

House of Representatives
**Supplementary
Order Paper**

Tuesday, 20 August 2013

Inquiries Bill

*Proposed amendments for the consideration
of the Committee of the whole House*

Key:

- **this is inserted text**
- **~~this is deleted text~~**

Note: This Supplementary Order Paper shows amendments to the Bill that are being proposed by the Minister for the purposes of consideration in Committee of the whole House. This document does—

- **NOT have official status in terms of unamended text**
 - **NOT have the status of an as-reported version of the Bill.**
-

Explanatory note

This Supplementary Order Paper sets out proposed amendments to the Inquiries Bill that reform the legal framework for public inquiries, including Royal commissions, and provides government inquiries with the same legal powers and protections.

The Supplementary Order Paper has been developed in light of lessons learned from the Royal Commission on the Pike River Coal Mine Tragedy and the Royal Commission of Inquiry into Building Failure Caused by the Canterbury Earthquakes.

In general terms, the proposed amendments—

- provide greater flexibility for the process of establishing inquiries whilst still maintaining the ability to set the parameters of an inquiry tightly:
- clarify the process for appointing counsel to assist an inquiry:
- clarify the discretion of an inquiry to manage its process in applying the principles of natural justice:
- ensure that inquiries are able to obtain information that contains expert opinion as well as fact:
- enable an inquiry to recompense participants for their reasonable expenses, without having to summon those persons to attend the inquiry.

In *clause 4*, 3 new definitions are included for the purpose of clarifying the substantive changes, including provision to enable more than 1 Minister to be the appointing Minister of a government inquiry.

Clause 7 is replaced. The principal change (in *new subclause (3)*) is to introduce flexibility as to the notification of the terms of reference, either by the relevant Minister in the document that establishes an inquiry, or at a later date by *Gazette* notice. The Minister may consult the chairperson of the inquiry before notifying the terms of reference.

Clause 13 enables an inquiry to request the appointment of counsel to assist and the Solicitor-General to make an appointment but, in doing so, an inquiry and the Solicitor-General must consider and have regard to the specified matters, and the Solicitor-General must consult the inquiry on the proposed appointee and on the terms and conditions of appointment.

In *clause 14(2)*, the requirement relating to the conduct of an inquiry applies to making findings that are adverse to any person as well

**Proposed amendments to the
Inquiries Bill**

as to decision making. In addition, *subclause (2A)* sets out some minimum requirements that apply when an inquiry makes a finding that is adverse to any person. These changes make *clause 17* redundant, which is removed.

Clause 26 is amended to clarify that an inquiry has a discretion to reimburse persons participating in an inquiry, whether or not as witnesses and whether or not actually present.

The amendment in *clause 31* reflects a change in terminology enacted by the Criminal Procedure Act 2011.

Amendments to *Schedule 1 and 2* update the consequential arrangements.

Departmental disclosure statement

The Department of Internal Affairs considers that a departmental disclosure statement is not required to be prepared for this Supplementary Order Paper.

Hon Chris Tremain, in Committee, to propose the amendments shown in the following document.

Hon Chris Tremain

Inquiries Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Inquiries Act **2008**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

3 Purpose

- (1) The purpose of this Act is to reform and modernise the law relating to inquiries, by—
- (a) providing for the establishment of both public and government inquiries to inquire into matters of public importance; and

- (b) recognising and providing for Royal commissions established under the Royal prerogative; and
 - (c) enabling those inquiries to be carried out effectively, efficiently, and fairly.
- (2) The Act therefore sets out, in relation to any inquiry to which this Act applies,—
- (a) how an inquiry is set up and its members are to be appointed; and
 - (b) the powers, duties, and privileges of an inquiry and the immunities that apply to the inquiry and its members; and
 - (c) the protection available for witnesses and counsel appearing before an inquiry; and
 - (d) the principles governing the procedure of an inquiry, including those relating to evidential matters; and
 - (e) provision for recourse to the court by, or in relation to, an inquiry; and
 - (f) sanctions that may be applied by or on behalf of an inquiry.
- (3) The Act also makes provision for—
- (a) the repeal of sections 2 and 15 of the Commissions of Inquiry Act 1908, which provide, respectively, for the appointment of a commission of inquiry and the extension of that Act to commissions appointed under other Acts or under the Letters Patent; and
 - (b) the continuing application of the remaining provisions of the Commissions of Inquiry Act 1908 in specified circumstances.

