

REPRINTED ACT
(WITH AMENDMENT INCORPORATED)
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1966 No. 14

An Act to make provision for the appointment of Commissions of Inquiry by the [Queen's Representative] by Order in Executive Council

(25 November 1966)

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

The word "Parliament" was substituted for the words "Legislative Assembly" by section 6 of the Constitution Amendment (No.9) Act 1980-81.

1. Short Title - This Act may be cited as the Commissions of Inquiry Act 1966.

2. Interpretation - In this Act unless the context otherwise requires -

"Constitution" means the Constitution of the Cook Islands as set out in the Second Schedule of the Cook Islands Constitution Amendment Act 1965;

["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 anything 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.]

"[Queen's Representative] means the [Queen's Representative] of the Cook Islands duly appointed under Article 3 of the Constitution;

"High Court" means the High Court of the Cook Islands appointed under the Constitution;

"Ship" means every description of vessel used in navigation however propelled.

The definition of "Document" was inserted by section 2 of the Commissions of Inquiry Amendment Act 1989.

The words "Queen's Representative" were substituted for the words "High Commissioner" by section 4(3) of the Constitution Amendment (No.10) Act 1981.

3. [Queen's Representative] may appoint Commissions of Inquiry - (1) The [Queen's Representative] may, by Order in Executive Council, 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 including any shipping casualty (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]
- (2) For the purpose of paragraph (e) of subsection (1) of this section a shipping casualty shall be deemed to occur -
- (a) When on or near the coasts of any island of the Cook Islands any ship is lost, abandoned, stranded or materially damaged or has been in collision with any ship; or
 - (b) When any loss of life ensues by reason of any casualty occurring to any ship on or near the coasts of any island of the Cook Islands; or
 - (c) When in any place any such loss, abandonment, stranding, material damage, or casualty as aforesaid occurs, and any witness is found in the Cook Islands; or
 - (d) When in any place any such loss, abandonment, stranding, material damage, or casualty as aforesaid occurs or is supposed to have occurred to any ship registered in the Cook Islands pursuant to the provisions of any law made in that behalf and for the time being in force; or
 - (e) When any ship proceeds to sea from any harbour in the Cook Islands and is lost or is supposed to have been lost and any evidence is obtainable in the Cook Islands as to the circumstances under which she proceeded to sea or was last heard of.

The words "Queen's Representative" were inserted in subsection (1) (in two places) by section 4(3) of the Constitution Amendment (No.10) Act 1981.

The letter "n" has been deleted from the word "Expendiency" in paragraph (c) of subsection (1), to correct a typographical error.

Paragraph (f) was inserted by section 3 of the Commissions of Inquiry Amendment Act 1989.

4. 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.

5. Commissioners' powers - Every such Commission shall for the purpose of the inquiry have the power and status of a Judge of the High Court in respect of citing parties interested in the inquiry, and conducting and maintaining order at the inquiry.

The words "summoning witnesses, administering oaths, hearing evidence" were deleted from by section 4 of the Commissions of Inquiry Amendment Act 1989.

6. (Repealed by section 5 of the Commissions of Inquiry Amendment Act 1989).

[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.

Section 6A was inserted by section 5 of the Commissions of Inquiry Amendment Act 1989.

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.

Section 6B was inserted by section 5 of the Commissions of Inquiry Amendment Act 1989.

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;

(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 of 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 question put by the Commission, and the production of papers, documents, records, and things to the Commission as witnesses have in the High Court.

Section 6C was inserted by section 5 of the Commissions of Inquiry Amendment Act 1989.

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 purpose of this Act, the power to issue summonses to the hearing 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 6D was inserted by section 5 of the Commissions of Inquiry Amendment Act 1989.

[7. 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 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 subsection (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.]

Section 7 was substituted for the original section 7 by section 6 of the Commissions of Inquiry Amendment 1989.

8. Protection of witnesses and counsel - Every witness attending and giving evidence in pursuance of any such summons, and every counsel [or agent or other person] appearing before any Commission, shall have the same privileges and immunities as witnesses and counsel in the High Court.

The words in square brackets were inserted by section 7 of the Commissions of Inquiry Amendment Act 1989.

9. Witnesses' allowances - Every witness attending in pursuance of any such summons shall be entitled to expenses for travelling and maintenance during his absence from his usual place of abode according to the scale allowed to witnesses in civil cases by the [Code of Civil Procedure 1980-81].

