



## **Archives (Records of the Parliament) Regulations 2019**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 07 March 2019

Peter Cosgrove  
Governor-General

By His Excellency's Command

Christian Porter  
Attorney-General

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## Part 1—Preliminary

### 1 Name

This instrument is the *Archives (Records of the Parliament) Regulations 2019*.

### 2 Commencement

- (1) Each provision of this instrument 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 instrument	The day after this instrument is registered.	13 March 2019

Note: This table relates only to the provisions of this instrument as originally made.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

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

### 3 Authority

This instrument is made under the *Archives Act 1983*.

### 4 Schedule 2

Each instrument that is specified in Schedule 2 to this instrument is amended or repealed as set out in the applicable items in that Schedule, and any other item in that Schedule has effect according to its terms.

### 5 Object of this instrument

The object of this instrument 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.

### 6 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Parliamentary Department;

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(b) record.

In this instrument:

*Act* means the *Archives Act 1983*.

## **Part 2—Application of Divisions 2 and 3 of Part V of the Act**

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

- (1) This section has effect for the purposes of subsection 20(1) of the Act.
- (2) Divisions 2 and 3 of Part V of the Act apply to records in the possession of the Senate, the House of Representatives or a Parliamentary Department.
- (3) Those Divisions apply to those records subject to the modifications set out in Schedule 1 to this instrument.
- (4) Despite subsections (2) and (3), those Divisions do not apply to records in:
  - (a) the library collection for which the Parliamentary Librarian has responsibility; or
  - (b) the art collection of the Parliament.

## Schedule 1—Modifications of Divisions 2 and 3 of Part V of the Act

### *Archives Act 1983*

#### 1 Division 2 of Part V (heading)

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

#### 2 Before section 24

Insert:

#### 23A Definitions for this Division and Division 3

(1) In this Division and Division 3:

**Class A record** means any of the following records except a record that is an excluded record:

- (a) the *Journals of the Senate* in the possession of the Senate;
- (b) the *Votes and Proceedings of the House of Representatives* in the possession of the House of Representatives;
- (c) a record that is:
  - (i) laid before, or tabled in; and
  - (ii) in the possession of; the Senate or the House of Representatives;
- (d) a record:
  - (i) that is presented to a committee; 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;
- (e) a record that:
  - (i) was prepared by an officer of a Parliamentary Department or a person employed in, or performing duties for, a Parliamentary Department; and
  - (ii) either minutes the proceedings of a committee or relates to a record that was presented to a committee; and
  - (iii) is in the possession of the committee, the Senate, the House of Representatives or 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 any of the following:

- (a) a Class A record;
- (b) a Class C record;
- (c) an excluded record.



**Class C record** means any of the following records in the possession of the Senate, the House of Representatives or a Parliamentary Department except a record that is an excluded record:

- (a) a record containing information that section 64V of the *Parliamentary Service Act 1999* prohibits an entrusted person from disclosing (except for purposes described in subsection 64V(3) or (4B));
- (b) a record determined under subsection (2) of this section.

**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.

**excluded record** means a record in:

- (a) the library collection for which the Parliamentary Librarian has responsibility; or
- (b) the art collection of the Parliament.

**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; or
- (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; or
- (c) in the case of records that are in the possession of the Department of Parliamentary Services (except records described in paragraph (d))—the Secretary of that Department; or
- (d) in the case of records that are in the possession of the Department of Parliamentary Services because they are in the possession of the Parliamentary Librarian or another Parliamentary Service employee in that Department assisting the Parliamentary Librarian—the Parliamentary Librarian; or
- (e) in the case of records that are in the possession of the Department of the Parliamentary Budget Office—the Parliamentary Budget Officer.

**old**, in relation to a provision, means that provision as it applied with modifications because of the *Archives (Records of the Parliament) Regulations* as in force immediately before the commencement of the *Archives (Records of the Parliament) Regulations 2019*.

**parliamentary body** means the Senate, the House of Representatives, a committee or a Parliamentary Department.

**parliamentary practice** means:

- (a) a normal administrative practice of a Parliamentary Department; or
- (b) a practice required by, or to implement:
  - (i) a Standing Order of either House of the Parliament; or
  - (ii) a Sessional Order of either House of the Parliament; or
  - (iii) a resolution adopted by either House of the Parliament; or
  - (iv) a ruling of the President or the Speaker; or
- (c) a practice approved by the President or the Speaker.

