

## FACT SHEET

### *Justice Miscellaneous (Commissions of Inquiry) Act 2021*

The Justice Miscellaneous (Commissions of Inquiry) Bill 2021 makes amendments to the *Commissions of Inquiry Act 1995*, the *Public Interest Disclosures Act 2002*, the *Children, Young Persons and Their Families Act 1997*, and the *Youth Justice Act 1997* to support the operation of Commissions of Inquiry in Tasmania.

The Bill amends the *Commissions of Inquiry Act 1995* to:

- clarify the Governor's power to amend or vary the matters which the inquiry is directed to examine, including the power to appoint additional Commissioners to an established Commission of Inquiry;
- enable a Commission of Inquiry to conduct its inquiry in any manner that it considers appropriate, subject to the requirements of procedural fairness and its terms of reference;
- enable the prescription of certain Acts or the provisions of certain Acts not to apply in relation to information collected or used by a prescribed Commission;
- enable a Commission of Inquiry to permit a witness to give evidence anonymously, including the use of pseudonyms and any other measure aimed at preventing the direct or indirect identification of the witness;
- provide for the use of special measures for the giving of evidence including, but not limited to, those available under the *Evidence (Children and Special Witnesses) Act 2001*;
- provide for the use of private sessions by a Commission of Inquiry;
- amend the definition of 'misconduct' to conduct by a person that could reasonably be considered likely to result in a criminal charge, civil liability or disciplinary proceedings or other legal proceedings in respect of the conduct;
- permit the requirement of notice of an allegation of misconduct to include the provision of the substance of the anticipated evidence;
- enable a person who may be the subject of a finding of misconduct to waive the notice period;
- provide that the notice period does not apply to allegations of misconduct that arise in relation to the giving or presentation of evidence to a Commission of Inquiry;
- provide a definition for 'adverse finding' to include any finding that is against a person or organisation's interest;

- provide that if a Commission of Inquiry proposes to make an adverse finding against a person or organisation, it must provide that person or organisation with procedural fairness;
- provide a Commission of Inquiry with the power to require a person summoned to appear before the Commission to prepare and produce a document or a statement;
- provide that a Commission of Inquiry can require a document containing particular information be prepared by a person;
- provide a non-exhaustive definition of 'reasonable excuse' to include an excuse which would excuse an act or omission of a similar nature in respect of a proceeding before a court of law;
- provide that where production of documents is refused on the basis of a legal privilege that a Commission of Inquiry may require the production of the relevant documents to determine the claim;
- provide that the production to, and use of documents by a Commission of Inquiry does not extinguish a claim of a legal privilege in any other context;
- repeal section 23;
- enable information sharing between a Commission of Inquiry for the purpose of ensuring the safety and protection of children;
- provide for electronic means of service of documents, including notices;
- provide that a Commission of Inquiry may seek authority to use a listening device; and
- repeal section 41.

The Bill amends the *Public Interest Disclosures Act 2002* to:

- enable the Ombudsman to refer a matter to a Commission of Inquiry under section 41; and
- enable the disclosure of information to a Commission of Inquiry under section 23.

The Bill amends the *Children, Young Person and Their Families Act 1997* to:

- provide exceptions to the operation of section 103 to permit the disclosure and use of information:
  - to and by the person to whom the information relates;
  - to a person seeking to bring an action in respect of matters governed by this Act;

- for the purpose of responding to an action in respect of matters governed by this Act;
- for any purpose associated with a Commission of Inquiry established under the *Commissions of Inquiry Act 1995*; and
- for the purposes of any employment investigation or process;
- provide a penalty for disclosing information under an exemption for any other purpose;
- clarify the rules of procedural fairness are to be observed to a disclosure made for the purposes of seeking to bring or responding to a criminal or civil action or undertaking employment screening, review and disciplinary processes.

The Bill amends the *Youth Justice Act 1997* to:

- provide exceptions to the operation of sections 22 and 31 to permit the disclosure and use of information:
  - a person seeking to bring an action in respect of matters governed by this Act;
  - for the purpose of responding to an action in respect of matters governed by this Act;
  - for any purpose associated with a Commission of Inquiry established under the *Commissions of Inquiry Act 1995*; and
  - for the purposes of any employment investigation or process;
- provide a penalty for disclosing information under an exemption for any other purpose;
- clarify the rules of procedural fairness are to be observed to a disclosure made for the purposes of seeking to bring or responding to a criminal or civil action or undertaking employment screening, review and disciplinary processes.