

SECOND READING SPEECH

Commissions of Inquiry Amendment Bill 2013

Royal Commissions are a form of non-judicial and non-administrative governmental investigation used for examining matters of significant public interest.

In Tasmania the equivalent to a Royal Commission is a Commission of Inquiry under the *Commissions of Inquiry Act 1995*.

Such Commissions have coercive powers to inquire into matters and the ability to make recommendations about systemic change but do not have power to prosecute or penalise persons for criminal behaviours (other than contempt associated with the inquiry process).

In November 2012 the then Prime Minister announced the establishment of a *Royal Commission into Institutional Responses to Child Sexual Abuse*. In January 2013, the Governor General appointed a six-member Royal Commission chaired by Hon. Justice Peter McClellan AM.

On 4 March 2013 the Governor by Order appointed the same six Commissioners to a Tasmanian Commission of Inquiry to operate concurrently with the Commonwealth Royal Commission. This will ensure that the Commissioners have full powers to inquire into institutional responses to allegations of child sexual abuse in Tasmania. All other States have taken similar action.

Having concurrent Commissions with the same remit allows broad inquiry throughout the country without constitutional or other jurisdictional concerns being raised. The model is the same that was used in the Inquiry into Aboriginal Deaths in Custody.

In order to facilitate the concurrent operation of the Commonwealth Royal Commission and the Tasmanian Commission of Inquiry, this Bill makes amendments to the *Commissions of Inquiry Act*.

I will now briefly discuss each of the amendments contained in the Bill.

The Tasmanian Commission of Inquiry Act only allows evidence to be given at a hearing before all Commissioners, or a quorum of Commissioners.

Because of the expected scale of this inquiry, the Commonwealth has amended its *Royal Commissions Act 1902* to give the President of the Commission the ability to authorise one or more Commissioners to hold hearings.

This amendment allows for the efficient distribution of workload between Commissioners, where it is appropriate to do so, and ensures that evidence taken at a hearing before one or more Commissioners forms part of the evidence for the inquiry as a whole.

This Bill makes similar amendments to the Tasmanian Act by inserting a new section 5A to provide for hearings by one or more Commissioners as authorised by the President of the Commission. Consequential amendments are made to interpretation provisions in section 3 and at new section 3A.

A further amendment to section 3 clarifies that legal practitioners appearing before the Commission do not have to be admitted in Tasmania, by inserting a definition of “counsel” to equate that term with “Australian legal practitioner” within the meaning of the *Legal Profession Act 2007*.

The Bill also inserts a new section 7A to provide that confidentiality provisions in a few specified Tasmanian Acts do not apply to information collected for and provided to the Commission.

A review was conducted of almost 200 confidentiality and privacy provisions in Tasmanian statutes. The vast majority of these concerned matters that are irrelevant to the current Commission of Inquiry. Of those provisions that might be relevant, many already allow for the information to be divulged if “required or authorised” by law and therefore did not need to be included in the new section.

As a matter of policy, some relevant provisions were not included in new section 7A.

For example in relation to section 16 of the *Children Young Persons and Their Families Act 1997*, which protects the identity of persons informing of abuse, it was decided that the importance of maintaining confidentiality to encourage the reporting of abuse was paramount. The fact that the Commission's interest would be in the response to the report, not the identity of the reporter was also a relevant consideration.

As a result there are very few confidentiality provisions which are overridden in new section 7A.

Finally, the Bill amends the Act to insert a new section 34A, modelled on section 6P of the Commonwealth *Royal Commissions Act 1902*, which provides that where, in the course of inquiring into a matter, a Commission obtains information or evidence that relates to a contravention of a law the Commission may, if it considers it is appropriate so to do, communicate the information or evidence to the relevant law enforcement authority.

The Commonwealth Royal Commission Letters Patent (and therefore also the Tasmanian Governor's Order establishing the Commission of Inquiry) permit the Commissions to communicate information, evidence, documents etc. received in the course of inquiry to law enforcement bodies.

In the light of the likely scope and duration of the inquiry and the fact that information and evidence of criminal offences will be presented to the Commissions, this is an important power for the Commissions to have.

However, under the current Tasmanian Act the function of a Commission of Inquiry in Tasmania is to "...conduct an inquiry into the matter in respect of which it is established and report to the Governor on that inquiry."

In the absence of an express provision permitting it to do so it may be questioned whether the Tasmanian Commission of Inquiry has power to communicate information to law enforcement bodies or others during the course of the inquiry.

The new section 34A overcomes this problem and also provides that the Commission may communicate information, evidence or documents obtained by it to another Commission if that material relates to a matter which another Commission is required or authorised to hear. New subsection (4) clarifies that in respect to this provision “another Commission” includes a Royal Commission or a Commission of Inquiry established by another Australian jurisdiction.

This will allow the Commissioners to consider information and documents received when sitting as the Tasmanian Commission of Inquiry in a matter before them as Commissioners in a Commission established under the laws of another Australian jurisdiction.

The new section will also allow the Commission to provide information, evidence or documents that may relate to the performance of the functions of the Integrity Commission to the Integrity Commission.

As the Tasmanian Commission of Inquiry was appointed on 4 March 2013, to prevent any argument that the Commission did not have a relevant power or that a person releasing information on behalf of the state government was in breach of a confidentiality provision in another Act at a particular time, the Bill applies the changes to the Act from the date of the appointment of the Commission.

While retrospectivity is usually avoided, in this case where the required amendments could not be made prior to the appointment of the Commission of Inquiry it is necessary to ensure that the Commissions can function concurrently.