



New South Wales

Special Commissions of Inquiry Amendment Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Special Commissions of Inquiry Act 1983* so as:

- (a) to permit the admission of evidence at a Special Commission if it satisfies the civil rather than the criminal tests of admissibility, subject to certain safeguards, and
 - (b) to clarify the scope of the report of a Special Commission, and
 - (c) to enable a House of Parliament to authorise a Special Commission to inquire into and report on matters relating to parliamentary proceedings in the House or a parliamentary committee, and to waive parliamentary privilege in connection with the Special Commission.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Special Commissions of Inquiry Act 1983* set out in Schedule 1.

Schedule 1 [1] amends section 9 (3) to permit the admission of evidence at a Special Commission if it satisfies the civil rather than the criminal tests of admissibility.

Schedule 1 [2] amends section 9 to make it clear that evidence admitted under the civil tests of admissibility is not to be taken into consideration in connection with reporting about possible offences if the evidence is not likely to be admissible in relevant criminal proceedings.

Schedule 1 [3] amends section 10 to make it clear that the report of a Special Commission can deal with the subject-matter of the commission, as well as with the issue of possible criminal prosecutions.

Schedule 1 [4] inserts a new Part 4A, dealing with inquiries concerning parliamentary proceedings. The Part contains the following provisions:

Proposed section 33A contains definitions used in the proposed Part.

Proposed section 33B empowers a House of Parliament to authorise the establishment of a Special Commission to inquire into and report on a matter relating to parliamentary proceedings within or before the House or one of its committees. In the case of a joint parliamentary committee, this authorisation is to be given by each House. The Special Commission would then be established under the existing procedures set out in the Act.

Proposed section 33C empowers a House of Parliament to authorise a Special Commission, already established, to inquire into and report on a matter relating to parliamentary proceedings within or before the House or one of its committees. Again, in the case of a joint parliamentary committee, this authorisation is to be given by each House.

Proposed section 33D empowers a House of Parliament to resolve to waive parliamentary privilege in connection with a new or existing Special Commission. However, any such waiver will not operate to waive parliamentary privilege to the extent that it can be asserted by a member of either House of Parliament, but does authorise the member to give evidence if the member so chooses (unless the declaration waiving privilege provides

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otherwise). The proposed section also makes it clear that section 23 (1) cannot be applied to a member, although section 23 (2) and (3) will apply to a member who chooses to give evidence.

Proposed section 33E requires a report of such a Special Commission to be made to the House of Parliament concerned (in addition to the Governor). Proposed section 33E (3) makes it clear that, once a resolution is passed under proposed section 33B or 33C, the authorisation conferred by it extends to incidental matters connected with the conduct of the Special Commission.

Proposed section 33F provides that a resolution must be supported by at least a two-thirds majority of members present and voting, is not affected by the prorogation, dissolution or expiry of either or both of the Houses of Parliament, and can be amended or revoked.

Proposed section 33G provides that the proposed Part has effect despite any other law, preserves any other powers that might exist apart from the proposed Part, and makes it clear that the proposed Part extends to parliamentary proceedings occurring before its commencement.

Proposed section 33H provides for the expiry of the proposed Part after 6 months following its commencement.

