

Special Commissions of Inquiry Act 1983 No 90

[1983-90]



New South Wales

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Special Commissions of Inquiry Act 1983 No 90



New South Wales

An Act to provide for the establishment and functions of Special Commissions of Inquiry.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Special Commissions of Inquiry Act 1983*.

2 (Repealed)

3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

commission means a commission issued by the Governor under this Act.

Commissioner means the person to whom a commission is issued under this Act.

reasonable excuse, in relation to any act or omission by a witness or a person summoned as a witness before a Special 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.

regulation means a regulation made under this Act.

Special Commission means a Special Commission of Inquiry established under this Act.

Supreme Court means the Supreme Court of New South Wales.

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

- (3) A reference in this Act to:

- (a) the Special Commission, where used in relation to a Commissioner, is a reference to the Special Commission established by the commission issued to the

Commissioner, and

(b) the Commissioner, where used in relation to a Special Commission, is a reference to the Commissioner to whom the commission establishing the Special Commission was issued.

(4) Notes included in this Act do not form part of this Act.

Part 2 Establishment of Special Commissions

4 Issue of commission

- (1) The Governor may, by letters patent under the Public Seal of the State, being letters patent expressed to be made or issued under the authority of this Act, issue a commission to a person specified in the commission:
 - (a) authorising or requiring the person to inquire into and report to the Governor on any matter specified in the commission, and
 - (b) establishing a Special Commission of Inquiry for that purpose.
- (2) A person is not eligible to be issued a commission unless the person:
 - (a) is or is qualified to be appointed as 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) is a former Judge or Justice of any court referred to in paragraph (a).
- (2A) A person is not eligible to be issued a commission if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.
- (3) The provisions of this Act apply to and in respect of a commission issued under this Act.
- (4) The [Royal Commissions Act 1923](#) does not apply to or in respect of a commission issued under this Act or any inquiry held in relation to it.

5 Conditions, limitations and directions

- (1) Notwithstanding anything in this Act, a commission may be issued subject to such conditions and limitations as may be specified therein and may contain such directions relating to the practice and procedure to be followed in the conduct of the Special Commission to which it relates as may be specified therein.
- (2) It is the duty of the Commissioner to ensure that such conditions, limitations and directions as are specified in the relevant commission are complied with and observed to the fullest possible extent.

6 Revocation or amendment of letters patent or commission

The Governor may revoke, alter or vary any letters patent or commission made or issued under this Act from time to time as occasion requires.

Part 3 Powers etc of Special Commissions

Division 1 General

7 Hearings

- (1) A Commissioner may hold hearings in connection with the Special Commission.
- (2) Where a Commissioner decides to hold a hearing, the hearing shall take place in public, unless the Commissioner, if satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, directs that the hearing take place in private.
- (3) Where a Commissioner directs that a hearing to be held by the Commissioner take place in private, the Commissioner may give directions as to the persons who may be present at the hearing.
- (4) Where, at a hearing by a Commissioner that is held in public, the Commissioner is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Commissioner may direct that the hearing or a part of the hearing take place in private and give directions as to the persons who may be present.

8 Restrictions on publication of evidence

A Commissioner may give directions preventing or restricting the publication of evidence given before the Commissioner or of matters contained in documents lodged with the Commissioner.

9 Limitations as to evidence

- (1) As far as practicable, a Commissioner shall, in the course of a hearing in public, only receive evidence in accordance with this section.
- (2) The Commissioner shall only receive evidence that appears to relate to a matter specified in the relevant commission.
- (3) The Commissioner shall only receive as evidence, and (as far as practicable) only permit to be given in evidence, matter that, in the opinion of the Commissioner, would be likely to be admissible in evidence in civil proceedings.
- (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.

10 Reports

- (1) It is the duty of a Commissioner, within such period or periods as may be specified in the relevant commission, to make a report or reports to the Governor in connection with the subject-matter of the commission, and in particular as to whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence.
- (2) If after making such investigations as a Commissioner thinks appropriate, and without conducting any hearings or further hearings, the Commissioner forms the view that no offence, or no serious offence, has been committed arising out of or in connection with the subject-matter of the Special Commission, the Commissioner may make a report to the Governor without conducting any hearings or further hearings.
- (3) A Commissioner may, in any such report, make such recommendations relating to the publication of the whole or any part of the report as the Commissioner thinks proper.
- (4) (Repealed)

Note—

Any determinations made by a Commissioner that are contained in a report made to the Governor under this section attract the following defences under the specified provisions of the [Defamation Act 2005](#) in defamation proceedings:

- (a) the defence of absolute privilege (see section 27 (2) (b) and the definition of **Australian tribunal** in section 4 of that Act),
- (b) the defence for publication of public documents (see section 28 of, and clause 7 of Schedule 2 to, that Act),
- (c) the defences of fair report of proceedings of public concern (see section 29 and, in particular, section 29 (4) (f) of that Act).

