

EXPLANATORY STATEMENT

Issued by the Authority of the Assistant Minister to the Prime Minister and Cabinet

Royal Commissions Act 1902

Royal Commissions Regulations 2019

Outline

The *Royal Commissions Act 1902* (the Act) provides for the establishment, powers and operation of Royal Commissions and for the management of Royal Commission records.

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

In accordance with section 50 of the *Legislation Act 2003*, the *Royal Commissions Regulations 2001* (the former Regulations) were due to sunset on 1 October 2019.

The *Royal Commissions Regulations 2019* (the Regulations) remakes the former Regulations, with changes to:

- remove the requirement that summonses issued by a Royal Commission be in the prescribed form, bringing it into line with the other compulsory powers under the Act and other similar legislation;
- clarify arrangements for payments to witnesses appearing at Royal Commissions;
- authorise private sessions to be held by the following Royal Commissions:
 - Royal Commission into Aged Care Quality and Safety, established by Letters Patent dated 8 October 2018 (as amended by Letters Patent dated 13 September 2019) (‘Aged Care Royal Commission’);
 - Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, established by Letters Patent dated 4 April 2019 (as amended by Letters Patent dated 13 September 2019 (‘Disability Royal Commission’);
- provide for custody of historical Royal Commission records;
- clarify arrangements for access to records of the following Royal Commissions:
 - Inquiry into Certain Australian Companies in relation to the UN Oil- for- Food Programme, established by Letters Patent dated 10 November 2005 (as amended by Letters Patent dated 6 February 2006, 10 March 2006, 17 March 2006, 22 June 2006 and 21 September 2006) (‘Oil-for-Food Inquiry’);
 - Royal Commission into matters relating to the affairs of various entities, mainly employee organisations, established by Letters Patent dated 13 March 2014 (as amended by Letters Patent dated 30 October 2014) (‘Royal Commission into Trade Union Governance and Corruption’); and
- provide for custody of records of future Royal Commissions; and
- provide that the records of a Royal Commission be transferred to the National Archives of Australia 20 years after its conclusion.

The Regulations remake, with minor changes, provisions of the former Regulations in relation to:

- service of notices;
- custody arrangements for records of the following Royal Commissions:
 - Oil-for-Food Inquiry
 - Royal Commission into Trade Union Governance and Corruption
 - Royal Commission into the Protection and Detention of Children in the Northern Territory, established by Letters Patent dated 1 August 2016 (as amended by Letters Patent dated 9 February 2017, 27 June 2017 and 7 September 2017) ('NT Royal Commission');
 - Royal Commission into Institutional Responses to Child Sexual Abuse, established by Letters Patent dated 11 January 2013 (as amended by Letters Patent dated 13 November 2014) ('Child Sexual Abuse Royal Commission');
 - Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, established by Letters Patent dated 14 December 2017 ('Banking, Superannuation and Financial Services Royal Commission')
 prior to their transfer to the National Archives of Australia; and
- access arrangements for records of the NT Royal Commission, Child Sexual Abuse Royal Commission and Banking, Superannuation and Financial Services Royal Commission.

The Regulations apply to both current and future Royal Commissions, with appropriate transitional arrangements to ensure the operations of current Royal Commissions are not adversely impacted.

The *Royal Commissions (Consequential Amendments) Regulations 2019* repeal the former Regulations and make minor consequential amendments to other regulations.

Consultation was undertaken with Commonwealth agencies, the Aged Care Royal Commission, and the Disability Royal Commission.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the Regulations may be exercised.

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

The Regulations commence the day after registration.

Authority: Section 17 of the *Royal Commissions Act 1902*

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Royal Commissions Regulations 2019

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The *Royal Commissions Act 1902* (the Act) provides for the establishment, powers and operation of Royal Commissions and for the management of Royal Commission records.

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

In particular, the Act provides that the following matters may be prescribed by regulation:

- methods in which a Royal Commission may serve a process on a named person (ss 2(3A), 2(3C), 3(1), 6AA(3));
- expenses to be paid to witnesses appearing before a Royal Commission (s 6G);
- Royal Commissions which may hold private sessions (s 6OAB); and
- allowances to be paid to witnesses summoned by a Royal Commission for their travelling expenses and maintenance (s 8).

