

## Chapter 34 The Parliament's Role in Referring Matters to or Expanding Powers of Investigatory Bodies

### 34.1 Royal Commissions

Under the *Royal Commissions Act 1923* a Royal Commission is established when the Governor, by letters patent, issues a Royal Commission to a person to make an inquiry.<sup>1</sup> This effectively means that the Executive Government is responsible for establishing Royal Commissions and the formal approval of the Parliament is not required. However, there have been times when the House has passed resolutions calling on the Government to establish Royal Commissions<sup>2</sup> or extend its terms of reference.<sup>3</sup> In these cases it is still left to the Executive Government to determine whether a particular inquiry is justified and a letters patent is required to be issued by the Governor.<sup>4</sup>

The Parliament has also passed specific legislation to increase the powers of an existing Royal Commission. For instance, in 1994 the Parliament passed legislation conferring additional powers on the Royal Commission which had been established to inquire into the NSW Police Service and to assist the Commission in the conduct of its inquiries.<sup>5</sup>

The Parliament has also agreed to resolutions calling on the Federal Government to establish Royal Commissions<sup>6</sup> and members of the Opposition have attempted to move motions noting the "failure of the Government to provide adequate terms of reference" for Royal Commissions.<sup>7</sup>

### 34.2 Special Commissions of Inquiry

As with Royal Commissions, no formal approval of the Parliament is required to establish special commissions of inquiry. Such inquiries are decided upon by the Executive Government and are established when a letter patent is issued by the Governor.<sup>8</sup> The Parliament does however, have a role in determining any additional powers such inquiries may be given and on one occasion passed legislation to enable a special commission of inquiry to consider material that would otherwise have been outside its powers because of the operation of parliamentary privilege.<sup>9</sup>

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<sup>1</sup> See section 5 of the *Royal Commissions Act 1923*.

<sup>2</sup> For example see VP 11/05/1994, pp. 245-5 where the House agreed to a resolution calling on the Government to establish a Royal Commission into the NSW Police Service.

<sup>3</sup> See PD 23/10/1996, p. 505 where the House passed a motion to extend the terms of reference of the Royal Commission into the NSW Police Service.

<sup>4</sup> See section 3 of the *Royal Commission (Police Service) Act 1994* which states that the letters patent for the inquiry was issued by the Governor on 13 May 1994.

<sup>5</sup> See the second reading speech for the *Royal Commission (Police Service) Bill PD 22/09/1994*, pp. 3628-9. There was no requirement for the Governor to issue letters patent as the legislation provided a Royal Commission that had already been established with additional powers.

<sup>6</sup> VP 17/05/1990, p. 261 where the House agreed to a resolution calling on the Federal Government to appoint a Royal Commission to investigate the activities of the Mafia.

<sup>7</sup> VP 17/08/1983.

<sup>8</sup> See section 4 of the *Special Commissions of Inquiry Act 1983*.

<sup>9</sup> See the *Special Commissions of Inquiry Amendment Act 1997* which provided that a House of Parliament, by way of resolution, may declare that parliamentary privilege is waived in connection with a special commission to an extent declared in the resolution. This provision no longer applies as the amendment expired six months after it commenced.

### 34.3 The Independent Commission Against Corruption

Section 73 of the *Independent Commission Against Corruption Act 1988* provides for the Legislative Assembly or Legislative Council to refer matters to the Independent Commission Against Corruption (ICAC). The first reference by the Parliament to the ICAC occurred in April 1992 when a motion was agreed to requesting it:

*To investigate the facts and circumstances relating to the resignation of the former member for Davidson from the Parliament of New South Wales and the appointment of him to a position in the Senior Executive Service or Public Service of New South Wales.*<sup>10</sup>

The Parliament also referred matters to the ICAC for investigation and report in March 1994<sup>11</sup> and in November 2002.<sup>12</sup> Under the legislation it is the duty of the ICAC to fully investigate any matter referred to it by either House of Parliament.<sup>13</sup>

Individual members of Parliament may also refer matters to the Independent Commission Against Corruption for investigation. However, it is up to the ICAC whether matters referred by individual members warrant a full investigation.

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<sup>10</sup> VP 28/04/1992, pp. 245-7.

<sup>11</sup> VP 09/03/1994, p. 86 and VP 10/03/1994 pp. 96-7. Reference sent to the ICAC regarding the protection of paedophiles by members of the Police Service of New South Wales.

<sup>12</sup> VP 21/11/2002, pp. 648-9. Reference sent to the ICAC to consider the adequacy of the provisions of the Code of Conduct for members of the Legislative Assembly.

<sup>13</sup> Section 73(2) of the *Independent Commission Against Corruption Act 1988*.