

4. Comparative Forms of Public Inquiry

Contents

Introduction	75
Models of inquiry in Australian states and territories	75
New South Wales	76
Victoria	77
Queensland	78
South Australia	79
Western Australia	79
Tasmania	80
Northern Territory	80
Australian Capital Territory	81
Other models of inquiry in Australia	81
Defence inquiries established by regulations	81
Models of inquiry in overseas jurisdictions	83
United Kingdom	83
Canada	84
New Zealand	85
Ireland	85
Singapore	86

Introduction

4.1 In this chapter, the ALRC discusses comparative models of public inquiries. It considers models of inquiry in Australian state and territory jurisdictions, those conducted under the *Defence (Inquiries) Regulations 1985* (Cth), and models of inquiry in overseas jurisdictions.

Models of inquiry in Australian states and territories

4.2 Legislation in all Australian states and territories provides for the establishment of public inquiries with coercive powers. Inquiries without statutory foundations are also established by most state and territory governments. In the next two sections, the ALRC outlines distinctive features of inquiries established by legislation in these jurisdictions. In particular, the ALRC notes where a model of inquiry differs from the *Royal Commissions Act 1902* (Cth) with respect to: establishment and membership of an inquiry; flexibility of processes; and the extent of powers to gather information and protections from legal liability.

4.3 In other chapters of this Report, the ALRC discusses in detail issues concerning: inquiry powers; protection of witnesses and inquiry members; offences; costs; administration; judicial review of inquiry decisions; and government responses to inquiry recommendations.

New South Wales

4.4 In New South Wales (NSW), the Governor has the prerogative power to establish public inquiries. Two statutes confer powers on public inquiries established by the Governor: the *Royal Commissions Act 1923* (NSW) and the *Special Commissions of Inquiry Act 1983* (NSW).¹ For a brief period in 1997–1998, the *Special Commissions of Inquiry Act* (NSW) allowed either or both Houses of Parliament to resolve to authorise the Governor to establish a special commission of inquiry to consider an issue related to parliamentary proceedings.²

4.5 While the Governor may appoint any person as commissioner or commissioners of an inquiry established under the *Royal Commissions Act* (NSW),³ only certain persons may be appointed as commissioners of an inquiry established under the *Special Commissions of Inquiry Act* (NSW). The latter Act provides that a commission may be issued only to a person who is a judge or legal practitioner of at least seven years standing.⁴ As well, some powers in the *Royal Commissions Act* (NSW) may be exercised only by a judge of a superior court, or a legal practitioner of seven years standing, who is declared to have these powers in the Letters Patent establishing the Royal Commission.⁵

1 The *Special Commissions of Inquiry Act* expressly excludes the operation of the *Royal Commissions Act* (NSW): *Special Commissions of Inquiry Act 1983* (NSW) s 4(4). Recent inquiries in NSW tend to have been established under the *Special Commissions of Inquiry Act* rather than under the *Royal Commissions Act* (NSW). See, eg, Special Commission of Inquiry into Acute Care Services in NSW Public Hospitals (2008); Special Commission of Inquiry into Child Protection Services in NSW (2008); Special Commission of Inquiry into Sydney Ferries (2007); Special Commission of Inquiry into Medical Research and Compensation Foundation (2004).

2 This amendment was made to allow the Parliament to authorise an inquiry to be held into certain comments protected by parliamentary privilege and made in relation to the Royal Commission into the New South Wales Police Service (1997): New South Wales, *Parliamentary Debates*, Legislative Assembly, 23 September 1997 (B Debus—Minister for Corrective Services). Part 4A expired six months after its introduction: *Special Commissions of Inquiry Act 1983* (NSW) s 33H. An inquiry established under pt 4A attracted an unsuccessful legal challenge on the basis that certain provisions abrogated freedom of speech: G Griffith, ‘The Powers and Privileges of the New South Wales Legislative Council—*Arena v Nader*’ (1998) 9 *Public Law Review* 227.

3 *Royal Commissions Act 1923* (NSW) s 5.

4 *Special Commissions of Inquiry Act 1983* (NSW) s 4(2). However, a commission of inquiry that is issued to a judge does not cease to have force only because the person ceases to be a judge: s 2A. ‘Judge’ is defined in s 3 of the Act to include judges of the NSW Land and Environment and District Courts, as well as judicial members of the NSW Industrial Relations and Workers’ Compensation Commission.