Provided that persons prosecuting any claim before a Commission shall not be entitled to be paid any moneys under this section.

The words in square brackets were inserted by section 8 of the Commissions of Inquiry Amendment Act 1989.

10. Payment of Witnesses' allowances - (1) Where the Commission has obtained the authority in writing of the Minister of Justice for summoning any witness, the expenses of that witness shall, if certified by the Chairman of the Commission be paid by the Minister of Finance out of the Government Account.

(2) In every other case the person requiring the evidence of any witness shall, before the summons is issued, deposit with the Commission such sum of money as the Commission deems sufficient, and the expenses of the witness shall be paid out of the sum so deposited.

[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 or 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.]

Section 11 was substituted for the original section 11 by section 9 of the Commission of Inquiries Amendment Act 1989.

12. 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 the 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.

13. 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 [6A] ... to appear and be heard at the inquiry or summoned to attend and give evidence at the inquiry.

The words in square brackets were inserted, and the words "of this Act" deleted, by section 10 of the Commissions of Inquiry Amendment Act 1989.

14. Enforcing orders for costs - 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 any office of the High Court and shall thereupon be enforceable in all respects as a final judgement of that Court in its civil jurisdiction.

15. Powers of Judges when Commissioners - (1) In every case where under this Act, or any other Act for the time being in force in the Cook Islands, the [Queen's Representative] or the [Queen's Representative] in Executive Council appoints one or more Judges of the High Court to be members of a Commission for the purpose of holding any inquiry, every such Judge, and the Commission of which he is a member, shall, for all 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 its civil jurisdiction under the Constitution.

(2) For the purpose of enforcing any order made by such Commission the order shall, as soon as conveniently may be after the making thereof, be drawn up and signed by the Chairman (whose signature and status shall be judicially noticed), and may be filed in any office of the High Court, whereupon the order shall be enforceable in the same manner as a final judgement of that Court in civil proceedings.

(3) (Repealed by section 11 of the Commissions of Inquiry Amendment Act 1989)

The words "Queen's Representative" in subsection (1) were substituted for the words "High Commissioner" (in two places) by section 4(3) of the Constitution Amendment (No.10) Act 1981.

16. Power to make scale of costs - The [Queen's Representative] by Order in Executive Council may from time to time make rules prescribing a scale of costs payable in respect of any inquiry under this Act.

The words "Queen's Representative" were substituted for the words "High Commissioner" by section 4(3) of the Constitution Amendment (No. 10) Act 1981.

17. Extent of Act - This Act shall extend and apply to all inquiries held by Commissioners appointed by the [Queen's Representative] or the [Queen's Representative] by Order in Executive Council under any Act for the time being in force in the Cook Islands.

The words "Queen's Representative" were substituted for the words "High Commissioner" (in two places) by section 4(3) of the Constitution Amendment (No.10) Act 1981.

18. Revocation and Savings - (1) The Cook Islands Commissions of Inquiry Regulations 1958 are hereby revoked.

(2) Without limiting the provisions of the Acts Interpretation Act 1924 as amended and applied to the Cook Islands it is hereby declared that the revocation of any provision by this Act shall not affect any document made or any thing whatsoever done under any provision so revoked or under any corresponding former provision and every such document, or thing so far as it is subsisting or in force at the time of the revocation and could have been made or done under this Act shall continue and have effect as if it had been made or done under any corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

COMMISSIONS OF INQUIRY AMENDMENT ACT 1989

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 (hereinafter referred to as "the principal Act").

2. This section inserted a definition of "document" in section 2 of the principal Act.

3. This section amended section 3(1) of the principal Act by adding paragraph (f).

4. This section amended section 5 of the principal Act.

5. This section repealed section 6 of the principal Act, and substituted new sections 6A, 6B, 6C and 6D.

6. This section repealed section 7 of the principal Act and substituted a new section 7.

7. This section amended section 8 of the principal Act.
8. This section amended section 9 of the principal Act.
9. This section repealed section 11 of the principal Act and substituted a new section 11.
10. This section amended section 13 of the principal Act.
11. This section amended section 15 of the principal Act by repealing subsection (3).

This Act is administered by the Crown Law Office.