4 Interpretation

In this Act, unless the context otherwise requires,—

appointing Minister means ~~a Minister~~ 1 or more Ministers of the Crown who ~~establishes~~ establish a government inquiry under **section 6(3)**

appropriate Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the relevant department

core participant has the meaning it is given in **section 18**

document has the same meaning that it is given in section 4(1) of the Evidence Act 2006

establishment instrument means—

- (a) an Order in Council made under **section 6(2)**; or
- (b) a *Gazette* notice issued under **section 6(3)**

expert opinion means the opinion of an expert based on the specialised knowledge or skill of that expert

government inquiry means an inquiry established under **section 6(3)**

information, in relation to the power of an inquiry to obtain or disclose information, includes matters of expert opinion as well as of fact

inquiry means both a public inquiry and a government inquiry, as provided for by **section 6**

member means a member of an inquiry established under **section 6**

officer of an inquiry means a person who is engaged to work for an inquiry

public inquiry—

- (a) means an inquiry established under **section 6(2)**; and
- (b) includes a Royal commission

relevant department means—

- (a) the Department of Internal Affairs; or
- (b) another department of State, if the other department is appointed, under the terms of reference for the inquiry, to be responsible for administrative matters relating to the inquiry.

5 Act binds the Crown

This Act binds the Crown.

Part 2

Establishment and membership of inquiry

6 Types of inquiry

(1) This Act applies to the following kinds of inquiry:

- (a) Royal commissions established under the authority of the Letters Patent constituting the office of the Gov-

- ernor-General, and this Act applies to Royal commissions as if they were public inquiries:
- (b) public inquiries, which are established in accordance with **subsection (2)**;
 - (c) government inquiries, which are established in accordance with **subsection (3)**.
- (2) The Governor-General may, by Order in Council, establish a public inquiry for the purpose of inquiring into, and reporting on, any matter of public importance.
- (3) ~~A Minister~~ One or more Ministers may, by notice in the *Gazette*, establish a government inquiry for the purpose of inquiring into, and reporting on, any matter of public importance.

- 7 Matters to be specified in instrument establishing inquiry**
- (1) ~~The matters set out in **subsection (2)** must be specified in the instrument made by the Governor-General in Council establishing a Royal commission, the Order in Council establishing a public inquiry, or the notice in the *Gazette* establishing a government inquiry:~~
- (2) The matters are—
- (a) the matter of public importance that is the subject of the inquiry; and
 - (b) ~~1~~ or more persons appointed to be members of the inquiry; and
 - (c) if more than ~~1~~ person is appointed to the inquiry, the person who is to be the chairperson of the inquiry; and
 - (d) the terms of reference for the inquiry, including any directions as to—
 - (i) the events or matters that are relevant to the inquiry; and
 - (ii) the dates, persons, and locations that are relevant to those events; and
 - (iii) whether any part or aspect of the inquiry is to be restricted from public access; and
 - (iv) the date by which the inquiry must complete its inquiry and submit a report under **section 12**; and
 - (v) any other administrative or procedural matters.

7 Establishment instrument to establish inquiry

- (1)** The establishment instrument to establish an inquiry must—
- (a)** specify the matter of public importance that is the subject of the inquiry; and
 - (b)** name the person or persons appointed to be members of the inquiry; and
 - (c)** if more than 1 person is appointed to the inquiry, name the person who is to be the chairperson of the inquiry; and
 - (d)** specify the date when the inquiry may begin considering evidence.
- (2)** However, an inquiry must not begin considering evidence before the terms of reference are notified under **subsection (3)**.
- (3)** The terms of reference for an inquiry must be notified—
- (a)** in the establishment instrument; or
 - (b)** by the appointing Minister or appropriate Minister, as the case may be, by notice in the *Gazette* as soon as is reasonably possible after the date of the establishment instrument.
- (4)** The terms of reference may set out any matters relevant to the inquiry, including matters such as—
- (a)** any matters relevant to the scope and purpose of the inquiry; and
 - (b)** any administrative or procedural matters; and
 - (c)** a reporting date, provisional reporting date, or process for determining a reporting date.
- (5)** The appointing Minister or appropriate Minister, as the case may be, may amend the terms of reference by notice in the *Gazette*.
- (6)** Before terms of reference may be notified under **subsection (3)** or amended under **subsection (5)**, the appointing Minister or appropriate Minister, as relevant, may consult the person appointed to the inquiry or appointed to be the chairperson of the inquiry.

8 Removal from office

- (1)** The Governor-General may, by Order in Council, remove any member of a public inquiry from office.

- (2) The appointing Minister may, by notice in the *Gazette*, remove any member of a government inquiry from office.
- (3) A member of an inquiry may be removed under **subsection (1) or (2)**, as the case may be, but only—
 - (a) due to the misconduct of the member; or
 - (b) if the member is unable to perform the functions of office; or
 - (c) if the member has neglected his or her duty.

