

# CONCURRENCE COPY

## SPECIAL COMMISSIONS OF INQUIRY BILL, 1983

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### EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to provide for the establishment by the Governor-in-Council of Special Commissions of Inquiry; and
- (b) to define their functions.

The Bill contains the following provisions:—

#### PART I.—PRELIMINARY.

Clause 1. Short title.

Clause 2. Arrangement of the Parts and Divisions of the proposed Act.

Clause 3. Interpretation.

#### PART II.—ESTABLISHMENT OF SPECIAL COMMISSIONS.

Clause 4 provides for the issue by the Governor-in-Council of a commission—

- (a) authorising a Judge or Queen's Counsel ("Commissioner") to report on any specified matter; and
- (b) establishing a Special Commission of Inquiry ("Special Commission") for the purpose.

Clause 5 enables conditions, limitations and directions to be inserted in the instrument establishing a Special Commission.

Clause 6 permits a commission to be revoked or amended.

#### PART III.—POWERS, ETC., OF SPECIAL COMMISSIONS.

##### DIVISION 1.—*General.*

Clause 7 empowers a Commissioner to conduct hearings, which are to be held in public unless the Commissioner considers it desirable that they be held in private.

Clause 8 empowers a Commissioner to give directions preventing or restricting the publication of evidence.

Clause 9 limits the evidence which may be received at a public hearing, so that only evidence which could be admitted in relevant criminal proceedings may be received.



Clause 10 requires a Commissioner to report to the Governor-in-Council as to whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence.

Clause 11 confers on a Commissioner the protections and immunities of a Judge of the Supreme Court.

Clause 12 confers a right of appearance before a Special Commission on counsel assisting the Commission, persons affected by the Special Commission and certain other persons.

Clause 13 permits a Commissioner to employ assistance.

Clause 14 empowers a Commissioner to summon witnesses.

Clause 15 enables a Commissioner to administer an oath or affirmation.

Clause 16 requires a witness summoned to attend a Special Commission to continue to be present until excused.

Clause 17 requires a witness to answer questions and otherwise participate as required.

Clause 18 allows a Commissioner to inspect, retain and copy documents.

Clause 19 empowers an authorised person to inspect documents and report back to the Commissioner.

Clause 20 provides for payment of allowances to witnesses.

#### *DIVISION 2.—Special powers of Commissioners.*

Clause 21 provides that the powers conferred by clauses 22–24 are not applicable to a Special Commission unless specifically conferred by the Governor-in-Council.

Clause 22 authorises a Commissioner to issue a warrant for the arrest of a witness who fails to attend.

Clause 23 provides that a witness may not, subject to certain safeguards, refuse to answer a question.

Clause 24 confers on a Commissioner certain powers of a Judge of the Supreme Court in relation to compelling witnesses to attend, punishing contempt, and certain other matters.

#### **PART IV.—OFFENCES.**

Clause 25 makes it an offence to fail to attend or produce documents at a Special Commission.

Clause 26 makes it an offence to refuse to be sworn or to give evidence at a Special Commission.

Clause 27 makes it an offence to give false testimony at a Special Commission.



# **SPECIAL COMMISSIONS OF INQUIRY BILL, 1983**

No. , 1983.

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## **A BILL FOR**

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

[MR WRAN—2 *November*, 1983.]

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*Special Commissions of Inquiry.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

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**PART I.****PRELIMINARY.****Short title.**

1. This Act may be cited as the "Special Commissions of Inquiry Act, 1983".

10 **Arrangement.**

2. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–3.

PART II.—ESTABLISHMENT OF SPECIAL COMMISSIONS—ss. 4–6.

PART III.—POWERS, ETC., OF SPECIAL COMMISSIONS—ss. 7–24.

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DIVISION 1.—*General*—ss. 7–20.

DIVISION 2.—*Special powers of Commissioners*—ss. 21–24.

PART IV.—OFFENCES—ss. 25–33.

PART V.—MISCELLANEOUS—ss. 34–37.

**Interpretation.**

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3. (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;



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*Special Commissions of Inquiry.*

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“Commissioner” means the person to whom a commission is issued under this Act;

“Judge” means—

- (a) a Judge of the Supreme Court of New South Wales;
- 5 (b) a judicial member of the Industrial Commission of New South Wales;
- (c) a Judge of the Land and Environment Court;
- (d) a Judge of the District Court of New South Wales; or
- 10 (e) a member of the Workers’ Compensation Commission of New South Wales;

“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.

20 (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—

- 25 (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.
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**PART II.****ESTABLISHMENT OF SPECIAL COMMISSIONS.****Issue of commission.**

5       **4. (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.