5 *Royal Commissions Act 1923* (NSW) div 2 s 15. Commissioners who are also judges of the Supreme Court of NSW may exercise the special powers without such a declaration by the Governor: s 15(1).

4.6 Both the *Royal Commissions Act* (NSW) and the *Special Commissions of Inquiry Act* (NSW) confer coercive powers upon inquiries appointed under the Acts.⁶ In inquiries established under the *Special Commissions of Inquiry Act* (NSW) and the special provisions of the *Royal Commissions Act* (NSW), a commissioner has the same powers, rights and privileges as a judge does with respect to compelling the: attendance of witnesses; answering by witnesses of relevant questions; and production of documents and other material.⁷ Further, a commissioner may issue warrants for the apprehension of a witness and the bringing of that witness before the inquiry.⁸

4.7 Not all inquiries enacted under the *Royal Commissions Act* (NSW) and the *Special Commissions of Inquiry Act* (NSW) are empowered to exercise all powers set out in the Acts—both Acts allow the Governor to set limitations on the powers available to inquiries.⁹ Professor Enid Campbell observed that a provision of this nature ‘provides an element of flexibility not present in the federal Act’.¹⁰

Victoria

4.8 Currently, there is no general inquiries statute that provides for the establishment of public inquiries in Victoria. The Governor-in-Council, however, may issue commissions and appoint boards of inquiry to any person or persons under the *Constitution Act 1975* (Vic).¹¹

4.9 The powers and rules of commissions and boards of inquiry are set out in the *Evidence Act 1958* (Vic).¹² There are few differences between the powers and rules of commissions and boards of inquiry. The coercive powers of both largely reflect those in the federal *Royal Commissions Act*.¹³ Several other Victorian Acts provide that the relevant provisions of the *Evidence Act* apply with respect to investigatory inquiries established under those Acts.¹⁴

6 Ibid pt 2; *Special Commissions of Inquiry Act 1983* (NSW) pt 3. Further, the *Royal Commission (Police Service) Act 1994* (NSW) was enacted to provide additional powers to the Royal Commission into the New South Wales Police Service, which was appointed under the *Royal Commissions Act 1923* (NSW).

7 *Royal Commissions Act 1923* (NSW) s 18; *Special Commissions of Inquiry Act 1983* (NSW) s 24. Note that the punishment of contempt differs between the two Acts: *Royal Commissions Act 1923* (NSW) s 18B; *Special Commissions of Inquiry Act 1983* (NSW) s 24(d).

8 *Royal Commissions Act 1923* (NSW) s 16; *Special Commissions of Inquiry Act 1983* (NSW) s 22.

9 *Royal Commissions Act 1923* (NSW) s 14; *Special Commissions of Inquiry Act 1983* (NSW) s 5.

10 H Coombs and others, *Royal Commission on Australian Government Administration* (1976), Appendix 4K, [3.7].

11 *Constitution Act 1975* (Vic) ss 88B, 88C. Campbell notes ‘[t]here appear to be no important differences between the powers of commissions and of boards. Though in practice royal commissions have been reserved for matters of great public importance’: H Coombs and others, *Royal Commission on Australian Government Administration* (1976), Appendix 4K, [3.5].

12 *Evidence Act 1958* (Vic) ss 14–21C.

13 Note, however, that in 1998 the *Evidence Act 1958* (Vic) was amended to confer on commissions or boards of inquiry established under the *Constitution Act 1975* (Vic) powers of entry to premises and inspection and possession of certain documents or things found on the premises: *Evidence Act 1958* (Vic) s 19E.

14 For a list of these Acts, see: Victorian Law Reform Commission, *Implementing the Uniform Evidence Act—Report* (2006), Appendix 12.

