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Statutory Rules 1995 No. 1

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Archives (Records of the Parliament) Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and being satisfied that there has been consultation between the Minister for Communications and the Arts and the President of the Senate and the Speaker of the House of Representatives under subsection 20 (2) of the *Archives Act 1983* concerning the application of the provisions of Divisions 2 and 3 of Part V of that Act to records in the possession of the Senate, the House of Representatives and the Parliamentary Departments, make the following Regulations under that Act.

Dated 1 1995.

11 MAY /

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Governor-General

BILL HAYDEN /

By His Excellency's Command,


Minister for Communications and the Arts

M. J. LEE /

Citation

1. These Regulations may be cited as the Archives (Records of the Parliament) Regulations.

[NOTE: These Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s.48]

Object of the Regulations

2. The object of these Regulations is to provide for the preservation, management and use of the records of the Parliament in a manner that reflects:

- (a) the position of the Parliament within the Commonwealth; and
- (b) the special recognition and treatment that should be given to particular records of the Parliament; and
- (c) the different powers and functions of the Parliament and the Executive Government of the Commonwealth.

Interpretation

3. In these Regulations, unless the contrary intention appears:

“Act” means the *Archives Act 1983*;

“Class A record” means:

- (a) the record of the proceedings of the Senate as recorded in the Journals of the Senate; or
- (b) the record of the proceedings of the House of Representatives as constituted by the Votes and Proceedings of the House of Representatives; or
- (c) a record that is:
 - (i) laid before, or tabled in; and
 - (ii) in the possession of; the Senate or the House of Representatives; or

- (d) a record:
 - (i) that is presented to a committee in camera or on a confidential or restricted basis; and
 - (ii) that is in the possession of the committee, the Senate or the House of Representatives; and
 - (iii) that the committee, the Senate or the House of Representatives respectively has not authorised to be published; or
- (e) a record prepared by:
 - (i) an officer of a Parliamentary Department; or
 - (ii) a person employed by, or performing duties for, a Parliamentary Department;that relates to a record presented to a committee and is in the possession of:
 - (iii) the committee; or
 - (iv) the Senate; or
 - (v) the House of Representatives; or
 - (vi) a Parliamentary Department;

“Class B record” means a record in the possession of the Senate, the House of Representatives or a Parliamentary Department that is not a Class A record;

“committee” means:

- (a) a committee of the Parliament that consists of Senators and Members of the House of Representatives; or
- (b) a committee of the Senate or of the House of Representatives.

Records to which the Regulations do not apply

- 4. These Regulations do not apply to:
 - (a) records in the library collection of the Department of the Parliamentary Library; or
 - (b) the art collection of the Parliament.

Application of provisions of the Act to certain records in the possession of the Parliament or a Parliamentary Department

5. For the purposes of subsection 20 (1) of the Act, Divisions 2 and 3 of Part V of the Act, except:

- (a) subsections 29 (2), 29 (4), 29 (5), 29 (6), 29 (7), 29 (8) and 31 (3); and
- (b) sections 32 and 34;

apply, subject to the modifications set out in the Schedule, to Class A and Class B records.

SCHEDULE

Regulation 5

MODIFICATIONS OF THE ACT

1. New sections 23A and 23B

1.1 After section 23, insert in Division 2 of Part V:

Interpretation

“23A. In Divisions 2 and 3, unless the contrary intention appears:

‘Class A record’ means:

- (a) the record of the proceedings of the Senate as recorded in the Journals of the Senate; or
- (b) the record of the proceedings of the House of Representatives as constituted by the Votes and Proceedings of the House of Representatives; or
- (c) a record that is:
 - (i) laid before, or tabled in; and
 - (ii) in the possession of;
the Senate or the House of Representatives; or

SCHEDULE—continued

- (d) a record:
- (i) that is presented to a committee in camera or on a confidential or restricted basis; and
 - (ii) that is in the possession of the committee, the Senate or the House of Representatives; and
 - (iii) that the committee, the Senate or the House of Representatives respectively has not authorised to be published; or
- (e) a record prepared by:
- (i) an officer of a Parliamentary Department; or
 - (ii) a person employed by, or performing duties for, a Parliamentary Department;
- that relates to a record presented to a committee and is in the possession of:
- (iii) the committee; or
 - (iv) the Senate; or
 - (v) the House of Representatives; or
 - (vi) a Parliamentary Department;

