

TASMANIA

**JUSTICE MISCELLANEOUS (COMMISSIONS OF
INQUIRY) BILL 2021**

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JUSTICE MISCELLANEOUS (COMMISSIONS OF INQUIRY) BILL 2021

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
18 March 2021

(Brought in by the Minister for Justice, the Honourable Elise Nicole Archer)

A BILL FOR

An Act to amend the *Children, Young Persons and Their Families Act 1997*, the *Commissions of Inquiry Act 1995*, the *Public Interest Disclosures Act 2002* and the *Youth Justice Act 1997*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Justice Miscellaneous (Commissions of Inquiry) Act 2021*.

2. Commencement

- (1) Parts 2 and 6 and this Part commence on the day on which this Act receives the Royal Assent.

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Part 1 – Preliminary

- (2) The remaining provisions of this Act are taken to have commenced on 1 March 2021.

3. Repeal of Act

This Act is repealed on the first anniversary of the day on which it received the Royal Assent.

**PART 2 – CHILDREN, YOUNG PERSONS AND THEIR
FAMILIES ACT 1997 AMENDED**

4. Principal Act

In this Part, the *Children, Young Persons and Their Families Act 1997** is referred to as the Principal Act.

5. Section 103 amended (Duty to maintain confidentiality)

Section 103 of the Principal Act is amended by inserting after subsection (2C) the following subsection:

- (2D) A person to whom personal information is disclosed under subsection (2A) or (2B) must not use or disclose the personal information other than –
- (a) for the purpose for which the information was so disclosed to the person; or
 - (b) as authorised or required to do so by law.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

*No. 28 of 1997

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PART 3 – CHILDREN, YOUNG PERSONS AND THEIR FAMILIES ACT 1997 FURTHER AMENDED

6. Principal Act

In this Part, the *Children, Young Persons and Their Families Act 1997** is referred to as the Principal Act.

7. Section 103 amended (Duty to maintain confidentiality)

Section 103 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (2A) Subsections (1) and (2) do not apply in respect of the disclosure and use of personal information relating to a person to, or by –
- (a) that person; or
 - (b) a person seeking to bring an action, whether criminal or civil, if –
 - (i) the person to whom the personal information relates is an intended defendant to the action or an alleged perpetrator in respect of the matter to

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which the action relates;
and

(ii) the personal information
is relevant to that action;
or

(c) a person responding, on behalf of the State, to an action, whether criminal or civil and whether proposed or commenced, against the State if the personal information is relevant to that action; or

(d) a Commission established under the *Commissions of Inquiry Act 1995* if the personal information is relevant to the inquiry for which that Commission was established; or

(e) a person undertaking an employment screening or review process, or disciplinary investigations or proceedings, in respect of the person to whom the personal information relates if the person to whom the personal information relates is –

(i) an employee or contractor, or prospective employee or contractor, of the person to whom the

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- (b) in the case of information disclosed to or used by a person referred to in paragraph (a)(i) or (ii), the information –
- (i) is relevant to the action;
and
 - (ii) does not disclose the identity of, or lead to the identification of, a person other than an intended defendant to the action or an alleged perpetrator in respect of the matter to which the action relates;
and
- (c) in the case of information disclosed to or used by a person referred to in paragraph (a)(iii), the information –
- (i) is relevant to the employment screening or review process, or disciplinary investigations or proceedings, being undertaken by the person to whom the information is disclosed; and
 - (ii) does not disclose the identity of, or lead to the identification of, a person

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Amended

other than the person
being screened or
reviewed or the subject of
those disciplinary
investigations or
proceedings.

(2C) Personal information disclosed under
subsection (2A)(c) or (e) is subject to the
rules of procedural fairness in respect of
the person whose personal information is
so disclosed.

**PART 4 – COMMISSIONS OF INQUIRY ACT 1995
AMENDED**

8. Principal Act

In this Part, the *Commissions of Inquiry Act 1995** is referred to as the Principal Act.

9. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *act*:

adverse finding means a finding of a Commission under section 19 that is adverse to the interests of a person;

- (b) by omitting the definition of *misconduct* and substituting the following definition:

misconduct means conduct by a person that could reasonably be considered likely to result in a criminal charge, civil liability, disciplinary proceedings, or other legal proceedings, being brought against that person in respect of the conduct;

*No. 70 of 1995

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- (c) by inserting the following definitions after the definition of *officer of the Commission*:

reasonable excuse, in relation to an act by a person, means –

- (a) if the person is a witness, or providing information, to a Commission, an excuse that would excuse the act by a witness in proceedings of a similar nature in a court of law; or
- (b) if the person is the subject of a notice, or warrant in relation to a Commission, an excuse that would excuse the act by a person summoned before a court of law in proceedings of a similar nature in the court; or
- (c) in any case, an excuse that the Commission considers reasonable in the circumstances in relation to the act by the person;

vehicle includes an aircraft and a vessel.

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10. Section 4 amended (Establishment of Commissions)

Section 4 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (3) For the avoidance of doubt, the Governor may, by order, amend or revoke an order under subsection (1) for any reason, including but not limited to –
 - (a) to appoint one or more persons as members of the Commission, whether before, or during, the inquiry that the Commission is established to conduct; or
 - (b) to amend a date referred to in subsection (1)(d) whether or not that date has passed.

11. Section 5 amended (Function and power of Commission)

Section 5 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) Subject to this Act or any other Act, a Commission –
 - (a) may –
 - (i) conduct its inquiry in any manner that it considers appropriate; and

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- (ii) obtain information in any manner that it considers appropriate; and
 - (iii) determine its own procedure in conducting its inquiry; and
- (b) must, in conducting its inquiry –
- (i) observe the rules of procedural fairness; and
 - (ii) comply with this Act; and
 - (iii) act within the scope of the order under section 4(1) that established the Commission.

12. Section 7A amended

Section 7A of the Principal Act is amended as follows:

- (a) by renumbering the text of the section as subsection (1);
- (b) by inserting the following subsection after subsection (1):
 - (2) The regulations may prescribe certain Acts, or certain provisions of Acts, as Acts or provisions that do not apply in relation to any information collected, or used, by

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or on behalf of a prescribed Commission.

13. Section 13 amended (Hearings to be public)

Section 13(1) of the Principal Act is amended by inserting “and Division 1A” after “subsection (2)”.

14. Section 18 amended (Allegations of misconduct)

Section 18 of the Principal Act is amended as follows:

(a) by omitting from subsection (1)(d) “evidence” and substituting “evidence, or nature and substance of anticipated evidence,”;

(b) by inserting the following subsection after subsection (2):

(2A) Subsection (2) does not apply in respect of a person given a notice under subsection (1) if –

(a) the allegation specified in the notice relates to misconduct by the person in respect of the giving, or presentation, of evidence in the inquiry; or

(b) the person waives the reasonable period, referred to in

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subsection (2), in respect
of the allegation specified
in the notice.

15. Section 19 amended (Commission findings)

Section 19 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (2A) If, in its report, a Commission intends to make a finding that is an adverse finding in respect of a person, the Commission must –
- (a) notify the person in writing of –
 - (i) the Commission’s intention to make the adverse finding in respect of the person; and
 - (ii) the details of the adverse finding; and
 - (b) allow the person at least 10 working days to make representations to the Commission in respect of the adverse finding before the report is finalised.
- (2B) If the report of a Commission makes an adverse finding in respect of a person, the rules of procedural fairness apply in respect of that person and that finding.

