



Royal Commissions Amendment (Private Sessions) Act 2019

No. 64, 2019

**An Act to amend the *Royal Commissions Act 1902*,
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 64, 2019

**An Act to amend the *Royal Commissions Act 1902*,
and for related purposes**

[Assented to 13 September 2019]

The Parliament of Australia enacts:

1 Short title

This Act is the *Royal Commissions Amendment (Private Sessions) Act 2019*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	14 September 2019

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Main amendments

Royal Commissions Act 1902

1 Subsection 1B(1)

Insert:

member of the staff, of a Royal Commission, means any of the following:

- (a) an APS employee who performs functions or duties relating to, or for the purposes of, the Commission;
- (b) a person engaged by, or on behalf of, the Commonwealth as a contractor to perform functions or duties relating to, or for the purposes of, the Commission;
- (c) a person who:
 - (i) is engaged, or employed, by a person to whom paragraph (b) or this paragraph applies; and
 - (ii) performs functions or duties for the Commission in connection with that engagement or employment;
- (d) a person who:
 - (i) is a legal practitioner appointed by the Attorney-General to assist the Commission; or
 - (ii) is appointed or otherwise engaged by, or on behalf of, the Commonwealth to assist the Commission as counsel.

2 Subsection 5(3)

Omit “a member of the staff of the relevant Commission”, substitute “a member of the relevant Commission, a member of the staff of the relevant Commission mentioned in paragraph (d) of the definition of *member of the staff* in subsection 1B(1)”.

3 Part 4 (heading)

Repeal the heading, substitute:

Part 4—Private sessions for certain Royal Commissions

4 Division 1 of Part 4 (heading)

Repeal the heading, substitute:

Division 1—Preliminary

6 At the end of Division 1 of Part 4

Add:

6OAB Royal Commissions to which this Part applies

This Part applies to:

- (a) the Child Sexual Abuse Royal Commission; and
- (b) any other Royal Commission prescribed by the regulations.

7 Section 6OB

Repeal the section, substitute:

6OB Power to hold private sessions

Who may hold a private session

- (1) If a Royal Commission is constituted by 2 or more members, the following members may hold a private session for the Commission to obtain information in relation to matters into which the Commission is inquiring:
 - (a) the Chair of the Commission;
 - (b) a member who is authorised in writing by the Chair of the Commission.
- (2) If a Royal Commission is constituted by a sole Commissioner, the sole Commissioner may hold a private session for the Commission to obtain information in relation to matters into which the Commission is inquiring.

Number of members who may hold a private session

- (3) A private session held under subsection (1) may be held only by one or 2 members.

Conduct of a private session

- (4) If a private session is held for a Royal Commission under subsection (1), any member of the Commission holding the private session may (subject to the Letters Patent establishing the Commission and Division 3) determine any matters relating to the conduct of the private session, having regard to any directions given by the Chair of the Commission.
- (5) If a private session is held for a Royal Commission under subsection (2), the sole Commissioner holding the private session may (subject to the Letters Patent establishing the Commission and Division 3) determine any matters relating to the conduct of the private session.

14 Section 6OC (heading)

Repeal the heading, substitute:

6OC Status of private sessions etc.

15 Subsections 6OC(1) and (2)

After “private session”, insert “for a Royal Commission”.

16 Subsections 6OC(3) and (4)

Repeal the subsections, substitute:

Powers of Commission and custody and use of records

- (3) Sections 6F (power of Commission in relation to documents and other things), 6P (Commission may communicate information) and 9 (custody and use of records of Royal Commission) apply as if information, a document, record or other thing that was:
- (a) obtained at a private session for a Royal Commission by a member holding the private session; or
 - (b) given to a member, or member of the staff, of a Royal Commission for the purposes of a private session (whether or

not a private session was, or is to be, held for the Commission);
were produced before, delivered or given to, or otherwise obtained or received by, the Commission.

- (4) Section 9 (custody and use of records of Royal Commission) also applies as if a record that was produced:
- (a) at a private session for a Royal Commission by a member holding the private session; or
 - (b) by a member, or member of the staff, of a Royal Commission for the purposes of a private session (whether or not a private session was, or is to be, held for the Commission);
- were produced by the Commission.