11 Protection of Commissioner

A Commissioner shall in the exercise of his or her duty as a Commissioner have the same protection and immunity as a Judge of the Supreme Court.

12 Right of appearance

- (1) Any counsel or solicitor appointed by the Crown to assist a Special Commission may appear before the Special Commission.

- (2) Where at a Special Commission it is shown to the satisfaction of the Commissioner 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 Commissioner may authorise the person to appear before the Special Commission, 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 Commissioner, examine or cross-examine any witness on any matter which the Commissioner deems relevant to the Special Commission, 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.

13 Assistance

A Commissioner may employ such assistance as the Commissioner deems proper for the carrying out of any inquiry or investigation in connection with the Special Commission.

14 Witnesses

A Commissioner may, by writing, summon any person to attend the Special Commission at a time and place named in the summons, and then and there to give evidence and to produce any books, documents or writings in the person's custody or control which the person is required by the summons to produce.

15 Oath or affirmation

- (1) A Commissioner may administer an oath to any person appearing as a witness at the Special 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 a Special Commission conscientiously objects to take an oath, the witness may make an affirmation that he or she conscientiously objects to take an oath, and that he or she will state the truth, the whole truth, and nothing but the truth, to all questions that may be put to him or her.
- (3) An affirmation so made shall be of the same force and effect, and shall entail the same liabilities, as an oath.

16 Continued attendance

Every witness who has been summoned to attend a Special Commission shall appear and report himself or herself from day to day unless he or she is excused from attendance or until he or she is released from further attendance by the Commissioner.

17 Answers and documents

- (1) A witness summoned to attend or appearing before a Special 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 the Commissioner, or
 - (c) to produce any book, document or writing 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 book, document or writing if the witness has a reasonable excuse for refusing, or
 - (b) to disclose any secret process of manufacture.
- (3) A witness summoned to attend or appearing before a Special 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 Commissioner obtains for the purposes of the Special Commission 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 Special Commission.

18 Inspection and copies of documents

A Commissioner may inspect any books, documents or writings produced before the Special Commission, and may retain them for such reasonable period as the Commissioner thinks fit, and may make copies of such matter as is relevant to the Special Commission or take extracts from them.

19 Inspections of books etc

A Commissioner may, in writing, authorise any person employed under section 13 to inspect and report to the Commissioner on any books, documents, writings or accounts that the Commissioner considers relevant to the subject-matter of the inquiry.

20 Allowances to witnesses

- (1) The regulations may prescribe a scale of allowances to be paid to any witness summoned under this Act for travelling expenses and maintenance while absent from the witness's usual place of abode.

- (2) If the regulations do not prescribe such a scale of allowance, allowances shall be payable as if the witness were a witness in proceedings in the Supreme Court.
- (3) The claim to allowance of any witness referred to in this section shall be paid by the Treasurer out of money to be provided by Parliament for the purposes of the Special Commission concerned.

Division 2 Special powers of Commissioners

21 Application of Division

- (1) Each of sections 22, 23 and 24 does not have effect in relation to a Special Commission unless in the relevant letters patent the Governor declares that the section shall apply to and in respect of the Special Commission.
- (2) Nothing in this Division limits the powers, rights and privileges of a Commissioner under any other provision of this Act.

22 Warrant

- (1) If any person served with a summons to attend a Special Commission as a witness fails to attend the Special 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 apprehension of the witness.
- (2) The warrant shall authorise the apprehension of the witness and his or her being brought before the Special Commission and his or her detention in custody for that purpose until he or she is released by order of the Commissioner.
- (3) The apprehension of any witness under this section does not relieve the witness from any liability incurred by the witness by reason of non-compliance with the summons.