16. Part 3, Division 1A inserted

After section 19 of the Principal Act, the following Division is inserted in Part 3:

Division 1A – Private sessions

19A. Private sessions

- (1) Unless otherwise specified by the order by which it is established, a Commission may hold a private session for the Commission to obtain information in respect of the matter into which the Governor has directed it to inquire.
- (2) A private session of a Commission under subsection (1) –
 - (a) is not a hearing of the Commission; and
 - (b) must be held in private; and
 - (c) subject to this Act and the order establishing the Commission, may be held as determined by the Commission.
- (3) A person who appears at a private session of a Commission under subsection (1) –
 - (a) is not a witness before the Commission; and

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- (b) does not give evidence to the Commission.
- (4) Despite subsection (3)(a), sections 36, 37 and 38 apply to a person who appears at a private session of a Commission under subsection (1) as if that person had appeared before the Commission or had been a witness to an inquiry.
- (5) Information that relates to an individual that has been provided at a private session of a Commission, or given to a member of a Commission solely for the purposes of a private session or proposed private session, may be included in a report or recommendation of the Commission only if the information –
 - (a) is also given in evidence to the Commission other than at a private session; or
 - (b) does not disclose the identity of, or lead to the identification of, the individual.

19B. Legal effect of private sessions

- (1) The following are not admissible in evidence against a person in any civil or criminal proceedings, other than proceedings for an offence in section 19C, in any court:

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- (a) a statement or disclosure made by the person –
 - (i) at a private session; or
 - (ii) to a member of a Commission solely for the purposes of a private session or proposed private session;
 - (b) the production of a document or other thing by the person at a private session.
- (2) A person who appears, or is authorised to be, at a private session has the same protection and immunity, and is subject to the same liabilities in respect of any civil or criminal proceedings, as a witness has in a case tried in the Supreme Court.
- (3) A legal practitioner who appears on behalf of another person at a private session has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

19C. Offences relating to private sessions

- (1) A person must not make a record of, use or disclose information that –

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- (a) was obtained by the person at a private session of a Commission; or
- (b) was given at a private session of a Commission and obtained by the person before, or after, the information was so given; or
- (c) was given to a member of a Commission for the purposes of a private session or proposed private session.

Penalty: Fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years.

(2) Subsection (1) does not apply if –

- (a) the disclosure of the information was required or authorised under this Act, or any other Act, in order to ensure the safety and welfare of a person or a class of persons; or
- (b) the record, use or disclosure of the information was for the purposes of performing functions, or exercising powers, under this Act in respect of the Commission to whom the information was given; or
- (c) the person is authorised to make the record of, or to use or

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disclose, the information under this Act and only records, uses or discloses the information in accordance with this Act; or

(d) the information is recorded, used or disclosed with the consent of –

(i) in relation to information referred to in subsection (1)(a) or (b), the person who gave the information at the private session of the Commission and each person referred to in the information; and

(ii) in relation to information referred to in subsection (1)(c), the person who gave the information to the member of the Commission; or

(e) the information that is recorded, or used or disclosed, does not disclose the identity of, or lead to the identification of, a person who has not given consent to the recording, use or disclosure of that information.

(3) Except as provided in subsection (2), nothing in this Act, or any other Act,

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authorises the making of a record, or the use or disclosure, of information provided at a private session or for the purposes of a private session or proposed private session.

- (4) Section 33 applies to a person who gives information at, or produces a document or thing to, a private session of a Commission as if –
- (a) a reference to a witness in section 33(1) were a reference to a person who appears at a private session under this Division; and
 - (b) a reference to a person giving evidence, or producing or surrendering a document or thing, in section 33(2) or (3) were a reference to a person appearing at, or producing or surrendering a document or thing to, a private session under this Division.

17. Section 23 substituted

Section 23 of the Principal Act is repealed and the following sections are substituted:

23. Notice to produce document or statement

- (1) A Commission may, by notice served on a person, require the person to –

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- (a) prepare a document for or statement to the Commission, or a person designated by the Commission, containing the information known by the person in respect of the matter specified in the notice; and
 - (b) give the document or statement so prepared to a person by the time, and at the place or in the manner, specified in the notice.
- (2) A Commission must not require a person to prepare a document or statement under subsection (1) if that person has been charged with an offence in respect of the matter to which the document or statement relates.
 - (3) Subsection (2) does not apply if the charge has been finally disposed of.
 - (4) A notice under this section served by the Commission on a person may form, but is not required to form, part of a notice served under section 22 by that Commission on that person.

