

CLAUSE NOTES
Justice Miscellaneous (Commissions of Inquiry) Bill 2021

PART 1 – Preliminary

Clause 1. Short title

Specifies the name of the proposed Act.

Clause 2. Commencement

Provides for the commencement of Parts 1, 2 and 6 of the proposed Act on the day it receives Royal Assent.

Provides for the commencement for Parts 3, 4, 5 and 7 of the proposed Act on 1 March 2021

Clause 3. Repeal of Act

Provides that the proposed Act is repealed one year after the day it commenced.

PART 2 – *Children, Young Persons and Their Families Act 1997* Amended

Clause 4. Principal Act

Provides that the Principal Act being amended in this Part is the *Children, Young Persons and Their Families Act 1997*.

Clause 5. Section 103 amended

Amends section 103 of the Principal Act by inserting a new subsection (2D) to provide that a person to whom personal information is disclosed under new subsection (2A) or new subsection (2B) must not disclose that information for any other purpose unless authorised or required by law.

Provides a penalty for failing to comply with the new subsection (2D).

PART 3 – *Children, Young Persons and Their Families Act 1997* Further Amended

Clause 6. Principal Act

Provides that the Principal Act being amended in this Part is the *Children, Young Persons and Their Families Act 1997*.

Clause 7. Section 103 amended

Inserts a new subsection (2A) to enable the disclosure and use of personal information relating to a person, to or by: the person; a person seeking to bring or responding to a criminal or civil action; a Commission of Inquiry; and a person undertaking employment screening, review or disciplinary processes.

Inserts a new subsection (2B) to enable the disclosure and use of personal information about a third party that is relevant for the purposes of seeking to bring or responding to a criminal or civil action or undertaking employment screening, review and disciplinary processes, providing that information does not disclose the identity of a person other than a party to the intended action or process.

Inserts a new subsection (2C) to 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.

PART 4 – *Commissions of Inquiry Act 1995* Amended

Clause 8. Principal Act

Provides that the Principal Act being amended in this Part is the *Commissions of Inquiry Act 1995*.

Clause 9. Section 3 amended

Inserts a definition for the term *adverse finding* as a finding of the Commission under section 19 that is adverse to the interests of a person.

Substitutes the definition for the term *misconduct* as 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.

Inserts a non-exhaustive definition for the term *reasonable excuse*.

Inserts definition of the term *vehicle*.

Clause 10. Section 4 amended

Amends subsection (3) to clarify that the Governor may amend or revoke an order made under the section, including, but not limited to, the appointment of additional members of the Commission during an inquiry.

Clause 11. Section 5 amended

Inserts subsection (3) to enable a Commission to conduct its inquiry and obtain information in any a manner it considers appropriate, and determine its own procedures for conducting its inquiry.

Provides that a Commission in conducting its inquiry must: observe the rules of procedural fairness; comply with the Principal Act and act within the scope of the Order establishing the Commission.

Clause 12. Section 7A amended

Amends Section 7A to enable the prescription of certain Acts or provisions of Act to not apply in relation to information collected or used by a prescribed Commission.

Clause 13. Section 13 amended

Amends Section 13 to include Division 1A.

Clause 14. Section 18 amended

Amends Section 18 to permit A Commission to provide a summary of the anticipated evidence to satisfy the notice requirement.

Inserts a new subsection (2A) to provide that a Commission is not required to give notice if the misconduct arises during the giving or presentation of evidence in the inquiry or the person who is the subject of the assertion of misconduct waives the notice period.

Clause 15. Section 19 amended

Inserts a new subsection (2A) to require a Commission to provide notice of its intention to make an adverse finding in its report and provide at least 10 days for a person subject to the proposed adverse finding to make representations to the Commission.

Inserts a new subsection (2B) to require a Commission to apply the rules of procedural fairness in respect of a person and the finding.

Clause 16. Part 3, Division 1A inserted

Inserts Part 3, Division 1A providing for the use of private sessions by a Commission is inserted after section 19 of the Principal Act.

Division 1A – Private sessions

Section 19A. Private sessions

Provides for the conduct of private sessions by a Commission of Inquiry.

Provides that a private session is not a hearing of the Commission, must be conducted in private and may be held as determined by the Commission.

Provides that a person appearing in a private session is not a witness before the Commission and does not give evidence to the Commission.

Provides that a person appearing in a private session is entitled to legal costs, allowances and compensation for loss of income under sections 36, 37 and 38 respectively of the Principal Act.

Provides that information given to a Commission during a private session may be included in a report or recommendation of the Commission if it is also given in evidence to the Commission

other than during a private session or where the information does not disclose the identity or lead to the identification of the individual.

Section 19B. Legal effect of private sessions

Provides that a statement or disclosure made in a private session or a document produced in a private session is not admissible in evidence against a person in any civil or criminal proceedings other than an offence under new section 19C.

Provides a person appearing in a private session has the same protection, immunity and liability to civil or criminal proceedings as a witness to a case tried in a Supreme Court.

Provides that a legal practitioner appearing on behalf of a person appearing in a private session has the same immunity as a barrister appearing in proceedings in the Supreme Court.

Section 19C. Offences relating to private sessions

Provides that a person may not make a record, use or disclose information obtained during a private session.