9 Vacancy in membership of inquiry

- (1) If 1 or more members of an inquiry are, for any reason, unable to continue in office, the appropriate Minister or appointing Minister, as the case may be, must consult with any remaining members of the inquiry as to how the inquiry should proceed.
- (2) After consultation has been undertaken, as required by **subsection (1)**,—
 - (a) the appropriate Minister or appointing Minister, as the case may be, may require the inquiry to continue to perform its functions, despite the vacancy in its membership; or
 - (b) a person may be appointed to be a replacement member, in accordance with **section 6**; or
 - (c) the inquiry may be terminated,—
 - (i) in the case of a public inquiry, by the Governor-General by Order in Council; or
 - (ii) in the case of a government inquiry, by the appointing Minister, by notice in the *Gazette*.
- (3) The power under **subsection (2)(a) or (b)** must not be exercised if to do so would be contrary to the principles of natural justice.

Part 3

Duties, powers, immunities, and privileges

Duties and powers of inquiry generally

- 10 Inquiry must act independently, impartially, and fairly**
In exercising its powers and performing its duties under this Act, an inquiry and each of its members must act independently, impartially, and fairly.

11 Limits to scope of power of inquiry

- (1) An inquiry has no power to determine the civil, criminal, or disciplinary liability of any person.
- (2) **Subsection (1)** does not prevent an inquiry, in exercising its powers and performing its duties under this Act, from making—
 - (a) findings of fault; or
 - (b) recommendations that further steps be taken to determine liability.

Reporting obligation

12 Reporting by inquiry

- (1) Every inquiry must, in accordance with any requirements of the terms of reference for the inquiry, prepare a final report and present it,—
 - (a) in the case of a public inquiry, to the Governor-General; and
 - (b) in the case of a government inquiry, to the appointing Minister.
- (2) The final report of an inquiry must set out—
 - (a) the findings of the inquiry; and
 - (b) any recommendations of the inquiry.
- (3) The final report of a public inquiry must be presented by the appropriate Minister to the House of Representatives as soon as practicable after the inquiry has reported under **subsection (1)**.

Counsel assisting

13 Counsel to assist inquiry

- (1) If an inquiry considers it appropriate to do so, the inquiry may request the Solicitor-General to appoint counsel—
 - (a) to assist the inquiry, either generally or in relation to a particular matter;
 - (b) to advise the inquiry on matters of law, procedure, or evidence.
- (2) The Solicitor-General must, after consulting the inquiry,—
 - (a) appoint counsel; and
 - (b) set the terms and conditions of the appointment.

- (1) An inquiry may request the appointment of counsel to assist the inquiry, but before making a request, must consider and have regard to—
- (a) the purpose of this Act and, in particular, the purpose of the Act to enable an inquiry to be carried out effectively, efficiently, and fairly; and
 - (b) the nature of the subject matter of the inquiry; and
 - (c) the procedures most appropriate for carrying out the terms of reference.
- (2) The Solicitor-General must, if requested to do so, appoint counsel to assist an inquiry, but in doing so must—
- (a) have regard to the matters specified in **subsection (1)**; and
 - (b) consult the inquiry on—
 - (i) the proposed appointee; and
 - (ii) the terms and conditions to apply to the appointment.

*Powers and duties of inquiry relating to
procedure*

14 Regulation of inquiry procedure

- (1) An inquiry may conduct its inquiry as it considers appropriate, unless otherwise specified—
- (a) by this Act; or
 - (b) in the terms of reference of the inquiry.
- (2) In making a decision as to the procedure or conduct of an inquiry, or in making a finding that is adverse to any person, an inquiry must—
- (a) ~~not act inconsistently~~ comply with the rules principles of natural justice; and
 - (b) have regard to the need to avoid unnecessary delay or cost in relation to public funds, witnesses, or other persons participating in the inquiry.
- (2A) If an inquiry proposes to make a finding that is adverse to any person, the inquiry must, using whatever procedure it may determine, be satisfied that the person—
- (a) is aware of the matters on which the proposed finding is based; and

- (b) has had an opportunity, at any time during the course of the inquiry, to respond on those matters.
- (3) Without limiting **subsections (1) and (2) to (2A)**, an inquiry may determine matters such as—
- (a) whether to conduct interviews, and if so, who to interview:
 - (b) whether to call witnesses, and if so, who to call:
 - (c) whether to hold hearings in the course of its inquiry, and if so, when and where hearings are to be held:
 - (d) whether to receive evidence or submissions from or on behalf of any person participating in the inquiry:
 - (e) whether to receive oral or written evidence or submissions and the manner and form of the evidence or submissions:
 - (f) whether to allow or restrict cross-examination of witnesses.

