

2010-2011-2012-2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Royal Commissions Amendment Bill
2013**

No. , 2013

(Prime Minister)

A Bill for an Act to amend the *Royal Commissions Act 1902*, and for related purposes

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	1
Schedule 1—Amendments		3
	<i>Royal Commissions Act 1902</i>	3

1 **A Bill for an Act to amend the *Royal Commissions***
2 ***Act 1902, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Royal Commissions Amendment Act*
6 *2013*.

7 **2 Commencement**

8 This Act commences on the day this Act receives the Royal
9 Assent.

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule

1
2

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Royal Commissions Act 1902

1 Before section 1

Insert:

Part 1—Preliminary

2 Section 1A

Omit “authorize”, substitute “authorise”.

3 Section 1A

Omit “authorizing”, substitute “authorising”.

4 Subsection 1B(1)

Insert:

authorised member hearing means a hearing of a Commission that is held as referred to in subsection 2(1A).

5 Subsection 1B(1) (definition of *Commission* and *Royal Commission*)

Repeal the definition, substitute:

Commission and *Royal Commission* means any Commission of inquiry issued by the Governor-General by Letters Patent under this Act or any other power, and includes the following persons sitting for the purposes of the inquiry:

- (a) in relation to an authorised member hearing—the member or members of the Commission holding the hearing;
- (b) in relation to a Commission that is constituted by 2 or more members (except if paragraph (a) applies)—the members of the Commission, or a quorum of those members;
- (c) in relation to a sole Commissioner—the Commissioner.

6 At the end of section 1B

Add:

1 (3) A reference in any other Act to a Royal Commission (being a
2 Royal Commission established by the Governor-General by Letters
3 Patent under this Act or any other power) includes a reference to
4 one or more members of a Commission holding an authorised
5 member hearing.

6 **7 After section 1C**

7 Insert:

8 **Part 2—Hearings and coercive and other powers of**
9 **Royal Commissions**
10

11 **8 After subsection 2(1)**

12 Insert:

13 (1A) If a Commission is constituted by 2 or more members, a hearing of
14 the Commission may be held by one or more members of the
15 Commission if each of the members holding the hearing is either:

- 16 (a) the President or Chair of the Commission; or
17 (b) authorised in writing by the President or Chair of the
18 Commission to hold authorised member hearings in relation
19 to the Commission.

20 (1B) The following person presides at an authorised member hearing:

- 21 (a) the President or Chair of the Commission;
22 (b) if the President or Chair is not one of the members holding an
23 authorised member hearing—the member of the Commission
24 who is authorised in writing by the President or Chair to
25 preside at the hearing.

26 **9 Paragraph 2(3)(b)**

27 Omit “authorized”, substitute “authorised”.

28 **10 After subsection 2(3A)**

29 Insert:

30 (3B) A member of a Commission must not require, under
31 subsection (3A), a person to produce a document or thing at a
32 private session (within the meaning of Part 4).

11 Subsection 2(4)

Repeal the subsection, substitute:

(4) In this section, a reference to a person who is an authorised person in relation to a Commission is a reference to a person authorised in writing, or a person included in a class of persons authorised in writing, for the purposes of this section by:

(a) in relation to an authorised member hearing—the member of the Commission presiding at the hearing; and

(b) in relation to a Commission that is constituted by 2 or more members (except if paragraph (a) applies)—the President or Chair of the Commission; and

(c) in relation to a sole Commissioner—the Commissioner.

12 At the end of section 3 (after the note)

Add:

(7) The references in subsections (3) and (6) to the matters into which the Commission was inquiring are, for a Commission that holds an authorised member hearing, references to the matters into which the Commission as a whole was inquiring.

13 Subsection 4(3)

Omit “authorizing”, substitute “authorising”.

14 Paragraphs 4(4)(b) and (c)

Omit “authorized”, substitute “authorised”.

15 Subsection 4(5)

Omit “authorize”, substitute “authorise”.

16 After subsection 4(5)

Insert:

(5A) The references in this section to a relevant Commission do not include references to one or more members of a Commission holding an authorised member hearing.

17 At the end of section 6AB (after the note)

Add:

1 (7) The reference in subsection (6) to the matters into which the
2 Commission was inquiring is, for a Commission that holds an
3 authorised member hearing, a reference to the matters into which
4 the Commission as a whole was inquiring.

