



Queensland

Commissions of Inquiry (Child Protection Inquiry—Evidence) Regulation 2012

Explanatory Notes for SL 2012 No. 107

made under the

Commissions of Inquiry Act 1950

General outline

Short title

Commissions of Inquiry (Child Protection Inquiry—Evidence) Regulation 2012.

Authorising law

Sections 5(2A) of the Commissions of Inquiry Act 1950 (the Act)

Policy objectives and the reasons for them

The Queensland Child Protection Commission (the Inquiry) was established on 1 July 2012 by the *Commissions of Inquiry Order (No. 1) 2012* (the Order). The Honourable Timothy Carmody SC was appointed as the Commissioner.

The establishment of the Inquiry is part of the Queensland Government's *First 100 Day Action Plan*. As an integral piece of the *Strengthening Queensland Families – Protecting Our Children* policy, the Inquiry will review the progress of implementation of the recommendations from the *Commission of Inquiry into Abuse of Children in Queensland Institutions*

(the Forde Inquiry) and *Protecting our Children: An Inquiry into the Abuse of children in Foster Care* (Crime and Misconduct Commission Inquiry).

In order for the Inquiry to fulfill its terms of reference, it is appropriate and necessary for the Inquiry to have access to all relevant information which may be subject to secrecy and confidentiality provisions in legislation. The purpose of the subordinate legislation is to declare that a Child Protection Inquiry chairperson's writing made under section 5(1) of the Act is to take precedence over any provision of an Act that is a provision that might afford reasonable excuse for not complying with the writing.

Achievement of policy objectives

The subordinate legislation will enable the Chairperson of Queensland's Child Protection Inquiry to summons witnesses and obtain documents and other material held by persons, unhindered by any provision in any Act that may afford a reasonable excuse for not complying with the Chairperson's requests.

Consistency with policy objectives of authorising law

This subordinate legislation is consistent with Act's objectives in making provision for commissions of inquiry. It will ensure that the writing of the Chairperson of the Commission will take precedence over any provision in any Act that may otherwise provide a reasonable excuse for not complying with any writing of the chairperson in respect of providing documents and other things.

Inconsistency with policy objectives of other legislation

This subordinate legislation is not inconsistent with the policy objectives of any other legislation.

Benefits and costs of implementation

There will be no costs incurred by the Queensland Government as a result of the regulation.

Consistency with fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* provides that fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. These principles include requiring that legislation has sufficient regard to the institution of Parliament. Section 4(5) of the *Legislative Standards Act 1992* provides that whether subordinate legislation has sufficient regard to the institution of Parliament depends on, for example:

- whether the subordinate legislation contains only matter appropriate to subordinate legislation; and
- whether the subordinate legislation amends statutory instruments only.

Section 5(2A) allows a regulation to effectively amend the operation of another Act of Parliament and as such is a “Henry VIII clause” and breaches fundamental legislative principles because generally only Parliament should be empowered to amend an Act. However, such a regulation is clearly contemplated by section 5(2A) of the *Commissions of Inquiry Act 1950* and is within the authority of the legislation. The previous Scrutiny of Legislation Committee has stated that the use of a “Henry VIII clause” may be justified in certain circumstances. One such justification is to facilitate immediate Executive action.

For the Inquiry to fulfill its terms of reference, it needs to have access to all relevant information which may be subject to secrecy and confidentiality provisions in legislation. The Regulation will provide the Chairperson of the Inquiry with the power to summons witnesses and request documentary evidence, unhindered by any confidentiality clauses contained in legislation. In view of the fact that the Inquiry has commenced there is some urgency to providing the chairperson with the appropriate powers to obtain evidence. Therefore it is considered that the use of a “Henry VIII clause” in these circumstances is warranted.

Consultation

Queensland Treasury advised that a Regulatory Assessment Statement was not required as the proposal is for internal management of the public sector and is related to the administration of courts and tribunals.

The proposed regulation is supported by the Honourable Timothy Carmody SC, Commissioner of the Child Protection Inquiry, the Principal Registrar

of the Queensland Civil and Administrative Tribunal, the Department of the Premier and Cabinet, Queensland Treasury and Trade, the Queensland Police Service, the Department of Community Safety, the Department of Housing and Public Works, the Public Trustee, and the Department of Communities, Child Safety and Disability Services.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

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