

FIRST PRINT

## ROYAL COMMISSIONS (AMENDMENT) BILL 1991

NEW SOUTH WALES



### EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Royal Commissions Act 1923 so as:

- (a) to empower a Royal Commission to communicate information or furnish material obtained by it during the course of its inquiry:
  - to another Commission of Inquiry if the information or material relates or may relate to matters within the other Commission's terms of reference; or
  - to a law enforcement agency (including a task force) if the information or material relates or may relate to a breach of the law; and
- (b) to expressly require documents and other things held by a Royal Commission to be returned to the person entitled to them when they are no longer reasonably required, unless they are furnished to another Commission of Inquiry or to a law enforcement agency or are otherwise dealt with according to law.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on the date of assent.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Royal Commissions Act 1923.

Clause 4 contains a transitional provision under which the amendments made by the proposed Act will apply to existing as well as future Royal Commissions.

Schedule 1 (1) makes the amendment described in paragraph (b) above.

Schedule 1 (2) makes the amendment described in paragraph (a) above.

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FIRST PRINT

**ROYAL COMMISSIONS (AMENDMENT) BILL 1991**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Royal Commissions Act 1923 No. 29
4. Transitional

**SCHEDULE 1—AMENDMENTS**

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**ROYAL COMMISSIONS (AMENDMENT) BILL 1991**

NEW SOUTH WALES



No. , 1991

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**A BILL FOR**

An Act to amend the Royal Commissions Act 1923 to specifically authorise Royal Commissions to communicate information and furnish material to certain other persons or bodies; and for other purposes.

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*Royal Commissions (Amendment) 1991*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Royal Commissions (Amendment) Act 1991.

**Commencement**

2. This Act commences on the date of assent.

**Amendment of Royal Commissions Act 1923 No. 29**

3. The Royal Commissions Act 1923 is amended as set out in Schedule 1.

**Transitional**

4. An amendment made by this Act extends to a commission under the Royal Commissions Act 1923 and subsisting at the commencement of this Act.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 12 (**Inspection and copies of documents**):

After section 12 (2), insert:

(3) When the retention of a document or other thing ceases to be reasonably necessary for the purposes of the inquiry to which it relates, the commission is required, if a person who appears to the commission to be entitled to the document or other thing so requests, to cause it to be delivered to that person.

(4) The requirement under subsection (3) does not apply if the commission has furnished the document or other thing or proposes to furnish it to a person or body referred to in section 12A or the commission deals with it or proposes to deal with it otherwise according to law.



SCHEDULE 1—AMENDMENTS—*continued*

## (2) Section 12A:

After section 12, insert:

**Communication of information etc.**

12A. (1) A commission may communicate any information or furnish any material (including evidence) that it obtains in the course of the inquiry conducted by it to a Commission of Inquiry, if the information or material relates or may relate to matters within the terms of reference of the Commission of Inquiry.

(2) A commission may communicate any information or furnish any material (including evidence) that it obtains in the course of the inquiry conducted by it to a law enforcement agency, if the information or material relates or may relate to a breach of a law of the State, of another State or Territory or of the Commonwealth.

(3) In this section:

**“Commission of Inquiry”** means a person or body holding a commission to inquire into and report on any matters and having:

- (a) powers under this Act; or
- (b) powers under another law of the State or under a law of another State or Territory or of the Commonwealth, being in either case a law that has the same or a similar purpose or effect as this Act (such as the Royal Commissions Act 1902 of the Commonwealth);

**“law enforcement agency”** means a person or body with responsibilities for the enforcement of laws of the State, of another State or Territory or of the Commonwealth, including but not limited to any of the following:

- (a) the Attorney General of New South Wales, of another State or Territory or of the Commonwealth;
- (b) the Director of Public Prosecutions of New South Wales, of another State or Territory or of the Commonwealth;

*Royal Commissions (Amendment) 1991*

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) the Commissioner of Police of New South Wales or the holder of a similar position in another State or Territory;
- (d) the Commissioner of Police in the Australian Federal Police;
- (e) the New South Wales Crime Commission;
- (f) the Independent Commission Against Corruption;
- (g) the National Crime Authority;
- (h) the Trade Practices Commission;
- (i) the Australian Securities Commission;
- (j) a task force set up to investigate any matters relating to breaches of law and arising out of the inquiry conducted by the commission.

