

Reprint
as at 5 August 2013

Commissions of Inquiry Act 1908

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

This Act is administered in the Department of Internal Affairs.

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An Act to consolidate certain enactments of the Parliament of New Zealand relating to commissions of inquiry appointed by the Governor-General in Council or by the Governor-General

Title: amended, on 1 January 1987, pursuant to section 29(2) of the Constitution Act 1986 (1986 No 114).

1 Short Title and savings

- (1) The Short Title of this Act is the Commissions of Inquiry Act 1908.
- (2) This Act is a consolidation of the enactments mentioned in the Schedule, and with respect to those enactments the following provisions shall apply:
 - (a) all Commissions, appointments, rules, Orders in Council, orders, instruments, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated:

- (b) all matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

1A Interpretation

In this Act, unless the context otherwise requires, **document** means a document in any form, whether signed or initialled or otherwise authenticated by its maker or not; and includes—

- (a) any writing on any material:
- (b) any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
- (d) any book, map, plan, graph, or drawing:
- (e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced.

Section 1A: inserted, on 4 July 1980, by section 2 of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

2 Appointment of Commissions of Inquiry

The Governor-General may, by Order in Council published in the *Gazette*, appoint any person or persons to be a Commission to inquire into and report upon any question arising out of or concerning—

- (a) the administration of the Government; or
- (b) the working of any existing law; or
- (c) the necessity or expediency of any legislation; or
- (d) the conduct of any officer in the service of the Crown; or
- (e) any disaster or accident (whether due to natural causes or otherwise) in which members of the public were killed or injured or were or might have been exposed to risk of death or injury:

(f) any other matter of public importance.

Section 2: replaced, on 2 October 1958, by section 2(1) of the Commissions of Inquiry Amendment Act 1958 (1958 No 58).

Section 2: amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 2(f): inserted, on 27 November 1970, by section 2 of the Commissions of Inquiry Amendment Act 1970 (1970 No 53).

3 Members of Commissions protected

So long as any member of any such Commission acts bona fide in the discharge of his duties, no action shall lie against him for anything he may report or say in the course of the inquiry.

Compare: 1903 No 20 s 3

4 Commissioners' powers

(1) For the purposes of the inquiry, every such Commission shall have the powers of a District Court, in the exercise of its civil jurisdiction, in respect of citing parties and conducting and maintaining order at the inquiry.

(2) *[Repealed]*

Section 4: replaced, on 13 December 1968, by section 2(1) of the Commissions of Inquiry Amendment Act 1968 (1968 No 73).

Section 4(1): amended, on 4 July 1980, by section 3(1) of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

Section 4(1): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

Section 4(2): repealed, on 4 July 1980, by section 3(2) of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

4A Persons entitled to be heard

(1) Any person shall, if he is a party to the inquiry or satisfies the Commission that he has an interest in the inquiry apart from any interest in common with the public, be entitled to appear and be heard at the inquiry.

(2) Any person who satisfies the Commission that any evidence given before it may adversely affect his interests shall be given an opportunity during the inquiry to be heard in respect of the matter to which the evidence relates.

- (3) Every person entitled, or given an opportunity, to be heard under this section may appear in person or by his counsel or agent.

Section 4A: replaced, on 4 July 1980, by section 4 of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

4B Evidence

- (1) The Commission may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the inquiry, whether or not it would be admissible in a Court of law.
- (2) The Commission may take evidence on oath, and for that purpose a member or officer of the Commission may administer an oath.
- (3) The Commission may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Commission thinks fit, verifying it by oath.

Section 4B: inserted, on 4 July 1980, by section 4 of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

4C Powers of investigation

- (1) For the purposes of the inquiry the Commission or any person authorised by it in writing to do so may—
- (a) inspect and examine any papers, documents, records, or things:
 - (b) require any person to produce for examination any papers, documents, records, or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made:
 - (c) require any person to furnish, in a form approved by or acceptable to the Commission, any information or particulars that may be required by it, and any copies of or extracts from any such papers, documents, or records as aforesaid.
- (2) The Commission may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this section shall be verified by statutory declaration or otherwise as the Commission may require.

