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Commissions of Enquiry Act, 1963

Act 35 of 1963

Legislation as at 1 December 1998

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Commissions of Enquiry Act, 1963

Act 35 of 1963

Commenced on 4 October 1963

[This is the version of this document at 1 December 1998.]

An Act to make provision for commissions of enquiry.

1. Short title

This Act may be cited as the Commissions of Enquiry Act, 1963.

2. Interpretation

In this Act, unless inconsistent with the context—

"**chairman**" means either the chairman of the commission, or in the case of a commission consisting of one person only that person;

"**commission**" means a commission of enquiry appointed under [section 3](#) and "commissioner" means a member of a commission;

"**committee**" means a committee established under [section 3](#);

[Added K.O-I-C. 3/1988]

"**magistrate's court**" means a subordinate court constituted under the Subordinate Courts Proclamation (Cap. 20);

"**member**" means a person appointed a member of a committee under [section 3](#) or [section 7](#) as the case may be;

[Added K.O-I-C. 3/1988]

"**Minister**" means the Minister issuing a commission in terms of [section 3](#); and

"**secretary**" means the secretary to the commission appointed under [section 7](#).

3. Appointment of commissions of enquiry and mode of holding enquiry

- (1) Any Minister may, by notice in the *Gazette*, issue a commission appointing one or more commissioners, and may therein provide that one or more members shall constitute a quorum for the purpose of the enquiry.
- (2) In the absence of a direction to the contrary under [section 4\(3\)\(c\)](#), the enquiry shall be held in public but section 7(4) of the Subordinate Courts Proclamation (Cap. 20) shall, *mutatis mutandis*, apply to proceedings of the commissioners.
- (3) Any Minister may, in appropriate circumstances, and for a specific purpose and with the approval of the Cabinet, appoint, by notice published in the *Gazette*, a committee on such terms and conditions to carry out a specific work, mission or task, as the case may be.

[Added K.O-I-C. 3/1988]

- (4) The provisions of this Act relating to Commissions of Enquiry shall, where applicable and with such modifications and adaptations as may be necessary, apply to a committee established under this section.

[Added K.O-I-C. 3/1988]

4. Particulars of commission

- (1) The Minister shall specify the matter which is the subject of the enquiry.
- (2) Unless a sole commissioner is appointed, the Minister shall direct which commissioner shall be chairman.
- (3) The Minister may direct—
- (a) when and where the enquiry shall be made and the report thereof rendered;
 - (b) how the commission shall be executed; and
 - (c) subject to section 10 of the Constitution whether the enquiry shall be held *in camera*.

5. Power to appoint new commissioners and to alter and revoke commissions

- (1) The Minister may appoint a new commissioner in the place of a commissioner who is unable or unwilling to act or who dies.
- (2) The Minister may alter or revoke a commission.

6. Oath or affirmation by commissioners

Before commencing his duties, every commissioner shall take the oath contained in Form A in the Schedule, or where he objects to taking such oath, make the affirmation contained in Form B in the Schedule, which shall be administered, or, as the case may be, accepted by an administrative officer.

7. Secretary to the commissioners

The Minister may appoint a secretary to the commissioners who shall keep a written record of the proceedings of the commission and generally perform such other duties, in accordance with this Act, as the commissioners may require.

8. Duties of commissioners

A commissioner shall comply with this Act and all directions of the Minister given in accordance with it.

9. Casting vote

Where there are more commissioners than one, and a question arises for decision on which the opinion of the commissioners is equally divided, the chairman shall exercise a casting vote in addition to his deliberative vote.

10. Commissioners' power to regulate proceedings

- (1) The commissioners may make rules not inconsistent with the terms of the commission or this Act for their own guidance as to the times of and places for their sittings, and generally as to the conduct of their proceedings.
- (2) A breach of a rule so made shall not of itself invalidate the proceedings.

