PARLIAMENTARY COMMISSION OF INQUIRY (REPEAL) BILL 1986

Date introduced: 20 August 1986
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P., Attorney-General

DIGEST OF BILL

Purpose

To terminate the inquiry into the conduct of Mr Justice Lionel Murphy.

Background

A Commission of Inquiry into the conduct of Mr Justice Lionel Murphy was established by the Parliamentary Commission of Inquiry Act 1986 which was passed in May 1986. The inquiry was established to investigate specific allegations against Mr Justice Lionel Murphy including allegations made by a former member of the Federal Police and any which may have been contained in a secret volume of the findings of the Stewart Royal Commission. For further details on the background to the establishment of the Commission of Inquiry refer to the Digest for the Parliamentary Commission of Inquiry Bill 1986 (No. 86/98).

On 29 July 1986 Mr Justice Lionel Murphy announced to the High Court that he would resume sitting on the bench. Matters came to a head on 1 August 1986 when Mr Justice Lionel Murphy recommenced sitting on the bench. In his statement on this matter, Mr Justice Lionel Murphy announced that he had terminal cancer and was not expected to live very long. In the same statement, he stated 'Between July 15 and 30 I received from those assisting the Parliamentary Commission of Inquiry a number of purported allegations. In my view they are either untrue or do not constitute misbehaviour'. On the same day the Chief Justice of the High Court, Sir Harry Gibbs, also released a statement which read in part '... I regard it as most
undesirable that Mr Justice Murphy should sit while matters into which the Commission is inquiring remain unresolved, and before the Commission has made its report'.

In addition, the Acting Attorney-General, Senator Evans, released a statement on that day which stated: 'The Government's view is that the most appropriate course in all the circumstances would be either for the Commission legislation to be repealed or, alternatively, for the Commission's proceedings to be suspended and then lapse after the presently fixed reporting date of 30 September'.

On 5 August the Commission of Inquiry delivered a report to the Presiding Officers which confirmed the state of Mr Justice Lionel Murphy's health. The medical certificate was subsequently released and shows that Mr Justice Lionel Murphy has approximately 3-9 months to live. After issuing the medical report, the Commission of Inquiry determined to adjourn further hearings until 19 August 1986 (the commencement of the Budget Session) at the earliest.

The Commission has reported that it will not be able to complete its work by 30 September and, if it is to continue, would require an extension to at least March 1987. The Commission was also of the opinion that it would be contrary to natural justice to continue the Inquiry if Mr Justice Lionel Murphy was dead or so sick as not to be able to answer any allegations. What may well be the Commission's last report, which dealt with the meaning of misbehaviour for the purposes of section 72 of the Constitution, was tabled in the Senate on 21 August 1986.

Main Provisions

Clause 3 will repeal the Parliamentary Commission of Inquiry Act 1986.

Clause 5 will continue the effect of section 16 of the repealed Act and will prevent statements made to the Commission from being used in court proceedings.

The Commission's documents are to come under the Presiding Officers control and only the Presiding Officers may have access to Class A documents (i.e. documents concerning the conduct of Mr Justice Lionel Murphy). The Presiding Officers may give access to Class B documents (i.e. those relating to the meaning of misbehaviour or other non Class A documents) (clause 7).
It will be an offence to disclose an allegation against Mr Justice Lionel Murphy derived from the Commission or any information or statement by the Commission that relate to an allegation against Mr Justice Lionel Murphy. The maximum penalty will be a $5000 fine and/or 6 months imprisonment for people or a $100 000 fine for corporations (clause 8).

Clause 9 will continue the power to grant legal and/or financial assistance to people appearing before the Commission.

Clause 11 will appropriate the funds necessary for the Commission's operations.

Remarks

During debate on this Bill in the Senate on 21 August a number of amendments were proposed.

The first involved clause 5 of the Bill which deals with statements by witnesses before the Commission. Following amendments moved by Senator Durack, the government agreed that the clause be excluded from the Bill as no witness had appeared before the Commission.

The second was moved by Senator Durack and sought to give the Commission specific power to communicate with other crime authorities. This motion was defeated along party lines with the Australian Democrats voting with the government.

The next amendment was moved by Senator Evans and sought to enable the release of Class A documents after 30 years. This motion was agreed to without a division.

A further amendment was proposed by Senator Durack to alter clause 8 of the Bill which will prohibit the disclosure or publication of evidence before the Commission. The amendment sought to prohibit a member of the Commission or its staff from disclosing information gained through their position with the Commission. Their would be no prohibition on a corporation disclosing such information. This motion was passed with the Australian Democrats voting with the opposition.

In the House of Representatives, the first three amendments were agreed to but that regarding clause 8 was rejected and the Attorney-General proposed another clause 8 which would prohibit the publication of a Class A document.
prepared by the Commission, staff of the Commission or council assisting the Commission. Under the Government's proposal this prohibition would apply to corporations.

Parliament rose for a three week break prior to the House of Representatives proposed clause 8 being considered by the Senate and, as such, the Bill remains in limbo.

For further information, if required, contact the Law and Government Group.

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