be liable to a penalty not exceeding 4 penalty units.
- (2) It shall be a defence to a prosecution under this section for failing without reasonable excuse to produce any documents or other things if the defendant proves that the documents or other things were not relevant to the inquiry.

20 Refusal to be sworn or to give evidence

If any person appearing as a witness before the commission refuses to be sworn or to make an affirmation or to answer any question relevant to the inquiry put to the person by any of the commissioners, the person shall be guilty of an offence, and shall be liable to a penalty not exceeding 4 penalty units.

21 False and misleading testimony

- (1) Any witness before a commission who gives testimony that is false or misleading in a material particular knowing it to be false or misleading, or not believing it to be true, is guilty of an indictable offence.

Maximum penalty: Imprisonment for 5 years.

- (2) Sections 331 and 332 of the *Crimes Act 1900* apply to proceedings for an offence against this section in the same way as they apply to proceedings for an offence

under section 330 of that Act.

22 Subornation

Any person who procures or causes or attempts or conspires to procure or cause the giving of false testimony before a commission shall be guilty of an indictable offence, and shall be liable to be imprisoned for a period not exceeding five years.

23 Destroying documents or other things

Any person who, knowing that any document or other thing is or may be required in evidence before a commission, wilfully destroys it or renders it incapable of identification or, in the case of a document, renders it illegible or undecipherable, with intent thereby to prevent it from being used in evidence, shall be guilty of an indictable offence, and shall be liable to be imprisoned for a period not exceeding two years.

23A Delaying and obstructing commission

- (1) Any person who, with intent to delay or obstruct the carrying out by a commission appointed under this Act of any inquiry, destroys or alters any document or other thing relating to the subject matter of the inquiry, or sends or attempts to send, or conspires with any other person to send out of New South Wales any such document or other thing, or any property of any description belonging to or in the disposition of or under the control of any person or company whose affairs are the subject matter of the inquiry, shall be guilty of an indictable offence, and shall be liable to be imprisoned for a period not exceeding five years.
- (2) If in any prosecution for an offence against this section it is proved that the person charged with the offence has destroyed or altered any document or other thing, or has sent or attempted to send, or conspired to send out of New South Wales any such document or other thing, the onus of proving that in so doing the person had not acted in contravention of this section shall be upon the person.

23B Contravention of direction as to non-publication or that part of inquiry to be held in private

A person who contravenes a direction given under section 12B commits an offence.

Maximum penalty: 10 penalty units.

24 Costs

In any proceedings for an offence against this Act, other than proceedings for the commitment for trial of a person charged with an indictable offence, the court may award costs against any party.

Schedule 1 Savings and transitional provisions

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Royal Commissions Amendment Act 2013* or any other Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

2 Operation of amendments made by *Royal Commissions Amendment Act 2013*

- (1) In this clause:

Child Sexual Abuse Royal Commission means the Royal Commission into institutional responses to allegations and incidents of child sexual abuse and related matters, issued by the Governor by Letters Patent on 25 January 2013 (and including any later alterations and variations of those Letters Patent).

Child Sexual Abuse Special Commission of Inquiry means the Special Commission of Inquiry into the police investigation of certain matters concerning alleged child sexual abuse, issued by the Governor by Letters Patent on 21 November 2012 and altered and varied by the Governor by Letters Patent on 25 January 2013 (and including any later alterations and variations of those Letters Patent).

- (2) The amendments made by the *Royal Commissions Amendment Act 2013* to this Act and to the *Special Commissions of Inquiry Act 1983* extend to the Child Sexual Abuse Royal Commission and to the Child Sexual Abuse Special Commission of Inquiry.

3 *Royal Commissions and Ombudsman Legislation Amendment Act 2013*

- (1) The amendments made by the *Royal Commissions and Ombudsman Legislation Amendment Act 2013* to this Act extend to the Child Sexual Abuse Royal Commission.
- (2) The declaration of the Governor in the Letters Patent of 25 January 2013 that section

17 of this Act applies to the Child Sexual Abuse Royal Commission is taken to be a declaration that amended section 17 applies to that Commission.

- (3) Any person who, prior to the commencement of amended section 17, answered any questions or produced any document or other thing to the Child Sexual Abuse Royal Commission is taken to have been compelled to do so in accordance with amended section 17.
- (4) Any preconditions to answering the questions or producing the document (or any information contained in the document) or other thing are taken to have been complied with.
- (5) In this clause:

amended section 17 means section 17 of this Act, as amended by the [Royal Commissions and Ombudsman Legislation Amendment Act 2013](#).

Child Sexual Abuse Royal Commission has the same meaning as in clause 2.