

Legislative Council—No 94A

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South Australia

Special Commission of Inquiry (Powers and Immunities) Bill 2005

A BILL FOR

An Act to facilitate a special commission of inquiry by conferring evidentiary powers and immunities.

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Schedule 1—Terms of reference

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Special Commission of Inquiry (Powers and Immunities) Act 2005*.

2—Commencement

5 This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

authorised person means the Special Commissioner or a person who is appointed by the Premier to assist the Special Commissioner in the conduct of the Inquiry;

10 *evidentiary material* means any document, object or substance of evidentiary value or possible evidentiary value to the Inquiry;

Inquiry means an Inquiry that is established by the Government with terms of reference as set out in Schedule 1;

15 *Special Commissioner* means a person who is appointed by the Governor to conduct the Inquiry.

4—Application of certain provisions of *Ombudsman Act 1972* to Inquiry

(1) The relevant provisions of the *Ombudsman Act 1972* apply to and in relation to the Inquiry, as if—

20 (a) the Inquiry were the investigation of an administrative act by the Ombudsman under that Act; and

(b) the Special Commissioner were the Ombudsman.

(2) The relevant provisions are—

(a) section 18(3)(c) and (6); and

(b) section 23; and

25 (c) section 24.

4A—Hearings in public or private

The Special Commissioner may obtain evidence and evidentiary material for the Inquiry by means of hearings conducted in public or private.

5—Power to require attendance of witnesses etc

- 5 (1) An authorised person may issue a summons requiring a person to appear before the Inquiry at a specified time and place to give evidence or to produce evidentiary material (or both).
- (3) An authorised person may administer an oath or affirmation to a person appearing before the Inquiry.

10 6—Obligation to give evidence

- (1) If a person refuses or fails—
- (a) to comply with a summons issued under this Act; or
 - (b) to make an oath or affirmation when required to do so by an authorised person; or
 - 15 (c) to answer a question on a subject relevant to the Inquiry to the best of the person's knowledge, information and belief,
- the Supreme Court may, on application by an authorised person, compel the attendance of the person before the Court to give evidence or to produce evidentiary material for the purposes of the Inquiry.
- 20 (2) A person who, without reasonable excuse, refuses or fails—
- (a) to comply with a summons issued under this Act; or
 - (b) to make an oath or affirmation when required to do so by an authorised person; or
 - 25 (c) to answer a question on a subject relevant to the Inquiry to the best of the person's knowledge, information and belief,
- is guilty of an offence and liable to a penalty not exceeding \$10 000.

6A—Statements by witness not admissible against witness

30 A statement or disclosure made by a witness in answer to a question put to the witness, or in evidentiary material produced by the witness, for the purposes of the Inquiry will not (except in proceedings for an offence against this Act or for contempt) be admissible in evidence against the witness in any civil or criminal proceedings in any court.

7—Privileges and immunities

- 35 (1) An authorised person has, in connection with the conduct of the Inquiry, and in respect of any report prepared as part of, or at the conclusion of, the Inquiry, the same protection, privileges and immunities as a Judge of the Supreme Court.
- (2) A person who appears before the Inquiry, or who provides evidentiary material to the Inquiry, has the same protection, privileges and immunities as a witness in proceedings before the Supreme Court.

- (3) A legal practitioner who represents a person in connection with the Inquiry has the same protection, privileges, immunities and obligations as counsel involved in proceedings before the Supreme Court.

Schedule 1—Terms of reference

5 To inquire into and report upon the following matters:

- (1) Whether the Premier or any Minister, ministerial adviser or public servant participated in any activity or discussions concerning:
- (a) the possible appointment of Mr Ralph Clarke to a government board or position; or
 - 10 (b) the means of facilitating recovery by Mr Clarke of costs incurred by him in connection with a defamation action between Mr Clarke and Attorney-General Atkinson

(The activity and discussions and events surrounding them are referred to in these terms as "the issues".)

