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ROYAL COMMISSIONS AMENDMENT BILL 1982

Date Introduced: 27 October 1982
House: House of Representatives
Presented by: Hon. N. A. Brown Q.C., M.P., Acting
Attorney-General

Short Digest of Bill

Purpose

To amend the Royal Commissions Act 1902 to facilitate obtaining a court order directed at a witness before a Commission refusing or failing to produce documents or answer questions; to permit issue of search warrants for items which the Commission believes may be concealed or destroyed if sought by summons; and to terminate the excuse of self-incrimination for failure to answer questions or produce documents.

Background

The Royal Commission into the activities of the Federated Ship Painters and Dockers Union, conducted by Mr Costigan Q.C., made a number of recommendations in Volume 1 of Interim Report No.4, based on investigations conducted to that date. The opinion is stated (at page 8) that a Royal Commissioner with a reasonable belief that a subpoena for documents would lead to their concealment or destruction should have "the power to issue" a search warrant. It is also strongly recommended that methods, such as those employed in the Victorian Evidence Act 1958, for compelling attendance of witnesses and answering of questions be adopted in the Commonwealth Royal Commissions Act 1902. As an illustration of the difficulties experienced by the Costigen Royal Commission, a resolution passed at a meeting of the union is cited (at page 139) to re-affirm the "decision of non-cooperation ... and this means that absolutely no questions will be answered except name, address and occupation."

The defence of self-incrimination, in addition to its historical significance may be viewed as a wider aspect of protection from interference for matters sub-judice. In the case of Hammond v Commonwealth of Australia (1982) 56 ALJR 767, Deane J., while not casting aspersions on the validity of Royal Commissions, said that their "actual

proceedings ... can amount to an interference with the due administration of justice and can constitute contempt of court" (at page 772).

Section 6DD, inserted in the **Royal Commissions Act** by amendment in 1912, renders the answer to a question inadmissible as evidence in any later civil or criminal proceedings. A new version substituted by **Act No. 26** of 1982 broadened the "answer to a question" provision to refer to the whole "course of giving evidence".

A seeming misapprehension that this provision overrode the common law privilege against self-incrimination is referred to in the Second Reading Speech and was effectively confirmed by the judgment in Hammond's case. Though it was unnecessary to the decision in that case, there are strong dicta that clear words would be required to render the privilege inoperative, and that section 6DD does not amount to that.

Main Provisions

The Bill will commence on a date to be proclaimed.

Clause 3 provides for the restriction of certain of the new powers to only those Royal Commissions for which the Letters Patent deliberately include them.

The existing sections 2 to 5 provide for witnesses to be summonsed to appear and to be examined on oath, with a \$1000 penalty for failure to attend. The new sections provide an alternative penalty of up to 6 months imprisonment. This penalty provision is similar to the terms of section 20 of the **Victorian Evidence Act 1958** (No. 6246) as modified by the **Penalties and Sentences Act 1981** (No. 9554), which commenced in September 1981.

The new section 4 facilitates obtaining of evidence through search warrant rather than by subpoena. Application may be made to a Judge of a prescribed court for issue of a warrant where the Commission believes on reasonable grounds that a "thing or things" relevant to its inquiry is at a certain location or will be within the next following 24 hours.

Clause 6 of the Bill inserts a new section 6A. New sub-section 6A(1) provides that it is not a reasonable excuse to refuse to produce documents on the ground that the documents may be incriminating. Sub-section 6A(2) provides that a person cannot refuse to answer a question on the grounds of self-incrimination.

The penal sanctions for refusal to attend or produce documents are further supplemented by new section 6C set out in clause 8. Upon certification by the Commission of such refusal, the Federal Court or a Supreme Court may make an order. The possibility of eventual sanctions for contempt of court is thus raised.

The original concept of a Royal Commission as an inquiry directed at some particular matter is modified where a Commission is part of a wider investigation. Although the differing role of the new and permanently established National Crimes Commission is referred to in the Second Reading Speech, provisions in clauses 9 and 15 both restrict and extend the flow of information to and from Royal Commissions set up on an ad hoc basis. New subsections 6D(3) and (4) permit the Commission to prohibit or restrict publication of information presented before it, with a \$2000 fine or up to 12 months imprisonment for violation. New section 6P permits the Commission to communicate information or furnish evidence to certain persons, including a Special Prosecutor or the National Crimes Commission.

The Commission's power to retain and make copies of documents on other things is modified to require their return to the person supplying them when no longer reasonably required, except where they are instead passed on to one of the persons or authorities specified in the new section 6P (clause 11).

Penal sanctions are further augmented in that offences under sections 6H or 6K of giving false testimony or destroying or concealing evidence may henceforth be dealt with summarily, with a maximum penalty under that procedure of \$2000 or 12 month's imprisonment (clauses 13 and 14).

The Costigan and Winneke Royal Commissions are themselves examples of Federal Government/State Government cooperation. The exercise by a Federal Royal Commission of powers and functions conferred by the Governor or a Minister of a State is permitted by new section 7AA (clause 17).

Clause 19 adds a general regulation-making power. An example of its applicability may be in prescribing the procedure for summons under new section 6C.

For further information, if required, contact:

References

Royal Commission on the Activities of the Federated Ship Painters and Dockers Union, Interim Report No. 4, Volume 1, July 1982.

Hammond v. Commonwealth of Australia, (1982) 56 AWR 767.
Full Court of the High Court of Australia, August 1982.