‘Class B record’ means a record in the possession of the Senate, the House of Representatives or a Parliamentary Department that is not a Class A record;

‘committee’ means:

- (a) a committee of the Parliament that consists of Senators and Members of the House of Representatives; or
- (b) a committee of the Senate or of the House of Representatives;

‘disapproved practice’, in relation to a Parliamentary Department, means an administrative practice of the Department of which the Archives has notified the Department in writing that it disapproves;

‘Head of the Department’ means:

- (a) in the case of records that are in the possession of the Department of the Senate—the Clerk of the Senate; and
- (b) in the case of records that are in the possession of the Department of the House of Representatives—the Clerk of the House of Representatives; and
- (c) in the case of records that are in the possession of the Joint House Department—the Secretary to the Joint House Department; and

SCHEDULE—continued

- (d) in the case of records that are in the possession of the Department of the Parliamentary Library—the Parliamentary Librarian; and
- (e) in the case of records that are in the possession of the Department of the Parliamentary Reporting Staff—the Principal Parliamentary Reporter;

‘Parliamentary practice’ means:

- (a) a normal administrative practice of a Parliamentary Department that is not a disapproved practice; or
- (b) a practice required by, or to implement:
 - (i) a Standing Order of either House; or
 - (ii) a Sessional Order of either House; or
 - (iii) a Resolution adopted by either House; or
 - (iv) a ruling of the President or the Speaker; or
- (c) a practice approved by the President or the Speaker;

‘President’ means:

- (a) the President of the Senate; or
- (b) if the Deputy President of the Senate and the Chairman of Committees is performing the duties of the President—the Deputy President and Chairman of Committees; or
- (c) if a person is deemed to continue to be the Presiding Officer of the Senate under section 3 or 6 of the *Parliamentary Presiding Officers Act 1965*—the person; or
- (d) if a Senator is elected by the Senate to preside over the Senate in the absence of the President and the Chairman of Committees—the Senator;

‘Presiding Officer’ means:

- (a) in the case of records that are in the possession of:
 - (i) the Senate; or
 - (ii) a committee of the Senate; or
 - (iii) the Department of the Senate;
- the President; and

SCHEDULE—continued

- (b) in the case of records that are in the possession of:
 - (i) the House of Representatives; or
 - (ii) a committee of the House of Representatives; or
 - (iii) the Department of the House of Representatives; the Speaker; and
- (c) in the case of records that are in the possession of:
 - (i) a committee of the Parliament that consists of Senators and Members; or
 - (ii) the Joint House Department; or
 - (iii) the Department of the Parliamentary Library; or
 - (iv) the Department of the Parliamentary Reporting Staff;the President and the Speaker;

‘Speaker’ means:

- (a) the Speaker of the House of Representatives; or
- (b) if the Deputy Speaker of the House of Representatives is performing the duties of the Speaker—the Deputy Speaker; or
- (c) if a person is deemed to continue to be the Presiding Officer of the House of Representatives under section 3 or 6 of the *Parliamentary Presiding Officers Act 1965*—the person.”.

Application of the Act to records

“23B. (1) Subsection 24 (5) of the Act applies to Class A and Class B records.

“(2) Subsections 33 (4), 33 (5), 35 (2), 35 (3), 35 (4), 36 (2) and 36 (3), paragraphs 36 (4) (b) and (c), subsections 36 (5) and 37 (2) and section 40 of the Act apply to Class B records.”.

2. Section 24 (Disposal, destruction, etc, of Commonwealth records)

2.1 Subsection 24 (1):

Omit “Commonwealth”, substitute “Class A or Class B”.

SCHEDULE—continued

2.2 Subsection 24 (2):

Omit the subsection, substitute:

“(2) Subsection (1) does not apply to anything done in relation to a Class A record:

- (a) in accordance with a law; or
- (b) with the permission of:
 - (i) in the case of journals, records and documents laid before the Senate—the Senate by resolution; or
 - (ii) in any other case—the Presiding Officer; or
- (c) in accordance with a Parliamentary practice; or
- (d) to give the record to a committee for the purposes of the committee; or
- (e) to give the record to the Head of the Department for the purposes of the Department; or
- (f) if the record is not in the custody of a committee or a Department that is entitled to custody of the record—to give the record to the committee or Department.