In accordance with section 50 of the *Legislation Act 2003*, the *Royal Commissions Regulations 2001* (the former Regulations) were due to sunset on 1 October 2019.

The *Royal Commissions (Consequential Amendments) Regulations 2019* repeal the former Regulations. The *Royal Commissions Regulations 2019* (the Regulations) make provision for:

- service of notices;
- payments to witnesses appearing at Royal Commissions;
- authority of the following Royal Commissions to hold private sessions:
 - Royal Commission into Aged Care Quality and Safety, established by Letters Patent dated 8 October 2018 (as amended by Letters Patent dated 13 September 2019) (‘Aged Care Royal Commission’);
 - Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, established by Letters Patent dated 4 April 2019 (as amended by Letters Patent dated 13 September 2019) (‘Disability Royal Commission’);
- custody of records of historical Royal Commissions;
- custody of records of future Royal Commissions; and
- custody and access arrangements for records of the following Royal Commissions:
 - Inquiry into Certain Australian Companies in relation to the UN Oil- for- Food Programme, established by Letters Patent dated 10 November 2005 (as amended by Letters Patent dated 6 February 2006, 10 March 2006, 17 March 2006, 22 June 2006 and 21 September 2006) (‘Oil-for-Food Inquiry’);

- Royal Commission into matters relating to the affairs of various entities, mainly employee organisations, established by Letters Patent dated 13 March 2014 (as amended by Letters Patent dated 30 October 2014) (‘Royal Commission into Trade Union Governance and Corruption’); and
- Royal Commission into the Protection and Detention of Children in the Northern Territory, established by Letters Patent dated 1 August 2016 (as amended by Letters Patent dated 9 February 2017, 27 June 2017 and 7 September 2017) (‘NT Royal Commission’);
- Royal Commission into Institutional Responses to Child Sexual Abuse, established by Letters Patent dated 11 January 2013 (as amended by Letters Patent dated 13 November 2014) (‘Child Sexual Abuse Royal Commission’);
- Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, established by Letters Patent dated 14 December 2017 (‘Banking, Superannuation and Financial Services Royal Commission’)

Human Rights Implications

This Legislative Instrument engages the following rights:

- The right to a fair hearing—article 14 of the International Covenant on Civil and Political Rights (ICCPR); and
- The right to protection against arbitrary and unlawful interference with privacy and reputation—article 17 of the ICCPR.

The Right to Fair Hearing (Article 14 of the ICCPR)

The Regulations engage Article 14(3)(g) of the ICCPR, which specifies that in the determination of criminal charges, an individual is not to be compelled to testify against themselves or to confess guilt.

A Royal Commission has powers to enable it to effectively investigate matters of public importance, however it is not a court or tribunal and cannot adjudicate on a person’s guilt or liability.

Section 6A of the Act specifically abrogates the privilege against self-incrimination. Section 6A of the Act provides that it is not a reasonable excuse for a person to refuse or fail to produce a document or thing, or to answer a question, on the ground that doing so might incriminate the person or make the person liable to a penalty.

Section 6DD of the Act also provides that statements or disclosures made by a person in the course of giving evidence to a Royal Commission, or the production of a document or thing in response to a summons or notice to produce, are not admissible in evidence against that person in ‘any civil or criminal proceedings’ in any Australian court, unless the proceedings are for an offence against the Act.

The scheme established by sections 6A and 6DD provides Royal Commissions with powers to effectively investigate matters of public importance, while ensuring a person’s own statements cannot be used against them in subsequent proceedings.

The Regulations support this scheme by making provision for how a Royal Commission may serve notices and summonses on persons to appear and give evidence or documents or provide a statement in writing. These provisions replicate provisions in the former Regulations. It is an offence to not comply with such a notice or summons.

The limited abrogation of the right against self-incrimination by the Act is for the purpose of supporting a Royal Commission's function to inquire and report on matters of public importance. This limited abrogation is reasonable, necessary, and appropriate for the purpose of equipping Royal Commissions with investigative powers.

To the extent that the Act does abrogate the right to a fair hearing, the extent of the abrogation is limited and safeguarded by section 6DD which ensures that any self-incriminating evidence given by a person to a Royal Commission is inadmissible in any subsequent proceeding.

However, Royal Commission records, including information or documents to which section 6A apply, may be used for law enforcement purposes in certain circumstances, such as for further investigations and in proceedings brought against another person.