23A. Privilege does not apply in certain circumstances

If a person refuses to prepare or produce a document or statement as required under section 22 or 23 on the grounds that the document or statement, or the

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information contained in the document or statement, is protected by privilege –

- (a) the Commission may require the production of the document or statement to assess whether privilege so applies; and
- (b) the production of the document or statement to the Commission, or the use of the document or statement by the Commission, does not affect whether the document or statement is protected by privilege in any other circumstances.

23B. Powers in relation to witnesses

If a Commission is satisfied that it is necessary in the circumstances, the Commission may do one or more of the following in respect of a person giving evidence to the Commission:

- (a) permit the person to give evidence anonymously or under a pseudonym;
- (b) use any means that the Commission considers appropriate to prevent the direct, or indirect, identification of the person;
- (c) identify the person as potentially vulnerable and apply any special

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evidentiary procedures, or measures, that may be appropriate, including but not limited to measures under the *Evidence (Children and Special Witnesses) Act 2001* whether or not the prerequisites under that Act for those measures are met.

18. Section 24 amended (Power of entry, search and seizure)

Section 24 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “building, vehicle or vessel” and substituting “building or vehicle”;
- (b) by omitting from subsection (2)(b) “building, vehicle or vessel” and substituting “building or vehicle”;
- (c) by omitting from subsection (3)(a) “building, vehicle or vessel” and substituting “building or vehicle”.

19. Section 24A amended (Application for use of surveillance device)

Section 24A of the Principal Act is amended by omitting “that section” and substituting “that Act”.

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Part 4 – Commissions of Inquiry Act 1995 Amended

20. Section 24B inserted

After section 24A of the Principal Act, the following section is inserted in Division 3:

24B. Application for use of listening device

- (1) A Commission may apply for a warrant under Part 4 of the *Listening Devices Act 1991* as if –
 - (a) the Commission were a police officer of or above the rank of sergeant; and
 - (b) a reference in that Part to a prescribed offence were read as a reference to the matter of the inquiry being undertaken by the Commission.
- (2) If a magistrate authorizes the use of a listening device, by the Commission, under a warrant under Part 4 of the *Listening Devices Act 1991* –
 - (a) the warrant may specify a person who is, or a class of persons who are, authorised to install and retrieve a listening device under the authority of the warrant; and
 - (b) that Act applies in respect of the warrant so issued.

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Part 4 – Commissions of Inquiry Act 1995 Amended

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21. Section 27 amended (Failure to give or produce evidence is contempt)

Section 27(6) of the Principal Act is amended by omitting “building, vehicle or vessel” and substituting “building or vehicle”.

22. Section 34A amended (Commission may communicate information)

Section 34A of the Principal Act is amended by inserting after subsection (5) the following subsection:

- (5A) If, in the course of inquiry into a matter, a Commission obtains information or evidence in relation to a person that relates, or may relate, to the safety and protection of children, the Commission may, if in the opinion of the Commission it is appropriate to do so, communicate the information or furnish the evidence, as the case may be, to a person or organisation that the Commission is satisfied –
- (a) is responsible for the management or oversight of, or reporting on, the safety and protection of children generally; or
 - (b) is responsible for the oversight, registration, approval or any other endorsement of persons in the same occupation, industry or

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recreational activity as the person to whom the information relates; or

- (c) is responsible for disciplinary proceedings relating to members of the same occupation, industry or recreational activity as the person to whom the information relates.

