



New South Wales

# Royal Commissions and Ombudsman Legislation Amendment Bill 2013

## Explanatory note

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

## Overview of Bill

The objects of this Bill are as follows:

- (a) to ensure witnesses attending or appearing before a Royal Commission established under the *Royal Commissions Act 1923* are not excused from answering any question or producing any document, when required by the Royal Commission to do so, despite any other Act (unless the other Act specifically prohibits disclosure to a Royal Commission),
- (b) to make related amendments to the *Children and Young Persons (Care and Protection) Act 1998*, ensuring that the identity of any person who makes a report under that Act that a child or young person is at risk of significant harm (a **risk of harm report**) may be disclosed to a Royal Commission in only limited circumstances,
- (c) to enable a Royal Commission to give directions preventing the publication of evidence, information or documents given to it and directions requiring any part of an inquiry to take place in private,
- (d) to enable the Ombudsman to disclose information, obtained in the course of an investigation by the Ombudsman, for the purpose of certain criminal proceedings resulting from the investigation and for the purpose of certain proceedings under the *Public Interest Disclosures Act 1994*.

## 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**

Section 17 (1) of the *Royal Commissions Act 1923 (RC Act)* provides that witnesses summoned to attend or appearing before a Royal Commission are not excused from answering questions or producing documents to the Commission on any grounds. Section 17 applies only if the Governor declares, in the letters patent establishing the Royal Commission, that the section applies to the inquiry.

**Schedule 1 [2]** amends section 17 (1) of the RC Act to expressly provide that the grounds on which a person is not excused from answering questions or producing documents include any duty of secrecy or other restriction on disclosure.

**Schedule 1 [3]** ensures that a provision of any other Act or law (for example, a provision imposing a restriction on disclosure) may only override section 17 (1) of the RC Act if the provision states specifically that it applies despite section 17.

**Schedule 1 [1]** inserts proposed section 12B into the RC Act. The proposed section enables a Royal Commission to give directions preventing or restricting the publication of evidence, information or documents given to it. The proposed section also enables a Royal Commission to direct that any part of an inquiry may take place in private and to direct who may be present at that part of the inquiry.

**Schedule 1 [4]** inserts proposed section 23B, which makes it an offence to contravene any direction made under proposed section 12B.

**Schedule 1 [5]** contains savings and transitional provisions consequent on the enactment of the proposed Act.

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

**Schedule 2 [2]** inserts proposed section 29AA into the *Children and Young Persons (Care and Protection) Act 1998*, which ensures that the identity of a person who makes a risk of harm report, or information from which the identity of that person could be deduced, must not be disclosed to a Royal Commission, except with the consent of the person who made the report or the leave of a commissioner who is satisfied that the report is of significant importance to the inquiry. The proposed section makes it clear (as required by the amendment to section 17 of the RC Act made by **Schedule 1 [3]**) that this particular restriction on disclosure to a Royal Commission has effect despite section 17 of the RC Act. **Schedule 2 [1]** makes a consequential amendment.

**Schedule 2 [3]** enables the Governor to make savings and transitional regulations that are consequential on the enactment of the proposed Act or any other amending Act.

**Schedule 2 [4]** contains a savings and transitional provision consequent on the enactment of the proposed Act.

## **Schedule 3      Amendment of Ombudsman Act 1974 No 68**

**Schedule 3 [1] and [2]** (together with the amendment to the *Police Act 1990* made in **Schedule 4 [1]**) give effect to the object described in paragraph (d) of the Overview.

**Schedule 3 [3]** contains a savings and transitional provision consequent on the enactment of the proposed Act.

## **Schedule 4      Amendment of Police Act 1990 No 47**

**Schedule 4 [1]** (together with the amendments to the *Ombudsman Act 1974* made in **Schedule 3 [1] and [2]**) gives effect to the object described in paragraph (d) of the Overview.

**Schedule 4 [2]** enables the Governor to make savings and transitional regulations that are consequential on the enactment of the proposed Act.

**Schedule 4 [3]** contains a savings and transitional provision consequent on the enactment of the proposed Act.



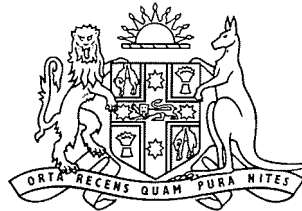
New South Wales

# Royal Commissions and Ombudsman Legislation Amendment Bill 2013

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New South Wales

# Royal Commissions and Ombudsman Legislation Amendment Bill 2013

No. , 2013

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## **A Bill for**

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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Royal Commissions and Ombudsman Legislation Amendment Act 2013</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6

<b>Schedule 1</b>	<b>Amendment of Royal Commissions Act 1923</b>	1
	<b>No 29</b>	2
<b>[1] Section 12B</b>		3
	Insert after section 12A:	4
<b>12B Direction as to non-publication or that part of inquiry to be held in private</b>		5
(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.	6 7 8
(2)	A commissioner may direct that any part of an inquiry is to take place in private.	9 10
(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.	11 12 13
(4)	In this section, <i>commissioner</i> means the chairperson or sole commissioner, as the case may be.	14 15
<b>[2] Section 17 Answers and documents</b>		16
	Insert “, or on the ground of a duty of secrecy or other restriction on disclosure,” after “privilege” in section 17 (1).	17 18
<b>[3] Section 17 (1A)</b>		19
	Insert after section 17 (1):	20
(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.	21 22 23 24
<b>[4] Section 23B</b>		25
	Insert after section 23A:	26
<b>23B Contravention of direction as to non-publication or that part of inquiry to be held in private</b>		27 28
	A person who contravenes a direction given under section 12B commits an offence.	29 30
	Maximum penalty: 10 penalty units.	31
<b>[5] Schedule 1 Savings and transitional provisions</b>		32
	Insert after clause 2:	33
<b>3 Royal Commissions and Ombudsman Legislation Amendment Act 2013</b>		34
(1)	The amendments made by the <i>Royal Commissions and Ombudsman Legislation Amendment Act 2013</i> to this Act extend to the Child Sexual Abuse Royal Commission.	35 36 37
(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.	38 39 40

