



ANALYSIS

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1989, No. 14

An Act to amend the Commissions of Inquiry Act 1966
(28 July 1989)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Commissions of Inquiry Amendment Act 1989, and shall be read together with and deemed part of the Commissions of Inquiry Act 1966 (hereafter referred to as "the principal Act").

2. Intepretation - Section 2 of the principal Act is amended by adding after the definition of "Constitution", the following new definition -

"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:

- (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 the High Court.

6D. 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."

6. Service of summons - The principal Act is amended by repealing section 7 and substituting the following new section -

"7. Service of summons - (1) A summons to a witness may be served -

- (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 one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) or being reproduced."

3. Queen's Representative may appoint Commissions of Inquiry - Subsection (1) of section 3 of the principal Act is amended by adding the following new paragraph -

"(f) any other matter of public importance"

4. Commissioner's powers - Section 5 of the principal Act is amended by omitting therefrom the words "summoning witnesses, administering oaths, hearing evidence".

5. New sections substituted - The principal Act is amended by repealing section 6, and substituting the following new sections -

"6A. 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.

6B. 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.

6C. 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:

- (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 paragraph (a) of subsection (1) of this section, be served at least 24 hours before the attendance of the witness is required;
 - (b) Where it is served under paragraph (b) of sub-section (1) of this section, be served at least 3 days before the attendance of the witness is required.
- (3) If the summons is posted by registered letter it shall be deemed for the purposes of paragraph (b) of subsection (2) of this section to have been served at the time when the letter would be delivered in the ordinary course of post."

7. Protection of witnesses and counsel - Section 8 of the principal Act is amended by inserting after the words "and every counsel" the words "or agent or other person".

8. Witnesses' allowances Section 9 of the principal Act is amended by omitting therefrom the words "rules of the High Court 1916" and substituting the words "Code of Civil Procedure 1980-81".

9. Non-attendance etc of witness - The principal Act is amended by repealing section 11, and substituting the following section:

- "11. Non-attendance etc of witness - (1) Every person commits an offence who, after being summoned to attend to give evidence before the Commission or to produce to it any paper, document, record, or thing, 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 6C (1) (a); or,
 - (b) Without sufficient cause, fails to comply with any requirement of the Commission or any authorised person made under section 6C (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 6C (3), or any term or condition of such order.

(3) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$5,000.

(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 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 9 of this Act."

10. Power to award costs - Section 13 of the principal Act is amended by omitting therefrom the words "section 6 of this Act" and substituting the words "section 6(A)"

11. Powers of Judges when Commissioners - Section 15 of the principal Act is amended by deleting subsection (3).

This Act is administered by the Crown Law Office.