



Full Day Hansard Transcript (Legislative Council, 11 September 2013, Proof)
Proof

Extract from NSW Legislative Council Hansard and Papers Wednesday, 11 September 2013 (Proof).

ROYAL COMMISSIONS AND OMBUDSMAN LEGISLATION AMENDMENT BILL 2013

Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. David Clarke, on behalf of the Hon. Michael Gallacher.

Motion by the Hon. David Clarke agreed to:

That standing orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [12.48 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

Leave granted.

The Royal Commissions and Ombudsman Legislation Amendment Bill 2013 has two purposes.

First, it makes further amendments to facilitate the work of the national Royal Commission into Institutional Responses to Child Sexual Abuse.

Secondly, it makes amendments to enable the NSW Ombudsman to give evidence for the purposes of certain court proceedings.

As members are aware, the Royal Commission into Institutional Response to Child Sexual Abuse was established in January this year under Letters Patent issued both under Commonwealth legislation and State legislation.

This has been done to ensure that the commission has the ability to use the powers under the both the Commonwealth and State legislation.

Under the NSW Royal Commissions Act 1923, the Royal Commission has a broad power to compel the production of documents, and the answering of questions.

This power—contained in section 17 of the Act—is expressed to override any ground of privilege or any other ground.

The Government is proposing an amendment to the Royal Commissions Act to make it clear that this power overrides all other legislative secrecy provisions.

The only exception will be secrecy or non-disclosure provisions which specifically state that they extend to Royal Commissions.

Although this power of the Royal Commission is broad, it is also subject to a number of protections.

In particular, the power can only be exercised by a commissioner with certain legal qualifications and if the Letters Patent have declared that the Royal Commission can exercise the power. Witnesses are protected under the Act, as the disclosed information is not admissible in evidence against them in proceedings, except in certain limited circumstances.

The bill will also provide for some additional protections, by giving Royal Commissions an express power to issue directions prohibiting or restricting the publication of the information, and to hold any part of the inquiry in private.

This amendment is particularly relevant to the current National Royal Commission, where sensitive personal information may be disclosed to the commissioners.

Schedule 2 of the bill provides for an additional protection, which will specifically apply in relation to information identifying a person who reported that a child is at risk of significant harm under the Children and Young Persons (Care and Protection) Act 1998.

The bill will ensure that information identifying the person who made the report may only be provided to the commission either with the person's consent or with the express leave of the commission.

The identification of children at risk of significant harm in the community relies on an effective reporting system, and it is critical to the success of that reporting system to protect the identity of the reporter from disclosure to the wider community.

The Royal Commission is continuing to gather information in a number of different ways, including through private sessions and issues papers.

The first public hearing of the Royal Commission will commence in Sydney on 16 September 2013. It will be looking at how organisations, including Scouts Australia, the Hunter Aboriginal Children's Services Corporation and the then NSW Department of Community Services responded to information and allegations concerning Steven Larkins, the former CEO of the Hunter Children's Services Corporation.

The bill will ensure that the Royal Commission will be able to access the information it requires to carry out its inquiries. And it will ensure that the commission can protect the confidentiality of that information.

The Government has consulted with the Royal Commission into Institutional Responses to Child Sexual Abuse on the proposed amendments.

Given that the commission will be moving to public hearings from next week, the Government will be seeking the House's support in passing this bill on an expedited basis.

The second matter that is dealt with by the bill is the amendments in schedules 3 and 4 to the bill. These amendments have been requested by the NSW Ombudsman in the context of his ongoing investigation of matters relating to Operation Prospect.

Presently, section 35 of the Ombudsman Act 1974 and section 165 of the Police Act 1990 provide that the Ombudsman or his office cannot give evidence or produce documents in any legal proceedings, except in particular categories of cases that are specifically prescribed in the legislation.

Likewise, section 34 of the Ombudsman Act prevents the Ombudsman from disclosing information obtained in the course of his office, except if the disclosure is for certain specified purposes.

These provisions are intended to ensure the secrecy of information received by the Ombudsman. They also promote frank disclosures to the Ombudsman, and encourage cooperation.

However, the Ombudsman has raised concerns that these provisions might jeopardise any prosecutions arising out of Operation Prospect, and like investigations.

Operation Prospect commenced in 2012, when the New South Wales Government announced that the Ombudsman would investigate allegations concerning the conduct of officers of the NSW Police Force, the NSW Crime Commission and the Police Integrity Commission, in relation to a number of investigations which occurred between 1998 and 2002.

The Ombudsman is also concerned that the secrecy provisions might hamper criminal proceedings or proceedings seeking an injunction against a person who, contrary to the Public Interest Disclosures Act 1994, has taken reprisal action against someone who made a public interest disclosure.

The New South Wales Government is keen to ensure that any prosecutions arising out of Operation Prospect, as well as those relating to reprisal action offences are not unduly hindered by the existing confidentiality regime.

The amendments strike a balance between facilitating prosecutions of the kind identified by the Ombudsman, and ensuring the current confidentiality regime continues to operate effectively.

I commend the bill to the House.