15 Power to impose restrictions on access to inquiry

- (1) An inquiry may, at any time, make orders to—
- (a) forbid publication of—
 - (i) the whole or any part of any evidence or submissions presented to the inquiry:
 - (ii) any report or account of the evidence or submissions:
 - (iii) the name or other particulars likely to lead to the identification of a witness or other person participating in the inquiry (other than counsel):
 - (iv) any rulings of the inquiry:
 - (b) restrict public access to any part or aspect of the inquiry:
 - (c) hold the inquiry, or any part of it, in private.
- (2) Before making an order under **subsection (1)**, an inquiry must take into account the following criteria:
- (a) the risk of prejudice to public confidence in the proceedings of the inquiry; and
 - (b) the need for the inquiry to ascertain the facts properly; and
 - (c) the extent to which public proceedings may prejudice the security, defence, or economic interests of New Zealand; and

- (d) the privacy interests of any individual; and
 - (e) whether it would interfere with the administration of justice, including any person's right to a fair trial, if an order were not made under **subsection (1)**; and
 - (f) any other countervailing interests.
- (3) If the instrument that establishes an inquiry restricts any part or aspect of the inquiry from public access, the inquiry must make such orders under **subsection (1)** as are necessary to give effect to the restrictions.

16 Power to postpone or temporarily suspend inquiry

- (1) An inquiry may, after consultation with the appropriate Minister or appointing Minister, as the case may be, postpone or temporarily suspend the inquiry if—
- (a) another investigation is being, or is likely to be, carried out into matters relating to the inquiry; and
 - (b) the inquiry is satisfied that to commence or continue the inquiry would be likely to prejudice—
 - (i) the investigation referred to in **paragraph (a)**; or
 - (ii) any person interested in that investigation.
- (2) The inquiry must commence or continue when it is satisfied that to do so would no longer prejudice the other investigation or any person interested in it.

17 Application of principles of natural justice

~~An inquiry must not, in its report, make any finding that is adverse to any person (whether a natural person or a body corporate), unless the inquiry has—~~

- ~~(a) taken all reasonable steps to—~~
 - ~~(i) give that person reasonable notice of the intention to make the finding; and~~
 - ~~(ii) disclose to that person the contents of the proposed finding, the relevant material relied on for that finding, and the reasons on which it is based; and~~
 - ~~(iii) give that person a reasonable opportunity to respond to the proposed finding; and~~
- ~~(b) properly considered any response given under **paragraph (a)(iii)**.~~

Persons participating in inquiry

18 Designation of core participants

- (1) At any time an inquiry may, by written notice, designate any person to be a core participant in the inquiry.
- (2) In determining whether to designate a person as a core participant, an inquiry must consider whether that person—
 - (a) played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates:
 - (b) has a significant interest in a substantial aspect of the matters to which the inquiry relates:
 - (c) may be subject to explicit or serious criticism during the inquiry or in the report.
- (3) Every person designated as a core participant has the right to give evidence and make submissions to the inquiry, subject to any directions of that inquiry as to the manner in which evidence is to be given and submissions made.

Legal assistance

19 Recommendation as to legal assistance

- (1) An inquiry may, at any time, make a recommendation to the chief executive of the relevant department that funding be granted for the purpose of providing legal assistance to 1 or more specified persons—
 - (a) who wish, or who are required, to appear before the inquiry; or
 - (b) who have an interest in the inquiry.
- (2) In determining whether to make a recommendation under **subsection (1)**, the inquiry must consider—
 - (a) the likelihood of hardship to a person if legal assistance is declined; and
 - (b) the nature and significance of the contribution that the person will, or is likely to, make to the inquiry; and
 - (c) the extent to which legal assistance is, or is likely to be, required to enable the inquiry to fulfil its purpose; and
 - (d) any other matters relating to the public interest.
- (3) If a recommendation is made under **subsection (1)**, the chief executive may—

- (a) grant funding for the legal assistance recommended under that subsection; and
 - (b) impose any conditions that he or she considers appropriate.
- (4) In this section, **legal assistance** means—
- (a) legal representation; or
 - (b) legal advice or help (for example, help with drafting submissions to an inquiry); or
 - (c) both.

Evidential matters

20 Evidence

An inquiry may, for the purposes of its inquiry,—

- (a) receive any evidence that, in its opinion, may assist it to deal effectively with the subject of the inquiry, whether or not the evidence would be admissible in a court of law; and
- (b) take evidence on oath or affirmation, and for that purpose an oath or affirmation may be administered by any member of the inquiry; and
- (c) permit a witness to give evidence by any means, including by written or electronic means, and require the witness to verify the evidence by oath or affirmation.

