

## Special Commission of Inquiry (James Hardie Records) Amendment Bill 2004

New South Wales

### Explanatory note

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

#### Overview of Bill

The *Special Commission of Inquiry (James Hardie Records) Act 2004* (the **Principal Act**) provides for the transfer of records of the Special Commission of Inquiry into the Medical Research and Compensation Foundation (the **Special Commission**) to the Australian Securities and Investments Commission (**ASIC**) and enables ASIC to give possession or custody of any such record to any other person (whether within or outside New South Wales) for any purpose it considers appropriate. Section 7 of the Act prevents a person from objecting to the use of a transferred record by ASIC, or to the disclosure of any matter contained in a transferred record, on certain grounds of privilege. Section 8 makes it clear that a transferred record is to be treated for the purposes of a law of the State as if it were a record that ASIC had lawfully obtained in the performance of its functions or the exercise of its powers under Commonwealth law and that, accordingly, if a record would be admissible in a court under Commonwealth law it will be treated as being admissible in a NSW court. The Special Commission reported on 21 September 2004 and found potential contraventions of the *Trade Practices Act 1974* of the Commonwealth that the Australian Competition and Consumer Commission (the **ACCC**) might wish to investigate.

The object of this Bill is to amend the Principal Act to make it clear that section 7 of the Principal Act prevents a person from objecting to the use of a transferred record by the ACCC or any other person to which ASIC has given possession or custody of the record, or to the disclosure of any matter contained in such a transferred record, on those grounds of privilege.

The Bill also amends section 8 of the Principal Act to make it clear that such a transferred record is to be treated for the purposes of a law of the State as if it were a record that the ACCC or other person had lawfully obtained in the performance of its functions or the exercise of its powers under any law and that, accordingly, if a record would be admissible in a court under that law it will be treated as being admissible in a NSW court.

#### 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 Act.

**Clause 3** is a formal provision that gives effect to the amendments to the *Special Commission of Inquiry (James Hardie Records) Act 2004* set out in Schedule 1.

#### Schedule 1 Amendments

Schedule 1 amends the Principal Act as described in the Overview above.