



New South Wales

# Royal Commissions and Ombudsman Legislation Amendment Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to ensure witnesses attending or appearing before a Royal Commission established under the *Royal Commissions Act 1923* are not excused from answering any question or producing any document, when required by the Royal Commission to do so, despite any other Act (unless the other Act specifically prohibits disclosure to a Royal Commission),
- (b) to make related amendments to the *Children and Young Persons (Care and Protection) Act 1998*, ensuring that the identity of any person who makes a report under that Act that a child or young person is at risk of significant harm (a *risk of harm report*) may be disclosed to a Royal Commission in only limited circumstances,
- (c) to enable a Royal Commission to give directions preventing the publication of evidence, information or documents given to it and directions requiring any part of an inquiry to take place in private,
- (d) to enable the Ombudsman to disclose information, obtained in the course of an investigation by the Ombudsman, for the purpose of certain criminal proceedings resulting from the investigation and for the purpose of certain proceedings under the *Public Interest Disclosures Act 1994*.

## Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Royal Commissions Act 1923 No 29**

Section 17 (1) of the *Royal Commissions Act 1923 (RC Act)* provides that witnesses summoned to attend or appearing before a Royal Commission are not excused from answering questions or producing documents to the Commission on any grounds. Section 17 applies only if the Governor declares, in the letters patent establishing the Royal Commission, that the section applies to the inquiry.

**Schedule 1 [2]** amends section 17 (1) of the RC Act to expressly provide that the grounds on which a person is not excused from answering questions or producing documents include any duty of secrecy or other restriction on disclosure.

**Schedule 1 [3]** ensures that a provision of any other Act or law (for example, a provision imposing a restriction on disclosure) may only override section 17 (1) of the RC Act if the provision states specifically that it applies despite section 17.

**Schedule 1 [1]** inserts proposed section 12B into the RC Act. The proposed section enables a Royal Commission to give directions preventing or restricting the publication of evidence, information or documents given to it. The proposed section also enables a Royal Commission to direct that any part of an inquiry may take place in private and to direct who may be present at that part of the inquiry.

**Schedule 1 [4]** inserts proposed section 23B, which makes it an offence to contravene any direction made under proposed section 12B.

**Schedule 1 [5]** contains savings and transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 2      Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157**

**Schedule 2 [2]** inserts proposed section 29AA into the *Children and Young Persons (Care and Protection) Act 1998*, which ensures that the identity of a person who makes a risk of harm report, or information from which the identity of that person could be deduced, must not be disclosed to a Royal Commission, except with the consent of the person who made the report or the leave of a commissioner who is satisfied that the report is of significant importance to the inquiry. The proposed section makes it clear (as required by the amendment to section 17 of the RC Act made by **Schedule 1 [3]**) that this particular restriction on disclosure to a Royal Commission has effect despite section 17 of the RC Act. **Schedule 2 [1]** makes a consequential amendment.

**Schedule 2 [3]** enables the Governor to make savings and transitional regulations that are consequential on the enactment of the proposed Act or any other amending Act.

**Schedule 2 [4]** contains a savings and transitional provision consequent on the enactment of the proposed Act.

## **Schedule 3      Amendment of Ombudsman Act 1974 No 68**

**Schedule 3 [1] and [2]** (together with the amendment to the *Police Act 1990* made in **Schedule 4 [1]**) give effect to the object described in paragraph (d) of the Overview.

**Schedule 3 [3]** contains a savings and transitional provision consequent on the enactment of the proposed Act.

## **Schedule 4      Amendment of Police Act 1990 No 47**

**Schedule 4 [1]** (together with the amendments to the *Ombudsman Act 1974* made in **Schedule 3 [1] and [2]**) gives effect to the object described in paragraph (d) of the Overview.

**Schedule 4 [2]** enables the Governor to make savings and transitional regulations that are consequential on the enactment of the proposed Act.

**Schedule 4 [3]** contains a savings and transitional provision consequent on the enactment of the proposed Act.