- (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. 1  
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- (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  
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- (5) In this clause: 8  
*amended section 17* means section 17 of this Act, as amended by the *Royal Commissions and Ombudsman Legislation Amendment Act 2013*. 9  
*Child Sexual Abuse Royal Commission* has the same meaning as in clause 2. 10  
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<b>Schedule 2</b>	<b>Amendment of Children and Young Persons (Care and Protection) Act 1998 No 157</b>	1
		2
<b>[1] Section 27A Alternative reporting arrangements</b>		3
Omit section 27A (7). Insert instead:		4
(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.		5 6 7 8 9
<b>[2] Section 29AA</b>		10
Insert after section 29:		11
<b>29AA Special provision relating to Royal Commissions</b>		12
(1) Despite section 17 of the <i>Royal Commissions Act 1923</i> , 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:		13 14 15 16
(a) the consent of the person who made the report, or		17
(b) the leave of a person who is a commissioner within the meaning of Division 2 of Part 2 of the <i>Royal Commissions Act 1923</i> .		18 19
(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.		20 21 22
(3) The protection given by this section to a person who made a report (a <i>reporter</i> ) applies to:		23 24
(a) any person who provided information to the reporter on the basis of which the report was made, and		25 26
(b) any person who otherwise was concerned in making such a report or causing such a report to be made,		27 28
in the same way as it applies in respect of the reporter.		29
<b>[3] Schedule 3 Savings, transitional and other provisions</b>		30
Insert at the end of clause 1 (1):		31
any other Act that amends this Act		32
<b>[4] Schedule 3, Part 9</b>		33
Insert after clause 29:		34
<b>Part 9 Provision consequent on enactment of Royal Commissions and Ombudsman Legislation Amendment Act 2013</b>		35 36 37
<b>30 Application of amendments to Child Sexual Abuse Royal Commission</b>		38
(1) The amendments made by the <i>Royal Commissions and Ombudsman Legislation Amendment Act 2013</i> to this Act extend to the Child Sexual Abuse Royal Commission.		39 40 41

- (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).

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<b>Schedule 3</b>	<b>Amendment of Ombudsman Act 1974 No 68</b>	1
<b>[1] Section 34 Disclosure by Ombudsman or officer</b>		2
Insert after section 34 (1) (b4):		3
(b5)	for the purpose of any proceedings under section 20 or 20B of the <i>Public Interest Disclosures Act 1994</i> ,	4
		5
(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,	6
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<b>[2] Section 35 Ombudsman, officer or expert as witness</b>		11
Omit section 35 (2). Insert instead:		12
(2)	Subsection (1) does not apply to any of the following:	13
(a)	proceedings under section 21A, 35A, 35B or 37,	14
(b)	proceedings under Part 3 of the <i>Royal Commissions Act 1923</i> ,	15
(c)	proceedings under Part 4 of the <i>Special Commissions of Inquiry Act 1983</i> ,	16
		17
(d)	proceedings under Part 5 of the <i>Government Information (Public Access) Act 2009</i> arising as a consequence of a decision made by the Ombudsman in respect of an access application under that Act,	18
		19
		20
(e)	proceedings under section 167A of the <i>Police Act 1990</i> ,	21
(f)	proceedings under section 20 or 20B of the <i>Public Interest Disclosures Act 1994</i> ,	22
		23
(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.	24
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<b>[3] Schedule 2 Savings and transitional provisions</b>		29
Insert after clause 4:		30
<b>5 Royal Commissions and Ombudsman Legislation Amendment Act 2013</b>		31
The amendments to sections 34 and 35 by the <i>Royal Commissions and Ombudsman Legislation Amendment Act 2013</i> extend to information obtained prior to the commencement of those amendments.		32
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		34

<b>Schedule 4</b>	<b>Amendment of Police Act 1990 No 47</b>	1
<b>[1]</b>	<b>Section 165 Ombudsman and officers of Ombudsman not competent or compellable witnesses in respect of certain matters</b>	2
	Omit section 165 (2). Insert instead:	3
		4
	(2) Subsection (1) does not apply to or in respect of any of the following proceedings:	5
		6
	(a) proceedings under section 37 of the <i>Ombudsman Act 1974</i> ,	7
	(b) proceedings under Part 3 of the <i>Royal Commissions Act 1923</i> ,	8
	(c) proceedings under section 167A of this Act,	9
	(d) proceedings under section 20 or 20B of the <i>Public Interest Disclosures Act 1994</i> ,	10
		11
	(e) criminal proceedings resulting from an investigation conducted, pursuant to this Part, by the Ombudsman under the <i>Ombudsman Act 1974</i> , 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.	12
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<b>[2]</b>	<b>Schedule 4 Savings, transitional and other provisions</b>	18
	Insert at the end of clause 2 (1):	19
	<i>Royal Commissions and Ombudsman Legislation Amendment Act 2013</i>	20
<b>[3]</b>	<b>Schedule 4</b>	21
	Insert at the end of the Schedule with appropriate Part and clause numbering:	22
<b>Part</b>	<b>Provision consequent on enactment of Royal Commissions and Ombudsman Legislation Amendment Act 2013</b>	23
		24
		25
	<b>Competency and compellability of Ombudsman and officers of Ombudsman as witnesses</b>	26
		27
	Section 165 (2), as substituted by the <i>Royal Commissions and Ombudsman Legislation Amendment Act 2013</i> , 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.	28
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