**President** means the President of the Senate.

**Presiding Officer** means:

- (a) in the case of records that are in the possession or custody of:
  - (i) the Senate; or
  - (ii) a committee of the Senate; or
  - (iii) the Department of the Senate;  
the President; or
- (b) in the case of records that are in the possession or custody 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; or
- (c) in the case of records that are in the possession or custody of:
  - (i) a committee of the Parliament that consists of Senators and Members of the House of Representatives; or
  - (ii) the Department of Parliamentary Services; or
  - (iii) the Department of the Parliamentary Budget Office;  
the President and the Speaker.

**Speaker** means the Speaker of the House of Representatives.

- (2) For the purposes of paragraph (b) of the definition of **Class C record** in subsection (1), the Presiding Officer may, by legislative instrument, determine a record if:
  - (a) the Presiding Officer is satisfied that:
    - (i) the record relates to the provision of advice to a Senator or a Member of the House of Representatives; and
    - (ii) the record should remain under the control of the Parliament because of a duty of confidentiality under the *Parliamentary Service Act 1999*; and
  - (b) the Director-General agrees with the proposed determination.

Note: Records may be determined individually or by reference to a class: see subsection 13(3) of the *Legislation Act 2003*.

### 3 Section 24 (heading)

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

### 4 Subsections 24(1) and (1A)

Omit “**Commonwealth record**” (wherever occurring), substitute “**Class A record, Class B record or Class C record**”.

### 5 Subsection 24(2)

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply to anything:

- (a) done in relation to a Class A record, a Class B record or a Class C record in accordance with a law; or
- (b) done in relation to:
  - (i) a Class A record that is a record laid before the Senate, or the *Journals of the Senate*, with the permission of the Senate by resolution; or
  - (ii) any other Class A record or Class C record with the permission of the Presiding Officer; or
  - (iii) a Class B record with the permission of the Archives; or
- (c) done in relation to a Class A record, a Class B record or a Class C record in accordance with a parliamentary practice other than a normal administrative practice of a Parliamentary Department that is a normal administrative practice of which the Archives has notified that Department in writing that it disapproves; or
- (d) done in relation to a Class A record or a Class C record to place the record in the custody of a committee for the purposes of the committee; or
- (e) done in relation to a Class A record or a Class C record to place the record in the custody of:
  - (i) the Clerk of the Senate for the purposes of the Department of the Senate; or
  - (ii) the Clerk of the House of Representatives for the purposes of the Department of the House of Representatives; or
  - (iii) the Secretary of the Department of Parliamentary Services for the purposes of that Department; or
  - (iv) the Parliamentary Librarian for the purposes of performing the Parliamentary Librarian's functions; or
  - (v) the Parliamentary Budget Officer for the purposes of the Department of the Parliamentary Budget Office; or
- (f) done, in relation to a Class A record, a Class B record or a Class C record, that is not in the custody of a committee or a Parliamentary Department that is entitled to custody of the record, to place the record in the custody of the committee or Department.

#### **6 Subsection 24(3)**

Omit "Commonwealth record", substitute "Class A record, Class B record or Class C record".

#### **7 Subsection 24(4)**

Repeal 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.

#### **8 Subsection 24(5)**

Omit "a record", substitute "a Class A record, a Class B record or a Class C record".

**9 Paragraph 25(1)(a)**

Repeal the paragraph.

**10 Paragraph 25(1)(b)**

Omit “of a kind referred to in paragraph (a)”, substitute “followed by, or approved by, the Archives in respect of the destruction or other disposal of Class B records”.

**11 Paragraph 25(1)(b)**

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

**12 Paragraph 25(1)(c)**

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

**13 Paragraph 25(1)(c)**

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

**14 Subsection 25(2)**

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

**15 Subsection 25(2)**

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

**16 Section 26 (heading)**

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

**17 Paragraph 26(1)(a)**

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

**18 After subsection 26(1A)**

Insert:

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

- (a) in accordance with a law; or
- (b) with the permission, in writing, of the Presiding Officer; or
- (c) if the record is either a record laid before the Senate or the *Journals of the Senate*—in accordance with a resolution of the Senate; or
- (d) in accordance with a parliamentary practice other than a normal administrative practice of a Parliamentary Department that is a normal administrative practice of which the Archives has notified that Department in writing that it disapproves.

**19 Subsection 26(2)**

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

## **20 Sections 27, 28, 28A, 29 and 30**

Repeal the sections, substitute:

### **27 Transfer of certain records to care of Archives**

#### *Class A records and Class C records*

- (1) The Presiding Officer may make a written agreement with the Director-General to allow Class A records and Class C records to be transferred to the care of the Archives.

Note: The Presiding Officer and the Director-General may agree under section 29 on the conditions on which the records are to be held after they are transferred.