(4) The reference in this section to a **task force** is limited to a State task force or a joint task force. A State task force is one set up by the State or an authority of the State. A joint task force is one set up jointly by the State or an authority of the State and by one or more other Australian jurisdictions or their authorities. An Australian jurisdiction is a State or Territory or the Commonwealth. Subject to the above provisions of this subsection, the expression "task force" includes a body of persons that is similar to a task force, however it is described.

(5) Nothing in this section derogates from or affects any powers a commission has apart from this section, and it is not to be construed as limiting in any way any such power by implication or otherwise.

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ROYAL COMMISSIONS (AMENDMENT) BILL 1991

MR PRESIDENT,

I MOVE THAT THIS BILL BE NOW READ A SECOND TIME.

MR PRESIDENT,

THE OBJECT OF THIS BILL IS TO GIVE A ROYAL COMMISSION CLEAR AUTHORITY TO PROVIDE INFORMATION AND MATERIAL TO A LAW ENFORCEMENT AGENCY WHERE THAT INFORMATION OR MATERIAL RELATES TO A BREACH OF A LAW OF NSW OR ANOTHER STATE OR THE COMMONWEALTH. THE BILL ALSO EXPRESSLY PROVIDES THAT A WITNESS'S DOCUMENTS AND OTHER PROPERTY ARE TO BE RETURNED TO THE WITNESS IF THE COMMISSION DOES NOT PROPOSE TO PASS THEM ON TO ANOTHER AGENCY.

MR PRESIDENT,

A ROYAL COMMISSIONER MAY CURRENTLY DISSEMINATE





INFORMATION TO APPROPRIATE PUBLIC AUTHORITIES CONCERNING POSSIBLE BREACHES OF LAW. HOWEVER, THERE IS SOME DOUBT ABOUT WHETHER THAT AUTHORITY EXTENDS TO HANDING OVER DOCUMENTS AND OTHER MATERIAL WHICH A COMMISSION HAS REQUIRED A WITNESS TO PRODUCE USING ITS COMPULSORY POWERS. THE AMENDMENT MADE BY THE BILL WILL MAKE IT CLEAR THAT A COMMISSION HAS THAT AUTHORITY WHERE THE MATERIAL RELATES TO POSSIBLE BREACHES OF THE LAW.

THE BILL ALSO EXPRESSLY ALLOWS A ROYAL COMMISSION IN NSW TO HAND ON MATERIAL AND INFORMATION TO OTHER COMMISSIONS OF INQUIRY WHETHER SET UP BY NSW OR ANOTHER STATE OR THE COMMONWEALTH.

GIVING ROYAL COMMISSIONERS A CLEAR POWER TO DISSEMINATE MATERIAL AND INFORMATION WHICH RELATES TO BREACHES OF LAW WILL HELP TO ENSURE THAT THOSE BREACHES ARE BROUGHT TO THE ATTENTION OF THE APPROPRIATE AUTHORITIES AND ACTION TAKEN.





ONCE ALLEGATIONS ARE MADE DURING THE COURSE OF AN INQUIRY THAT A WITNESS HAS BREACHED THE LAW THEN THE WITNESS IS ALERTED TO THE POSSIBILITY OF PROCEEDINGS BEING BROUGHT AGAINST HIM OR HER. IF MATERIAL PRODUCED BY THE WITNESS WERE RETURNED AT THE CONCLUSION OF AN INQUIRY THEN THERE WOULD CLEARLY BE A STRONG INCENTIVE FOR THE WITNESS TO DESTROY IT. THE AMENDMENT WILL ENSURE THAT IMPORTANT EVIDENCE IS SAFEGUARDED.

HOWEVER, WHERE MATERIAL PRODUCED TO A COMMISSION DOES NOT RELATE TO A BREACH OF LAW OR WHERE THE COMMISSION DOES NOT PROPOSE TO PASS IT ON TO A LAW ENFORCEMENT AGENCY THEN THE BILL WILL REQUIRE IT TO BE RETURNED TO THE WITNESS AT HIS OR HER REQUEST.

THE AMENDMENTS ARE MODELLED ON SIMILAR PROVISIONS IN THE COMMONWEALTH ROYAL COMMISSIONS ACT.

IT SHOULD BE EMPHASISED, HOWEVER, THAT THE AUTHORITY TO PASS ON EVIDENCE OF BREACHES OF LAW TO APPROPRIATE AUTHORITIES WILL NOT AFFECT THE





RULES OF EVIDENCE RELATING TO THE ADMISSIBILITY OF THAT EVIDENCE IN ANY SUBSEQUENT CIVIL OR CRIMINAL PROCEEDINGS.