“(2A) Subsection (1) does not apply to anything done in relation to a Class B record:

- (a) in accordance with a law; or
- (b) with the permission of the Archives; or
- (c) in accordance with a Parliamentary practice; or
- (d) if the record is not in the custody of a committee or a Department that is entitled to custody of the record—to give the record to the committee or Department.”.

2.3 Subsection 24 (4):

Omit the subsection, substitute:

“(4) This section does not authorise the Archives to permit the destruction or other disposal of a Class B record without the consent, in writing, of the Presiding Officer.”.

SCHEDULE—continued

3. Section 25 (Advice to Council on disposal practices)

3.1 Subsection 25 (1):

Omit “Commonwealth records” (wherever occurring), substitute “Class B records”.

3.2 Paragraph 25 (1) (a):

Omit “any particular Commonwealth institution”, substitute “the Presiding Officer”.

3.3 Subsection 25 (1):

Omit “a Commonwealth institution” (wherever occurring), substitute “the Presiding Officer”.

3.4 Subsection 25 (2):

Omit “a Commonwealth institution”, substitute “the Presiding Officer”.

3.5 Subsection 25 (2):

Omit “that institution”, substitute “the Presiding Officer”.

4. Section 26 (Alteration of Commonwealth records)

4.1 Subsection 26 (1):

Omit “Commonwealth”, substitute “Class A or Class B”.

4.2 After subsection 26 (1), insert:

“(1A) Subsection (1) does not apply to anything done in relation to a Class A record:

- (a) in accordance with a law; or
- (b) with the permission, in writing, of the Presiding Officer; or
- (c) in the case of journals, records and documents laid before the Senate—in accordance with a resolution of the Senate; or
- (d) in accordance with a Parliamentary practice.”.

SCHEDULE—continued

4.3 Subsection 26 (2):

After “done”, insert “in relation to a Class B record”.

5. Section 27 (Transfer of Commonwealth records to Archives)

5.1 Omit the section, substitute:

Transfer of Class A and Class B records to the Archives

“27. (1) The Presiding Officer may make an agreement, in writing, with the Director-General:

- (a) to allow Class A records to be transferred to the custody of the Archives; and
- (b) to require the Archives to hold the records under the arrangements specified in the agreement, being arrangements consistent with this Part.

“(2) Subject to this Part, if the body holding a Class A record does not need it to be readily available for its purposes, the body may transfer the record to the custody of the Archives in accordance with the agreement.

“(3) Subject to this Part, if the body holding a Class B record does not need it to be readily available for its purposes, the body must:

- (a) lawfully destroy the record; or
- (b) transfer the record to the custody of the Archives.

“(4) Subject to this Part, if a Class B record has been in existence for more than 25 years, the body holding it must transfer it to the custody of the Archives as soon as practicable.”.

SCHEDULE—continued

6. Section 28 (Archives to have access to records)

6.1 Omit the section, substitute:

Archives to have access to records

“28. (1) Subject to this Part, the Archives is entitled to have access to a Class A record in the possession of the Senate, the House of Representatives or a Parliamentary Department:

- (a) with the consent, in writing, of the Presiding Officer or the Head of the Department; and
- (b) at a reasonable time; and
- (c) in accordance with conditions that the Presiding Officer or the Head of the Department determines in writing.

“(2) Subject to this Part, the Archives is entitled to have access at a reasonable time to a Class B record in the possession of the Senate, the House of Representatives or a Parliamentary Department.”.

7. Section 29 (Exemption of certain records)

7.1 Subsection 29 (1):

Omit the subsection, substitute:

“(1) If:

- (a) the Senate or the House of Representatives determines by resolution that a Class A record is:
 - (i) a record that is not to be transferred to the custody of the Archives; or
 - (ii) a record to which the Archives is not entitled to have access; or
 - (iii) a record to which the Archives is not entitled to have access unless the conditions that are specified in the resolution or determination are complied with; or

SCHEDULE—continued

- (b) the Presiding Officer makes a similar determination in writing, with the agreement of the Director-General, in relation to a Class B record;

the Archives must comply with the resolution or determination.

“(1A) If the Archives seeks access to a Class B record that is not in the custody of the Archives, and a person responsible for the custody of the record considers that it may be appropriate for the Presiding Officer to make a determination in relation to the record, the person must:

- (a) notify the Archives of his or her opinion; and
- (b) notify the Presiding Officer to allow the Presiding Officer to consider whether a determination should be made.