21 Powers to obtain information

An inquiry may, as it thinks appropriate for the purposes of the inquiry,—

- (a) require any person to—
 - (i) produce any documents or things in that person's possession or control or copies of those documents or things;
 - (ii) allow copies or representations of those documents or things to be made;
 - (iii) provide information to the inquiry, in a form approved by the inquiry;
 - (iv) verify by statutory declaration any written information, copies of documents, or representations of things provided to the inquiry:

- (b) examine any document or thing that is produced by a witness:
- (c) examine any document or thing for which privilege or confidentiality is claimed, or refer the document or thing to an independent person or body, to determine whether—
 - (i) the person claiming privilege or confidentiality has a justifiable reason in maintaining the privilege or confidentiality; or
 - (ii) the document or thing should be disclosed.

22 Delegation

An inquiry may delegate in writing to an officer of the inquiry the powers of the inquiry under **sections 20(b) and 21(b)**.

23 Disclosure of evidence

- (1) An inquiry—
 - (a) may, on its own initiative or on the application of another person, order any person to disclose to any person participating in the inquiry any specified document, information, or thing that the person has produced before the inquiry; but
 - (b) must not make orders for general discovery.
- (2) An order given under **subsection (1)(a)** may impose appropriate terms and conditions in relation to—
 - (a) any disclosure required under that subsection; and
 - (b) the use that may be made of the information, documents, or things required to be disclosed.

24 Power to summon witnesses

- (1) An inquiry may issue a witness summons in writing to any person, requiring that person to attend and give evidence before the inquiry.
- (2) The witness summons must state—
 - (a) the place where, and the date and time when, the person is to attend; and
 - (b) the documents or things in that person's possession or control that he or she is required to produce to the inquiry; and

- (c) the person's entitlement to be paid costs and travelling expenses, in accordance with **section 26**; and
- (d) the penalty for failing to attend.

25 Service of summons to witnesses

- (1) Unless a witness has consented to service by another means, a summons must be served personally on that witness by delivering a sealed copy of the summons to the witness not later than 24 hours before the witness must attend the inquiry.
- (2) Despite **subsection (1)**, an inquiry may direct substituted service in accordance with the High Court Rules.

26 Expenses of witnesses and other participants

- (1) Persons summoned to attend an inquiry as witnesses are entitled to be paid for their reasonable costs and travelling expenses, at the level determined by the inquiry.
- (1A) An inquiry may reimburse other persons who participate in an inquiry for their reasonable costs and travelling expenses at the level the inquiry determines.
- (2) The payment required by **subsection (1)** must be made, if the witness is summoned,—
 - (a) by an inquiry on its own initiative, by that inquiry; or
 - (b) by an inquiry on the application of any person participating in the inquiry, by that person, unless the inquiry itself agrees to do so.

*Immunities and privileges***27 Immunity of inquiry**

- (1) This section applies to an inquiry, each member of the inquiry, and an officer of an inquiry acting under a delegation made under **section 22**.
- (2) Neither an inquiry nor any person to whom this section applies—
 - (a) is liable for anything done, reported, stated, or omitted in the exercise or intended exercise of the powers and performance or intended performance of the duties of the inquiry, unless the inquiry or person acted in bad faith; or

- (b) may be compelled to give evidence in court or in any proceedings of a judicial nature in relation to the inquiry, unless leave of the court is granted to bring proceedings relating to an allegation of bad faith against the inquiry or any person to whom this section applies.

28 Other immunities and privileges of participants

- (1) Witnesses and other persons participating in an inquiry (other than counsel) have the same immunities and privileges as if they were appearing in civil proceedings and the provisions of subpart 8 of Part 2 of the Evidence Act 2006 apply to the inquiry, to the extent that they are relevant, as if—
 - (a) the inquiry were a civil proceeding; and
 - (b) every reference to a Judge were a reference to an inquiry.
- (2) Counsel appearing before an inquiry have the same immunities and privileges as they would have if appearing before a court.

Part 4

Sanctions and miscellaneous matters

Subpart 1—Sanctions able to be imposed by
or on behalf of inquiry

Orders for award of costs

29 Award of costs

- (1) An inquiry may, on its own initiative or on the application of any person, by order make an award of costs against any person participating in, or summoned to appear before, the inquiry if it is satisfied that the conduct of the person against whom the order is made has unduly lengthened or obstructed the inquiry or has added undue cost to the inquiry.
- (2) **Subsection (1)** applies whether or not an inquiry holds any hearings.
- (3) An inquiry may—
 - (a) set the award of costs at any level it thinks reasonable, having regard to all the circumstances; and
 - (b) require the costs to be paid, in whole or in part,—

- (i) to the inquiry; or
 - (ii) to 1 or more persons who participated in the inquiry; or
 - (iii) to ~~both the parties referred to in both **subparagraphs (i) and (ii)**~~, in the proportion specified in the order.
- (4) An order for an award of costs made under this section, if filed in the registry of any court of competent jurisdiction, becomes enforceable as a judgment of that court in its civil jurisdiction.
- (5) A person who is dissatisfied with an order made under **subsection (1)** may appeal the order to the High Court on a question of fact or law.
- (6) A decision of the High Court on appeal under this section is final.

