

COMMISSIONS OF INQUIRY AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill is based on recommendations made by the Public and Administrative Law Reform Committee in its review of the Commissions of Inquiry Act 1908.

Clause 1 relates to the Short Title.

Clause 2 removes the existing powers of a Commission of Inquiry to summon witnesses, administer oaths, and hear evidence.

Clause 3 substitutes a number of new sections in the principal Act.

Section 4B deals with evidence.

Subsection (1) is new. The Commission may receive as evidence any statement or matter that may assist it to deal effectively with the subject of the inquiry.

Subsection (2) replaces part of section 4 (1) of the principal Act. The Commission may take evidence on oath.

Subsection (3) is new. The Commission may permit a witness to give evidence by tendering a written statement.

Section 4c is new. The Commission or a person authorised by it may inspect and examine books and documents, require their production for examination, and require the furnishing of information. It may also order that any information or documents furnished or produced to it shall be supplied to any person on such terms and conditions as it thinks fit. The section is based on sections 12 and 15 (3) of the Commerce Act 1975.

Section 4d replaces part of section 4 of the principal Act (including the subsection (2) repealed by *clause 2 (2)* of this Bill). *Section 4d* gives power to issue summonses requiring the attendance of witnesses and the production of books, papers, documents, records, or things relevant to the inquiry.

Section 5 replaces section 5 of the principal Act, as to the service of a witness summons.

Subsection (1) (c) is new. It allows service by registered letter.

Subsections (2) and (3): At present a summons must be served at least 24 hours before the witness's attendance is required. Where service is effected by leaving the summons at the usual place of abode of the person summoned or by posting it by registered letter to that address, this subsection alters the period to 10 days before the date on which the attendance of the witness is required.

Section 6 replaces section 6 of the principal Act. At present, although counsel has the same privileges and immunities as if he were in a Court of law, a witness does not unless he attends pursuant to a summons issued by the

Commission. This clause omits the reference to a summons. Every witness, counsel, agent, or other person appearing will have the same privileges and immunities as witnesses and counsel in Courts of law.

Section 7: Subsection (1) replaces, in redrafted form, section 7 of the principal Act. Where a witness attends pursuant to a summons the witness is entitled to the prescribed allowances. The existing proviso, under which persons prosecuting a claim before a Commission are not entitled to be paid, is not re-enacted.

Subsection (2) is new. The appropriate allowances and travelling expenses are to be paid or tendered to the witness on the service of the summons or at some other reasonable time before the date on which the witness is required to attend.

Section 8 replaces, in redrafted form, section 8 of the principal Act. Where the Commission has obtained the authority of the Minister of Internal Affairs for summoning a witness, the witness's expenses are paid by the Minister of Finance out of the Consolidated Account. In every other case the person requiring the evidence of a witness must pay.

Section 9 specifies offences. *Subsection (1)* re-enacts, with drafting amendments, section 9 of the principal Act. A person commits an offence who, after being summoned, without lawful excuse fails to attend, refuses to be sworn or to give evidence, or to answer questions, or fails to produce books, papers, records, or things as required by the summons.

Subsection (2) is new. It makes it an offence to wilfully interrupt or obstruct a hearing; to wilfully use insulting or false and defamatory words towards the Commission or a member of it; to wilfully obstruct or hinder an inspection of documents or things under *section 4c*; or without lawful excuse to contravene orders or requirements of the Commission under *section 4c*.

Subsection (3): The penalty for an offence is increased from a maximum of \$40 to a maximum of \$1,000.

Clause 4 effects a consequential repeal.

Hon. Mr Highet

COMMISSIONS OF INQUIRY AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Commissions of Inquiry Act 1908

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title—This Act may be cited as the Commissions of Inquiry Amendment Act 1980, and shall be read together with and deemed part of the Commissions of Inquiry Act 1908* (hereinafter referred to as the principal Act).