17 Paragraph 6OC(5)(a)

After “private session”, insert “for a Royal Commission”.

18 Paragraph 6OC(5)(a)

Omit “Child Sexual Abuse Royal Commission”, substitute “Commission”.

19 Paragraphs 6OC(5)(b) and (c)

After “private session”, insert “for a Royal Commission”.

20 Subsection 6OC(6)

After “a private session”, insert “for a Royal Commission”.

21 Paragraph 6OC(6)(a)

Omit “of the Child Sexual Abuse Royal Commission”.

22 Section 6OE (heading)

Repeal the heading, substitute:

6OE Certain statements made and documents produced etc. not admissible in evidence

23 At the end of subsection 6OE(1)

Add:

- ; (c) a statement or disclosure made by the person to a member, or member of the staff, of a Royal Commission for the purposes of a private session (whether or not a private session was, or is to be, held for the Commission).

26 Division 3 of Part 4 (heading)

Repeal the heading, substitute:

Division 3—Privacy in relation to private sessions

27 Section 6OG

Omit “of the Child Sexual Abuse Royal Commission”.

28 Section 6OH (heading)

Repeal the heading, substitute:

6OH Offence for unauthorised use or disclosure of information given at a private session etc.

29 Paragraph 6OH(a)

Repeal the paragraph, substitute:

- (a) the person obtains information:
- (i) at a private session for a Royal Commission; or
 - (ii) that was given at a private session for a Royal Commission; or
 - (iii) that was given by a natural person to a member, or member of the staff, of a Royal Commission for the purposes of a private session (whether or not a private session was, or is to be, held for the Commission) and identifies the person who gave the information; and

30 Subparagraph 6OH(c)(i)

Omit “Child Sexual Abuse Royal Commission”, substitute “Commission”.

31 Subparagraphs 6OH(c)(iii) and (iv)

Repeal the subparagraphs, substitute:

- (iii) in the case of information referred to in subparagraph (a)(i) or (ii)—the person makes the record
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of, uses or discloses the information with the consent of the person who gave the information at the private session;

- (iv) in the case of information referred to in subparagraph (a)(iii)—the person makes the record of, uses or discloses the information with the consent of the person who gave the information to the member, or member of the staff, of the Commission.

32 Section 6OH (note)

Omit “Note”, substitute “Note 1”.

33 At the end of section 6OH

Add:

Note 2: The person who gave the information at the private session, or to the member, or member of the staff, of the Royal Commission, does not commit an offence under this section by making a record of, using or disclosing the information, because the person is not covered by paragraph (a).

34 Section 6OJ

After “private session”, insert “for a Royal Commission or that was given to a member, or member of the staff, of a Royal Commission for the purposes of a private session (whether or not a private session was, or is to be, held for the Commission)”.

35 Section 6OJ

Omit “Child Sexual Abuse Royal Commission”, substitute “Commission”.

36 Section 6OK

Omit “information at a private session.”, substitute:

information:

- (a) in the case of information referred to in subparagraph 6OH(a)(i) or (ii)—at the private session; or
- (b) in the case of information referred to in subparagraph 6OH(a)(iii)—to the member, or member of the staff, of the Commission.

37 Before subsection 6OL(1)

Insert:

- (1A) This section applies if a person obtains information:
- (a) at a private session for a Royal Commission; or
 - (b) that was given at a private session for a Royal Commission; or
 - (c) that was given by a natural person to a member, or member of the staff, of a Royal Commission for the purposes of a private session (whether or not a private session was, or is to be, held for the Commission) and identifies the person who gave the information.

38 Subsection 6OL(1)

Omit “a person to make a record of, use or disclose information obtained at a private session”, substitute “the person who obtains the information to make a record of, use or disclose the information”.

39 After paragraph 6OM(1)(b)

Insert:

- or (c) that contains information that was given by a natural person to a member, or member of the staff, of a Royal Commission for the purposes of a private session (whether or not a private session was, or is to be, held for the Commission) and identifies the person who gave the information;

40 Subsection 6OM(2)

Repeal the subsection, substitute:

- (2) To avoid doubt, subsection (1) applies in relation to a record whether it came into existence before, during or after a private session (if any) was held.

