

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 40

Issued by the Authority of the Minister for Employment and Workplace Relations
for the Prime Minister

Royal Commissions Act 1902

Royal Commissions Amendment Regulations 2008 (No. 1)

The *Royal Commissions Act 1902* (the Act) provides for the establishment and operation of Royal Commissions.

Section 17 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 9 of the Act provides for the custody and use of records of Royal Commissions. Subsection 9(2) allows for regulations that may provide for the custody, use or transfer of, or access to, Royal Commission records.

By Letters Patent dated 10 November 2005 (as amended by Letters Patent dated 6 February, 10 March, 17 March, 22 June and 21 September 2006) the Hon Terence Rhoderic Hudson Cole AO RFD QC was appointed under the Act to inquire into certain Australian companies in relation to the UN Oil-for-Food Programme (the Cole Inquiry).

In December 2006, the *Royal Commissions Amendment Regulations 2006 (No. 2)* (the 2006 Regulations) were made to provide for the custody and use of the Cole Inquiry records.

The Regulations amend the *Royal Commissions Regulations 2001* (the Principal Regulations) in relation to the custody and use of Cole Inquiry records, to clarify the intent and operation of the Principal Regulations as amended by the 2006 Regulations. The 2006 Regulations were intended to allow law enforcement agencies to access and use relevant Cole Inquiry records without any need for procedural fairness to be provided to those who might be adversely affected by that access and use, in accordance with subsection 9(11) of the Act, without limiting the circumstances in which the custodian could give or allow access to others. It appears, however, that the 2006 Regulations may be seen to have limited the circumstances in which the custodian could give or allow access to Cole Inquiry records to others. The Regulations remedy this and make clear that these circumstances are not limited.

The Regulations omit the previous subregulation 8(1) and substitute a new subregulation 8(1), and insert new subregulations 8(7) and (8), in regulation 8 (Custody and use of records of Oil-for-Food Inquiry) of the Principal Regulations. For subsection 9(2) of the Act, new subregulation 8(1) provides that regulation 8 applies in relation to the Royal Commission records of the Cole Inquiry, except for

Royal Commission records relating to the administration and financial management of the Inquiry, the Cole Inquiry Report and all Royal Commission records of the Cole Inquiry already in the public domain on 27 November 2006, the date on which the Cole Inquiry Report was tabled in the Parliament. The Regulations, in addition to Royal Commission records relating to the administration and financial management of the Inquiry excluded under the Principal Regulations as they were immediately before the Regulations commenced, also exclude from the Principal Regulations' regime the Cole Inquiry Report and all Royal Commission records of the Cole Inquiry already in the public domain at 27 November 2006. This ensures that Cole Inquiry records which were publicly available when the Cole Inquiry Report was tabled on 27 November 2006 can continue to be made publicly available.

New Subregulation 8(7) provides that subregulations 8(3), (4), (5), and (6), which set out circumstances in which the custodian of the Cole Inquiry records must or may give or allow access to Cole Inquiry records, do not limit the circumstances in which the custodian may give or allow access to Cole Inquiry records. This subregulation ensures that the circumstances outlined in subregulations 8(3), (4), (5) and (6) are not the only circumstances in which the custodian of the Cole Inquiry records, the Secretary of the Department of the Prime Minister and Cabinet, may give or allow access to records to a person or body.

New Subregulation 8(8) provides that subregulations 8(3), (4), (5) and (6) do not limit the operation of subsections 9(6) and (7) of the Act, which provide the circumstances in which Royal Commission records may be used by the custodian or by a public office holder or public authority given records or access to records by the custodian. This subregulation makes it clear that the Principal Regulations in no way limit the uses that may be made of Royal Commission records that are provided for in subsections 9(6) and (7).

The Principal Regulations continue to allow law enforcement agencies to access and use relevant Cole Inquiry records without any need for procedural fairness to be provided to those who might be adversely affected by that access and use, in accordance with subsection 9(11) of the Act. Thus, relevant records continue to be able to be passed quickly to agencies to assist in their investigations of matters arising from the Cole Inquiry.

Consultation was not required due to the limited range of persons who might be affected and the technical nature of the amendments to the Principal Regulations.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.