



May 2017

# Attorney-General's Department submission

## Senate Finance and Public Administration Legislation Committee inquiry – Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017

The Attorney-General's Department (the department) is pleased to provide this submission to the Senate Finance and Public Administration Legislation Committee in relation to its Inquiry into the Provisions of the Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017 (the Bill). This submission will only address Schedule 5 of the Bill.

Under the Administrative Arrangements Orders while the *Royal Commissions Act 1902* (the Royal Commissions Act) is administered by the Prime Minister the Attorney-General is responsible for "Administrative support for Royal Commissions and certain other inquiries". In recent years the department has provided administrative support for the Royal Commission into Institutional Responses to Child Sexual Abuse (2013-2017), the Royal Commission into the Home Insulation Program (2013-2014), the Royal Commission into Trade Union Governance and Corruption (2014-2015), and the Royal Commission into the youth detention and child protection systems of the Northern Territory (2016-2017). The department has also coordinated the Commonwealth's legal representation before each of these royal commissions.

### Power to require information or statement

The Bill amends the Royal Commissions Act to provide for a new power for Commissioners to issue a written notice to require a person to give information or a statement in writing to a Commission<sup>1</sup>.

This new power was recommended by Mr Ian Hangar AM QC in the Report of the Royal Commission into the Home Insulation Program (the HIP Report). As Commissioner Hangar notes in the HIP Report in some states and territories' legislation already provides (either directly or indirectly) for a person to be compelled to provide a statement to an inquiry<sup>2</sup>.

---

<sup>1</sup> Item 2, Schedule 5, Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017

<sup>2</sup> *Commissions of Inquiry Act 1950* (Qld) s 5(1)(d), *Royal Commissions Act 1968* (WA) s 8A(2), *Royal Commissions Act 1991* (ACT) s 23(c)

Mr Hangar's recommendation built on an earlier recommendation from the Australian Law Reform Commission that a member of a royal commission or official inquiry be empowered to issue a notice requiring a person to provide information in a form approved by the inquiry, failing which the member can require the person to attend the inquiry as if he or she had been issued with a notice to attend or appear before the inquiry<sup>3</sup>. This recommendation from the Australian Law Reform Commission in turn built on an earlier recommendation from Commissioner Terence Cole AO RFD QC in the Final Report of the Royal Commission into the Building and Construction Industry<sup>4</sup>.

Commissioner Hangar notes in the HIP Report that the inability to compel the making of statements presented the Royal Commission with a number of concerns<sup>5</sup>. Commissioner Hangar was initially concerned that the inability to compel the making of submissions may have forced the Royal Commission to either hold extensive (and expensive) public or private hearings. Commissioner Hangar was also concerned about whether the voluntary submission of a statement by a witness may potentially result in contraventions of Commonwealth legislation (for example section 70 of the *Crime Act 1914* (Cth) with regards to public servants giving statements) and whether witnesses who submitted statements would benefit from the protection afforded by Section 6DD of the Royal Commissions Act. The Royal Commission attempted to address these issues through a protocol that was agreed between Counsel Assisting and the Commonwealth to facilitate interviews between Commission representatives and witnesses.

The department understands that the Royal Commission into Trade Union Governance and Corruption and the Royal Commission into Institutional Responses to Child Sexual Abuse have asked witnesses to (voluntarily) prepare statements that reflected the evidence they were prepared to give if summonsed to appear before the respective royal commission. Once such a statement is prepared, these royal commissions have then exercised powers under section 2 of the Royal Commissions Act to require the statement to be produced.

The department supports the proposed amendment of the Royal Commissions Act to provide for a new power for commissioners to issue a written notice to require a person to give information or a statement in writing to a royal commission. This new power would enable future royal commissions to use a more streamlined approach to gathering evidence. The department also supports the further proposed amendments that would ensure that the information gathered under the new compulsive power will be treated in the same way as other evidence gathered by royal commissions in the use of their current compulsive powers.

## **Increase in penalties for offences under the Royal Commissions Act**

The Bill also provides for the implementation of Recommendation 78 of the Final Report of the Royal Commission into Trade Union Governance and Corruption<sup>6</sup>. Recommendation 78 recommends that:

---

<sup>3</sup> Australian Law Reform Commission, *Making Inquiries – A New Statutory Framework*, Report No 11 (2009) 17 (recommendation 11-4)

<sup>4</sup> Royal Commission into the Building and Construction Industry, *Final Report* (2003), Vol. 2 recommendation 1(a)

<sup>5</sup> Royal Commission into the Home Insulation Program, *Report of the Royal Commission into the Home Insulation Program* (2014), 12

<sup>6</sup> Items 4, 7, 10, 15-16, Schedule 5, Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017

The *Royal Commissions Act 1902* (Cth) be amended to increase the penalties for a failure to comply with a summons to attend, a failure to comply with a notice to produce, a failure to be sworn or answer questions and a failure or refusal to provide documents to at least a maximum penalty of two years' imprisonment or a fine of 120 penalty units, or both<sup>7</sup>.

Two years imprisonment is consistent with the penalties available for failure to comply with notices issued by the Australian Securities and Investments Commission and the Australian Competition and Consumer Commission<sup>8</sup>.

Royal Commissions are the highest form of public inquiry in Australia and it is imperative that persons comply with requests made under the Royal Commissions Act and that if they do not they are appropriately dealt with under the law. As such the proposed increase in penalties is proportionate and reasonable.

## **Custodian of Royal Commission Records**

The Bill provides for the inclusion of the Secretary of the Attorney-General's Department as a person who may, by regulations, be given custody of Royal Commission records<sup>9</sup>. The department notes that this provision would apply in relation to Royal Commission records of Royal Commissions established before, on or after the commencement of this amendment<sup>10</sup>.

---

<sup>7</sup> Royal Commission into Trade Union Governance and Corruption, *Final Report* (2015), Vol. 5, recommendation 78

<sup>8</sup> Royal Commission into Trade Union Governance and Corruption, *Final Report* (2015), Vol. 5

<sup>9</sup> Item 46, Schedule 5, Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017

<sup>10</sup> Item 47, Schedule 5, Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017