



New South Wales

Royal Commissions and Ombudsman Legislation Amendment Act 2013 No 65

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Royal Commissions and Ombudsman Legislation Amendment Act 2013 No 65

Act No 65, 2013

An Act to amend the *Royal Commissions Act 1923* and the *Children and Young Persons (Care and Protection) Act 1998* with respect to disclosures to a Royal Commission; to amend the *Ombudsman Act 1974* and the *Police Act 1990* with respect to disclosures for the purposes of legal proceedings; and for other purposes. [Assented to 12 September 2013]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Royal Commissions and Ombudsman Legislation Amendment Act 2013*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Royal Commissions Act 1923 No 29

[1] Section 12B

Insert after section 12A:

12B Direction as to non-publication or that part of inquiry to be held in private

- (1) A commissioner may give directions preventing or restricting the publication of evidence or information given, or of matters in documents produced, to or before the commission.
- (2) A commissioner may direct that any part of an inquiry is to take place in private.
- (3) If a commissioner directs that any part of an inquiry is to take place in private, the commissioner may give directions as to the persons who may be present at that part of the inquiry.
- (4) In this section, *commissioner* means the chairperson or sole commissioner, as the case may be.

[2] Section 17 Answers and documents

Insert “, or on the ground of a duty of secrecy or other restriction on disclosure,” after “privilege” in section 17 (1).

[3] Section 17 (1A)

Insert after section 17 (1):

- (1A) Subsection (1) prevails over any inconsistent provision of any other Act or law (whether the inconsistent provision is made before or after the commencement of this subsection) unless the inconsistent provision specifically states that it is to have effect despite this section.

[4] Section 23B

Insert after section 23A:

23B Contravention of direction as to non-publication or that part of inquiry to be held in private

A person who contravenes a direction given under section 12B commits an offence.

Maximum penalty: 10 penalty units.

[5] Schedule 1 Savings and transitional provisions

Insert after clause 2:

3 Royal Commissions and Ombudsman Legislation Amendment Act 2013

- (1) The amendments made by the *Royal Commissions and Ombudsman Legislation Amendment Act 2013* to this Act extend to the Child Sexual Abuse Royal Commission.
- (2) The declaration of the Governor in the Letters Patent of 25 January 2013 that section 17 of this Act applies to the Child Sexual Abuse Royal Commission is taken to be a declaration that amended section 17 applies to that Commission.

- (3) Any person who, prior to the commencement of amended section 17, answered any questions or produced any document or other thing to the Child Sexual Abuse Royal Commission is taken to have been compelled to do so in accordance with amended section 17.
- (4) Any preconditions to answering the questions or producing the document (or any information contained in the document) or other thing are taken to have been complied with.
- (5) In this clause:
amended section 17 means section 17 of this Act, as amended by the *Royal Commissions and Ombudsman Legislation Amendment Act 2013*.
Child Sexual Abuse Royal Commission has the same meaning as in clause 2.

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

[1] Section 27A Alternative reporting arrangements

Omit section 27A (7). Insert instead:

- (7) Sections 29 and 29AA apply in relation to a referral that is made to an assessment officer under this section in the same way as they apply to a report to which those sections apply. For that purpose, a reference in section 29 or 29AA to the making of a report includes a reference to the referral of a matter to an assessment officer in accordance with an arrangement under this section.

[2] Section 29AA

Insert after section 29:

29AA Special provision relating to Royal Commissions

- (1) Despite section 17 of the *Royal Commissions Act 1923*, that section does not authorise or compel the disclosure to a Royal Commission of the identity of a person who made a report to which section 29 applies, or information from which the identity of that person could be deduced, except with:
 - (a) the consent of the person who made the report, or
 - (b) the leave of a person who is a commissioner within the meaning of Division 2 of Part 2 of the *Royal Commissions Act 1923*.
- (2) A commissioner cannot grant leave under this section unless the commissioner is satisfied that the report or information concerned is of significant importance to the inquiry.
- (3) The protection given by this section to a person who made a report (a *reporter*) applies to:
 - (a) any person who provided information to the reporter on the basis of which the report was made, and
 - (b) any person who otherwise was concerned in making such a report or causing such a report to be made,in the same way as it applies in respect of the reporter.