23 Answers and documents

- (1) A witness summoned to attend or appearing before a Special Commission shall not be excused from answering any question or producing any book, document or writing on the ground that the answer or production may criminate or tend to criminate the witness, or on the ground of privilege or on any other ground.
- (2) An answer made, or book, document or writing produced, by a witness to or before a Special 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, book, document or writing in proceedings for an offence against this Act,

- (b) any answer, book, document or writing in any civil or criminal proceedings if the witness was willing to give the answer or produce the book, document or writing irrespective of the provisions of subsection (1), or
- (c) any book, document or writing in civil proceedings for or in respect of any right or liability conferred or imposed by the book, document or writing.

24 Particular powers of Commissioner

For the purposes of a Special Commission, 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 proceedings, 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 Special Commission,
- (c) compelling the production of books, documents and writings, and
- (d) punishing persons guilty of contempt or of disobedience of any order or summons made or issued by the Commissioner.

Part 4 Offences

25 Failure to attend or produce documents

- (1) If any person served with a summons to attend a Special 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 Special Commission or to produce any documents or writings in the person's custody or control which the person was required by the summons to produce, the person is guilty of an offence and liable to a penalty not exceeding 10 penalty units.
- (2) It shall be a defence to a prosecution under this section for failing without reasonable excuse to produce any books, documents or writings if the defendant proves that the books, documents or writings were not relevant to the Special Commission.

26 Refusal to be sworn or to give evidence

If any person appearing as a witness before a Special Commission refuses to be sworn or to make an affirmation or to answer any question relevant to the Special Commission put to the person by the Commissioner, the person is guilty of an offence and liable to a penalty not exceeding 10 penalty units.

27 False and misleading testimony

- (1) Any witness before a Special 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.

28 Subornation

Any person who procures or causes or attempts or conspires to procure or cause the giving of false testimony before a Special Commission is guilty of an indictable offence and is liable to be imprisoned for a period not exceeding 5 years.

29 Destroying books or documents

Any person who, knowing that any book, document or writing is or may be required in evidence before a Special Commission, wilfully destroys it or renders it illegible or undecipherable or incapable of identification, with intent thereby to prevent it from being used in evidence, is guilty of an indictable offence and is liable to be imprisoned for a period not exceeding 2 years.

30 Delaying and obstructing Special Commission

- (1) Any person who, with intent to delay or obstruct the carrying out by a Special Commission of any inquiry, destroys or alters any book, document or record 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 book, document or record, 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, is guilty of an indictable offence and is liable to be imprisoned for a period not exceeding 5 years.
- (2) If in any prosecution for an offence against this section it is proved that the defendant has destroyed or altered any book, document or record, or has sent or attempted to send, or conspired to send, out of New South Wales any such book, document or record, or any other thing, the onus of proving that in so doing the defendant had not acted in contravention of this section shall be upon the defendant.

31 Offences in connection with hearings

- (1) Where a Commissioner directs that a hearing or part of a hearing before the Commission take place in private, a person shall not be present at the hearing unless the person is entitled to be present by virtue of the direction.
- (2) Where a Commissioner gives a direction preventing or restricting the publication of evidence given before the Commissioner or of matters contained in documents lodged with the Commissioner, a person shall not contravene the direction.

Maximum penalty: 10 penalty units.

32 Costs

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

33 Proceedings for offences

Proceedings for an offence (other than an indictable offence) against this Act or the regulations may be taken before the Local Court.

Part 4A

33A-33H (Repealed)

Part 5 Miscellaneous

34 Application of provisions of Act

If in the letters patent by which a commission is issued under this Act the Governor declares that any specified provisions of this Act shall not be applicable, or shall not be applicable to such extent or in such circumstances as may be specified, for the purposes of the Special Commission established by the commission, the specified provisions shall not apply to or in respect of the Special Commission, or shall not apply to that extent or in those circumstances to or in respect of the Special Commission, as the case may be.

35 Other Acts not affected

Except as provided by section 4 (4), nothing in this Act affects the power conferred by or under any other Act in relation to any inquiry or investigation.

36 No proceedings to lie in respect of Special Commission

- (1) A Special Commission shall not be vitiated by reason of any informality or want of form or be liable to be challenged, appealed against, quashed or called in question by any court.
- (2) No proceedings, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief, shall lie in respect of any Special Commission.

37 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to the practice and procedure to be adopted in

the conduct of any Special Commission.

- (2) A regulation may impose a penalty not exceeding 10 penalty units for any contravention thereof.
- (3) A provision of a regulation may:
 - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.