23. Section 35 substituted

Section 35 of the Principal Act is repealed and the following section is substituted:

35. Service of notices

A notice required to be served on a person under this Act may be served or given by –

- (a) in the case of an individual –
- (i) delivering it to the person personally; or
 - (ii) leaving it at, or sending it by post to, the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last

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known to the person
serving the notice; or

(iii) sending it by electronic
transmission to an email
address nominated by the
person as an email
address to be used for the
giving or service of
documents; or

(iv) sending it by any other
electronic means
nominated by the person
as a means to be used for
the giving or service of
documents; or

(b) in the case of a body corporate –

(i) leaving it with a person
apparently of or above the
age of 16 years at, or
sending it by post to, the
head office, a registered
office or a principal place
of business of the body
corporate or to an address
specified by the body
corporate for the giving or
service of documents; or

(ii) sending it by electronic
transmission to an email
address nominated by the
body corporate as an

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email address to be used
for the giving or service
of documents; or

- (iii) sending it by any other
electronic means
nominated by the body
corporate as a means to be
used for the giving or
service of documents.

24. Section 41 repealed

Section 41 of the Principal Act is repealed.

**PART 5 – PUBLIC INTEREST DISCLOSURES ACT
2002 AMENDED**

25. Principal Act

In this Part, the *Public Interest Disclosures Act 2002** is referred to as the Principal Act.

26. Section 23 amended (Offence to reveal confidential information)

Section 23(1) of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

- (ca) the exercise of the functions of a Commission under the *Commissions of Inquiry Act 1995*; or

27. Section 41 amended (Referral of matters for investigation otherwise than under this Act)

Section 41 of the Principal Act is amended by inserting “a Commission under the *Commissions of Inquiry Act 1995*,” after “Auditor-General,”.

*No. 16 of 2002

PART 6 – YOUTH JUSTICE ACT 1997 AMENDED

28. Principal Act

In this Part, the *Youth Justice Act 1997** is referred to as the Principal Act.

29. Section 22 amended (Confidentiality)

Section 22 of the Principal Act is amended by inserting after subsection (4D) the following subsection:

(4E) A person to whom information is provided under subsection (4B) or (4C) must not use or disclose the information other than –

- (a) for the purpose for which the information was so provided to the person; or
- (b) as authorised, or required, by law.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

30. Section 31 amended (Restrictions on reporting proceedings)

Section 31 of the Principal Act is amended by inserting after subsection (9) the following subsection:

*No. 81 of 1997

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(10) A person to whom information is provided under subsection (7) or (8) must not use or disclose the information other than –

- (a) for the purpose for which the information was so provided to the person; or
- (b) as authorised, or required, by law.

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 2 years, or both.

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Part 7 – Youth Justice Act 1997 Further Amended

**PART 7 – YOUTH JUSTICE ACT 1997 FURTHER
AMENDED**

31. Principal Act

In this Part, the *Youth Justice Act 1997** is referred to as the Principal Act.

32. Section 22 amended (Confidentiality)

Section 22 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (b) in subsection (4A):
 - (ba) if the information is provided as part of a Commission established under the *Commissions of Inquiry Act 1995*; or
- (b) by inserting the following subsections after subsection (4A):
 - (4B) Subsection (1) does not apply to the provision of information in relation to a youth –
 - (a) to a person involved in the action or proceedings, taken in respect of the youth, other than the youth or the victim of the offence; or

*No. 81 of 1997

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- (b) to a person seeking to bring an action, whether criminal or civil, if –
 - (i) the person to whom the information relates is an intended defendant to the action or an alleged perpetrator in respect of the matter to which the action relates; and
 - (ii) the information is relevant to that action; or
- (c) to a person responding, on behalf of the State, to an action, whether criminal or civil and whether proposed or commenced, against the State if the information is relevant to that action; or
- (d) to a person undertaking an employment screening or review process, or disciplinary investigations or proceedings, in respect of the person to whom the information relates if the

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person to whom the
information relates is –

(i) an employee or
contractor, or
prospective
employee or
contractor, of the
person to whom
the information is
provided; or

(ii) a volunteer or
assistant, or
prospective
volunteer or
assistant, whether
paid or unpaid, of
an organisation of
which the person,
to whom the
information is
provided, is in a
position of
management or
control.