10       **(2)** A commission may not be issued to a person who is not a Judge or Queen's Counsel, but (subject to revocation, alteration or variation by the Governor) continues in force notwithstanding that the person ceases to be a Judge or Queen's Counsel after it is issued.

15       **(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.

**Conditions, limitations and directions.**

20       **5. (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.

25       **(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.



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**Revocation or amendment of letters patent or commission.**

6. 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.

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PART III.

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POWERS, ETC., OF SPECIAL COMMISSIONS.

DIVISION 1.—*General.*

**Hearings.**

7. (1) A Commissioner may hold hearings in connection with the Special Commission.

10 (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  
15 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 Commis-  
20 sioner 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.

**Restrictions on publication of evidence.**

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



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**Limitations as to evidence.**

9. (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  
5 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 admitted into evidence in relevant criminal proceedings.

**10 Reports.**

10. (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 as to whether there is or was any evidence or sufficient evidence warranting the prosecution of a specified person for a specified offence.

15 (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  
20 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) Where a report of a Commissioner has been made to the  
25 Governor, the report shall, for the purposes of the Defamation Act, 1974, be deemed to have been published under the authority of either House of Parliament.



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**Protection of Commissioner.**

11. 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.

**5 Right of appearance.**

12. (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  
10 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  
15 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.

**20 Assistance.**

13. 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.

**Witnesses.**

25 14. 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.



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**Oath or affirmation.**

15     **15. (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.

10     **(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.

**Continued attendance.**

15     **16.** 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.

**Answers and documents.**

20     **17. (1)** A witness summoned to attend or appearing before a Special Commission shall not be entitled, except as otherwise provided in this section, 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
- 25     (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.



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(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

5 (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.

**10 Inspection and copies of documents.**

18. 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  
15 them.

**Inspections of books, etc.**

19. 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  
20 to the subject-matter of the inquiry.

**Allowances to witnesses.**

20. (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.

25 (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.



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(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.*

**5 Application of Division.**

**21. (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.

10 **(2)** Nothing in this Division limits the powers, rights and privileges of a Commissioner under any other provision of this Act.

**Warrant.**

**22. (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  
15 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  
20 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.

**Answers and documents.**

25 **23. (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.



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(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.

- 5           (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
  - 10           (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.

**15 Particular powers of Commissioner.**

24. 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:—

- 20           (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
  - 25           (d) punishing persons guilty of contempt or of disobedience of any order or summons made or issued by the Commissioner.
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**PART IV.****OFFENCES.****Failure to attend or produce documents.**

25. (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 \$1,000.

(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.

**15 Refusal to be sworn or to give evidence.**

26. 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 \$1,000.

**False testimony.**

27. Any witness before a Special Commission who knowingly gives false testimony touching any matter, material to the inquiry being made by the Special Commission, is guilty of an indictable offence and is liable to be imprisoned for a period not exceeding 5 years.

**Subornation.**

28. 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.



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**Destroying books or documents.**

29. 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.

**Delaying and obstructing Special Commission.**

30. (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.

**Offences in connection with hearings.**

31. (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.

Penalty: \$1,000.



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*Special Commissions of Inquiry.*

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**Costs.**

32. 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.

**5 Proceedings for offences.**

33. Proceedings for an offence (other than an indictable offence) against this Act or the regulations may be taken before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

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**PART V.**

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**MISCELLANEOUS.****Application of provisions of Act.**

15 34. 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.

**20 Other Acts not affected.**

35. 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.

**No proceedings to lie in respect of Special Commission.**

25 36. (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.



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*Special Commissions of Inquiry.*

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(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.

**Regulations.**

5     **37. (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  
10 Commission.

(2) A regulation may impose a penalty not exceeding \$1,000 for any contravention thereof.

(3) A provision of a regulation may—

- 15     (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,
- 20 or may do any combination of those things.

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983







Clause 28 makes it an offence to cause or attempt to make a witness give false testimony at a Special Commission.

Clause 29 makes it an offence to destroy documents with intent to prevent their use at a Special Commission.

Clause 30 makes it an offence to delay or obstruct a Special Commission.

Clause 31 makes it an offence to be present at a private hearing of a Special Commission without authority or to contravene a direction preventing or restricting publication of evidence given at a Special Commission.

Clause 32 enables costs to be awarded in certain proceedings.

Clause 33 provides that summary offences against the proposed Act are to be disposed of before a stipendiary magistrate.

#### PART V.—MISCELLANEOUS.

Clause 34 provides that the instrument establishing a Special Commission may exclude provisions of the proposed Act from applying.

Clause 35 preserves the operation of other Acts.

Clause 36 provides that the proceedings of a Special Commission may not be challenged in legal proceedings.

Clause 37 empowers regulations to be made by the ~~Governor-in-Council~~, including regulations relating to the practice and procedure at Special Commissions.

