

**ROYAL COMMISSIONS (AMENDMENT) ACT 1990 No. 58**

NEW SOUTH WALES



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2. Commencement
3. Amendment of Royal Commissions Act 1923 No. 29
4. Transitional

SCHEDULE 1 - AMENDMENTS

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**ROYAL COMMISSIONS (AMENDMENT) ACT 1990 No. 58**

**NEW SOUTH WALES**



**Act No. 58, 1990**

An Act to amend the Royal Commissions Act 1923 with respect to reports of royal commissions, the powers of certain commissioners who are Queen's Counsel and the punishment of contempt of royal commissions; and for other purposes. [Assented to 26 September 1990]

**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Royal Commissions (Amendment) Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Royal Commissions Act 1923 No. 29**

3. The Royal Commissions Act 1923 is amended as set out in Schedule 1.

**Transitional**

4. (1) An amendment made by this Act extends to a commission under the Royal Commissions Act 1923 and subsisting at the commencement of the amendment.

(2) Without affecting the generality of subsection (1):

(a) letters patent may be issued under section 15 of that Act, as amended, declaring that the provisions of Division 2 of Part 2 of that Act are to have effect in relation to such a commission; and

(b) a declaration in such letters patent may specifically state under section 17 (5) of that Act, as amended, that section 17 shall apply to and with respect to the inquiry.

(3) An amendment made by this Act does not apply to a contempt alleged to have been committed before the commencement of the amendment.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 14B:

After section 14A, insert:

**Release of reports when Parliament not sitting**

14B. (1) If neither House of Parliament is sitting, the Minister may present to the Clerks of both Houses a report made by a commission.

(2) When the report has been presented to and received by the Clerks:

- (a) the report is for all purposes to be taken to have been laid before each House and to be a document published by order or under the authority of each House; and
- (b) without limiting paragraph (a), the report attracts the same privileges and immunities as if it had been laid before each House and published by order or under the authority of each House; and
- (c) the report may be printed by the authority of either or both of the Clerks.

(3) Material may be omitted from such a report before its presentation to the Clerks of both Houses, on the recommendation of the commission or otherwise.

(4) The report is required to be recorded in the Minutes of Proceedings or Votes and Proceedings of the House on the first sitting day after it was presented to and received by the Clerk of the House.

(5) This section does not have effect in relation to a report of a person or body to whom some or all of the provisions of this Act are applied by other legislation enacted before the commencement of this section, unless and until the other legislation expressly provides that this section applies to the person or body.

(2) Part 2, Division 2, heading:

Omit the heading, insert instead:

SCHEDULE 1 - AMENDMENTS - *continued*

**Division 2 - Special powers**

(3) Section 15 (**Application of Division**):

Omit section 15 (3), insert instead:

(3) The provisions of this Division shall also have effect if:

- (a) the chairman of a commission or the sole commissioner holds an appointment as Queen's Counsel for the State of New South Wales or for any other Australian jurisdiction; and
- (b) in the letters patent by which the commission is issued, or in other letters patent under the Public Seal, the Governor declares that the provisions of this Division are to have effect in relation to the commission.

(4) In this Division:

"**commissioner**" means such a Judge or Queen's Counsel as chairman or sole commissioner.

(4) Section 17 (5):

Omit "section 15 (2)", insert instead "section 15".

(5) Section 18 (**Powers of commissioner**):

Omit section 18 (1) (d).

(6) Sections 18A-18D:

After section 18, insert:

**Contempt**

18A. (1) A person is guilty of contempt of a commission if the person does or omits to do anything which would, if the commission were the Supreme Court, be contempt of that Court or if the person disobeys any order or summons made or issued by the commissioner.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) For the purposes of this Division, "offender" means a person guilty or alleged to be guilty of contempt of a commission.

**Punishment of contempt**

18B. (1) A contempt of a commission may be punished in accordance with this section.

(2) The commissioner may present to the Supreme Court a certificate setting out the details which the commissioner considers constitute the contempt.

(3) If the commissioner presents such a certificate to the Supreme Court:

- (a) the Supreme Court shall thereupon inquire into the alleged contempt; and
- (b) after hearing any witnesses who may be produced against or on behalf of the person charged with the contempt, and after hearing any statement that may be offered in defence, the Supreme Court (if satisfied that the person is guilty of the contempt) may punish or take steps for the punishment of the person in like manner and to the like extent as if the person had committed that contempt in or in relation to proceedings in the Supreme Court; and
- (c) the provisions of the Supreme Court Act 1970 and the rules of court of the Supreme Court shall, with any necessary adaptations, apply and extend accordingly.