(4C) Subsection (1) does not apply to
the provision of information in
relation to a youth if the
information –

(a) is provided to a person –

(i) seeking to bring
an action, whether

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- criminal or civil;
or
- (ii) responding, on behalf of the State, to an action, whether criminal or civil and whether proposed or commenced; or
 - (iii) undertaking an employment screening or review process, or disciplinary investigations or proceedings; and
- (b) in the case of information provided to a person referred to in paragraph (a)(i) or (ii), the information –
- (i) is relevant to the action; and
 - (ii) does not disclose the identity of, or lead to the identification of, a person other than an intended defendant to the action or an

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alleged perpetrator
in respect of the
matter to which
the action relates;
and

(c) in the case of information
provided to a person
referred to in
paragraph (a)(iii), the
information –

(i) is relevant to the
employment
screening or
review process, or
disciplinary
investigations or
proceedings, being
undertaken by the
person to whom
the information is
provided; and

(ii) does not disclose
the identity of, or
lead to the
identification of, a
person other than
the person being
screened or
reviewed or the
subject of those
disciplinary
investigations or
proceedings.

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(4D) Information provided under subsection (4B)(c) or (d) is subject to the rules of procedural fairness in respect of the person whose information is so provided.

33. Section 31 amended (Restrictions on reporting proceedings)

Section 31 of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (g) in subsection (4):

(ga) a Commission established under the *Commissions of Inquiry Act 1995* if the information is relevant to the matter in respect of which the Commission was so established; and

(b) by inserting the following subsections after subsection (6):

(7) Subsections (1) and (3) do not apply to the provision of information in relation to a person –

(a) to a person seeking to bring an action, whether criminal or civil, if –

(i) the person to whom the

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information relates
is an intended
defendant to the
action or an
alleged perpetrator
in respect of the
matter to which
the action relates;
and

(ii) the information is
relevant to that
action; or

(b) to a person responding, on
behalf of the State, to an
action, whether criminal
or civil and whether
proposed or commenced,
against the State if the
information is relevant to
that action; or

(c) to a person undertaking an
employment screening or
review process, or
disciplinary investigations
or proceedings, in respect
of the person to whom the
information relates if the
person to whom the
information relates is –

(i) an employee or
contractor, or
prospective

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employee or
contractor, of the
person to whom
the information is
provided; or

- (ii) a volunteer or
assistant, or
prospective
volunteer or
assistant, whether
paid or unpaid, of
an organisation of
which the person,
to whom the
information is
provided, is in a
position of
management or
control.

(8) Subsections (1) and (3) do not
apply to the provision of
information in relation to a youth
if the information –

(a) is provided to a person –

- (i) seeking to bring
an action, whether
criminal or civil;
or
- (ii) responding, on
behalf of the State,
to an action,

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- whether criminal
or civil and
whether proposed
or commenced; or
- (iii) undertaking an
employment
screening or
review process, or
disciplinary
investigations or
proceedings; and
- (b) in the case of information
provided to a person
referred to in
paragraph (a)(i) or (ii), the
information –
- (i) is relevant to the
action; and
- (ii) does not disclose
the identity of, or
lead to the
identification of, a
person other than
an intended
defendant to the
action or an
alleged perpetrator
in respect of the
matter to which
the action relates;
and

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(c) in the case of information provided to a person referred to in paragraph (a)(iii), the information –

(i) is relevant to the employment screening or review process, or disciplinary investigations or proceedings, being undertaken by the person to whom the information is provided; and

(ii) does not disclose the identity of, or lead to the identification of, a person other than the person being screened or reviewed or the subject of those disciplinary investigations or proceedings.

(9) Information provided under subsection (7)(b) or (c) is subject to the rules of procedural fairness in respect of the person whose information is so provided.