- (3) For the purposes of the inquiry the Commission may of its own motion, or on application, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, furnished or produced to it be supplied to any person appearing before the Commission, and in the order impose such terms and conditions as it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy.
- (4) Every person shall have the same privileges in relation to the giving of information to the Commission, the answering of questions put by the Commission, and the production of papers, documents, records, and things to the Commission as witnesses have in Courts of law.

Section 4C: inserted, on 4 July 1980, by section 4 of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

4D Power to summon witnesses

- (1) For the purposes of the inquiry the Commission may of its own motion, or on application, issue in writing a summons requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the subject of the inquiry.
- (2) For the purposes of this Act, the power to issue summonses or to do any other act preliminary or incidental to the hearing of any matter by the Commission, may be exercised by the Commission or its Chairman, or by an officer of the Commission purporting to act by direction or with the authority of the Commission or its Chairman.

Section 4D: inserted, on 4 July 1980, by section 4 of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

5 Service of summons

- (1) A summons to a witness may be served—
 - (a) by delivering it to the person summoned; or
 - (b) by posting it by registered letter addressed to the person summoned at that person's usual place of abode.
- (2) The summons shall—

- (a) where it is served under subsection (1)(a), be served at least 24 hours before the attendance of the witness is required:
 - (b) where it is served under subsection (1)(b), be served at least 10 days before the date on which the attendance of the witness is required.
- (3) If the summons is posted by registered letter it shall be deemed for the purposes of subsection (2)(b) to have been served at the time when the letter would be delivered in the ordinary course of post.

Section 5: replaced, on 4 July 1980, by section 4 of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

6 Protection of persons appearing

Every witness giving evidence, and every counsel or agent or other person appearing before the Commission, shall have the same privileges and immunities as witnesses and counsel in Courts of law.

Section 6: replaced, on 4 July 1980, by section 4 of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

7 Witnesses' allowances

- (1) Every witness attending the inquiry to give evidence pursuant to a summons shall be entitled to be paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Criminal Procedure Act 2011, and those regulations shall apply accordingly.
- (2) On each occasion on which the Commission issues a summons under section 4D, the Commission, or the person exercising the power of the Commission under subsection (2) of that section, shall fix an amount which, on the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, shall be paid or tendered to the witness.
- (3) The amount fixed under subsection (2) of this section shall be the estimated amount of the allowances and travelling expenses to which, in the opinion of the Commission or person, the witness will be entitled according to the prescribed scales if

the witness attends at the time and place specified in the summons.

- (4) The whole or part of any amount fixed under subsection (2) of this section may, with the consent of the witness, be paid or tendered in the form of vouchers or tickets.

Section 7: replaced, on 4 July 1980, by section 4 of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

Section 7(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

8 Payment of witnesses' allowances

- (1) Where the Commission has obtained the authority in writing of the Minister of Internal Affairs for summoning any witness, the amounts of the witness's fees, allowances, and travelling expenses shall, if certified by the Chairman of the Commission, be paid by the Minister of Finance out of the Consolidated Account.
- (2) In every other case the person requiring the evidence of a witness—
- (a) shall be liable for payment of the witness's fees, allowances, and expenses; and
 - (b) shall, on making application for the issue of a witness summons, deposit with the Commission such sums as the Commission thinks sufficient.
- (3) Except where subsection (1) applies, the amounts of a witness's fees, allowances, and expenses shall be paid out of the sum deposited under subsection (2)(b).