(4) Such a certificate is prima facie evidence of the matters certified.

(5) Neither liability to be punished nor punishment under this section for contempt consisting of failure to attend before the commission as a witness in obedience to a summons excuses the offender from such attendance, and the commissioner may enforce attendance by warrant under section 16 or by exercise of any other available power.

SCHEDULE 1 - AMENDMENTS - *continued*

(6) A contempt of a commission may not be punished by a commissioner under section 18.

**General provisions regarding contempt**

18C. (1) In the case of any alleged contempt of a commission, the commissioner may summon the offender to appear before the commission at a time and place named in the summons to show cause why the offender should not be dealt with under section 18B for the contempt.

(2) If the offender fails to attend before the commission in obedience to the summons, and no reasonable explanation to the satisfaction of the commissioner is offered for the failure, the commissioner may, on proof of the service of the summons, issue a warrant to arrest the offender and bring the offender before the commissioner to show cause why the offender should not be dealt with under section 18B for the contempt.

(3) If a contempt of the commission is committed in the face or hearing of the commission, no summons need be issued against the offender, but the offender may be taken into custody then and there by a police officer and called upon to show cause why the offender should not be dealt with under section 18B for the contempt.

(4) The commissioner may issue a warrant to arrest the offender while the offender (whether or not already in custody under this section) is before the commission and to bring the offender forthwith before the Supreme Court.

(5) The warrant is sufficient authority to detain the offender in a prison or elsewhere, pending the offender's being brought before the Supreme Court.

(6) The warrant is to be accompanied by the certificate in which the commissioner sets out the details of the alleged contempt.

(7) The commissioner may revoke the warrant at any time before the offender is brought before the Supreme Court.



SCHEDULE 1 - AMENDMENTS - *continued*

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

**Act or omission that is both an offence and contempt**

18D. (1) An act or omission may be punished as a contempt of a commission even though it could be punished as an offence.

(2) An act or omission may be punished as an offence even though it could be punished as a contempt of a commission.

(3) If an act or omission constitutes both an offence and a contempt of a commission, the offender is not liable to be punished twice.

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[*Minister's second reading speech made in -  
Legislative Assembly on 5 September 1990  
Legislative Council on 18 September 1990*]

Dear Mr. [Name],

I have received your letter of the 15th and am sorry that I cannot reply to you more quickly.

The matter is being considered and I will let you know as soon as a decision has been reached.

I am sure that you will understand the need for a thorough review of the situation.

Very truly yours,

[Signature]

[Name]

[Address]





FIRST PRINT

## ROYAL COMMISSIONS (AMENDMENT) BILL 1990

NEW SOUTH WALES



### EXPLANATORY NOTE

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

The object of this Bill is to amend the Royal Commissions Act 1923 so as:

- \* to provide for the release of reports of royal commissions when Parliament is not sitting; and
- \* to provide that certain coercive powers which may presently be exercised only by commissioners who are Judges of certain superior courts may also be exercised by Queen's Counsel (subject to those powers being conferred in a particular case by letters patent); and
- \* to establish new procedures for dealing with contempt of a commission, so that the alleged contempt will be dealt with by the Supreme Court, rather than being dealt with by the commissioner; and
- \* to make other minor or consequential amendments.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a proclaimed day or days.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Royal Commissions Act 1923.

Clause 4 contains transitional provisions. Under these provisions, the amendments made by the proposed Act will apply to existing as well as future royal commissions, but the new contempt provisions will not have a retrospective effect.

## *Royal Commissions (Amendment) 1990*

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### SCHEDULE 1 - AMENDMENTS

#### **Release of reports of royal commissions (proposed section 14B)**

Schedule 1 (1) proposes that, if neither House of Parliament is sitting, a report, or portion of a report, made by a royal commission may be presented to the Clerk of either House. The report is then for all purposes to be taken to have been laid before the House and to be a document published by the House and it consequently attracts the defence of absolute privilege for publication conferred by the Defamation Act 1974. The report attracts the same privileges and immunities as if it had been laid before and published by the House.