4.10 In 2006, the Victorian Law Reform Commission recommended the: repeal of the provisions of the *Evidence Act 1958* that deal with commissions and boards of inquiries; enactment of a Victorian *Royal Commissions Act*; and consequential amendment of several Victorian Acts that incorporate by reference the inquiry provisions of the *Evidence Act 1958*.¹⁵ On 1 January 2010, most provisions of the *Evidence Act 2008* (Vic) will come into force, replacing most provisions of the *Evidence Act 1958*.¹⁶ The *Evidence Act 2008*, however, does not contain provisions dealing with the powers and procedures of public inquiries, and the provisions of the *Evidence Act 1958* relating to inquiries remain in force. At the time of writing in October 2009, draft legislation for the establishment of public inquiries has not been introduced into the Victorian Parliament.

Queensland

4.11 In Queensland, the Governor has the prerogative power to establish a commission of inquiry. Under the *Commissions of Inquiry Act 1950* (Qld), commissions of inquiry with coercive powers may be issued to any person or persons.¹⁷ Unlike most other equivalent Acts in Australian jurisdictions, the *Commissions of Inquiry Act* (Qld) states that the Governor shall establish an inquiry under the Act with the advice of the Executive Council.¹⁸ Further, the Governor in Council may declare that specified provisions of the *Commissions of Inquiry Act* (Qld) apply to inquiries other than those issued under the Act.¹⁹

4.12 Inquiries established under the *Commissions of Inquiry Act* (Qld) have the power, in certain circumstances, to enter and search premises.²⁰ The commission may inspect documents and make copies of any material that may be relevant to the inquiry.²¹ Further, if the chair of the commission is satisfied that there are reasonable grounds for suspecting that there is relevant material on certain premises, he or she may issue a warrant to police officers to search the premises and seize relevant material.²²

15 Ibid, Rec 43. These recommendations were made as a result of the inquiry into uniform evidence law in Australia conducted jointly by the ALRC, Victorian Law Reform Commission and NSW Law Reform Commission: Australian Law Reform Commission, New South Wales Law Reform Commission and Victorian Law Reform Commission, *Uniform Evidence Law*, ALRC 102 (2005).

16 *Evidence Act 2008* (Vic) s 2.

17 *Commissions of Inquiry Act 1950* (Qld) ss 3, 4(1).

18 Ibid 4(1). With respect to the analogous power of the Governor-General under s 1A of the *Royal Commissions Act 1902* (Cth), note that the *Acts Interpretation Act 1901* (Cth) s 16 provides that the reference in an Act to the Governor-General shall be read as referring to the Governor-General acting with the advice of the Executive Council. This is discussed further in Ch 3.

19 *Commissions of Inquiry Act 1950* (Qld) s 4(2).

20 Ibid s 19A. See also H Reed, 'The "Permanent" Commissions of Inquiry—A Comparison with Ad Hoc Commissions—Part II' (1995) 2 *Australian Journal of Administrative Law* 157, 159.

21 *Commissions of Inquiry Act 1950* (Qld) s 19.

22 Ibid s 19A.

South Australia

4.13 In South Australia, the Governor has the prerogative power to establish a Royal Commission. Coercive powers of Royal Commissions are set out in the *Royal Commissions Act 1917* (SA).²³

4.14 While there are no requirements in the *Royal Commissions Act* (SA) as to who may be a member of a Royal Commission, there were stringent requirements for one inquiry established under the *Commission of Inquiry (Children in State Care and Children on APY Lands) Act 2004* (SA). This Act established a commission of inquiry into the incidence of sexual offences against children resident on the Anangu Pitjantjatjara Yankunytjatjara lands in Central Australia. While the Governor may have appointed any person to be a commissioner of this inquiry, he or she also needed to appoint two assistant commissioners of whom:

- one needed to be male and one female; and
- at least one needed to be of Aboriginal descent.²⁴

4.15 Few other Acts providing for the establishment of public inquiries with coercive powers set out restrictions on the gender or ethnicity of an inquiry member. The issue of membership of an inquiry is discussed further in Chapter 6.

Western Australia

4.16 The *Royal Commissions Act 1968* (WA) provides that a Royal Commission with coercive powers may be appointed by the Governor.²⁵ It mirrors the federal *Royal Commissions Act* in providing a statutory basis for the establishment of Royal Commissions with coercive powers.²⁶ Other Acts may confer additional powers on inquiries established under the *Royal Commissions Act* (WA).²⁷

23 *Royal Commissions Act 1917* (SA) ss 3, 4.