Sub-section 9(11) of the Act provides that there is no requirement for consultation with a person whose interests are affected before a record is used for law enforcement purposes. This ensures law enforcement agencies can effectively investigate potential criminal behaviour.

The Regulations continue to allow information and documents gathered by the Oil-for-Food Inquiry, Royal Commission into Trade Union Governance and Corruption, NT Royal Commission, Child Sexual Abuse Royal Commission (other than private session records) and the Banking, Superannuation and Financial Services Royal Commission to be accessed and used for law enforcement purposes. This was also the case under the former Regulations. As a result of sub-section 9(11) of the Act, there will be no requirement that a person's consent is obtained before they are investigated. However, section 6DD of the Act will mean that their own evidence to the Royal Commission cannot be used in evidence against them.

This access and use of information appropriately balances the rights of individuals to not be compelled to testify against themselves with the interests of the community in the prosecution of offences. While Royal Commissions serve the important function of inquiring into matters of public interest, they do not have powers to prosecute civil or criminal wrongdoing. Provision of access to the Royal Commission's records allows criminal and civil offences to be further investigated.

The Right to Protection against Arbitrary and Unlawful Interference with Privacy and Unlawful Attacks on Reputation (Article 17 of the ICCPR)

The Regulations also engage Article 17 of the ICCPR, which provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family or home nor to unlawful attacks on their reputation. Interferences with privacy may be permissible, provided they are authorised by law and not arbitrary.

The Regulations provide that the Aged Care Royal Commission and the Disability Royal Commission may hold private sessions. Private sessions enable individuals to give personal

accounts, related to matters into which a Royal Commission is inquiring, in a private setting. In this respect, the private session regime enhances the privacy of the individual telling their story. However, as the information is not taken as evidence, limits on use and disclosure of the information are also aimed at protecting the privacy and reputation of third parties who may be named in the information.

Royal Commissions keep records of evidence given to them in the course of their inquiries. Due to the nature of the inquiries, many of these records include private information.

The Regulations provide that the records of historical Royal Commissions are to be held in the custody of the National Archives of Australia, as are the records of more recent and future Royal Commissions 20 years after the conclusion of the relevant Royal Commission. This will align with the open access period under the *Archives Act 1983* for all records other than records of private sessions of the Child Sexual Abuse Royal Commission, which will enter the open access period after 99 years.

The National Archives of Australia will deal with the records in accordance with the provisions of the *Archives Act*. The *Archives Act* provides that records in the open access period are publicly accessible unless they are exempt. The *Archives Act* contains several categories of exemption from public access, including where public release would involve “the unreasonable disclosure of information relating to the personal affairs of any person” (s 33(1)(g)). This exemption promotes the right in Article 17 of the ICCPR.

The Regulations also facilitate the access and use of records of the Oil-for-Food Inquiry, Royal Commission into Trade Union Governance and Corruption, NT Royal Commission, Child Sexual Abuse Royal Commission and Banking, Superannuation and Financial Services Royal Commission, including private information, by law enforcement agencies to further investigate criminal wrongdoing. This access and use of Royal Commission records must be for the purposes of law enforcement. To the extent that this is an interference with privacy, it is not arbitrary. This is because it is consistent with upholding the inherent dignity of the human person, which underlies the provisions, aims and objectives of the ICCPR.

Law enforcement agencies may not access records of the Child Sexual Abuse Royal Commission relating to private sessions, or containing information about child sexual abuse treated as confidential by the Commission, unless that information was included in the inquiry’s reports or recommendations. While it was active, the Child Sexual Abuse Royal Commission had the power to communicate information about potential unlawful conduct to law enforcement under section 6P of the Act.

This is an appropriate protection of privacy due to the deeply personal nature of the subject matter. As the information was not sworn evidence and not subject to cross-examination, it also protects the privacy and reputation of any named third parties. Accordingly, this aspect of the Regulations promotes the rights contained in Article 17.

Conclusion

The Regulations are compatible with human rights because they advance the protection of human rights, in particular the right to be free from arbitrary or unlawful interference of privacy. To the extent that they limit human rights to a fair trial and privacy, those limitations are reasonable, necessary and proportionate.

Detail of the *Royal Commissions Regulations 2019*

Section 1 – Name

This section provides that the title of the Regulations is the *Royal Commissions Regulations 2019*.