“(1B) If the person notifies the Archives under subsection (1A), the Archives is not entitled to access to the record until the earlier of:

- (a) the end of a period of 1 month from the day on which the Archives is notified; or
- (b) the day on which the notification is withdrawn.”.

7.2 Subsection 29 (3):

Omit the subsection, substitute:

“(3) The Director-General may make an agreement, in writing, with the Presiding Officer to allow Class A and Class B records that are transferred to the custody of the Archives to be held by the Archives on the conditions specified in the agreement, being conditions consistent with this Part.”.

SCHEDULE—continued

8. Section 30 (Commonwealth records to be available to Commonwealth institutions)

8.1 Subsection 30 (1):

Omit “all Commonwealth records”, substitute “Class A and Class B records”.

8.2 Subsection 30 (1):

Omit “a Commonwealth institution” (first occurring), substitute “the Senate, the House of Representatives, a committee or a Parliamentary Department”.

8.3 Subsection 30 (1):

Omit “that institution or a Commonwealth institution that has succeeded to the relevant functions of that institution”, substitute “the body from which it received the records”.

8.4 Subsection 30 (2):

Omit “a Commonwealth institution”, substitute “the Senate, the House of Representatives, a committee or a Parliamentary Department”.

8.5 Subsection 30 (2):

Omit “the Commonwealth institution”, substitute “the body from which it received the record”.

9. Section 31 (Records in open access period to be publicly available)

9.1 Subsection 31 (1):

Omit “all Commonwealth”, substitute “Class B”.

9.2 Subsection 31 (1):

Omit “a Commonwealth institution”, substitute “the Senate, the House of Representatives, a committee or a Parliamentary Department”.

SCHEDULE—continued

9.3 Subsection 31 (2):

Omit “A Commonwealth institution that has the custody of Commonwealth records in the open access period, other than exempt records,” substitute “The Presiding Officer”.

9.4 Subsection 31 (2):

Omit “those records”, substitute “Class B records”.

9.5 Subsection 31 (4):

Omit “Commonwealth”, substitute “Class B”.

9.6 Add at the end:

“(5) A Class A record, or a part of the record, may be made available for public access:

(a) with the permission of:

(i) in the case of a record laid before the Senate—the Senate by resolution; or

(ii) in any other case—the Presiding Officer; or

(b) in accordance with a Parliamentary practice.”.

10. Section 33 (Exempt records)

10.1 Omit “Commonwealth record” (wherever occurring), substitute “Class B record”.

10.2 Paragraph 33 (1) (b):

After “the Government of the Commonwealth”, insert “, to the Senate, to the House of Representatives, to a Parliamentary Department”.

10.3 After subsection 33 (1), insert:

“(1A) A Class A record is an exempt record.”.

SCHEDULE—continued

11. Section 35 (Identification of exempt records)

11.1 Subsection 35 (1):

Omit “the responsible Minister or a person authorized by the responsible Minister”, substitute “the Presiding Officer”.

11.2 Subsection 35 (1):

Omit “Commonwealth records” (first occurring), substitute “Class B records”.

11.3 Subsection 35 (1):

Omit “access in part to Commonwealth records”, substitute “access in part to Class B records”.

11.4 Subsection 35 (5):

Omit “Commonwealth records”, substitute “Class B records”.

12. Section 36 (Forms of access)

12.1 Subsection 36 (1):

Omit “a record”, substitute “a Class B record”.

12.2 Paragraph 36 (4) (a):

Omit “another Commonwealth institution that has the custody of the record”, substitute “the Senate, the House of Representatives, a committee or a Parliamentary Department”.

12.3 Paragraph 36 (4) (d):

After “the Commonwealth,”, insert “the Senate, the House of Representatives, a committee, a Parliamentary Department”.

13. Section 37 (Conditions in respect of proper care of records)

13.1 Subsection 37 (1):

Omit “any record”, substitute “a Class B record”.

14. Section 38 (Access to part of exempt record)

14.1 Omit “a record”, substitute “a Class B record”.

15. Section 39 (Information as to existence of certain documents)

15.1 Subsection 39 (1):

Omit "a record", substitute "a Class B record".

15.2 Subsection 39 (1):

Omit "Commonwealth record", substitute "Class B record".

15.3. Subsection 39 (2):

Omit "a record", substitute "a Class B record".

15.4 Subsection 39 (2):

Omit "Commonwealth", substitute "Class B".

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on / 1995.

18 May/