Offences and penalties

30 Offences

- (1) Every person commits an offence who intentionally—
- (a) fails to attend the inquiry in accordance with the notice of summons;
 - (b) refuses to be sworn or to affirm and give evidence;
 - (c) fails to produce any document or thing required by order of the inquiry;
 - (d) destroys evidence or obstructs or hinders any person authorised to examine, copy, or make a representation of a document or thing required by order of an inquiry;
 - (e) fails to comply with a procedural order or direction of an inquiry, including an order made under **section 15(1)**;
 - (f) disrupts the proceedings of an inquiry;
 - (g) prevents a witness from giving evidence or threatens or seeks to influence a witness before an inquiry;
 - (h) provides false or misleading information to an inquiry;
 - (i) threatens or intimidates an inquiry, a member of an inquiry, or an officer of an inquiry.
- (2) However, a person does not commit an offence under **subsection (1)(a) to (e)** if—
- (a) compliance would be prevented by a privilege or immunity that the person would have as a witness or coun-

- sel, were that person giving evidence or acting as counsel in civil proceedings before a court; or
- (b) compliance is prevented by an enactment, rule of law, or order of a court prohibiting or restricting disclosure, or the manner of disclosure, of any document, information, or thing; or
 - (c) compliance would be likely to prejudice the maintenance of the law, including the prevention, detection, investigation, prosecution, or punishment of offences, including the right to a fair trial.

31 Penalties

Every person who commits an offence against **section 30(1)** is liable, on ~~summary~~ conviction, to a fine not exceeding \$10,000.

Contempt against inquiry

32 Contempt proceedings

- (1) The Solicitor-General, on his or her own initiative or at the request of an inquiry, may commence proceedings in the High Court for contempt of an inquiry.
- (2) In determining any proceedings commenced under **subsection (1)**, the court may make any orders that it considers necessary and just to enable the inquiry to fulfil its purpose.

Subpart 2—Miscellaneous matters

*Official Information Act 1982 and Public
Records Act 2005*

33 Application of Official Information Act 1982

- (1) When an inquiry has reported in accordance with **section 12**, all documents created by the inquiry or received in the course of the inquiry are, except as set out in **subsection (2)**, official information for the purposes of the Official Information Act 1982.
- (2) However, the following are not official information for the purposes of the Official Information Act 1982:
 - (a) any matter subject to an order under **section 15(1)(a)**:

- (b) any documents that relate to the internal deliberations of the inquiry and are—
 - (i) created by a member of an inquiry in the course of the inquiry; or
 - (ii) provided to the inquiry by an officer of the inquiry.

34 Application of Public Records Act 2005

- (1) An inquiry is a public office for the purposes of the Public Records Act 2005.
- (2) As soon as is reasonably practicable after an inquiry has reported under **section 12**,—
 - (a) the Chief Archivist must authorise the disposal of the public records of the inquiry under section 20 of the Public Records Act 2005; and
 - (b) the relevant department must dispose of the public records of that inquiry in accordance with the authority issued by the Chief Archivist.
- (3) The Chief Archivist may accept the transfer of any things from an inquiry to the control of the Chief Archivist, even though that thing is not a public record.
- (4) In determining, for the purposes of Part 3 of the Public Records Act 2005, the access status of the public records or any things transferred to the control of the Chief Archivist under this section, the relevant department must take into account any order made by the inquiry under **section 15(1)**.
- (5) In this section, **public record** has the meaning it is given in section 4 of the Public Records Act 2005.

Court proceedings

35 Reference of questions of law to High Court

- (1) An inquiry may, at any time, state a case to the High Court on any question of law arising in any matter before the inquiry.
- (2) If an inquiry exercises the power under **subsection (1)**, it may either—
 - (a) continue the inquiry, pending the decision of the High Court; or

- (b) adjourn the inquiry until that court has delivered its decision.
- (3) A question referred to the High Court under this section must be in the form of a case stated—
 - (a) as consulted on and agreed by the core participants and the members of the inquiry; or
 - (b) if there is no agreement or there are no core participants, as settled by the inquiry.
- (4) The decision of the High Court is final and binding on an inquiry and on all persons participating in the inquiry.

36 Inquiry to be cited in judicial review proceedings

In any application for judicial review of an inquiry under this Act, the inquiry, and not the chairperson or members of that inquiry, must be cited as the respondent.