24 *Commission of Inquiry (Children in State Care and Children on APY Lands) Act 2004* (SA) s 4A(2), (3). In the Commission of Inquiry into Children on APY Lands (2007), the assistant commissioners could have exercised the powers and performed the functions of the commissioner under the Act in accordance with an arrangement entered into with the commissioner: *ibid* s 4A(4).

25 *Royal Commissions Act 1968* (WA) s 5.

26 *Ibid* s 5; *Royal Commissions Act 1902* (Cth) s 1A. Also see H Reed, 'The "Permanent" Commissions of Inquiry—A Comparison with Ad Hoc Commissions—Part I' (1995) 2 *Australian Journal of Administrative Law* 69, 72.

27 For example, see *Royal Commission (Police) Act 2002* (WA).

4.17 Any person may be appointed as a member of a Royal Commission established under the *Royal Commissions Act* (WA). Unlike equivalent Acts in other jurisdictions, however, the Act also makes special provision for the appointment of members of a select committee of either House of Parliament as members of a Royal Commission.²⁸ In such a case, a majority of the members shall form a quorum at any meeting, and any decision of a majority of members shall be the decision of the Royal Commission.²⁹

4.18 In Western Australia, some public inquiries also may be established by an individual minister. The minister responsible for administering the *Public Sector Management Act 1994* (WA) may direct, in writing, a suitably qualified person or persons to conduct a special inquiry into a matter relating to the Western Australian public sector.³⁰ Special inquirers appointed under the Act have some coercive information-gathering powers, including the power to enter the premises of any public sector body, and inspect and retain any book, document or writing produced to him or her upon notice in writing.³¹

Tasmania

4.19 In Tasmania, inquiries with coercive powers are established by the Governor under the *Commissions of Inquiry Act 1995* (Tas). Unlike comparable legislation in other Australian jurisdictions, this Act sets out criteria for when a public inquiry may be established. The Governor may direct that a commission of inquiry be made into a matter only when he or she is satisfied that it is both in the public interest and expedient to do so.³²

4.20 The *Commissions of Inquiry Act* (Tas) provides that one or more persons may be appointed as members of such an inquiry. The Act also sets out the circumstances in which such appointment may be terminated.³³

4.21 In 2003, the Tasmania Law Reform Institute made several recommendations with respect to the powers of inquiries established under the *Commissions of Inquiry Act* (Tas).³⁴ These recommendations are discussed in Chapter 11.

Northern Territory

4.22 Under the *Inquiries Act 1945* (NT), either the responsible minister or the Legislative Assembly can appoint, or resolve to appoint, a person or board of inquiry.³⁵

28 *Royal Commissions Act 1968* (WA) s 8.

29 Ibid.

30 *Public Sector Management Act 1994* (WA) s 11. 'Public sector' is defined broadly under the Act to mean all agencies, ministerial offices and non-state emergency service organisations: ibid s 3.

31 Ibid ss 12, 13.

32 *Commissions of Inquiry Act 1995* (Tas) s 4(1).

33 Ibid s 4(5), sch 1.

34 Tasmania Law Reform Institute, *Report on the Commissions of Inquiry Act 1995* (2003).

35 *Inquiries Act 1945* (NT) ss 4, 4A. The minister responsible for administering the *Inquiries Act* is the Chief Minister: Northern Territory, *Administrative Arrangements Order*, 9 February 2009.

If the Legislative Assembly passes a resolution for the appointment of an inquiry, the Administrator of the Northern Territory appoints the board of inquiry or inquiry member. Reports are required to be tabled in the Legislative Assembly.³⁶

4.23 Inquiries established under the *Inquiries Act* (NT) have similar powers to those established under the federal *Royal Commissions Act*. In addition, the *Commission of Inquiry (Deaths in Custody) Act 1989* (NT) expressly provided the commissioner of that inquiry with the same powers, protections and privileges as those contained in the federal *Royal Commissions Act*.³⁷ Concurrent inquiries established jointly by the federal and state or territory governments are discussed in Chapter 11.