Section 2 – Commencement

This section provides that the Regulations commence the day after they are registered.

Section 3 – Authority

This section provides that the Regulations are made under the Act.

Section 4 – Definitions

This section provides for definitions for various terms used in the Regulations.

Part 2 - Service of documents and witnesses' expenses and allowances

Section 5 – Service of notices and summonses

The Act provides Royal Commissions with powers to summon a person to appear to give evidence and/or produce documents or other things (s 2(1)).

The Act also provides Royal Commissions with powers to by written notice require a person to:

- produce a document or thing to a specified person, at a specified time and place (s 2(3A));
- give information, or a statement, in writing to a person by a specified time, and at a specified place or in a specified manner (s 2(3C)); and
- produce a document over which legal professional privilege is claimed for inspection for the purpose of deciding whether to accept or reject the claim (s 6AA(3))

This section provides for the ways in which a summons or notice must be served on a person to be effective. It replicates (with minor changes) section 6 of the former Regulations. It provides that service of a summons or notice may be effected:

- personally on a natural person (s 5(2)) or corporation (s 5(3));
- through a legal practitioner who has authority to accept service on behalf the person named in the summons or notice and does in fact do so (s 5(4)); or
- in a manner agreed in writing by the person named in the summons or notice (s 5(5)).

Sub-sections 5(6) also provides the method in which a notice (but not a summons) may be served on a named person if the Royal Commission has previously served the named person with a notice for the purposes of sub-section 2(3A) or (3C) of the Act in the ways set out in sub-sections 5(2) to (5). The Royal Commission may serve another notice on the named person by sending the notice by pre-paid post addressed to them at an address provided by

them to the Royal Commission, or at the named person's residential or business address last known to the Royal Commission.

Section 6 – Witnesses' expenses and allowances

This section provides scales for payment of expenses for a witness appearing before a Royal Commission and travelling and maintenance allowances for a witness summoned by a Royal Commission. These scales are referenced by sections 6G and 8 of the Act respectively.

Paragraph 6(1)(a) provides that an expert witness will be paid an amount of \$1174.90 per day, and any other witness an amount of \$123.90 per day. This provides a base payment to cover the expenses of a witnesses attending a Royal Commission.

Paragraph 6(1)(b) provides that, where a witness's attendance at a Royal Commission causes them to lose wages, salary or fees, they will be paid an amount equal to the amount of those wages, salary or fees reasonably lost. Whether the loss of wages, salary or fees was reasonable will be determined by an 'authorised person'. This payment is in addition to any payment under paragraph 6(1)(a).

Paragraph 6(1)(c) provides for payment to expert witness to compensate them for their preparation time. Where preparation has led an expert witness to lose wages, salary or fees, they will be paid an amount equal to the amount of those wages, salary or fees reasonably lost. Whether the loss of wages, salary or fees was reasonable will be determined by an 'authorised person'.

Sub-section 6(2) provides that the scale of witness expenses set out in sub-section 6(1) will apply to a witness attending a Royal Commission in response to a summons. It will also apply to a witness attending a Royal Commission without being summoned, where a member of the Royal Commission decides the scale will apply to the witness.

Sub-section 6(3) provides that, where a witness is summoned to attend a Royal Commission and their usual place of abode is more than 50 kilometres from the location of the Royal Commission, they will be paid a reasonable allowance to cover their travelling expenses and maintenance while absent from their place of abode. The amount to be paid will be worked out by an 'authorised person' having regard to the relevant circumstances, such as the distance travelled by the witness, the transport infrastructure available and the costs of maintenance in the particular locality.

Sub-section 6(4) defines 'authorised person' as the Secretary of the Attorney-General's Department or an SES-level employee in that Department authorised by the Secretary. It is appropriate that officers of the Attorney-General's Department make decisions in relation to witness allowances, as the Attorney-General's Department provides administrative support to Royal Commissions.

Allowing an 'authorised person' rather than a member of the Royal Commission to determine a witness's payment in accordance with the scale is necessary as Royal Commissions receive evidence from large numbers of witnesses. It would be impractical for a member of a Royal Commission to make all decisions in relation to witness payments.

The scales set out in the section provide a level of discretion as to amounts paid to witnesses as expenses and allowances. This flexibility is required due to the variety of witnesses that

may appear at Royal Commissions and their differing circumstance. Given this discretion, it is appropriate that decisions as to payments are made by relatively senior officers.