Review required

37 Review of continuing application of Commissions of Inquiry Act 1908

- (1) Not later than 5 years after the commencement of this Act, the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act must ensure that a review is commenced, in relation to the entities referred to in **section 39(b)**, to consider—
 - (a) what powers each entity requires to carry out its functions and duties; and
 - (b) what changes to the law are necessary to replace any powers an entity derives from the Commissions of Inquiry Act 1908.
- (2) The purpose of the review required by this section is to consider whether the remaining provisions of the Commissions of Inquiry Act 1908 can be repealed.

*Repeal, transitional provisions, and
consequential amendments*

38 Commissions of Inquiry Act 1908

Sections 2 and 15 of the Commissions of Inquiry Act 1908 are repealed.

39 Transitional provision

- (1) This Act does not apply to a Royal commission that has not completed its functions and obligations before the commencement of this Act.
- (2) The Commissions of Inquiry Act 1908 continues to apply to—
 - (a) any commission of inquiry or Royal commission appointed under that Act that has not completed its functions and obligations before the commencement of this Act; and
 - (b) any entity that is or may be established under an enactment enacted before the commencement of this Act, including those listed in **Schedule 1**, and that derives powers from the Commissions of Inquiry Act 1908.

40 Consequential amendments to other Acts

The Acts specified in **Schedule 2** are amended in the manner indicated in that schedule.

Schedule 1 **s 39(2)(b)**
**Acts under which entities have been, or
may be, set up and to which Commissions
of Inquiry Act 1908 applies**

Act under which commission of inquiry powers derived	Relevant provisions
Biosecurity Act 1993	et 5 of Schedule 2
Broadcasting Act 1989	s 12
Cadastral Survey Act 2002	s 40
Charitable Trusts Act 1957	s 58
Companies (Bondholders Incorporation) Act 1934-35	s 12
Electricity Act 1992	s 136 <u>147X</u>
Engineering Associates Act 1961	s 25
Environment Act 1986	s 16
<u>Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012</u>	<u>s 55</u>
Fire Service Act 1975	s 86
Fisheries Act 1996	ss 181, 221
Forest and Rural Fires Act 1977	ss 59, 64A
Gambling Act 2003	s 225
Hawke's Bay Earthquake Act 1931	s 43
Hazardous Substances and New Organisms Act 1996	ss 3, 61
Health Act 1956	s 124
Health and Safety in Employment Act 1992	s 27
Immigration Act 1987	s 129P, et 7 of Schedule 2, and et 7 of Schedule 3C
Independent Police Conduct Authority Act 1988	s 23
Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003	s 101
Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004	s 26
Land Drainage Act 1908	ss 15, 65
Land Drainage Amendment Act 1913	s 6
Land Drainage Amendment Act 1922	s 2
Land Valuation Proceedings Act 1948	s 19
<u>Lawyers and Conveyancers Act 2006</u>	<u>s 47(d)</u>

Act under which commission of inquiry powers derived	Relevant provisions
Legal Services Act 2000 <u>2011</u>	s 99 <u>s 7</u>
Local Government Act 2002	s 34, and et 7 of <u>Schedule 1</u> and <u>cl 1 of Schedule 5</u>
Maori Reserved Land Act 1955	s 74
Maritime Transport Act 1994	ss 58, 235, <u>246E</u> , <u>246F</u> , and cl 10 of Schedule 2
Mental Health (Compulsory Assessment and Treatment) Act 1992	ss 95, 104
Mortgagors and Lessees Rehabilitation Act 1936	s 24
New Zealand Public Health and Disability Act 2000	s 71
Niue Act 1966	s 75
Petroleum Demand Restraint Act 1981	s 4
Plumbers, Gasfitters, and Drainlayers Act 2006	s 118
Police Act 1958	s 12
Private Investigators and Security Guards Act 1974	s 10
<u>Private Security Personnel and Private Investigators Act 2010</u>	<u>s 93</u>
Remuneration Authority Act 1977	s 25
Reserves and Other Lands Disposal and Public Bodies Empowering Act 1915	s 38
Reserves and Other Lands Disposal and Public Bodies Empowering Act 1917	ss 61 , 110, 129, and et 9 of <u>Schedule 5</u>
Reserves and Other Lands Disposal and Public Bodies Empowering Act 1920	ss 91, 108
Resource Management Act 1991	s 41
River Boards Amendment Act 1913	s 4
Rotorua Borough Act 1922	s 10
Sale of Liquor Act 1989	s 110
<u>Sale and Supply of Alcohol Act 2012</u>	<u>s 201</u>
Secondhand Dealers and Pawnbrokers Act 2004	s 27
Shipping Act 1987	s 5
Social Security Act 1964	s 12M
Soil Conservation and Rivers Control Act 1941	s 33A
Soil Conservation and Rivers Control Amendment Act 1946	s 9

