



New South Wales

Royal Commissions Amendment Bill 2013

Explanatory note

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

Overview of Bill

On 11 January 2013, the Commonwealth government established a Royal Commission into institutional responses to child sexual abuse, with 6 commissioners. The NSW government established an equivalent Royal Commission with the same commissioners under the *Royal Commissions Act 1923* of New South Wales to provide legal support for the operation of the Royal Commission. Under amendments to the *Royal Commissions Act 1902* of the Commonwealth, the chairperson of a Royal Commission is to be given power to authorise one or more of the commissioners to hold separate and concurrent hearings and exercise other powers of the Royal Commission.

The object of this Bill is to amend the *Royal Commissions Act 1923* to give the chairperson of a Royal Commission under the NSW Act similar powers to those to be given to the chairperson of a Royal Commission under the Commonwealth Act.

The Bill also amends the *Royal Commissions Act 1923*:

- (a) to ensure that a person who provides material voluntarily for the purposes of an inquiry has the same protections as a witness appearing before the Royal Commission, and

- (b) to make the legal qualifications necessary for a chairperson or sole commissioner to exercise special powers under the Act the same as those that apply for a person to be appointed as the Commissioner of a Special Commission of Inquiry or to other standing commissions such as the Independent Commission Against Corruption.

The Bill also amends the *Special Commissions of Inquiry Act 1983* to give effect to the object in paragraph (a) with respect to material obtained voluntarily by a Special Commission of Inquiry under that Act.

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

Schedule 1 [1] amends the definition of a *royal commission* under the Act and **Schedule 1 [3]** inserts proposed section 5A into the Act, with respect to the commissioners of a Royal Commission who may sit for the purposes of an inquiry. In addition to the existing provision with respect to a sole commissioner or all or a quorum of the commissioners, the amendments enable any of the following to sit for the purposes of any part of an inquiry:

- (a) the chairperson of the commission,
- (b) one or more commissioners authorised by the chairperson to sit for the purposes of that part of the inquiry.

A commissioner or commissioners so authorised may sit concurrently for the purposes of the inquiry, and exercise relevant powers of the chairperson under the Act with respect to a separate sitting.

Schedule 1 [2] makes a consequential amendment to the definition of *chairperson* for the purposes of Division 2 of Part 2 of the Act.

Schedule 1 [4] amends section 11 of the Act to ensure that a person who provides material voluntarily for the purposes of an inquiry has the same protections as a witness appearing before the Royal Commission.

Schedule 1 [5] substitutes section 15 of the Act with respect to the legal qualifications necessary for a chairperson or sole commissioner to exercise special powers under the Act. The qualified persons authorised to exercise those special powers are:

- (a) a Judge of the Supreme Court of New South Wales or of any other State or Territory, a Judge of the Federal Court of Australia or a Justice of the High Court of Australia, or

- (b) a former Judge or Justice of any such court, or
- (c) a person qualified to be appointed as a Judge or Justice of any such court (but only if the Governor declares that the person may exercise the special powers).

The substituted section enables the exercise of the special powers by a member of a commission who is a qualified person and who has been authorised to do so by the chairperson.

Schedule 1 [6] inserts proposed Schedule 1 into the Act. The Schedule provides that the amendments made by the proposed Act extend to the New South Wales Royal Commission into institutional responses to child sexual abuse.

The proposed Schedule also enables regulations under the Act to contain provisions of a savings or transitional nature consequent on the enactment of the proposed Act or any other Act that amends the *Royal Commissions Act 1923*.

Schedule 2 Amendment of Special Commissions of Inquiry Act 1983 No 90

Schedule 2 amends section 17 of the Act to ensure that a person who provides material voluntarily for the purposes of an inquiry has the same protections as a witness appearing before the Special Commission.

Schedule 1 [6] includes provisions that ensure that this proposed amendment extends to the New South Wales Special Commission of Inquiry into the police investigation of matters concerning alleged child sexual abuse established on 21 November 2012.

First print



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New South Wales

Royal Commissions Amendment Bill 2013

No. , 2013

A Bill for

An Act to amend the *Royal Commissions Act 1923* with respect to Royal Commissions, and to amend the *Special Commissions of Inquiry Act 1983*.

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|---|---|
| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Royal Commissions Amendment Act 2013</i> . | 3 |
| 2 Commencement | 4 |
| This Act commences on the date of assent to this Act. | 5 |