41 At the end of Division 3 of Part 4

Add:

6ON Protection of certain information given to the Child Sexual Abuse Royal Commission

- (1) This section applies to information if:
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- (a) the information was given by, or on behalf of, a natural person to the Child Sexual Abuse Royal Commission other than for the purposes of a private session; and
 - (b) the information contains an account of:
 - (i) the natural person's experiences of child sexual abuse in an institutional context; or
 - (ii) what happened to other people regarding child sexual abuse in an institutional context; and
 - (c) the information identifies the natural person who gave the information, or on whose behalf the information was given; and
 - (d) the Commission indicated that the information, if given, would be treated as confidential; and
 - (e) the information was treated as confidential by the Commission.
- (2) Section 6OE applies in relation to the information as if it were a statement or disclosure made by the natural person at a private session for the Commission.
- (3) Sections 6OH, 6OK and 6OL apply in relation to the information as if it were information given by the natural person at a private session for the Commission.
- (4) Section 6OM applies in relation to the information as if it were a record that contains information obtained at a private session for the Commission.

42 Application provisions

- (1) The amendment of subsection 5(3) of the *Royal Commissions Act 1902* made by this Schedule applies in relation to an application made by telephone on or after the commencement of this item.
- (2) Paragraph 6OAB(b), and the amendments of section 6OB, subsections 6OC(1), (2), (5) and (6) and sections 6OG and 6OJ, of the *Royal Commissions Act 1902*, as inserted or made by this Schedule, apply in relation to a Royal Commission that conducts an inquiry after the commencement of this item, whether the Royal Commission is established before, on or after that commencement.

- (3) Subsections 6OC(3) and (4) of the *Royal Commissions Act 1902*, as amended by this Schedule, apply in relation to information, a document, record or other thing obtained, given or produced before, on or after the commencement of this item.
- (4) Section 6OE of the *Royal Commissions Act 1902*, as amended by this Schedule (including as it applies in accordance with section 6ON of that Act, as added by this Schedule), applies in relation to civil or criminal proceedings instituted on or after the commencement of this item, whether the statements or disclosures mentioned in section 6OE were made before, on or after that commencement.
- (5) Sections 6OH, 6OK and 6OL of the *Royal Commissions Act 1902*, as amended by this Schedule (including as those provisions apply in accordance with section 6ON of that Act, as added by this Schedule), apply in relation to the making of a record, or the use or disclosure, of information by a person on or after the commencement of this item, whether the person obtains the information before, on or after that commencement.
- (6) Section 6OM of the *Royal Commissions Act 1902*, as amended by this Schedule (including as it applies in accordance with section 6ON of that Act, as added by this Schedule), applies in relation to a record that comes into existence before, on or after the commencement of this item.

Schedule 2—Consequential amendments

Freedom of Information Act 1982

1 Paragraph 7(2E)(a)

Repeal the paragraph, substitute:

- (a) a document that has originated with, or has been received from, a Royal Commission to which Part 4 of the *Royal Commissions Act 1902* applies and:
 - (i) that contains information obtained at a private session for the Commission; or
 - (ii) that relates to a private session for the Commission and identifies a natural person who appeared at a private session for the Commission; or
 - (iii) that contains information that was given by a natural person to a member, or member of the staff, of the Commission for the purposes of a private session (whether or not a private session was, or is to be, held for the Commission) and identifies the person who gave the information; or
 - (iv) that contains information to which section 6ON of that Act (which deals with certain information given to the Child Sexual Abuse Royal Commission) applies;

2 At the end of section 7

Add:

- (5) An expression used in subsection (2E) that is also used in Part 4 of the *Royal Commissions Act 1902* has the same meaning as in that Part.

3 Application provision

The amendments of section 7 of the *Freedom of Information Act 1982* made by this Schedule apply in relation to the following:

- (a) a request for access, made under section 15 of that Act, that is received on or after the commencement of this item;
- (b) an application, made under section 48 of that Act, that is received on or after the commencement of this item.

*[Minister's second reading speech made in—
House of Representatives on 25 July 2019
Senate on 31 July 2019]*

(130/19)

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