**Proposed amendments to the
Inquiries Bill**

Schedule 1

Act under which commission of inquiry powers derived	Relevant provisions
State Sector Act 1988	ss 25, 26
Taupiri Drainage and River District Act 1929	ss 3, 11
Taxation Review Authorities Act 1994	s 15
Temporary Safeguard Authority Act 1987	s 4
Transport Accident Investigation Commission Act 1990	s 11
Treaty of Waitangi Act 1975	cl 8 of Schedule 2
Veterinarians Act 2005	s 48
War Pensions Act 1954	s 13

Schedule 2**s 40****Consequential amendments to other
enactments****Commissions of Inquiry Act 1908 (1908 No 25)**

New section 2A: insert after section 2:

**“2A Application of this Act and relationship to Inquiries Act
2008**

This Act applies to—

- “(a) any entity that is or may be established under an enactment enacted before the commencement of the Inquiries Act **2008** (including those listed in **Schedule 1** of that Act), and that derives powers from this Act; and
- “(b) any commission of inquiry or Royal commission appointed under this Act that has not completed its functions and obligations before the commencement of the Inquiries Act **2008**.”

Copyright Act 1994 (1994 No 143)

Section 27(1): add “; or” and the following paragraph:

- “(i) reports of any inquiry established under **section 6** of the Inquiries Act **2008**.”

Coroners Act 2006 (2006 No 38)Definition of **other investigation investigating authority** in section 9: add:

- “(o) an inquiry to which **section 6** of the Inquiries Act **2008** applies”.

**Health Practitioners Competence Assurance Act 2003 (2003
No 48)**Definition of **investigation** in section 53: insert after paragraph (a):

- “(aa) an inquiry to which **section 6** of the Inquiries Act **2008** applies.”

Section 61(1): add:

- “(c) for the purposes of an inquiry to which **section 6** of the Inquiries Act **2008** applies.”

Legal Services Act 2000 (2000 No 42)

Section 7(4): add:

- “(i) proceedings before an inquiry to which **section 6** of the Inquiries Act **2008** applies.”

Maori Language Act 1987 (1987 No 176)

Paragraph (c) of the definition of **legal proceedings** in section 2: repeal and substitute:

- “(c) proceedings to inquire into and report on any matter of particular interest to the Māori people or any tribe or group of Māori people before—
 - “(i) a commission of inquiry under the Commissions of Inquiry Act 1908; or
 - “(ii) a tribunal or other body having any of the powers of a commission of inquiry under any other enactment; or
 - “(iii) an inquiry to which **section 6** of the Inquiries Act **2008** applies”.

New Zealand Public Health and Disability Act 2000 (2000 No 91)

Clause 6(1) of Schedule 5: add:

- “(c) for the purposes of an inquiry to which **section 6** of the Inquiries Act **2008** applies.”

New Zealand Sign Language Act 2006 (2006 No 18)

Paragraph (c) of the definition of **legal proceedings** in section 4: repeal and substitute:

- “(c) proceedings to inquire into and report on any matter of particular interest to the Deaf community before—
 - “(i) a commission of inquiry under the Commissions of Inquiry Act 1908; or
 - “(ii) a tribunal or other body having any of the powers of a commission of inquiry under any other enactment; or
 - “(iii) an inquiry to which **section 6** of the Inquiries Act **2008** applies”.

Official Information Act 1982 (1982 No 156)

Definition of **official information** in section 2(1): insert after paragraph (h):

“(ha) does not include—

“(i) any matter subject to an order under **section 15(1)(a)** of the Inquiries Act **2008**; or

“(ii) documents referred to in **section 33(2)(b)** of the Inquiries Act **2008**; and”.

Section 2(6): insert after paragraph (e):

“(ea) an inquiry to which **section 6** of the Inquiries Act **2008** applies; or”.

Privacy Act 1993 (1993 No 28)

Paragraph (b) of the definition of **agency** in section 2(1): add:

“(xiv) an inquiry to which **section 6** of the Inquiries Act **2008** applies”.

Section 55(b): repeal and substitute:

“(b) evidence given or submissions made to—

“(i) a Royal Commission; or

“(ii) a commission of inquiry appointed by Order in Council under the Commissions of Inquiry Act 1908; or

“(iii) an inquiry to which **section 6** of the Inquiries Act **2008** applies,—

at any time before the report of the Royal Commission, commission of inquiry, or inquiry, as the case may be, has been published or, in the case of evidence given or submissions made in the course of a public hearing, at any time before the report has been presented to the Governor-General or appointing Minister, as the case may be; or”.

**Transport Accident Investigation Commission Act 1990 (1990
No 99)**

Definition of **proceedings** in section 14A: add “; and” and the following paragraph:

- “(f) an inquiry to which **section 6** of the Inquiries Act **2008** applies.”
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