- 15 (2) If so, the content and nature of such activity or discussions.
- (3) Whether the Premier or any Minister or ministerial adviser authorised any such discussions or whether the Premier or any Minister or ministerial adviser was aware of the discussions at the time they were occurring or subsequently.
- 20 (4) Whether the conduct (including acts of commission or omission) of the Premier or any Minister or ministerial adviser or public servant contravened any law or Code of Conduct; or whether such conduct was improper or failed to comply with appropriate standards of probity and integrity.
- (5) Whether the Premier or any Minister or ministerial adviser made any statement in relation to the issues which was misleading, inaccurate or dishonest in any material
- 25 particular.
- (6) The failure of the Premier, the Deputy Premier, the Attorney-General and the, then, Minister for Police to report the issue in the first instance to the Anti-Corruption Branch of the SA Police.
- 30 (7) Whether the actions taken by the Premier and Ministers in relation to the issues were appropriate and consistent with proper standards of probity and public administration and, in particular:
- (a) why no public disclosure of the issues was made until June 2003;
 - (b) why Mr Randall Ashbourne was reprimanded in December 2002 and whether that action was appropriate;
 - 35 (c) whether the appointment of Mr Warren McCann to investigate the issues was appropriate;
 - (d) whether actions taken in response to the report prepared by Mr McCann were appropriate.
- 40 (8) What processes and investigations the Auditor-General undertook and whether the Auditor-General was furnished with adequate and appropriate material upon which to base the conclusions reflected in his letter dated 20 December 2002 to the Premier.

- (9) Whether adequate steps were taken by Mr McCann, the SA Police and the Office of the Director of Public Prosecutions to obtain from Mr Clarke information which was relevant to the issues.
- 5 (10) Whether the processes undertaken in response to the issues up to and including the provision of the report prepared by Mr McCann were reasonable and appropriate in the circumstances.
- (11) Whether there were any material deficiencies in the manner in which Mr McCann conducted his investigation of the issues.
- 10 (12) Whether it would have been appropriate to have made public the report prepared by Mr McCann.
- (13) The matters investigated and all the evidence and submissions obtained by and any recommendations made by the Anti-Corruption Branch of the SA Police.
- 15 (14) Whether Mr Ashbourne, during the course of his ordinary employment, engaged in any (and, if so, what) activity or discussions to advance the personal interests of the Attorney-General and, if so, whether any Minister had knowledge of, or authorised, such activity or discussion.
- 20 (15) Whether Mr Ashbourne undertook any and, if so, what actions to "rehabilitate" Mr Clarke, or the former Member for Price, Mr Murray DeLaine, or any other person into the Australian Labor Party and, if so, whether such actions were undertaken with the knowledge, authority or approval of the Premier or any Minister.
- (16) The propriety of the Attorney-General contacting journalists covering the Ashbourne case in the District Court, during the trial, and the nature of those conversations.
- (17) With reference to the contents of the statement issued on 1 July 2005 by the Director of Public Prosecutions, Mr Stephen Pallaras QC:
- 25 (a) what was the substance of the "complaint about the conduct of the Premier's legal advisor, Mr Alexandrides";
- (b) what was the substance of the "telephone call made [by Mr Alexandrides] to the prosecutor involved in the Ashbourne case";
- 30 (c) what were the "serious issues of inappropriate conduct" relating to Mr Alexandrides;
- (d) whether the responses of the Premier, the Attorney-General or any Minister or Mr Alexandrides or any other person to the issues mentioned in the Director of Public Prosecutions' statement were appropriate and timely; and
- 35 (e) whether any person made any statement concerning the issues referred to in the Director of Public Prosecutions' statement which was misleading, inaccurate or dishonest in any material particular.
- 40 (18) Whether it would be appropriate in future to refer any credible allegation of improper conduct on the part of a Minister or ministerial adviser (that has not already been referred to the police) to the Solicitor-General in the first instance for investigation and advice.

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- (19) If the reference of such an allegation to the Solicitor-General would not be appropriate (in general or in a particular case) or would not be possible because of the Solicitor-General's absence or for some other reason, who would be an alternative person to whom it would be appropriate to refer such an allegation in the first instance for investigation and advice.
- (20) Whether Mr Alexandrides assisted in framing the Terms of Reference for the Inquiry proposed by the Government in the resolution of the House of Assembly passed on 5 July 2005.
- 10 (21) What action should be taken in relation to any of the matters arising out of the consideration by the Inquiry of these terms of reference.

The Special Commissioner must not, in the Inquiry or report on the Inquiry, purport to make any finding of criminal or civil liability.