Section 9: replaced, on 4 July 1980, by section 4 of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

9 Offences

- (1) Every person commits an offence who, after being summoned to attend to give evidence before the Commission or to produce to it any papers, documents, records, or things, without sufficient cause—
- (a) fails to attend in accordance with the summons; or
 - (b) refuses to be sworn or to give evidence, or having been sworn refuses to answer any question that the person is

- lawfully required by the Commission or any member of it to answer concerning the subject of the inquiry; or
- (c) fails to produce any such paper, document, record, or thing.
- (2) Every person commits an offence who—
- (a) wilfully obstructs or hinders the Commission or any member of it or any authorised person in any inspection or examination of papers, documents, records, or things pursuant to section 4C(1)(a); or
 - (b) without sufficient cause, fails to comply with any requirement of the Commission or any authorised person made under section 4C(1)(b) or (c); or
 - (c) without sufficient cause, acts in contravention of or fails to comply with any order made by the Commission under section 4C(3) or any term or condition of the order.
- (3) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$1,000.
- (4) No person summoned to attend the inquiry shall be convicted of an offence against subsection (1) unless at the time of the service of the summons, or at some other reasonable time before the date on which that person was required to attend, there was made to that person a payment or tender of the amount fixed under section 7(2).

Section 9: replaced, on 4 July 1980, by section 4 of the Commissions of Inquiry Amendment Act 1980 (1980 No 2).

Section 9(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

10 Reference of point of law to High Court

- (1) The Commission may refer any disputed point of law arising in the course of an inquiry to the High Court for decision, and for this purpose may either conclude the inquiry subject to such decision or may at any stage of the inquiry adjourn it until after such decision has been given.
- (2) The question shall be in the form of a special case to be drawn up by the parties (if any) to the inquiry, and, if the parties do not agree, or if there are no parties, to be settled by the Commission.

- (3) The decision of the High Court shall be final and binding upon all parties to the inquiry and upon the Commission.

Compare: 1903 No 20 s 10

Section 10(3): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

11 Power to award costs

The Commission, upon the hearing of an inquiry, may order that the whole or any portion of the costs of the inquiry or of any party thereto shall be paid by any of the parties to the inquiry, or by all or any of the persons who have procured the inquiry to be held:

provided that no such order shall be made against any person who has not been cited as a party or authorised by the Commission, pursuant to section 4A, to appear and be heard at the inquiry or summoned to attend and give evidence at the inquiry.

Compare: 1903 No 20 s 11

Section 11: amended, on 2 October 1958, by section 3(2) of the Commissions of Inquiry Amendment Act 1958 (1958 No 58).

12 Enforcing orders for costs

- (1) For the purpose of enforcing any order of the Commission for the payment of costs, a duplicate of such order may be filed by the person to whom the costs are payable in the office of the Court named in the order, and shall thereupon be enforceable in all respects as a final judgment of that Court in its civil jurisdiction.
- (2) In every case where an order for costs is made, the order shall name the Court in which the order may, if necessary, be enforced.
- (3) The Court so named shall, where the amount recoverable under the order—
- (a) exceeds 100 pounds, be the High Court; and
 - (b) does not exceed 100 pounds, be the District Court.

Section 12(3)(a): amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 12(3)(b): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