Australian Capital Territory

4.24 Royal Commissions and boards of inquiry are appointed by the ACT executive under the *Royal Commissions Act 1991* (ACT) and the *Inquiries Act 1991* (ACT) respectively.³⁸ The Acts generally are similar, but Royal Commissions and boards of inquiry differ in the scope of their powers. The explanatory memorandum for the bills makes clear the parliamentary intention for the different mechanisms—a Royal Commission is intended to be ‘inquisitorial’ in nature, whereas a board of inquiry ‘provide[s] the Government of the Territory with information on a matter of general importance’.³⁹

4.25 Commissioners appointed under the *Royal Commissions Act* (ACT) must be a judge or a person who has been a lawyer for at least five years.⁴⁰ There is no similar requirement for the membership of boards of inquiry established under the *Inquiries Act* (ACT).⁴¹ The executive may terminate the appointment of a commissioner of a Royal Commission or member of a board of inquiry on the grounds of misbehaviour or physical or mental incapacity.⁴²

Other models of inquiry in Australia

Defence inquiries established by regulations

4.26 Inquiries established under regulations usually consider issues related to national security or the Australian Defence Force (ADF). During, and immediately following, the Second World War, inquiries were conducted under the *National Security (Inquiries) Regulations 1941* (Cth).⁴³ One such commission of inquiry was the Inquiry

36 *Inquiries Act 1945* (NT) s 4A. The tabling of reports of inquiries established under the federal *Inquiries Act* recommended in this Report is discussed in Ch 7.

37 *Commission of Inquiry (Deaths in Custody) Act 1987* (NT) s 7.

38 *Royal Commissions Act 1991* (ACT) s 5; *Inquiries Act 1991* (ACT) s 5.

39 Explanatory Memorandum, Royal Commissions Bill 1990, Inquiries Bill 1990, Royal Commissions and Inquiries (Consequential Provisions) Bill 1990 (ACT), 2.

40 *Royal Commissions Act 1991* (ACT) s 6.

41 Section 5 of the *Inquiries Act 1991* (ACT) provides that the ‘Executive may appoint 1 or more people as a board of inquiry’.

42 *Royal Commissions Act 1991* (ACT) s 11; *Inquiries Act 1991* (ACT) s 11.

43 These regulations were made under the *National Security Act 1939* (Cth).

Concerning the Circumstances Connected with the Attack Made by Japanese Aircraft at Darwin on 19 February 1942 (1945). This inquiry considered a range of issues, including: damage sustained in the attack; loss of life; accuracy of bombing; whether there was adequate warning of the raid; preparation of defence services; cooperation between various defence services; and changes necessary to ensure defence against recurrence of attacks.⁴⁴

4.27 Currently, inquiries may be conducted under the *Defence (Inquiry) Regulations 1985* (Cth),⁴⁵ which enable the establishment of courts and boards of inquiry to inquire into matters related to the ADF.⁴⁶ Courts of inquiry are established by, and report to, the Minister for Defence.⁴⁷ Boards of inquiry are established by, and report to, the Australian Secretary for Defence, Chief of the Defence Force (CDF), or the Chief Officers of the Navy, Army or Air Force.⁴⁸ Courts and boards of inquiry tend to examine issues related to an accident, injury or damage to ADF property.⁴⁹

4.28 In June 2007, the *Defence (Inquiry) Regulations* were amended to provide for the establishment by the CDF of commissions of inquiry.⁵⁰ These inquiries may consider service-related deaths and suicides of ADF members.⁵¹ In 2009, a CDF commission of inquiry reported on the loss of HMAS Sydney II in November 1941 and related loss of life.⁵²

4.29 At least one member of a court or commission of inquiry established under the *Defence (Inquiry) Regulations* must be a civilian with legal (or, in the case of a commission of inquiry, judicial) experience.⁵³ Where there is more than one member of an inquiry, the civilian is to be the president of the inquiry.⁵⁴ Expert ‘assessors’ may be appointed to advise members of a board of inquiry.⁵⁵ Assessors do not join in the preparation of the report of the inquiry, but may examine the report before it is presented to the appointing authority.⁵⁶

44 Justice Lowe, *Commission of Inquiry Concerning the Circumstances Connected with the Attack Made by Japanese Aircraft at Darwin on 19 February 1942* (1945).

45 These regulations are made under the *Defence Act 1903* (Cth); *Naval Defence Act 1910* (Cth); and *Air Force Act 1923* (Cth).