The proposed provision does not apply to a report of a person or body under other existing legislation which applies provisions of the Royal Commissions Act 1923 unless and until the other legislation expressly applies the provision.

#### **Exercise of coercive powers by Queen's Counsel (Part 2, Division 2 (sections 15, 17 and 18))**

Schedule 1 (2) is a consequential amendment. It changes the heading of Division 2 of Part 2 of the Act so as to encompass the proposed extension of the Division to cover Queen's Counsel (see Schedule 1 (3)).

Schedule 1 (3) proposes, if letters patent so provide, that, in addition to applying when the chairman of a commission or a sole commissioner is a Judge of a superior court, the Division applies when the chairman or sole commissioner holds an appointment as Queen's Counsel for New South Wales or another Australian jurisdiction. A consequential amendment is made to the definition of "commissioner".

Schedule 1 (4) is a consequential amendment, arising from the proposed extension of Division 2 of Part 2 to cover Queen's Counsel. The result will be that the power to compel witnesses to answer questions, or to produce documents or things, may apply to commissions constituted by Queen's Counsel as chairman or sole commissioner (as well as to commissions constituted by Judges) - but only if letters patent specifically declare that such powers are to be so exercisable.

Schedule 1 (5) proposes that the provision dealing with the powers of a commissioner under Division 2 of Part 2 be amended to remove the power of the commissioner to punish for contempt or for disobedience of any order or summons made or issued by the commissioner. The exercise of this power is now dealt with by proposed sections 18A-18D (see Schedule 1 (6)).

#### **Contempt (proposed sections 18A-18D)**

Schedule 1 (6) proposes the insertion of sections 18A-18D dealing with contempt of a commission. These provisions will appear in Division 2 of Part 2, and will therefore apply only to those commissions to which that Division expressly applies i.e. commissions headed by a Judge of the Supreme Court, and commissions headed by a Judge of an Australian superior court or Queen's Counsel to which the Division is applied by letters patent.

*Royal Commissions (Amendment) 1990*

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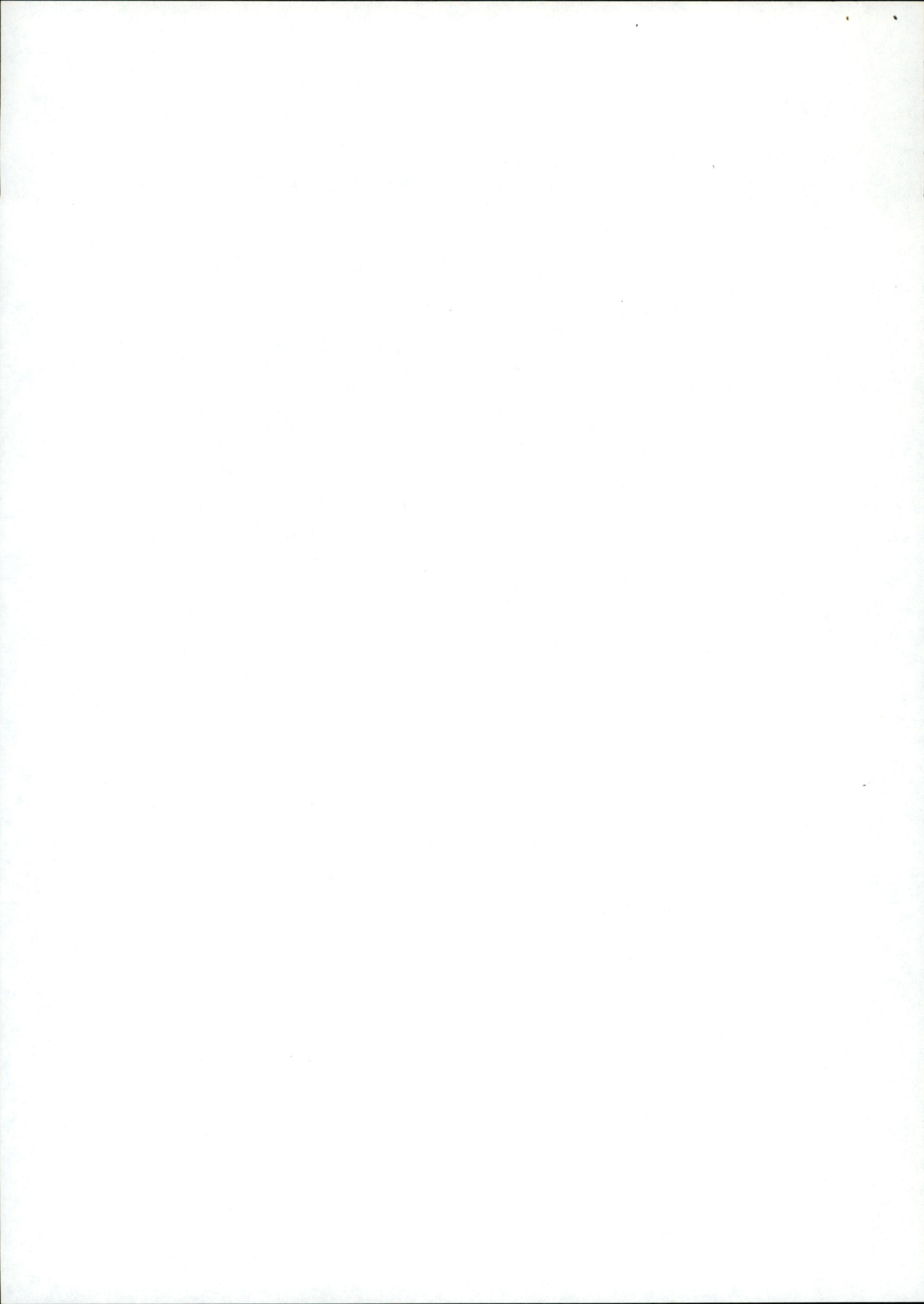
Proposed section 18A provides that a person is guilty of contempt of a commission if the person conducts himself or herself in a manner which would constitute contempt of the Supreme Court or if the person disobeys any order or summons of the commissioner. The wording of the provision is consistent with the terminology of the existing section 18 (1) (d). The expression "offender" is defined as including a person alleged to have committed contempt.