13 Powers of Judges and former Judges when Commissioners

- (1) In every case where, under this Act, or any other Act or the Letters Patent constituting the office of the Governor-General, the Governor-General or the Governor-General in Council appoints 1 or more Judges of the High Court or former Judges of the High Court to be members of a Commission for the purpose of holding an inquiry, every such Judge or retired Judge, and the Commission of which he or she is a member, shall, for the purposes of such inquiry, have the same powers, privileges, and immunities as are possessed by a Judge of the High Court in the exercise of his or her civil jurisdiction under the Judicature Act 1908.
- (2) Where any member of a Commission is a Judge of the High Court or a former Judge of the High Court, any order made by that Commission or any such member—
 - (a) shall, as soon as conveniently may be after its making, be drawn up and signed,—
 - (i) in the case of an order made by the Commission, by the Chairman (whose signature shall be judicially noticed); and
 - (ii) in the case of an order made by a member of the Commission who is a Judge of the High Court or a former Judge of the High Court, by that member (whose signature shall be judicially noticed); and
 - (b) may, for the purpose of enabling that order to be enforced, be filed in any office of the High Court.
- (3) Where any order made by a Commission (other than an order made under section 56A(1) of the Judicature Act 1908 (as applied by section 13A(1)(a) of this Act) or under section 56B of the Judicature Act 1908 (as applied by section 13A(1)(b) of this Act) or under section 13B of this Act) is, under subsection (2) of this section, filed in an office of the High Court, that order shall be enforceable in the same manner as a final judgment of the High Court in civil proceedings.
- (4) Where any member of a Commission who is a Judge or a former Judge of the High Court makes an order under section 56A(1) of the Judicature Act 1908 (as applied by section 13A(1)(a) of this Act) or under section 56B of the Judicature Act 1908 (as applied by section 13A(1)(b) of this Act) or under

section 13B of this Act, that order shall be enforceable as if it were an order of the High Court.

- (5) Where any member of a Commission is a Judge of the High Court or a former Judge of the High Court,—
- (a) the provisions of this section shall, in relation to that member, apply in the place of the provisions of section 3; and
 - (b) section 4(1) shall, in relation to that Commission, be read as if, for the words “a District Court”, there were substituted the words “the High Court”; and
 - (c) section 10 shall, in relation to that Commission, be read as if, for the words “High Court” in both places where they appear, there were substituted in each case the words “Court of Appeal”.

Compare: 1905 No 13 ss 2, 3

Section 13: replaced, on 29 July 1995, by section 2 of the Commissions of Inquiry Amendment Act 1995 (1995 No 48).

13A Powers in relation to witnesses

- (1) Notwithstanding the provisions of section 9,—
- (a) where any witness who is compellable to attend to give evidence at any hearing of a Commission and who has been duly summoned fails to attend at the time and place appointed, any member of that Commission who is a Judge of the High Court or a former Judge of the High Court may exercise, in relation to that witness, the powers conferred on the High Court by section 56A(1) of the Judicature Act 1908; and the provisions of that section shall, with all necessary modifications, apply accordingly; and
 - (b) where, in any proceedings before a Commission, a witness, without offering any just excuse, refuses to give evidence when required, or refuses to produce any document which the witness is required to produce, or refuses to be sworn or having been sworn refuses to answer such questions concerning the inquiry as are put to that witness, any member of that Commission who is a Judge of the High Court or a former Judge of the High Court may exercise, in relation to that witness,

the powers conferred on the High Court by section 56B of the Judicature Act 1908; and the provisions of that section shall, with all necessary modifications, apply accordingly.

- (2) Any member of a Commission who is a Judge of the High Court or a former Judge of the High Court may,—
- (a) in exercising the powers conferred by section 56A(1) of the Judicature Act 1908 (as applied by subsection (1)(a) of this section), issue to every constable or to a named constable a warrant requiring every constable or the named constable, as the case may be, to arrest a witness and bring that witness before the Commission; and
 - (b) in exercising the powers conferred by section 56B of the Judicature Act 1908 (as applied by subsection (1)(b) of this section), issue to every constable or to a named constable and to the prison manager of any prison a warrant for the arrest and detention of any witness in respect of whom an order made under section 56B(1) of the Judicature Act 1908 (as so applied) is in force (which warrant must contain the information prescribed for the purposes of section 165 of the Criminal Procedure Act 2011).

Section 13A: inserted, on 29 July 1995, by section 2 of the Commissions of Inquiry Amendment Act 1995 (1995 No 48).

Section 13A(2)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 13A(2)(b): amended, on 1 June 2005, by section 206 of the Corrections Act 2004 (2004 No 50).