5 **18 Subsection 6B(1)**

6 After “Chair”, insert “, or the sole Commissioner”.

7 **19 Subsection 6B(2)**

8 Omit “authorize”, substitute “authorise”.

9 **20 At the end of subsection 6B(2)**

10 Add “, or the sole Commissioner”.

11 **21 At the end of section 6B**

12 Add:

13 (5) The reference in subsection (2) to the Commission does not include
14 a reference to one or more members of a Commission holding an
15 authorised member hearing.

16 **22 Section 6C**

17 Omit “meeting”, substitute “hearing”.

18 **23 Subsection 6D(2)**

19 Omit “authorized”, substitute “authorised”.

20 **24 Subsection 6F(1)**

21 Omit “authorized”, substitute “authorised”.

22 **25 Subsection 6F(3)**

23 Repeal the subsection, substitute:

24 (3) In subsection (1), a reference to a person who is an authorised
25 person in relation to a Commission is a reference to a person
26 authorised in writing, or a person included in a class of persons
27 authorised in writing, for the purposes of that subsection by:

28 (a) in relation to an authorised member hearing—the member of
29 the Commission presiding at the hearing; and

1 (b) in relation to a Commission that is constituted by 2 or more
2 members (except if paragraph (a) applies)—the President or
3 Chair of the Commission; and

4 (c) in relation to a sole Commissioner—the Commissioner.

5 **26 Section 6FA**

6 Omit “authorized” (wherever occurring), substitute “authorised”.

7 **27 Subsection 6G(2)**

8 Omit “authorize”, substitute “authorise”.

9 **28 Before section 6H**

10 Insert:

11 **Part 3—Offences**
12

13 **29 At the end of section 6H**

14 Add:

15 (5) The reference in subsection (1) to the inquiry being made by the
16 Commission is, for a Commission that holds an authorised member
17 hearing, a reference to the inquiry being made by the Commission
18 as a whole.

19 Note: However, the reference in subsection (1) to a hearing before a
20 Commission may be an authorised member hearing.

21 **30 After section 6O**

22 Insert:

23 **Part 4—Private sessions for the Child Sexual Abuse**
24 **Royal Commission**
25

26 **60A Definitions**

27 In this Part:

28 *Child Sexual Abuse Royal Commission* means the Royal
29 Commission into Institutional Responses to Child Sexual Abuse

1 issued by the Governor-General by Letters Patent on 11 January
2 2013 (and including any later variations of those Letters Patent).

3 *private session* means a private session held under section 6OB.

4 **6OB Power to hold private sessions**

5 (1) Any of the following members of the Child Sexual Abuse Royal
6 Commission may hold a private session to obtain information in
7 relation to matters into which the Commission is inquiring:

- 8 (a) the Chair of the Commission;
9 (b) a member who is authorised in writing by the Chair of the
10 Commission.

11 (2) A private session may be held only by one or 2 members referred
12 to in subsection (1).

13 (3) Any member of the Commission holding a private session may
14 (subject to the Letters Patent establishing the Commission and
15 section 6OD) determine any matters relating to the conduct of the
16 private session, having regard to any directions given by the Chair
17 of the Commission.

18 **6OC Status of private session**

19 (1) A person who appears at a private session:
20 (a) is not a witness before the Commission; and
21 (b) does not give evidence to the Commission.

22 (2) A private session is not a hearing of the Commission.

23 *Powers of Commission and custody and use of records*

24 (3) The following provisions apply as if information, a document,
25 record or other thing obtained by one or 2 members of the Child
26 Sexual Abuse Royal Commission at a private session were
27 produced before, delivered or given to, or otherwise obtained or
28 received by, the Commission:

- 29 (a) section 6F (power of Commission in relation to documents
30 and other things);
31 (b) section 6P (Commission may communicate information);
32 (c) section 9 (custody and use of records of Royal Commission).

-
- 1 (4) Section 9 (custody and use of records of Royal Commission) also
2 applies as if a record produced by one or 2 members of the Child
3 Sexual Abuse Royal Commission at a private session were
4 produced by the Commission.

5 *Application of Part 4 (offences)*

- 6 (5) Sections 6H (false or misleading evidence), 6I (bribery of witness),
7 6J (fraud on witness), 6L (preventing witness from attending), 6M
8 (injury to witness) and 6N (dismissal by employers of witness)
9 apply as if:

- 10 (a) a person who appears, or intends to appear, at a private
11 session were called or summoned, or appeared, as a witness
12 before the Child Sexual Abuse Royal Commission; and
13 (b) any information provided, or that a person intends to provide,
14 at a private session were testimony or evidence given at a
15 hearing before the Commission; and
16 (c) any document or other thing that a person produces, or
17 intends to produce, at a private session was produced or
18 would have been produced because the person was required
19 to do so under a summons, requirement or notice under
20 section 2.

