



Royal Commissions Amendment Act 2013

No. 24, 2013

**An Act to amend the *Royal Commissions Act 1902*,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title	1
2	Commencement	2
3	Schedule(s)	2
Schedule 1—Amendments		3
	<i>Freedom of Information Act 1982</i>	3
	<i>Royal Commissions Act 1902</i>	3



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No. 24, 2013

**An Act to amend the *Royal Commissions Act 1902*,
and for related purposes**

[Assented to 28 March 2013]

The Parliament of Australia enacts:

1 Short title

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

Schedule 1 Amendments

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2 Commencement

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Freedom of Information Act 1982

1A After subsection 7(2D)

Insert:

- (2E) A Minister and an agency are exempt from the operation of this Act in relation to the following documents:
- (a) a document that has originated with, or has been received from, the Child Sexual Abuse Royal Commission (within the meaning of Part 4 of the *Royal Commissions Act 1902*) and:
 - (i) that contains information obtained at a private session (within the meaning of that Part); or
 - (ii) that relates to a private session and identifies a natural person who appeared at a private session;
 - (b) a document that contains a summary of, or an extract or information from, a private session.

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:

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

7 After section 1C

Insert:

Part 2—Hearings and coercive and other powers of Royal Commissions

8 After subsection 2(1)

Insert:

- (1A) If a Commission is constituted by 2 or more members, a hearing of the Commission may be held by one or more members of the Commission if each of the members holding the hearing is either:
 - (a) the President or Chair of the Commission; or

(b) authorised in writing by the President or Chair of the Commission to hold authorised member hearings in relation to the Commission.

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

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

9 Paragraph 2(3)(b)

Omit “authorized”, substitute “authorised”.

10 After subsection 2(3A)

Insert:

(3B) A member of a Commission must not require, under subsection (3A), a person to produce a document or thing at a 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
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Schedule 1 Amendments

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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:

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

18 Subsection 6B(1)

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

19 Subsection 6B(2)

Omit “authorize”, substitute “authorise”.

20 At the end of subsection 6B(2)

Add “, or the sole Commissioner”.

21 At the end of section 6B

Add:

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

22 Section 6C

Omit “meeting”, substitute “hearing”.

23 Subsection 6D(2)

Omit “authorized”, substitute “authorised”.

24 Subsection 6F(1)

Omit “authorized”, substitute “authorised”.

25 Subsection 6F(3)

Repeal the subsection, substitute:

- (3) In subsection (1), 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 that subsection 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.

26 Section 6FA

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

27 Subsection 6G(2)

Omit “authorize”, substitute “authorise”.

28 Before section 6H

Insert:

Part 3—Offences

29 At the end of section 6H

Schedule 1 Amendments

Error! No text of specified style in document.**Error! No text of specified style in document.**

Add:

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

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

30 After section 6O

Insert:

Part 4—Private sessions for the Child Sexual Abuse Royal Commission

Division 1—Definitions

60A Definitions

In this Part:

Child Sexual Abuse Royal Commission means the Royal Commission into Institutional Responses to Child Sexual Abuse issued by the Governor-General by Letters Patent on 11 January 2013 (and including any later variations of those Letters Patent).

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

Division 2—Private sessions

60B Power to hold private sessions

- (1) Any of the following members of the Child Sexual Abuse Royal Commission may hold a private session to obtain information in relation to matters into which the Commission is inquiring:
- (a) the Chair of the Commission;
 - (b) a member who is authorised in writing by the Chair of the Commission.

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- (2) A private session may be held only by one or 2 members referred to in subsection (1).
 - (3) Any member of the Commission holding a private session may (subject to the Letters Patent establishing the Commission and Division 3) determine any matters relating to the conduct of the private session, having regard to any directions given by the Chair of the Commission.

6OC Status of private session

- (1) A person who appears at a private session:
 - (a) is not a witness before the Commission; and
 - (b) does not give evidence to the Commission.
- (2) A private session is not a hearing of the Commission.

Powers of Commission and custody and use of records

- (3) The following provisions apply as if information, a document, record or other thing obtained by one or 2 members of the Child Sexual Abuse Royal Commission at a private session were produced before, delivered or given to, or otherwise obtained or received by, the Commission:
 - (a) section 6F (power of Commission in relation to documents and other things);
 - (b) section 6P (Commission may communicate information);
 - (c) section 9 (custody and use of records of Royal Commission).
- (4) Section 9 (custody and use of records of Royal Commission) also applies as if a record produced by one or 2 members of the Child Sexual Abuse Royal Commission at a private session were produced by the Commission.

