



# **HIH Royal Commission (Transfer of Records) Act 2003**

**No. 61, 2003**

**An Act to provide for the transfer of custody of certain records of the HIH Royal Commission to the Australian Securities and Investments Commission, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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## **An Act to provide for the transfer of custody of certain records of the HIH Royal Commission to the Australian Securities and Investments Commission, and for related purposes**

*[Assented to 30 June 2003]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *HIH Royal Commission (Transfer of Records) Act 2003*.

## 2 Commencement

This Act commences on the day on which it receives the Royal Assent.

## 3 Definitions

In this Act:

**ASIC** means the Australian Securities and Investments Commission.

**HIH Royal Commission** means the Royal Commission that was commissioned, by Letters Patent dated 29 August 2001, to inquire into certain matters relating to the failure of HIH Insurance Group.

**record** has the same meaning as in the *Archives Act 1983*.

**transferred record** means:

- (a) a record that ASIC has custody of:
  - (i) under subsection 4(1); or
  - (ii) under regulations made for the purposes of section 6; or
- (b) an electronic copy of a document or thing provided or made available to ASIC:
  - (i) under section 5; or
  - (ii) under regulations made for the purposes of section 6.

## 4 ASIC entitled to custody of certain original records of the HIH Royal Commission

- (1) ASIC is, by force of this section, entitled to the custody of records that:
  - (a) are deemed, by subsection 22(2) of the *Archives Act 1983*, to be Commonwealth records for the purposes of that Act; and
  - (b) are documents or things that were produced to the HIH Royal Commission;as if a direction to that effect were in force under subsection 22(3) of the *Archives Act 1983* at all times after the commencement of this Act.

Note: This subsection applies to documents or things that were actually produced to the HIH Royal Commission. For the obligation to provide ASIC with electronic copies of such documents or things, see section 5.

- (2) The Commonwealth must ensure that the records to which subsection (1) applies are provided or made available to ASIC as soon as practicable after the commencement of this Act.

## **5 ASIC to be provided with electronic copies of certain records of the HIH Royal Commission**

If:

- (a) the Commonwealth has an electronic version of a document or thing that was produced to the HIH Royal Commission (whether or not subsection 4(1) applies to the document or thing itself); and
- (b) the electronic version is deemed, by subsection 22(2) of the *Archives Act 1983*, to be a Commonwealth record for the purposes of that Act;

the Commonwealth must ensure that an electronic copy of that electronic version, and of any associated objective coding data, is provided or made available to ASIC as soon as practicable after the commencement of this Act.

## **6 Regulations may provide for ASIC's access to other records of the HIH Royal Commission**

The regulations may provide for ASIC to have access to other records of, or relating to, the HIH Royal Commission, including by:

- (a) providing that ASIC is entitled to the custody of such records; or
- (b) requiring such records, or electronic copies of such records (with or without objective coding data), to be provided or made available to ASIC.

## **7 Status of the transferred records**

- (1) The transferred records are taken:

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- (a) to have been disclosed or given to ASIC for the purposes of any of its functions and powers; and
  - (b) to have the status of *protected information* for the purposes of section 127 of the *Australian Securities and Investments Commission Act 2001*.
- (2) ASIC may retain possession of a record or thing of which it is entitled to custody under subsection 4(1) for so long as ASIC considers it desirable to do so for the purposes of any of its functions and powers, despite any request from the owner of the document or thing for the return of the document or thing.

### **8 Section 6DD of the *Royal Commissions Act 1902* continues to apply to the transferred records**

Nothing in this Act affects the operation of section 6DD of the *Royal Commissions Act 1902* in relation to the transferred records.

Note: Section 6DD limits the admissibility in proceedings against a person of statements or disclosures made by the person to a Royal Commission, or of the fact that the person produced a document or thing to a Royal Commission.

### **9 No loss of legal professional privilege**

A transferred record, or material in or referred to in a transferred record, does not cease to be the subject of legal professional privilege merely because:

- (a) ASIC is entitled to the custody of the record under subsection 4(1), or under regulations made for the purposes of section 6; or
- (b) the record, or an electronic copy of the record, is provided or made available to ASIC under subsection 4(2) or section 5, or under regulations made for the purposes of section 6.

### **10 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.



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*[Minister's second reading speech made in—  
House of Representatives on 18 June 2003  
Senate on 24 June 2003]*

(98/03)