13B Powers to punish for contempt of Commission

Where a Judge of the High Court or a former Judge of the High Court is a member of a Commission and any person does, in relation to—

- (a) that Commission; or
- (b) any member of that Commission; or
- (c) any officer of that Commission; or
- (d) any witness; or
- (e) any hearing of that Commission; or
- (f) any order or direction of that Commission; or

(g) the inquiry being conducted by that Commission,—
any act that would, if done in relation to the High Court or a Judge of the High Court or any Registrar or any officer of the High Court or any witness or any proceedings of the High Court or any order or direction of the High Court, be contempt of Court, the doing of that act, whether in the face of that Commission or otherwise, shall constitute contempt of that Commission, and any member of that Commission who is a Judge of the High Court or a former Judge of the High Court may punish that person for contempt of that Commission by exercising, in relation to that person, the same powers as a Judge of the High Court would have had if that person had been guilty of contempt of Court (including the powers conferred by section 56C of the Judicature Act 1908); and the provisions of section 56C of the Judicature Act 1908 shall, with all necessary modifications, apply accordingly.

Section 13B: inserted, on 29 July 1995, by section 2 of the Commissions of Inquiry Amendment Act 1995 (1995 No 48).

13C Right of appeal against order made in respect of contempt of Commission

Where any member of a Commission who is a Judge of the High Court or a former Judge of the High Court has, under section 56A(1) of the Judicature Act 1908 (as applied by section 13A(1)(a) of this Act) or under section 56B of the Judicature Act 1908 (as applied by section 13A(1)(b) of this Act) or under section 13B of this Act made an order against any person, that person may, in accordance with and subject to the terms of subpart 5 of Part 6 of the Criminal Procedure Act 2011, appeal to the Court of Appeal against the order as if that person had been found guilty in the High Court of a criminal contempt of the High Court; and the provisions of that section shall, with all necessary modifications, apply accordingly.

Section 13C: inserted, on 29 July 1995, by section 2 of the Commissions of Inquiry Amendment Act 1995 (1995 No 48).

Section 13C: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

13D Jurisdiction of High Court during incapacity of Commissioner or following completion of inquiry

Where an order or warrant has been made or issued under section 56A(1) of the Judicature Act 1908 (as applied by section 13A(1)(a) of this Act) or under section 56B of the Judicature Act 1908 (as applied by section 13A(1)(b) of this Act) or under section 13B of this Act by a member of a Commission who is a Judge of the High Court or a former Judge of the High Court, and anything remains to be done or suffered pursuant to the order or warrant—

- (a) at any time while that member of the Commission is incapable of acting by reason of illness, absence, or other cause; or
 - (b) at any time after the Commission has delivered its final report to the Governor-General or to a Minister,—
- the High Court may vary or rescind the order or warrant.

Section 13D: inserted, on 29 July 1995, by section 2 of the Commissions of Inquiry Amendment Act 1995 (1995 No 48).

14 Power to prescribe scale of costs

Rules prescribing a scale of costs payable in respect of any inquiry under this Act may be made in the manner provided in section 51C of the Judicature Act 1908.

Section 14: replaced, on 1 January 1986, by section 11(2) of the Judicature Amendment Act (No 2) 1985 (1985 No 112).

15 Extent of Act

This Act shall extend and apply to all inquiries held by Commissioners appointed by the Governor-General or the Governor-General in Council under any Act or such Letters Patent as aforesaid.

Compare: 1905 No 13 s 4

Schedule

s 1(2)

Enactments consolidated

Commissioners Act 1903 (1903 No 20)

Commissioners Act Amendment Act 1905 (1905 No 13)

Statute Law Amendment Act 1906 (1906 No 58)

Amendment(s) incorporated in the Act(s).

Eprint notes

1 *General*

This is an eprint of the Commissions of Inquiry Act 1908 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *About this eprint*

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

3 *Amendments incorporated in this eprint*

Legislation Act 2012 (2012 No 119): section 77(3)
Criminal Procedure Act 2011 (2011 No 81): section 413