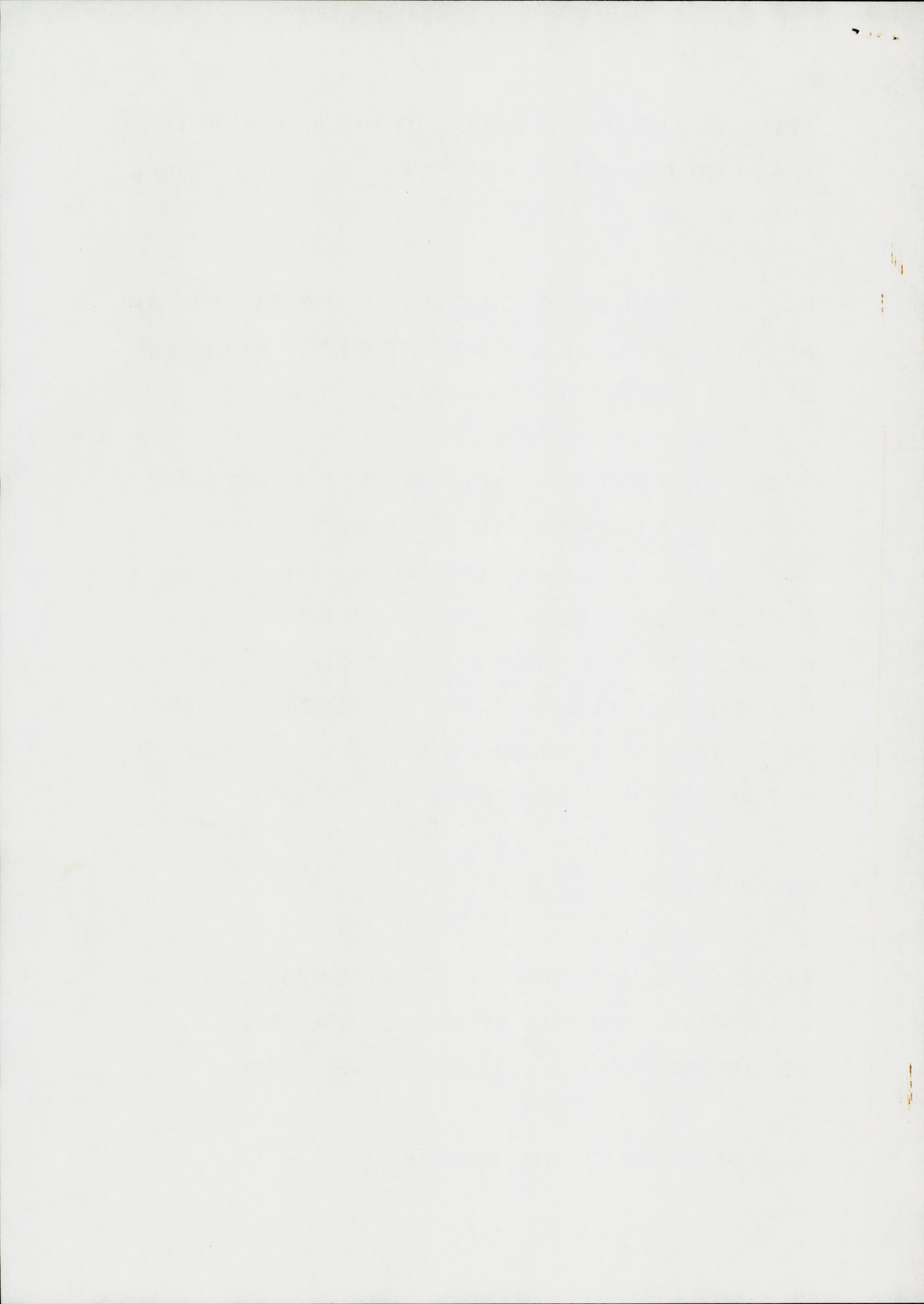
NOR WILL THE PROTECTION GIVEN BY SECTION 17 OF THE ROYAL COMMISSIONS ACT AGAINST ADMISSION OF EVIDENCE UNDER OBJECTION BE AFFECTED.

THAT SECTION PROVIDES THAT WHERE A WITNESS HAS PRODUCED A DOCUMENT TO A COMMISSION UNDER OBJECTION, WHERE HE OR SHE COULD HAVE SUCCESSFULLY CLAIMED PRIVILEGE IN COURT PROCEEDINGS, THAT DOCUMENT CANNOT BE ADMITTED INTO EVIDENCE IN SUBSEQUENT PROCEEDINGS AGAINST THE WITNESS. THE AMENDMENTS MADE BY THE BILL DO NOT AFFECT THIS PROTECTION.