10 2. Commissioners' powers—(1) Section 4 of the principal Act (as substituted by section 2 (1) of the Commissions of Inquiry Amendment Act 1968) is hereby amended by omitting from subsection (1) the words “summoning witnesses, administering oaths, hearing evidence”.

15 (2) Section 4 of the principal Act (as so inserted) is hereby further amended by repealing subsection (2).

*Reprinted 1974, Vol. 3, p. 2267

3. New sections substituted—The principal Act is hereby amended by repealing sections 5 to 9, and substituting the following sections:

“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. 5

“(2) The Commission may take evidence on oath, and for that purpose a member or officer of the Commission may administer an oath. 10

“(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. 15

“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 books, papers, documents, records, or things: 20

“(b) Require any person to produce for examination any books, 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 books, papers, documents, or records to be made: 25

“(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 books, papers, documents, or records as aforesaid. 30

“(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. 35

“(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 book, 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. 40

“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
5 to give evidence, and to produce any books, 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
10 summonses requiring the attendance of witnesses or the production of books, papers, documents, records, or things, 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 Commis-
15 sion purporting to act by direction or with the authority of the Commission or its Chairman.

“5. **Service of summons**—(1) A summons to a witness may be served—

“(a) By delivering it to the person summoned; or
20 “(b) By leaving it at the usual place of abode of the person summoned; or

“(c) By posting it by registered letter addressed to the person summoned at that person’s usual place of abode.

25 “(2) The summons shall—

“(a) Where it is served under subsection (1) (a) of this section, be served at least 24 hours before the attendance of the witness is required:

“(b) Where it is served under subsection (1) (b) or (c)
30 of this section, 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) of this
35 section to have been served at the time when the letter would be delivered in the ordinary course of post.

“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
40 and immunities as witnesses and counsel in Courts of law.

“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 Summary Proceedings Act 1957, and those regulations shall apply accordingly. 5

“(2) On the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, there shall be paid or tendered to the witness the estimated amount of the allowances and travelling expenses to which the witness is entitled according to the prescribed scales. 10

“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. 15

“(2) In every other case the person requiring the evidence of a witness— 20

“(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. 25

“(3) Except where subsection (1) of this section applies, the amounts of a witness’s fees, allowances, and expenses shall be paid out of the sum deposited under subsection (2) (b) of this section. 30

“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 books, papers, documents, records, or things, without lawful excuse—

“(a) Fails to attend in accordance with the summons; or 35

“(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 40

“(c) Fails to produce any such paper, document, record, or thing.

“(2) Every person commits an offence who—

“(a) Wilfully interrupts or obstructs any hearing of the Commission or otherwise misbehaves at a hearing; or

5 “(b) By writing or speech, wilfully uses any insulting words towards the Commission or any member of it, or uses words that are false and defamatory of the Commission or of any member of it, whether at a hearing or not; or

10 “(c) Wilfully obstructs or hinders the Commission or any member of it or any authorised person in any inspection or examination of books, papers, documents, records, or things pursuant to section 4c (1) (a) of this Act; or

15 “(d) Without lawful excuse, fails to comply with any requirement of the Commission or any authorised person made under section 4c (1) (b) or (c) of this Act; or

20 “(e) Without lawful excuse, acts in contravention of or fails to comply with any order made by the Commission under section 4c (3) of this Act or any term or condition of the order.

“(3) Every person who commits an offence against this section is liable on summary conviction to a fine not exceeding \$1,000.

25 “(4) No person summoned to attend the inquiry shall be convicted of an offence against subsection (1) of this section unless at the time of the service of the summons, or at some other reasonable time before the date on which that person
30 was required to attend, there was made to that person a payment or tender of a sum in respect of that person’s allowances and travelling expenses in accordance with section 7 (2) of this Act.”

35 **4. Repeal**—The Commissions of Inquiry Amendment Act 1967 is hereby consequentially repealed.