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SPECIAL COMMISSIONS OF INQUIRY ACT, 1983, No. 90

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

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Act No. 90, 1983.

An Act to provide for the establishment and functions of Special Commissions of Inquiry. [Assented to, 4th November, 1983.]



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*Special Commissions of Inquiry.*

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.**

**PRELIMINARY.**

**Short title.**

- 1.** This Act may be cited as the "Special Commissions of Inquiry Act, 1983".

**Arrangement.**

- 2.** This Act is divided as follows:—

PART I.—PRELIMINARY—*ss.* 1–3.

PART II.—ESTABLISHMENT OF SPECIAL COMMISSIONS—*ss.* 4–6.

PART III.—POWERS, ETC., OF SPECIAL COMMISSIONS—*ss.* 7–24.

DIVISION 1.—*General*—*ss.* 7–20.

DIVISION 2.—*Special powers of Commissioners*—*ss.* 21–24.

PART IV.—OFFENCES—*ss.* 25–33.

PART V.—MISCELLANEOUS—*ss.* 34–37.

**Interpretation.**

- 3. (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;



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“Commissioner” means the person to whom a commission is issued under this Act;

“Judge” means—

- (a) a Judge of the Supreme Court of New South Wales;
- (b) a judicial member of the Industrial Commission of New South Wales;
- (c) a Judge of the Land and Environment Court;
- (d) a Judge of the District Court of New South Wales; or
- (e) a member of the Workers’ Compensation Commission of New South Wales;

“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.
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*Special Commissions of Inquiry.*

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**PART II.****ESTABLISHMENT OF SPECIAL COMMISSIONS.****Issue of commission.**

4. (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 commission may not be issued to a person who is not a Judge or Queen's Counsel, but (subject to revocation, alteration or variation by the Governor) continues in force notwithstanding that the person ceases to be a Judge or Queen's Counsel after it is issued.

(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.

**Conditions, limitations and directions.**

5. (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.



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*Special Commissions of Inquiry.*

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**Revocation or amendment of letters patent or commission.**

6. 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.

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PART III.

POWERS, ETC., OF SPECIAL COMMISSIONS.

DIVISION 1.—*General.*

**Hearings.**

7. (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.

**Restrictions on publication of evidence.**

8. 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.



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*Special Commissions of Inquiry.*

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**Limitations as to evidence.**

9. (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 admitted into evidence in relevant criminal proceedings.

**Reports.**

10. (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 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) Where a report of a Commissioner has been made to the Governor, the report shall, for the purposes of the Defamation Act, 1974, be deemed to have been published under the authority of either House of Parliament.



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*Special Commissions of Inquiry.*

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**Protection of Commissioner.**

11. 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.

**Right of appearance.**

12. (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.

**Assistance.**

13. 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.

**Witnesses.**

14. 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.



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**Oath or affirmation.**

15. (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.

**Continued attendance.**

16. 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.

**Answers and documents.**

17. (1) A witness summoned to attend or appearing before a Special Commission shall not be entitled, except as otherwise provided in this section, 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.



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(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.

**Inspection and copies of documents.**

18. 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.

**Inspections of books, etc.**

19. 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.

**Allowances to witnesses.**

20. (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.



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(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.*

**Application of Division.**

21. (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.

**Warrant.**

22. (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.

**Answers and documents.**

23. (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.



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(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.

**Particular powers of Commissioner.**

24. 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.
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**PART IV.****OFFENCES.****Failure to attend or produce documents.**

**25. (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 \$1,000.

**(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.

**Refusal to be sworn or to give evidence.**

**26.** 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 \$1,000.

**False testimony.**

**27.** Any witness before a Special Commission who knowingly gives false testimony touching any matter, material to the inquiry being made by the Special Commission, is guilty of an indictable offence and is liable to be imprisoned for a period not exceeding 5 years.

**Subornation.**

**28.** 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.



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**Destroying books or documents.**

29. 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.

**Delaying and obstructing Special Commission.**

30. (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.

**Offences in connection with hearings.**

31. (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.

Penalty: \$1,000.



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**Costs.**

32. 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.

**Proceedings for offences.**

33. Proceedings for an offence (other than an indictable offence) against this Act or the regulations may be taken before a court of petty sessions constituted by a stipendiary magistrate sitting alone.

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**PART V.****MISCELLANEOUS.****Application of provisions of Act.**

34. 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.

**Other Acts not affected.**

35. 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.

**No proceedings to lie in respect of Special Commission.**

36. (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.



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*Special Commissions of Inquiry.*

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(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.

**Regulations.**

37. (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 \$1,000 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.

*In the name and on behalf of Her Majesty I assent to this Act.*

J. A. ROWLAND,  
Governor.

*Government House,  
Sydney, 4th November, 1983.*



