



New South Wales

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

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.

First print



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Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Special Commission of Inquiry (James Hardie Records) Act 2004 No 78	2
Schedule 1 Amendments	3

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

Contents

Page

Contents page 2



New South Wales

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

No. , 2004

A Bill for

An Act to amend the *Special Commission of Inquiry (James Hardie Records) Act 2004* to make further provision with respect to transferred records; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Special Commission of Inquiry (James Hardie Records) Amendment Act 2004</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Special Commission of Inquiry (James Hardie Records) Act 2004 No 78	7 8
The <i>Special Commission of Inquiry (James Hardie Records) Act 2004</i> is amended as set out in Schedule 1.	9 10

Schedule 1 Amendments

	(Section 3)	2
[1] Section 3 Definitions		3
Insert in alphabetical order in section 3 (1):		4
<i>ACCC</i> means the Australian Competition and Consumer Commission established under the <i>Trade Practices Act 1974</i> of the Commonwealth.		5 6 7
[2] Section 4 ASIC entitled to control of records of James Hardie Special Commission of Inquiry		8 9
Omit “any person” from section 4 (2).		10
Insert instead “the ACCC or any other person”.		11
[3] Section 7 Use of transferred records		12
Insert “, or giving of possession or custody by ASIC to the ACCC or any other person,” after “ASIC” where firstly occurring.		13 14
[4] Section 7		15
Insert “, the ACCC or other person” after “ASIC” where secondly and thirdly occurring.		16 17
[5] Section 8 Use and admissibility in proceedings of transferred records		18
Insert “, or given into the possession or custody of the ACCC or any other person,” after “obtained” in section 8 (1).		19 20
[6] Section 8 (2) (c) and (d)		21
Insert after section 8 (2) (b):		22
, or		23
(c) the giving into the possession or the custody of the ACCC or any other person of any record under this Part, or		24 25
(d) the publication or use by the ACCC or other person of the record, or of matter in or referred to in the record, in connection with the performance of its functions or the exercise of its powers under any law.		26 27 28 29

[7] Section 16 and Schedule 1	1
Insert after section 15:	2
16 Savings and transitional provisions	3
Schedule 1 has effect.	4
Schedule 1 Savings and transitional provisions	5
<p style="text-align: right;">(Section 16)</p>	6
1 Transferred records given to ACCC and other persons	7
Section 7, as amended by the <i>Special Commission of Inquiry (James Hardie Records) Amendment Act 2004</i> , extends to the giving of possession or custody of a record by ASIC to the ACCC or any other person under Part 2 before the commencement of that Act.	8 9 10 11 12