46 *Defence (Inquiry) Regulations 1985* (Cth) pts II–III. Combined courts and boards of inquiry also may be appointed: pt III. Further, in certain circumstances, Inquiry Officers may inquire into a matter concerning a part of the ADF: pt 6. The Inspector-General of the ADF also may carry out inquiries: pts 6, 7.

47 *Ibid* regs 5, 6.

48 *Ibid* regs 23, 26.

49 Australian Government Department of Defence, *Commission of Inquiry—Frequently Asked Questions* (2009) <<http://www.defence.gov.au/coi/inquiries.htm>> at 4 August 2009.

50 *Defence (Inquiry) Amendment Regulations 2007* (Cth).

51 *Defence (Inquiry) Regulations 1985* (Cth) reg 109.

52 T Cole, *The Loss of HMAS Sydney II* (2009).

53 *Defence (Inquiry) Regulations 1985* (Cth) regs 4, 6, 112.

54 *Ibid* regs 7, 112.

55 *Ibid* reg 8.

56 *Ibid* reg 19.

4.30 Coercive information-gathering powers are conferred upon members of all inquiries conducted under the *Defence (Inquiry) Regulations*.⁵⁷ The regulations also address procedural issues, such as whether inquiries should be conducted in private or public.⁵⁸

Models of inquiry in overseas jurisdictions

4.31 In this section, the ALRC considers models of inquiry in several overseas jurisdictions in which the systems of government are comparable to the Australian system. In addition, a number of these jurisdictions have conducted recent reviews of their inquiries legislation.

United Kingdom

4.32 In the United Kingdom (UK) under the *Inquiries Act 2005* (UK), any minister may establish an inquiry with coercive powers.⁵⁹ The *Inquiries Act* (UK) replaced approximately 30 laws for the establishment of inquiries, including the *Tribunals of Inquiry (Evidence) Act 1921* (UK).⁶⁰

4.33 Under the *Inquiries Act* (UK), inquiries may be established to consider particular events that have caused, or have the potential to cause, public concern. A minister may also establish an inquiry if there is public concern that particular events may have happened.⁶¹ Within a reasonably practicable time after establishing an inquiry, the minister needs to inform the relevant Parliament or Assembly of the decision to establish the inquiry, the terms of reference, and the name of the chair of the inquiry.⁶²

4.34 The minister responsible for establishing an inquiry appoints its chair, and, in consultation with the chair, any additional inquiry members.⁶³ The criteria for the membership of an inquiry are not related directly to professional qualifications—rather, inquiry members are appointed on the basis of ‘suitability’ and ‘impartiality’.⁶⁴

4.35 A judge may be appointed as a chair or other inquiry member but he or she does not exercise different powers to a member who is not a judge.⁶⁵ In addition to

57 Ibid pts II–8.

58 Ibid.

59 *Inquiries Act 2005* (UK) s 1. That section defines a ‘minister’ to mean a minister in the UK, Scotland or Northern Ireland governments or the National Assembly of Wales.

60 See United Kingdom Department of Constitutional Affairs, *Inquiries Act (2005)* <<http://www.dca.gov.uk/legist/inquiries.htm>> at 4 August 2009.

61 *Inquiries Act 2005* (UK) s 1.

62 Ibid s 6.

63 Ibid ss 4, 7. The minister also sets the terms of reference for the inquiry in consultation with the chair: ibid s 5.

64 Ibid ss 8, 9.

65 Ibid s 10. This section also provides that some judges may be appointed by the minister only in consultation with certain other judges.

appointing inquiry members, the minister may appoint expert ‘assessors’ to assist panel members. Assessors have an advisory role and do not exercise powers under the *Inquiries Act* (UK).⁶⁶

4.36 The *Inquiries Act* (UK) provides flexibility in other ways. For example, an inquiry commenced other than under the Act may be ‘converted’ to an inquiry under the Act.⁶⁷ A converted inquiry enjoys the same powers and protections as an inquiry commenced under the Act.⁶⁸ Another flexible feature of the Act is that the minister responsible for establishing an inquiry may suspend that inquiry temporarily to allow the completion of any investigation, or civil or criminal proceedings, that relate to the inquiry.⁶⁹