Proposed section 18B provides for a commissioner to present to the Supreme Court a certificate setting out details of the alleged contempt and for the examination and punishment of the offender by the Supreme Court.

Proposed section 18C contains ancillary provisions in relation to dealing with cases of contempt. A commissioner may summon a person to show cause why the offender should not be dealt with for contempt, and a commissioner may have the offender arrested and brought before the Supreme Court.

Proposed section 18D states that an act or omission which is both contempt and an offence can be punished as either contempt or an offence but not both.

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FIRST PRINT

**ROYAL COMMISSIONS (AMENDMENT) BILL 1990**

NEW SOUTH WALES

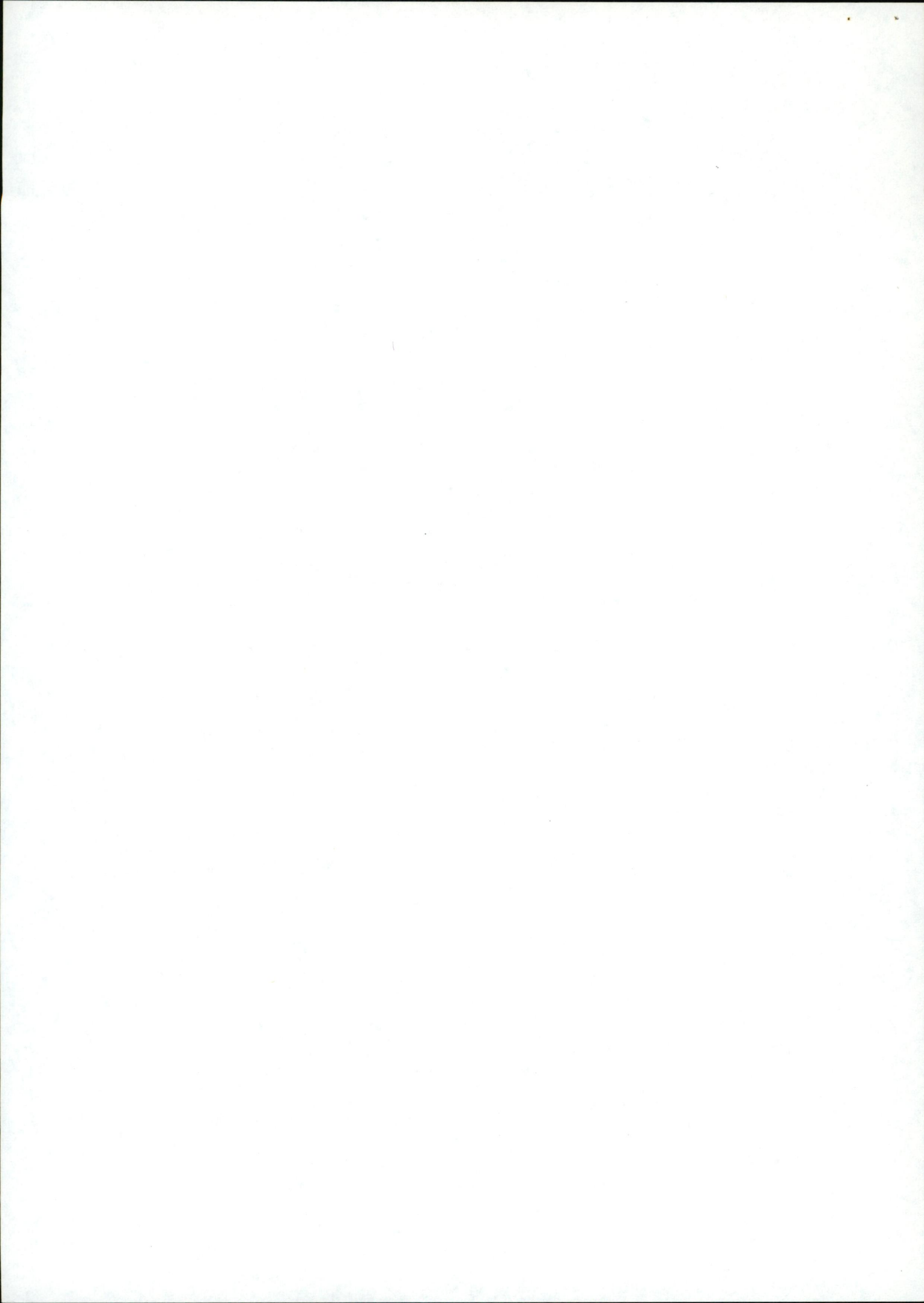


**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Royal Commissions Act 1923 No. 29
4. Transitional

**SCHEDULE 1 - AMENDMENTS**

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# ROYAL COMMISSIONS (AMENDMENT) BILL 1990

NEW SOUTH WALES



No. , 1990

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## A BILL FOR

An Act to amend the Royal Commissions Act 1923 with respect to reports of royal commissions, the powers of certain commissioners who are Queen's Counsel and the punishment of contempt of royal commissions; and for other purposes.

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*Royal Commissions (Amendment) 1990*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Royal Commissions (Amendment) Act 1990.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Royal Commissions Act 1923 No. 29**

3. The Royal Commissions Act 1923 is amended as set out in Schedule 1.

**Transitional**

4. (1) An amendment made by this Act extends to a commission under the Royal Commissions Act 1923 and subsisting at the commencement of the amendment.