11. Power to summon and examine witnesses on oath

- (1) For the purposes of their enquiry, the commissioners may—
 - (a) subpoena witnesses to attend and give evidence before them, and
 - (b) call for the production of such books, plans and other documents as they consider relevant to the enquiry.
- (2) A subpoena for the attendance of a witness, or the production of books, plans or other documents, shall be—
 - (a) *mutatis mutandis*, in the form prescribed for magistrates' courts;
 - (b) signed by the chairman or the secretary; and
 - (c) served by the messenger of the court in the same manner as if it were a subpoena issuing out of a magistrate's court.
- (3) A witness before the commissioners shall take an oath or make an affirmation in the form in use in the magistrates' courts.
- (4) The chairman or the secretary shall administer the oath or accept the affirmation.
- (5) The commissioners may receive evidence by affidavit, and administer interrogatories and require the person concerned to make a full and true reply.

12. Application of Civil Evidence Act, [No. 16 of 1902](#)

The Civil Evidence Act, [No. 16 of 1902](#) shall apply to the giving of evidence before the commissioners as though they constituted a court.

13. False evidence

- (1) Any person who procures, or attempts to procure the giving of false evidence before the commissioners or after being duly sworn or having affirmed, wilfully gives false evidence before the commissioners, shall be guilty of an offence, and liable on conviction to a fine not exceeding one hundred emalangeni, or in default of payment thereof, imprisonment not exceeding six months, or both.
- (2) Any person who has made a statement on oath, whether orally or in writing, and thereafter, on another oath, makes another such statement which is in conflict with the first-mentioned statement, shall be guilty of an offence and may, on a charge alleging that he made the two conflicting statements and upon proof of those two statements and without proof as to which of those statements was false, be convicted of that offence and punished with the penalties prescribed by law for the crime of perjury, unless it is proved that when he made each statement he believed it to be true.

14. Refusal to be sworn or to answer questions

Any person who being required by the commissioners to take an oath fails to do so or to make an affirmation in lieu of it, or, after being duly sworn or having affirmed refuses to answer all questions lawfully put to him, shall be guilty of an offence and may be punished with the penalties prescribed by law for a neglect or refusal to take an oath duly administered, or to answer a question put by any court.

15. Non-liability of commissioners to be sued

A commissioner or other person shall be not liable to an action or suit for anything done, or omitted to be done, in the execution of his duties under this Act.

16. Duty of witness summoned and power to regulate witnesses' expenses

- (1) Any person who, having received a subpoena issued in terms of [section 11](#) fails, without sufficient cause to attend and give evidence, or produce books or other documents in his possession, or under his control, which he is required to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty emalangeni, or, in default of payment thereof, imprisonment for three months, or both.
- (2) Witnesses shall be paid such allowances as witnesses in a civil action in a magistrate's court are paid.

17. Custody and punishment for contempt

- (1) Section 86 of the Subordinate Courts Proclamation (Cap. 20) shall, *mutatis mutandis* apply to proceedings of the commissioners.
- (2) Nothing in subsection (1) shall derogate from the powers of the commissioners under [section 3\(3\)](#).

18. Legal representation

A person, whose conduct is the subject of enquiry, or who may be otherwise implicated in the matter the subject of the enquiry, may appear at the enquiry in person, or by an attorney, or by an advocate duly instructed by an attorney.

19. Reimbursement and remuneration of commissioners, etc.

- (1) The Minister for Finance shall authorise the grant to a commissioner—
 - (a) of reimbursement of his actual expenses incurred in holding the enquiry; and
 - (b) of remuneration for his services in respect of the enquiry.
- (2) The Minister for Finance may authorise the grant of remuneration to the secretary, and other persons employed in connection with the commission.
- (3) A grant so authorised is hereby charged on the Consolidated Fund.
- (4) In the case of a public officer appointed to a commission or committee the Minister for Finance shall determine whether or not any allowances and reimbursements are payable to such public officer by issuing a notice or circular of general application.

[Amended K.O-I-C. 3/1998]

20. Publication in gazette

There shall be published in the *Gazette* the issue, alteration or revocation of a commission.

Schedule (Section 6)

Form A

"I, _____ (*here insert full name*), being sworn, do solemnly and sincerely declare that I will perform my duties as a commissioner according to the best of my abilities."

Form B

"I, _____ (*here insert full name*), do sincerely affirm and declare that I will perform my duties as a commissioner according to the best of my abilities."