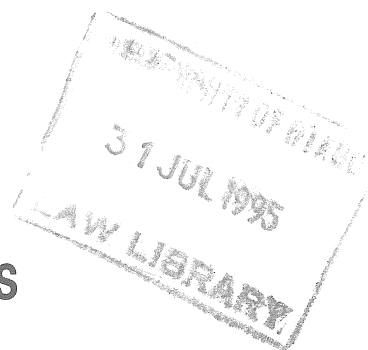


LAW
RES

HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 25 July 1995

COMMISSIONS OF INQUIRY AMENDMENT BILL

Proposed Amendments

Hon. D. A. M. GRAHAM, in Committee, to move the following amendments:

Clause 2: To omit from line 16 on page 1 the word "retired", and substitute the word "former".

To omit *subsection (2) of section 13* (all the words in lines 3 to 10 on page 2), and substitute the following subsection:

"(2) Where any member of a Commission is a Judge of the High Court or a former Judge of the High Court, any order made by that Commission or any such member—

"(a) Shall, as soon as conveniently may be after its making, be drawn up and signed—

"(i) In the case of an order made by the Commission, by the Chairman (whose signature shall be judicially noticed); and

"(ii) In the case of an order made by a member of the Commission who is a Judge of the High Court or a former Judge of the High Court, by that member (whose signature shall be judicially noticed); and

"(b) May, for the purpose of enabling that order to be enforced, be filed in any office of the High Court.

To omit from line 12 on page 2 the expression "section 56A", and substitute the expression "section 56A(1)".

To insert, after line 18 on page 2 (as *subsection (3A) of section 13*), the following subsection:

"(3A) Where any member of a Commission who is a Judge or a former Judge of the High Court makes an order under section 56A(1) of the Judicature Act 1908 (as applied by section 13A(1)(a) of this Act) or under section 56B of the Judicature Act 1908 (as applied by section 13A(1)(b) of this Act) or under section 13B of this Act, that order shall be enforceable as if it were an order of the High Court.

To omit from lines 20 and 40 on page 2, and also from lines 9, 16, and 36 on page 3, and from line 9 on page 4, the word “retired” wherever it occurs, and substitute in each case the word “former”.

To omit from line 42 on page 2 the expression “section 56A”, and substitute the expression “section 56A (1)”.

To insert, after line 16 on page 4, the following section:

“13BA. Right of appeal against order made in respect of contempt of Commission—Where any member of a Commission who is a Judge of the High Court or a former Judge of the High Court has, under section 56A (1) of the Judicature Act 1908 (as applied by section 13A (1) (a) of this Act) or under section 56B of the Judicature Act 1908 (as applied by section 13A (1) (b) of this Act) or under section 13B of this Act made an order against any person, that person may, in accordance with and subject to the terms of section 384 of the Crimes Act 1961, appeal to the Court of Appeal against the order as if that person had been found guilty in the High Court of a criminal contempt of the High Court, and the provisions of that section shall, with all necessary modifications, apply accordingly.

To omit *section 13c* (all the words in lines 17 to 28 on page 4), and substitute the following section:

“13c. Jurisdiction of High Court during incapacity of Commissioner or following completion of inquiry—Where an order or warrant has been made or issued under section 56A (1) of the Judicature Act 1908 (as applied by section 13A (1) (a) of this Act) or under section 56B of the Judicature Act 1908 (as applied by section 13A (1) (b) of this Act) or under section 13B of this Act by a member of a Commission who is a Judge of the High Court or a former Judge of the High Court, and anything remains to be done or suffered pursuant to the order or warrant—

“(a) At any time while that member of the Commission is incapable of acting by reason of illness, absence, or other cause; or

“(b) At any time after the Commission has delivered its final report to the Governor-General or to a Minister,—the High Court may vary or rescind the order or warrant.”

Clause 4: To add, after line 39 on page 4, the following subclause:

(3) For the avoidance of doubt, where before the commencement of this Act a person has been served with a summons issued under section 4D of the principal Act, being a summons requiring that person to attend on a date after the commencement of this Act, the failure to comply in any respect with the summons shall be an act done or omitted to be done after the commencement of this Act.

EXPLANATORY NOTE

The proposed amendments to the Commissions of Inquiry Amendment Bill—

- (a) Omit from those amendments the references to “retired” Judges of the High Court, and substitute references to “former” Judges of the High Court (the word “former” being more appropriate than the word “retired”):
- (b) Make provision for the “contempt” orders provided for in the amendments to be enforceable as if they were orders of the High Court:
- (c) Provide that a fine for failure to attend in accordance with a summons issued by a Commission may be imposed only under section 9 of the Commissions of Inquiry Act 1908 and not under section 56A (2) of the Judicature Act 1908:
- (d) Provide a right of appeal to the Court of Appeal in respect of “contempt” orders:
- (e) Provide that where an order or warrant has been made or issued under the contempt provisions and the Judge of the High Court or the former Judge of the High Court who made the order or issued the warrant is unable, by reason of incapacity, to do anything that remains to be done or suffered pursuant to the order or warrant, the High Court may vary or rescind the order or warrant:
- (f) Provide, for the avoidance of doubt, that where before the commencement of the Bill a person has been served with a summons issued under section 4D of the Commissions of Inquiry Act 1908, being a summons requiring that person to attend on a date after the commencement of the Bill, the failure to comply in any respect with the summons shall be an act done or omitted to be done after the commencement of the Bill.