(2) Without affecting the generality of subsection (1):

- (a) letters patent may be issued under section 15 of that Act, as amended, declaring that the provisions of Division 2 of Part 2 of that Act are to have effect in relation to such a commission; and
- (b) a declaration in such letters patent may specifically state under section 17 (5) of that Act, as amended, that section 17 shall apply to and with respect to the inquiry.

(3) An amendment made by this Act does not apply to a contempt alleged to have been committed before the commencement of the amendment.

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**SCHEDULE 1 - AMENDMENTS**

(Sec. 3)

(1) Section 14B:

After section 14A, insert:

**Release of reports when Parliament not sitting**

14B. (1) If neither House of Parliament is sitting, the Minister may present to the Clerk of either House a report made by a commission.

(2) When the report has been presented to and received by the Clerk:

- (a) the report is for all purposes to be taken to have been laid before the House and to be a document published by order or under the authority of the House; and
- (b) without limiting paragraph (a), the report attracts the same privileges and immunities as if it had been laid before the House and published by order or under the authority of the House; and
- (c) the report may be printed by the authority of the Clerk.

(3) Material may be omitted from such a report before its presentation to the Clerk of either House, on the recommendation of the commission or otherwise.

(4) This section does not have effect in relation to a report of a person or body to whom some or all of the provisions of this Act are applied by other legislation enacted before the commencement of this section, unless and until the other legislation expressly provides that this section applies to the person or body.