Canada

4.37 Two types of inquiries with coercive powers may be established under the *Inquiries Act 1985* (Canada). A ‘public’ inquiry is established by the Governor-in-Council whenever it considers it would be expedient to do so.⁷⁰ A ‘departmental’ inquiry may be established, with the approval of the Governor-in-Council, by a minister with responsibility for a federal government department.⁷¹ Commissioners of departmental inquiries investigate and report on matters relating to departmental business and the conduct of officials.⁷²

4.38 Public and departmental inquiries exercise similar powers with respect to compelling the attendance and answers of witnesses and the production of relevant material.⁷³ In addition, commissioners of departmental inquiries may enter any public institution and search for relevant material.⁷⁴

4.39 The *Inquiries Act* (Canada) has some elements of flexibility. It provides for the appointment of counsel, experts and assistants to assist the commissioners. These individuals may be delegated the same powers as the commissioners.⁷⁵ It also allows the Governor-in-Council to confer on an international commission or tribunal any of the powers conferred on public inquiries. Such a commission or tribunal may exercise these powers in Canada, subject to any conditions or limitations that may be imposed by the Governor-in-Council.⁷⁶

66 Ibid s 11.

67 Ibid s 15.

68 Ibid ss 15, 16.

69 Ibid s 13.

70 *Inquiries Act 1985* RSC c I-11 (Canada) s 2. Unless the inquiry is regulated by a special law, the Governor-in-Council also may appoint commissioners to conduct the inquiry: ibid s 3.

71 Ibid s 6.

72 Ibid.

73 Ibid ss 4, 5, 7–10.

74 Ibid s 7.

75 Ibid pt III.

76 Ibid pt IV.

New Zealand

4.40 The Governor-General of New Zealand may establish Royal Commissions by use of the royal prerogative. Other public inquiries, including Royal Commissions with coercive powers and protections, also may be established by the Governor-General under the *Commissions of Inquiry Act 1908* (NZ).⁷⁷

4.41 Under the *Commissions of Inquiry Act* (NZ), public inquiries may be established to consider: the administration of government; the operation, necessity or expediency of any legislation; the conduct of any officer in the service of the Crown; disasters or accidents in which members of the public were, or could have been, killed or injured; or any other matter of public importance.⁷⁸ Judges may be appointed as members of a public inquiry. Judges, and former judges, of the High Court have additional powers and protections under the Act.⁷⁹

4.42 Public inquiries may be commenced under a very large number of other New Zealand statutes and over 50 statutes incorporate by reference powers of the *Commissions of Inquiry Act* (NZ).⁸⁰ In addition, at least 12 Acts provide for the establishment of inquiries to consider issues related to those Acts, with powers akin to inquiries established under the *Commissions of Inquiry Act*.⁸¹

4.43 In May 2008, the New Zealand Law Commission (NZLC) released a report, *A New Inquiries Act*. Amongst other things, the NZLC recommended the repeal of the *Commissions of Inquiry Act* and the enactment of a statute that provides for the establishment and other aspects of ‘commissions of inquiry’ and ‘government inquiries’.⁸² On 29 September 2008, the Inquiries Bill 2008 was introduced into the New Zealand Parliament. At the time of writing in October 2009, the Bill was under consideration by the Select Committee on Government Administration. If passed, the Bill will implement many of the recommendations made by the NZLC.⁸³

Ireland

4.44 Statutory commissions with coercive powers and protections may be established under the *Commissions of Investigation Act 2004* (Ireland). Commissions established under this Act may consider issues of significant public concern.⁸⁴ Before a commission is established, the Minister for Finance needs to approve a minister’s

77 *Commissions of Inquiry Act 1908* (NZ) s 2.

78 Ibid.

79 Ibid ss 13–13B.

80 These statutes are set out in New Zealand Law Commission, *A New Inquiries Act*, Report No 102 (2008), 187–189.

81 Ibid, 190.

82 Ibid, Rec 3.

83 The inquiries legislation proposed by the New Zealand Law Commission and the Inquiries Bill 2008 (NZ) differ with respect to the ‘tiers’ of inquiry that may be established under the draft legislation. These models are discussed in detail in Ch 5.