- (2) Subject to this Part, if a Class A record or Class C record is not required to be readily available for the purposes of the parliamentary body that has custody of the record, the body may transfer the record to the care of the Archives in accordance with the agreement.

#### *Class B records*

- (3) Subsections (4) and (5) apply to a Class B record that:
  - (a) is in the custody of a parliamentary body; and
  - (b) has been determined to be part of the archival resources of the Commonwealth under section 3C.
- (4) The person responsible for the custody of the record must cause the record to be transferred to the care of the Archives in accordance with arrangements approved by the Archives.
- (5) The record must be transferred:
  - (a) if the record ceases to be required to be readily available for the purposes of a parliamentary body—as soon as practicable after that cessation; and
  - (b) in any event—within 15 years of the record coming into existence.

Note: The record need not be transferred if the Presiding Officer determines, with the concurrence of the Director-General, that the record is not to be transferred: see subsection 29(1).

### **28 Archives to have access to records**

- (1) Subject to this Part, the Archives is entitled to have access to a Class A record or a Class C record:
  - (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.

Note: The circumstances in which the Archives is entitled to have access to a Class A record or a Class C record may be limited by section 29.

- (2) Subject to this Part, the Archives is entitled to have access at a reasonable time to a Class B record.

Note: The circumstances in which the Archives is entitled to have access to a Class B record may be limited by section 29.

## 29 Special rules about availability of and dealing with records

### *Limiting availability of records to Archives*

- (1) If:
- (a) the Senate or the House of Representatives determines by resolution that a Class A record is, for a period specified in the resolution:
    - (i) a record that is not to be transferred to the care 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
  - (b) the Presiding Officer makes a similar determination in writing, with the concurrence of the Director-General, in relation to a Class B record; or
  - (c) the Presiding Officer makes a similar determination in writing in relation to a Class C record;
- the Archives must comply with the determination.
- (1A) If the Archives seeks access to a Class B record, or a Class C record, that is not in the care 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 the person's 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 1 month from the day the Archives is notified; and
  - (b) the day the notification is withdrawn.

### *Agreement on dealing with certain records*

- (3) The Presiding Officer may make a written agreement conforming with subsection (3A) with the Director-General about records (the **relevant records**) that are any or all of the following:
- (a) Class A records, Class B records and Class C records, transferred to the care of the Archives;
  - (b) Class B records that are in the custody of a parliamentary body and are in the open access period.

Note: Arrangements under section 64 for a person (other than the Archives) to have custody of a Commonwealth record must enable the Archives to meet its obligations under this subsection.

- (3A) The agreement:
- (a) must enable the Archives to meet:

- (i) its obligations under subsection 30(1) in respect of the relevant records that are described in paragraph (3)(a) of this section (if any); and
- (ii) its obligations under subsection 31(1) in respect of the relevant records that are Class B records described in paragraph (3)(a) or (b) of this section (if any); and
- (b) must provide for the relevant records to be held on the conditions that are specified in the agreement and consistent with this Part; and
- (c) may provide for either or both of the following:
  - (i) the care of the relevant records;
  - (ii) the regular inspection of the relevant records by the Archives.

Note: Subsection 30(1) requires the Archives to make records transferred into the care of Archives from a parliamentary body available for use by the body. Subsection 31(1) requires the Archives to make certain Class B records in the open access period available for public access.

### **30 Class A records, Class B records and Class C records to be available to Parliament**

- (1) The Archives must ensure that all Class A records, Class B records and Class C records transferred to its care from a parliamentary body are made available, as reasonably required, for use by, or at the direction of, the body.

Note: Arrangements under section 64 for a person (other than the Archives) to have custody of a Commonwealth record must enable the Archives to meet its obligations under this subsection.

- (2) A record that has been in existence for more than 15 years must not be made available to a parliamentary body under subsection (1) in a manner that involves its leaving the custody of the person who has the custody of the record, except as necessary for the proper conduct of the business of the body.

### **21 Subsections 30A(1) and (2)**

Omit “record”, substitute “Class A record, Class B record or Class C record”.

### **22 Division 3 of Part V (heading)**

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

### **23 Section 31 (heading)**

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

### **24 Subsection 31(1A)**

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

### **25 Paragraph 31(1A)(b)**

Omit “Commonwealth institution”, substitute “parliamentary body”.

**26 Subsection 31(2)**

Omit “Commonwealth institution, the institution”, substitute “parliamentary body, the Presiding Officer”.

**27 Subsection 31(3)**

Repeal the subsection.

**28 Subsection 31(4)**

Omit “a Commonwealth record or a class of Commonwealth records from public access”, substitute “from public access a record, or class of records, described in subsection (1A),”.