(2) Part 2, Division 2, heading:

Omit the heading, insert instead:

SCHEDULE 1 - AMENDMENTS - *continued*

**Division 2 - Special powers**

(3) Section 15 (**Application of Division**):

Omit section 15 (3), insert instead:

(3) The provisions of this Division shall also have effect if

- (a) the chairman of a commission or the sole commissioner holds an appointment as Queen's Counsel for the State of New South Wales or for any other Australian jurisdiction; and
- (b) in the letters patent by which the commission is issued, or in other letters patent under the Public Seal, the Governor declares that the provisions of this Division are to have effect in relation to the commission.

(4) In this Division:

**"commissioner"** means such a Judge or Queen's Counsel as chairman or sole commissioner.

(4) Section 17 (5):

Omit "section 15 (2)", insert instead "section 15".

(5) Section 18 (**Powers of commissioner**):

Omit section 18 (1) (d).

(6) Sections 18A-18D:

After section 18, insert:

**Contempt**

18A. (1) A person is guilty of contempt of a commission if the person does or omits to do anything which would, if the commission were the Supreme Court, be contempt of that Court or if the person disobeys any order or summons made or issued by the commissioner.

SCHEDULE 1 - AMENDMENTS - *continued*

(2) For the purposes of this Division, "offender" means a person guilty or alleged to be guilty of contempt of a commission.

**Punishment of contempt**

18B. (1) A contempt of a commission may be punished in accordance with this section.

(2) The commissioner may present to the Supreme Court a certificate setting out the details which the commissioner considers constitute the contempt.

(3) If the commissioner presents such a certificate to the Supreme Court:

- (a) the Supreme Court shall thereupon inquire into the alleged contempt; and
- (b) after hearing any witnesses who may be produced against or on behalf of the person charged with the contempt, and after hearing any statement that may be offered in defence, the Supreme Court (if satisfied that the person is guilty of the contempt) may punish or take steps for the punishment of the person in like manner and to the like extent as if the person had committed that contempt in or in relation to proceedings in the Supreme Court; and
- (c) the provisions of the Supreme Court Act 1970 and the rules of court of the Supreme Court shall, with any necessary adaptations, apply and extend accordingly.

(4) Such a certificate is prima facie evidence of the matters certified.

(5) Neither liability to be punished nor punishment under this section for contempt consisting of failure to attend before the commission as a witness in obedience to a summons excuses the offender from such attendance, and the commissioner may enforce attendance by warrant under section 16 or by exercise of any other available power.

SCHEDULE 1 - AMENDMENTS - *continued*

(6) A contempt of a commission may not be punished by a commissioner under section 18.

**General provisions regarding contempt**

18C. (1) In the case of any alleged contempt of a commission, the commissioner may summon the offender to appear before the commission at a time and place named in the summons to show cause why the offender should not be dealt with under section 18B for the contempt.

(2) If the offender fails to attend before the commission in obedience to the summons, and no reasonable explanation to the satisfaction of the commissioner is offered for the failure, the commissioner may, on proof of the service of the summons, issue a warrant to arrest the offender and bring the offender before the commissioner to show cause why the offender should not be dealt with under section 18B for the contempt.

(3) If a contempt of the commission is committed in the face or hearing of the commission, no summons need be issued against the offender, but the offender may be taken into custody then and there by a police officer and called upon to show cause why the offender should not be dealt with under section 18B for the contempt.

(4) The commissioner may issue a warrant to arrest the offender while the offender (whether or not already in custody under this section) is before the commission and to bring the offender forthwith before the Supreme Court.

(5) The warrant is sufficient authority to detain the offender in a prison or elsewhere, pending the offender's being brought before the Supreme Court.

(6) The warrant is to be accompanied by the certificate in which the commissioner sets out the details of the alleged contempt.

(7) The commissioner may revoke the warrant at any time before the offender is brought before the Supreme Court.



SCHEDULE 1 - AMENDMENTS - *continued*

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

**Act or omission that is both an offence and contempt**

18D. (1) An act or omission may be punished as a contempt of a commission even though it could be punished as an offence.

(2) An act or omission may be punished as an offence even though it could be punished as a contempt of a commission.

(3) If an act or omission constitutes both an offence and a contempt of a commission, the offender is not liable to be punished twice.

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