MR PRESIDENT,

THE BILL WILL ENHANCE THE EFFECTIVENESS OF ROYAL COMMISSIONS AND HELP TO ENSURE THAT THE RESOURCES INVESTED IN THEM ARE WELL USED.

I COMMEND THE BILL TO THE HOUSE.



**ROYAL COMMISSIONS (AMENDMENT) ACT 1991 No. 58**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Royal Commissions Act 1923 No. 29
4. Transitional

SCHEDULE 1—AMENDMENTS

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**ROYAL COMMISSIONS (AMENDMENT) ACT 1991 No. 58**

**NEW SOUTH WALES**



**Act No. 58, 1991**

An Act to amend the Royal Commissions Act 1923 to specifically authorise Royal Commissions to communicate information and furnish material to certain other persons or bodies; and for other purposes. [Assented to 11 December 1991]

*Royal Commissions (Amendment) 1991*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Royal Commissions (Amendment) Act 1991.

**Commencement**

2. This Act commences on the date of assent.

**Amendment of Royal Commissions Act 1923 No. 29**

3. The Royal Commissions Act 1923 is amended as set out in Schedule 1.

**Transitional**

4. An amendment made by this Act extends to a commission under the Royal Commissions Act 1923 and subsisting at the commencement of this Act.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 12 (**Inspection and copies of documents**):

After section 12 (2), insert:

(3) When the retention of a document or other thing ceases to be reasonably necessary for the purposes of the inquiry to which it relates, the commission is required, if a person who appears to the commission to be entitled to the document or other thing so requests, to cause it to be delivered to that person.

(4) The requirement under subsection (3) does not apply if the commission has furnished the document or other thing or proposes to furnish it to a person or body referred to in section 12A or the commission deals with it or proposes to deal with it otherwise according to law.



SCHEDULE 1—AMENDMENTS—*continued*

## (2) Section 12A:

After section 12, insert:

**Communication of information etc.**

12A. (1) A commission may communicate any information or furnish any material (including evidence) that it obtains in the course of the inquiry conducted by it to a Commission of Inquiry, if the information or material relates or may relate to matters within the terms of reference of the Commission of Inquiry.

(2) A commission may communicate any information or furnish any material (including evidence) that it obtains in the course of the inquiry conducted by it to a law enforcement agency, if the information or material relates or may relate to a breach of a law of the State, of another State or Territory or of the Commonwealth.

(3) In this section:

**“Commission of Inquiry”** means a person or body holding a commission to inquire into and report on any matters and having:

- (a) powers under this Act; or
- (b) powers under another law of the State or under a law of another State or Territory or of the Commonwealth, being in either case a law that has the same or a similar purpose or effect as this Act (such as the Royal Commissions Act 1902 of the Commonwealth);

**“law enforcement agency”** means a person or body with responsibilities for the enforcement of laws of the State, of another State or Territory or of the Commonwealth, including but not limited to any of the following:

- (a) the Attorney General of New South Wales, of another State or Territory or of the Commonwealth;
- (b) the Director of Public Prosecutions of New South Wales, of another State or Territory or of the Commonwealth;

*Royal Commissions (Amendment) 1991*

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SCHEDULE 1—AMENDMENTS—*continued*

- (c) the Commissioner of Police of New South Wales or the holder of a similar position in another State or Territory;
- (d) the Commissioner of Police in the Australian Federal Police;
- (e) the New South Wales Crime Commission;
- (f) the Independent Commission Against Corruption;
- (g) the National Crime Authority;
- (h) the Trade Practices Commission;
- (i) the Australian Securities Commission;
- (j) a task force set up to investigate any matters relating to breaches of law and arising out of the inquiry conducted by the commission.

(4) The reference in this section to a **task force** is limited to a State task force or a joint task force. A State task force is one set up by the State or an authority of the State. A joint task force is one set up jointly by the State or an authority of the State and by one or more other Australian jurisdictions or their authorities. An Australian jurisdiction is a State or Territory or the Commonwealth. Subject to the above provisions of this subsection, the expression "task force" includes a body of persons that is similar to a task force, however it is described.

(5) Nothing in this section derogates from or affects any powers a commission has apart from this section, and it is not to be construed as limiting in any way any such power by implication or otherwise.

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[Minister's second reading speech made in—  
*Legislative Assembly on 14 November 1991*  
*Legislative Council on 4 December 1991*]