**29 Section 32**

Repeal the section, substitute:

**31A Class A records and Class C records may be made publicly available with permission or in accordance with parliamentary practice**

A Class A record, a Class C record, or part of a Class A record or Class C 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, other than a normal administrative practice of a Parliamentary Department that is a normal administrative practice of which the Archives has notified that Department in writing that it disapproves.

**30 Before subsection 33(1)**

Insert:

(1AA) A Class A record or a Class C record is an exempt record.

**31 Subsection 33(1)**

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

**32 Subparagraph 33(1)(b)(i)**

Omit “or to a person who received the communication on behalf of the Commonwealth or an authority of the Commonwealth”, substitute “, to a parliamentary body or to a person who received the communication on behalf of the Commonwealth, an authority of the Commonwealth or a parliamentary body”.

**33 Subsections 33(2) and (3)**

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



**34 Subsection 35(1)**

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

**35 Subsection 35(1)**

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

**36 Subsection 35(5)**

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

**37 Subsections 36(1) and (2)**

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

**38 Subsection 36(3)**

After “applied for access”, insert “to a Class B record”.

**39 Subsection 36(4)**

After “access” (first occurring), insert “to a Class B record”.

**40 Paragraph 36(4)(a)**

Omit “another Commonwealth institution”, substitute “a parliamentary body”.

**41 Section 37 (heading)**

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

**42 Subsection 37(1)**

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

**43 Section 38**

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

**44 Subsection 39(1)**

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

**45 Subsection 39(1)**

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

**46 Subsection 39(2)**

Omit “a record” (first and second occurring), substitute “a Class B record”.

**47 Subsection 39(2)**

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

**48 Subsection 39(2)**

Omit “such a record” (wherever occurring), substitute “such a Class B record”.

#### **49 At the end of Division 3 of Part V**

Add:

#### **40C Transitional provisions—continuation of permissions, approvals and agreements**

- (1) A permission in force immediately before the commencement of the *Archives (Records of the Parliament) Regulations 2019* for the purposes of old paragraph 24(2)(b) continues in force for the purposes of subparagraph 24(2)(b)(i) or (ii).
- (2) A permission in force immediately before the commencement of the *Archives (Records of the Parliament) Regulations 2019* for the purposes of old paragraph 24(2A)(b) continues in force for the purposes of subparagraph 24(2)(b)(iii).
- (3) A permission or approval in force immediately before the commencement of the *Archives (Records of the Parliament) Regulations 2019* for the purposes of old paragraph 26(2)(b) continues in force for the purposes of paragraph 26(2)(b).
- (4) An agreement made under old subsection 27(1) and in force immediately before the commencement of the *Archives (Records of the Parliament) Regulations 2019* continues in force as if it had been made under subsections 27(1) and 29(3).
- (5) An agreement made under old subsection 29(3) and in force immediately before the commencement of the *Archives (Records of the Parliament) Regulations 2019* continues in force as if it had been made under subsection 29(3).
- (6) The continuation in force by this section of a permission, approval or agreement does not prevent the revocation or variation of the permission, approval or agreement.

#### **40D Transitional provisions—disapproved administrative practices of Parliamentary Departments**

Paragraphs 24(2)(c), 26(1B)(d) and 31A(b) apply in relation to a notification of a Parliamentary Department by the Archives of the Archives' disapproval of a normal administrative practice whether the notification was given before, on or after the commencement of the *Archives (Records of the Parliament) Regulations 2019*.

#### **40E Transitional provisions—determinations about transfer and access**

- (1) Subsections 29(1) and 35(2) apply to a determination described in subsection 29(1), whether made before, on or after the commencement of the *Archives (Records of the Parliament) Regulations 2019*.

*Determinations made before commencement about not transferring record*

- (2) Subsection (3) of this section applies to a determination, made as described in old subsection 29(1) (before the commencement of the *Archives (Records of the*

*Parliament) Regulations 2019*), that a record is not to be transferred to the custody of the Archives.

- (3) Subsection 29(1) applies in relation to the determination as if it were a determination that the record is not to be transferred to the care of the Archives.

*Determinations made before commencement about certain records*

- (4) If:
- (a) before the commencement of the *Archives (Records of the Parliament) Regulations 2019*, the Presiding Officer made a determination described in old paragraph 29(1)(b) relating to a record; and
  - (b) the record is a Class C record;
- the fact that the record is a Class C record does not prevent subsection 29(1) from applying in relation to the record on the basis of the determination.

## **Schedule 2—Repeals**

### *Archives (Records of the Parliament) Regulations*

#### **1 The whole of the instrument**

Repeal the instrument.