[3] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

[4] Schedule 3, Part 9

Insert after clause 29:

Part 9 Provision consequent on enactment of Royal Commissions and Ombudsman Legislation Amendment Act 2013

30 Application of amendments to Child Sexual Abuse Royal Commission

- (1) The amendments made by the *Royal Commissions and Ombudsman Legislation Amendment Act 2013* to this Act extend to the Child Sexual Abuse Royal Commission.

- (2) In this clause, *Child Sexual Abuse Royal Commission* means the Royal Commission into institutional responses to allegations and incidents of child sexual abuse and related matters, issued by the Governor by Letters Patent on 25 January 2013 (and including any later alterations and variations of those Letters Patent).

Schedule 3 Amendment of Ombudsman Act 1974 No 68

[1] Section 34 Disclosure by Ombudsman or officer

Insert after section 34 (1) (b4):

- (b5) for the purpose of any proceedings under section 20 or 20B of the *Public Interest Disclosures Act 1994*,
- (b6) for the purpose of any criminal proceedings resulting from an investigation under this Act, but only if the investigation related (whether or not entirely) to a matter referred by the Inspector of the Police Integrity Commission, or the Inspector of the Crime Commission, to the Ombudsman for investigation,

[2] Section 35 Ombudsman, officer or expert as witness

Omit section 35 (2). Insert instead:

- (2) Subsection (1) does not apply to any of the following:
 - (a) proceedings under section 21A, 35A, 35B or 37,
 - (b) proceedings under Part 3 of the *Royal Commissions Act 1923*,
 - (c) proceedings under Part 4 of the *Special Commissions of Inquiry Act 1983*,
 - (d) proceedings under Part 5 of the *Government Information (Public Access) Act 2009* arising as a consequence of a decision made by the Ombudsman in respect of an access application under that Act,
 - (e) proceedings under section 167A of the *Police Act 1990*,
 - (f) proceedings under section 20 or 20B of the *Public Interest Disclosures Act 1994*,
 - (g) criminal proceedings resulting from an investigation under this Act, but only if the investigation related (whether or not entirely) to a matter referred by the Inspector of the Police Integrity Commission, or the Inspector of the Crime Commission, to the Ombudsman for investigation.

[3] Schedule 2 Savings and transitional provisions

Insert after clause 4:

5 Royal Commissions and Ombudsman Legislation Amendment Act 2013

The amendments to sections 34 and 35 by the *Royal Commissions and Ombudsman Legislation Amendment Act 2013* extend to information obtained prior to the commencement of those amendments.

Schedule 4 Amendment of Police Act 1990 No 47

[1] Section 165 Ombudsman and officers of Ombudsman not competent or compellable witnesses in respect of certain matters

Omit section 165 (2). Insert instead:

- (2) Subsection (1) does not apply to or in respect of any of the following proceedings:
- (a) proceedings under section 37 of the *Ombudsman Act 1974*,
 - (b) proceedings under Part 3 of the *Royal Commissions Act 1923*,
 - (c) proceedings under section 167A of this Act,
 - (d) proceedings under section 20 or 20B of the *Public Interest Disclosures Act 1994*,
 - (e) criminal proceedings resulting from an investigation conducted, pursuant to this Part, by the Ombudsman under the *Ombudsman Act 1974*, but only if the investigation related (whether or not entirely) to a matter referred by the Inspector of the Police Integrity Commission, or the Inspector of the Crime Commission, to the Ombudsman for investigation.

[2] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Royal Commissions and Ombudsman Legislation Amendment Act 2013

[3] Schedule 4

Insert at the end of the Schedule with appropriate Part and clause numbering:

Part Provision consequent on enactment of Royal Commissions and Ombudsman Legislation Amendment Act 2013

Competency and compellability of Ombudsman and officers of Ombudsman as witnesses

Section 165 (2), as substituted by the *Royal Commissions and Ombudsman Legislation Amendment Act 2013*, extends to evidence or documents acquired in the course of the administration or execution of Part 8A before the commencement of that subsection, as substituted.

[Second reading speech made in—

Legislative Assembly on 11 September 2013

Legislative Council on 11 September 2013]