Provides a penalty for failing to comply with the new section 19C(1).

Provides that a person may make a record, use or disclose information obtained during a private session unless:

- otherwise authorised by the Principal Act, including to ensure the safety or welfare of a person or class of persons;
- for the purposes of performing the functions or exercising the powers of the Commission;
- with the consent of the person appearing in the private session or giving the information to the Commission; or
- the information does not disclose the identity of a person who has not given consent.

Provides that the offences in Section 33 of the Principal Act apply to a person appearing in a private session or producing a document or thing to a private session.

Clause 17. Section 23 substituted

Substitutes section 23 of the Principal Act and inserts a new section 23 to provide that a Commission may require a person to prepare a document for or a statement to the Commission containing specified information.

Provides that a person must not be required to prepare a document or statement if that person has been charged with an offence, unless the charge has been fully disposed of, relating to the information requested.

Inserts new Section 23A to provide that a Commission may inspect a document required under Section 22 or 23 to be produced for the purposes of assessing a claim of privilege.

Inserts new Section 23B to provide that the Commission may permit a person giving evidence to do so anonymously or under a pseudonym; use measures to prevent the direct or indirect identification of the person; and apply any special evidentiary procedures that may be

appropriate including but not limited to measures in the *Evidence (Children and Special Witnesses) Act 2001*.

Clause 18. Section 24 amended

Amends subsection 24 of the Principal Act to include the power of search of a building and the amended definition of vehicle, to include an aircraft.

Clause 19. Section 24A amended

Amends Section 24A to clarify the use of a surveillance device by a Commission and the application of under Part 2 of the *Police Powers (Surveillance Devices) Act 2006*.

Clause 20. Section 24B inserted

Inserts Section 24B to provide that a Commission may apply for a warrant for the use of a listening device under Part 4 of the *Listening Devices Act 1991*.

Clause 21. Section 27 amended

Amends subsection 27(6) of the Principal Act to reflect the amended definition of vehicle, to include an aircraft.

Clause 22. Section 34A amended

Amends Section 34A by inserting subsection (5A) to enable a Commission to provide information relating to the safety and protection of children to an appropriate person or organisation, in appropriate circumstances.

Clause 23. Section 35 substituted

Substitutes Section 35 to provide for the methods of effecting service under the Principal Act, including personal, postal and electronic.

Clause 24. Section 41 repealed

Repeals section 41 of the Principal Act.

PART 5 – *Public Interest Disclosures 2002* Amended

Clause 25. Principal Act

Provides that the Principal Act being amended in this Part is the *Public Interest Disclosures Act 2002*.

Clause 26. Section 23 amended

Amends section 23(1) of the Principal Act by inserting a new paragraph (ca) to enable information received in the course of a protected disclosure or the investigation of a disclosed

matter under the Principal Act to a Commission of Inquiry for the purposes of a referral under section 41 of the Principal Act.

Clause 27. Section 41 amended

Amends section 41 of the Principal Act by including a Commission of Inquiry established under the *Commissions of Inquiry Act 1995* as a body that may receive a referral to investigate a disclosed matter.

PART 6 – *Youth Justice Act 1997* Amended

Clause 28. Principal Act

Provides that the Principal Act being amended in this Part is the *Youth Justice Act 1997*.

Clause 29. Section 22 amended

Amends section 22 of the Principal Act by inserting a new subsection (4E) to provide that a person to whom information is disclosed under new subsection (4B) or new subsection (4C) must not disclose that information for any other purpose unless authorised or required by law.

Provides a penalty for failing to comply with the new subsection (4E).

Clause 30. Section 31 amended

Amends section 31 of the Principal Act by inserting a new subsection (10) to provide that a person to whom information is disclosed under new subsection (7) or new subsection (8) must not disclose that information for any other purpose unless authorised or required by law.

Provides a penalty for failing to comply with the new subsection (10).

PART 7 – *Youth Justice Act 1997* Further Amended

Clause 31. Principal Act

Provides that the Principal Act being amended in this Part is the *Youth Justice Act 1997*.

Clause 32. Section 22 amended

Inserts a new subsection (4A)(ba) to enable the disclosure and use of information to a Commission of Inquiry.

Inserts a new subsection (4B) to enable the provision of information in relation to a youth, to a person seeking to bring or responding to a criminal or civil action; and a person undertaking employment screening, review or disciplinary processes.

Inserts a new subsection (4C) to enable the disclosure and use of information about a third party that is relevant for the purposes of seeking to bring or responding to a criminal or civil

action or undertaking employment screening, review and disciplinary processes, providing that information does not disclose the identity of a person other than a party to the intended action or process.

Inserts a new subsection (4D) to 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.

Clause 33. Section 31 amended

Inserts a new subsection (4)(ga) to enable the disclosure and use of information to a Commission of Inquiry.

Inserts a new subsection (7) to enable the provision of information in relation to a youth, to a person seeking to bring or responding to a criminal or civil action; and a person undertaking employment screening, review or disciplinary processes.

Inserts a new subsection (8) to enable the disclosure and use of information about a third party that is relevant for the purposes of seeking to bring or responding to a criminal or civil action or undertaking employment screening, review and disciplinary processes, providing that information does not disclose the identity of a person other than a party to the intended action or process.

Inserts a new subsection (9) to 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.