84 *Commissions of Investigation Act 2004* (Ireland) s 3.

proposal to establish a commission, and both Houses of Parliament (the Oireachtas) need to resolve to approve the draft proposal.⁸⁵

4.45 The Irish Government also has the power to establish a tribunal of inquiry to consider a matter of ‘urgent public importance’.⁸⁶ A tribunal of inquiry has coercive powers vested in it by the *Tribunals of Inquiry (Evidence) Acts 1921 to 2004* (Ireland) if both Houses of the Oireachtas pass a resolution to that effect.⁸⁷

4.46 In 2005, the Law Reform Commission of Ireland (LRCI) released a *Report on Public Inquiries Including Tribunals of Inquiry*. The LRCI made a number of recommendations for changes to the current system with respect to: the selection of an appropriate type of inquiry; drafting appropriate terms of reference; the rights of individuals and organisations to be heard and represented; and the awarding of legal costs.⁸⁸ Following the release of this report, the Tribunals of Inquiry Bill 2005 (Ireland) was introduced into the Oireachtas. This Bill has also been considered by the Select Committee on Justice, Equality, Defence and Women’s Rights. At the time of writing in October 2009, the Bill had not yet been passed.

Singapore

4.47 Two types of public inquiries with coercive powers may be established under the *Inquiries Act 2007* (Singapore). A ‘commission of inquiry’ may be established by the President of Singapore whenever he or she considers that it would be expedient to do so. Such an inquiry may consider: the conduct of public service officers; the conduct of any public service department or public institution; or any matter, in the opinion of the President, which would be in the public interest.⁸⁹

4.48 A ‘committee of inquiry’ may be established by any minister whenever he or she considers that it would be expedient to do so. A committee may be established for the purpose of inquiring into: an occurrence involving death, serious personal injury or serious property damage; an occurrence that may endanger public safety or public health; the conduct of a ministry, department or statutory body within the minister’s responsibility; or the conduct of an officer employed by, or seconded to, such a body.⁹⁰

85 Ibid.

86 *Tribunals of Inquiry (Evidence) Acts 1921 to 2004* (Ireland) s 1(1). When Ireland gained its independence in 1922, existing UK law was brought into Irish law.

87 Ibid.

88 Law Reform Commission of Ireland, *Report on Public Inquiries Including Tribunals of Inquiry*, LRC 73 (2005), Ch 11. Also see Irish Government Citizens Information Board, *Citizens Information—Tribunals of Inquiry* (2009) <http://www.citizensinformation.ie/categories/government-in-ireland/national-government/tribunals-and-investigations/tribunals_of_inquiry> at 4 August 2009.

89 *Inquiries Act 2007* (Singapore) s 3(1).

90 Ibid s 9(1).

4.49 Members of commissions and committees of inquiry are appointed by the person establishing the inquiry (appointing authority).⁹¹ At least one member of a commission of inquiry must be a judge of the High Court of Singapore, and at least one member of a committee of inquiry must be a judge of a District Court of Singapore.⁹²

4.50 Both types of public inquiry have identical powers with respect to procuring evidence, examining witnesses and compelling attendance of witnesses.⁹³ Subject to the terms of reference, both types of inquiry may have the power to admit evidence that would otherwise be inadmissible in judicial proceedings, and to hold private hearings.⁹⁴

4.51 The *Inquiries Act* (Singapore) provides for the appointment of a secretary or assessors at the discretion of the appointing authority.⁹⁵ The appointing authority may also make rules with respect to the inquiry body—for example on matters of evidence or procedure.⁹⁶ With the consent of the appointing authority, an inquiry may be suspended to allow for the completion of any relevant investigation or judicial proceedings.⁹⁷

4.52 Under the *Inquiries Act* (Singapore), an inquiry may report on anything it considers relevant to the terms of reference. It may also make recommendations related to the terms of reference, including ‘any recommendations the inquiry body sees fit to make despite not being required to do so’.⁹⁸

91 Ibid s 2.

92 Ibid ss 4(1), 10(1).

93 Ibid sch 1 para 1.

94 Ibid sch 1 paras 5–6.

95 Ibid ss 6–7, 12–13.

96 Ibid ss 15–16.

97 Ibid sch 1 para 2.

98 Ibid sch 1 para 15.