First print

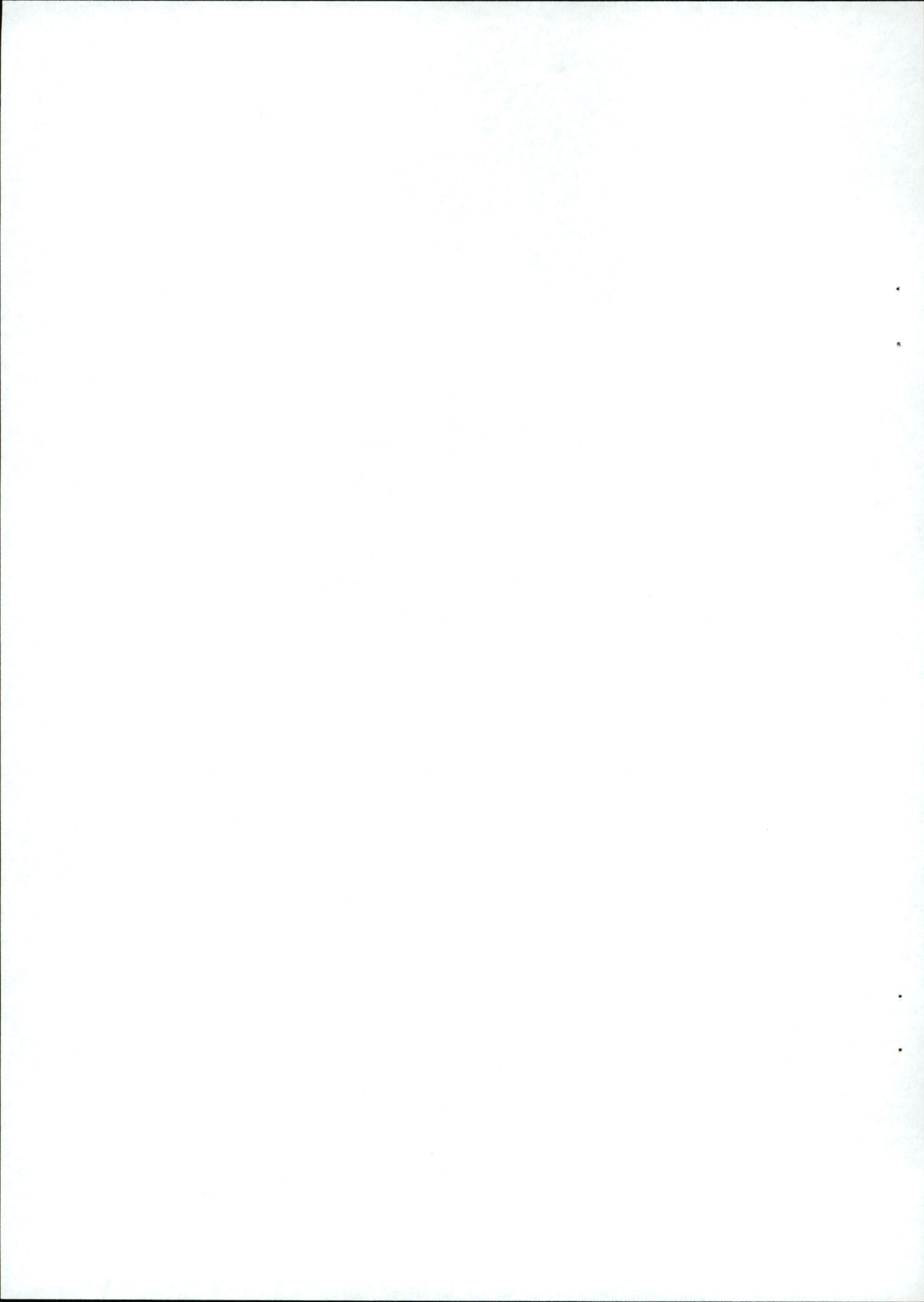


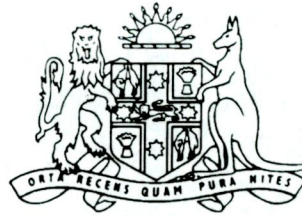
New South Wales

Special Commissions of Inquiry Amendment Bill 1997

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New South Wales

Special Commissions of Inquiry Amendment Bill 1997

No. , 1997

A Bill for

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.

The Legislature of New South Wales enacts:

1 Name of Act

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

2 Commencement

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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.

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). 5

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. 10
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(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. 20

[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

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(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. 10

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. 15

(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. 20

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. 25
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- (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. 5
- (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. 10
- (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. 15

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. 20
- (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. 25
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- (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 5

- (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. 10

- (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. 15

- (3) However, a declaration by a House of Parliament under this section waiving parliamentary privilege: 20

- (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 25

- (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. 30

- (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. 35

- (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

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- (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. 10
- (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 15
- (b) to exercise and perform any other powers, authorities, duties and functions under this Act in connection with the inquiry and report, and 20
- (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. 25
- (2) A resolution under this Part is not affected by the prorogation, dissolution or expiry of either or both of the Houses of Parliament. 30

- (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. 5
- (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. 10
- (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. 15

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.