- 21 (6) Section 6O (contempt of Royal Commission) applies in relation to
22 a private session as if:

- 23 (a) the member or members of the Child Sexual Abuse Royal
24 Commission holding the private session were the
25 Commission; and
26 (b) the private session were proceedings of the Commission.

27 **6OD Privacy of private sessions**

- 28 (1) A private session must be held in private, and only persons who are
29 authorised by a member of the Child Sexual Abuse Royal
30 Commission holding the private session may be present during the
31 private session.

32 *Offence for using or disclosing information obtained at a private*
33 *session*

- 34 (2) A person commits an offence if:

- 35 (a) the person obtains information at a private session; and
-

- 1 (b) the person uses or discloses the information; and
2 (c) neither of the following applies:
3 (i) the use or disclosure is for the purposes of performing
4 functions or duties or exercising powers in relation to
5 the Child Sexual Abuse Royal Commission;
6 (ii) the person is authorised to use, disclose or publish the
7 information under subsection (3) or section 6P
8 (Commission may communicate information) or 9
9 (custody and use of records of Commission).

10 Penalty: 20 penalty units or 12 months imprisonment or both.

11 *Inclusion of information in reports and recommendations*

- 12 (3) Information that relates to a natural person that has been obtained
13 at a private session may be included in a report or recommendation
14 of the Child Sexual Abuse Royal Commission only if:
15 (a) the information is also given as evidence to the Commission
16 or under a summons, requirement or notice under section 2;
17 or
18 (b) the information is de-identified.

19 *Archives Act 1983*

- 20 (4) The *Archives Act 1983* applies in relation to information obtained
21 at a private session as if a direction had been given by the Child
22 Sexual Abuse Royal Commission prohibiting the publication of the
23 information.

24 **6OE Statements made and documents produced etc. at a private**
25 **session are not admissible in evidence**

- 26 (1) The following are not admissible in evidence against a natural
27 person in any civil or criminal proceedings in any court of the
28 Commonwealth, of a State or of a Territory:
29 (a) a statement or disclosure made by the person at a private
30 session;
31 (b) the production of a document or other thing by the person at
32 a private session.
33 (2) Subsection (1) does not apply to the admissibility of evidence in
34 proceedings for an offence against this Act.

1 **6OF Protection of those who appear, or are authorised to be**
2 **present, at a private session**

3 (1) Any person who appears, or is authorised to be present, at a private
4 session has the same protection and, in addition to the penalties
5 provided by this Act, is to be subject to the same liabilities in any
6 civil or criminal proceeding, as a witness in any case tried in the
7 High Court.

8 (2) A legal practitioner who appears on behalf of a person at a private
9 session has the same protection and immunity as a barrister has in
10 appearing for a party in proceedings in the High Court.

11 **Part 5—Miscellaneous**
12

13 **31 Subsection 6P(2)**

14 Omit “authorized”, substitute “authorised”.

15 **32 At the end of section 6P**

16 Add:

17 (4) The references in this section to the opinion of the Commission do
18 not include references to the opinion of one or more members of
19 the Commission while holding an authorised member hearing.

20 **33 Subsection 9(12) (heading)**

21 Omit “*section 6DD*”, substitute “*sections 6DD and 6OE*”.

22 **34 Subsection 9(12)**

23 Omit “section 6DD”, substitute “sections 6DD and 6OE (admissibility
24 of statements etc. made by witness)”.

25 **35 Before section 10 (heading relating to legal proceedings)**

26 Repeal the heading.

27 **36 Paragraph 16(1)(a)**

28 Omit “authorize”, substitute “authorise”.

29 **37 Application**

Schedule 1 Amendments

1 The amendments made by this Schedule (other than the amendments
2 made by items 10, 30, 33 and 34 of this Schedule) apply in relation to
3 any Royal Commission that conducts an inquiry after this Schedule
4 commences, whether the Royal Commission is established before or
5 after this Schedule commences.

6 Note: The amendments made by items 10, 30, 33 and 34 of this Schedule apply only in
7 relation to the Child Sexual Abuse Royal Commission.