Application of Part 4 (offences)

- (5) Sections 6H (false or misleading evidence), 6I (bribery of witness), 6J (fraud on witness), 6L (preventing witness from attending), 6M (injury to witness) and 6N (dismissal by employers of witness) apply as if:
 - (a) a person who appears, or intends to appear, at a private session were called or summoned, or appeared, as a witness before the Child Sexual Abuse Royal Commission; and
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Schedule 1 Amendments

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- (b) any information provided, or that a person intends to provide, at a private session were testimony or evidence given at a hearing before the Commission; and
 - (c) any document or other thing that a person produces, or intends to produce, at a private session was produced or would have been produced because the person was required to do so under a summons, requirement or notice under section 2.
- (6) Section 6O (contempt of Royal Commission) applies in relation to a private session as if:
- (a) the member or members of the Child Sexual Abuse Royal Commission holding the private session were the Commission; and
 - (b) the private session were proceedings of the Commission.

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

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

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

- (1) Any person who appears, or is authorised to be present, at a private session has the same protection and, in addition to the penalties provided by this Act, is to be subject to the same liabilities in any civil or criminal proceeding, as a witness in any case tried in the High Court.
- (2) A legal practitioner who appears on behalf of a person at a private session has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

Division 3—Privacy of private sessions

6OG Privacy of private sessions

A private session must be held in private, and only persons who are authorised by a member of the Child Sexual Abuse Royal Commission holding the private session may be present during the private session.

6OH Offence for unauthorised use or disclosure of information given at a private session

A person commits an offence if:

- (a) the person obtains information:
 - (i) at a private session; or
 - (ii) that was given at a private session; and
- (b) the person makes a record of, uses or discloses the information; and
- (c) none of the following applies:
 - (i) the record, use or disclosure is for the purposes of performing functions or duties or exercising powers in relation to the Child Sexual Abuse Royal Commission;
 - (ii) the person is authorised to make the record of, or use, disclose or publish, the information in accordance with section 6OJ (inclusion of information in reports and recommendations), 6P (Commission may communicate information) or 9 (custody and use of records of Commission);
 - (iii) the person gave the information at the private session;
 - (iv) the person makes the record of, uses or discloses the information with the consent of the person who gave the information at the private session.

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

Note: For a defence to this offence, see section 6OK.

60J Inclusion of information in reports and recommendations

Information that relates to a natural person that has been obtained at a private session may be included in a report or recommendation of the Child Sexual Abuse Royal Commission only if:

- (a) the information is also given as evidence to the Commission or under a summons, requirement or notice under section 2; or
- (b) the information is de-identified.

60K Defence for disclosure to person who provided the information

Section 60H does not apply to a disclosure of information to the person who gave the information at a private session.

Note: A defendant bears an evidential burden in relation to the matter in this section (see subsection 13.3(3) of the *Criminal Code*).

60L No other exceptions under other laws

- (1) A provision of a law of the Commonwealth, a State or a Territory has no effect to the extent that it would otherwise require or authorise a person to make a record of, use or disclose information obtained at a private session if the record, use or disclosure:
 - (a) would contravene a provision of this Division; or
 - (b) would not be permitted by a provision of this Division.
- (2) Subsection (1) has effect whether the provision concerned is made before or after the commencement of this section.

60M Relationship with the *Archives Act 1983*

- (1) For the purposes of the *Archives Act 1983*, a record:
 - (a) that contains information obtained at a private session; or
 - (b) that relates to a private session and identifies a natural person who appeared at a private session;is in the open access period on and after 1 January in the year that is 99 years after the calendar year that the record came into existence.
- (2) To avoid doubt, subsection (1) applies in relation to a record even if the record came into existence after the private session.

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- (3) Subsection 3(7) and section 56 of the *Archives Act 1983* do not apply to a record referred to in subsection (1).

Part 5—Miscellaneous

31 Subsection 6P(2)

Omit “authorized”, substitute “authorised”.

31A After subsection 6P(2B)

Insert:

- (2C) A person who obtains information, evidence, a document or a thing in accordance with this section may (subject to sections 6DD and 6OE) make a record of, use or disclose the information, evidence, document or thing for the purposes of performing his or her functions or exercising his or her powers.

32 At the end of section 6P

Add:

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

33 Subsection 9(12) (heading)

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

34 Subsection 9(12)

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

35 Before section 10 (heading relating to legal proceedings)

Repeal the heading.

36 Paragraph 16(1)(a)

Omit “authorize”, substitute “authorise”.

37 Application

Schedule 1 Amendments

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

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

*[Minister's second reading speech made in—
House of Representatives on 13 February 2013
Senate on 13 March 2013]*

(25/13)

14Royal Commissions Amendment Act 2013No. 24, 2013