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| Schedule 1 | Amendment of Royal Commissions Act 1923 No 29 | 1 2 |
| [1] | Section 4 Definitions | 3 |
| | Omit “and includes the members of the commission, or a quorum thereof, or the sole commissioner, sitting for the purposes of the inquiry” from the definitions of <i>Commission</i> and <i>Royal Commission</i> . | 4 5 6 |
| | Insert instead “and includes a sole commissioner or a member or members of the commission sitting for the purposes of the inquiry”. | 7 8 |
| [2] | Section 5 Commissioners | 9 |
| | Omit section 5 (2). Insert instead: | 10 |
| | (2) In this Division <i>chairperson</i> means the chairperson of a commission, and includes (except in section 5A): | 11 12 |
| | (a) a deputy chairperson of a commission appointed by the letters patent or chosen by the other commissioners in accordance with the letters patent to act in the absence of the chairperson, and | 13 14 15 16 |
| | (b) a member of a commission acting in accordance with an authorisation under section 5A (3). | 17 18 |
| [3] | Section 5A | 19 |
| | Insert after section 5: | 20 |
| | 5A Commissioners authorised to sit for purposes of any part of inquiry | 21 22 |
| | (1) A commissioner may sit for the purposes of any part of an inquiry if: | 23 24 |
| | (a) the commissioner is a sole commissioner, or | 25 |
| | (b) all the members, or a quorum of the members, of the commission are sitting for the purposes of that part of the inquiry, or | 26 27 28 |
| | (c) the commissioner is the chairperson of the commission, or | 29 |
| | (d) the commissioner is a member of the commission authorised by the chairperson to sit for the purposes of that part of the inquiry. | 30 31 32 |
| | (2) More than one member may be authorised under subsection (1) (d) by the chairperson to sit for the purposes of a part of the inquiry, in which case the member designated by the chairperson is to preside. | 33 34 35 36 |

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| (3) | A member authorised under subsection (1) (d) or, if there is more than one member so authorised, the designated presiding member is authorised to exercise the powers of the chairperson of the commission under the other sections of this Division (unless the authorisation under subsection (1) (d) provides otherwise). | 1 2 3 4 5 |
| (4) | If a member is authorised under subsection (1) (d), commissioners may sit concurrently for the purposes of an inquiry. | 6 7 8 |
| [4] | Section 11 Answers and documents | 9 |
| | Insert at the end of the section: | 10 |
| (4) | If a commission obtains for the purposes of the inquiry any document or other thing or any information that is provided voluntarily by a person, subsection (3) applies to the person as if the person were a witness appearing before the commission. | 11 12 13 14 |
| [5] | Section 15 | 15 |
| | Omit the section. Insert instead: | 16 |
| 15 | Application of Division | 17 |
| (1) | The provisions of this Division have effect if the chairperson of a commission or the sole commissioner is a qualified person, namely: | 18 19 20 |
| (a) | a Judge of the Supreme Court of the State or of any other State or Territory, a Judge of the Federal Court of Australia or a Justice of the High Court of Australia, or | 21 22 23 |
| (b) | a former Judge or Justice of any such court, or | 24 |
| (c) | a person qualified to be appointed as a Judge or Justice of any such court (but only if in the letters patent by which the commission is issued, or in other letters patent under the Public Seal, the Governor declares that this Division has effect in relation to the commission). | 25 26 27 28 29 |
| (2) | In this Division, <i>commissioner</i> means a chairperson or sole commissioner who is such a qualified person, and also includes a member of a commission who is such a qualified person and who has been authorised by the chairperson to exercise powers under this Division (but only if the chairperson is also such a qualified person). | 30 31 32 33 34 35 |

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| [6] Schedule 1 | 1 |
| Insert at the end of the Act: | 2 |
| Schedule 1 Savings and transitional provisions | 3 |
| 1 Regulations | 4 |
| (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the <i>Royal Commissions Amendment Act 2013</i> or any other Act that amends this Act. | 5 6 7 8 |
| (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. | 9 10 |
| (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as: | 11 12 13 |
| (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or | 14 15 16 |
| (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. | 17 18 19 |
| 2 Operation of amendments made by Royal Commissions Amendment Act 2013 | 20 21 |
| (1) In this clause: | 22 |
| <i>Child Sexual Abuse Royal Commission</i> 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). | 23 24 25 26 27 |
| <i>Child Sexual Abuse Special Commission of Inquiry</i> means the Special Commission of Inquiry into the police investigation of certain matters concerning alleged child sexual abuse, issued by the Governor by Letters Patent on 21 November 2012 and altered and varied by the Governor by Letters Patent on 25 January 2013 (and including any later alterations and variations of those Letters Patent). | 28 29 30 31 32 33 34 |
| (2) The amendments made by the <i>Royal Commissions Amendment Act 2013</i> to this Act and to the <i>Special Commissions of Inquiry Act 1983</i> extend to the Child Sexual Abuse Royal Commission and to the Child Sexual Abuse Special Commission of Inquiry. | 35 36 37 38 |

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|-------------------|---|-----------------------|
| Schedule 2 | Amendment of Special Commissions of Inquiry Act 1983 No 90 | 1 |
| | | 2 |
| Section 17 | Answers and documents | 3 |
| | Insert at the end of the section: | 4 |
| (4) | If a Commissioner obtains for the purposes of the Special Commission any document or other thing or any information that is provided voluntarily by a person, subsection (3) applies to the person as if the person were a witness appearing before the Special Commission. | 5 6 7 8 9 |