Part 3 – Private Sessions

Section 7 – Royal Commissions for which private sessions may be held

This section allows the Aged Care Royal Commission and the Disability Royal Commission to hold private sessions.

Private sessions, which were first utilised by the Child Sexual Abuse Royal Commission, enable individuals to tell their story about matters into which the Commission is inquiring in a less formal setting than a hearing. The power to prescribe Royal Commissions for which private sessions may be held was inserted into the Act by the *Royal Commissions Amendment (Private Sessions) Act 2019*.

Part 4 – Custody and Use of Records

Section 8 – General

This section clarifies the operation of Part 4 of the Regulations, which deals with arrangements for custody and use of records of ceased Royal Commissions.

Sub-section 8(1) provides that any reference within this Part to a Royal Commission record also includes any part of the record. This provision is included for clarification only.

Sub-section 8(2) indicates that the Regulations do not limit the circumstances in which a custodian of a Royal Commission record may give, or allow access to, a record. For example, the *Freedom of Information Act 1982* may also allow access in some circumstances, as may other laws or administrative principles.

Sub-section 8(3) makes it clear that the Regulations do not limit the circumstances in which a custodian of a Royal Commission record may use the record for the purpose of exercising their powers and functions. This sub-section also makes it clear that the Regulations do not limit the circumstances in which a custodian can provide the records to a public office holder or public authority for the purposes of exercising their functions and powers.

Section 9 – Custody of historical Royal Commission records

This section confirms that the National Archives of Australia is the custodian of the records of a large number of historical Royal Commissions. This will clarify the ability of the National Archives of Australia to provide access to these records under the provisions of the *Archives Act 1983*.

Section 10 – Custody of future Royal Commission records

This section provides that the Secretary of the Attorney-General's Department will be the custodian of the records of Royal Commissions which conclude after commencement of the Regulations. This reflects the fact that administrative support for Royal Commissions is provided by the Attorney-General's Department, meaning the Secretary is well-placed to manage a Royal Commission's records once the Royal Commission ceases. In accordance with ordinary principles, the Secretary may delegate some or all of their powers as custodian.

Sub-section 10(3) provides that twenty years after a Royal Commission concludes, custody of its records will transfer to the National Archives of Australia. This will ensure that the records of a Royal Commission are in the custody of the National Archives of Australia by the time the last of the Royal Commission's records enter the open access period set out in sub-section 3(7) of the *Archives Act 1983*.

Sub-section 10(4) provides that this arrangement will only apply to a Royal Commission's records where a contrary direction has not been made by the Minister responsible for the Act under sub-section 22(3) of the *Archives Act 1983*. This will provide flexibility where a custodian other than the Secretary of the Attorney-General's Department would be more appropriate.

Section 11 – Custody of records of listed Royal Commissions

This section, as well as the access arrangements in the following section, relates to records of the following Royal Commissions:

- Oil-for-Food Inquiry;
- Royal Commission into Trade Union Governance and Corruption;
- NT Royal Commission;
- Child Sexual Abuse Royal Commission;
- Banking, Superannuation and Financial Services Royal Commission.

Sub-section 11(a) provides that, for a period of 20 years after conclusion of the Royal Commission, the records of the Royal Commissions will be held in the custody of the persons set out below:

Royal Commission	Custodian of records
Oil-for-Food Inquiry – administrative and financial records	Secretary of the Attorney-General's Department
Oil-for-Food Inquiry – records other than administrative and financial records	Secretary of the Department of the Prime Minister and Cabinet
Royal Commission into Trade Union Governance and Corruption	Secretary of the Department of the Prime Minister and Cabinet
NT Royal Commission	Secretary of the Attorney-General's Department
Child Sexual Abuse Royal Commission	Secretary of the Attorney-General's Department
Banking, Superannuation and Financial Services Royal Commission	Secretary of the Attorney-General's Department

This provision maintains the existing custodianship arrangements for these records. In accordance with ordinary administrative principles, the custodian may delegate some or all of their powers.

Sub-section 11(b) provides that, for each of these Royal Commissions, the National Archives of Australia will become the custodian of the records 20 years after the Royal Commission concluded. The dates on which custodianship of the records of each Royal Commission will transfer to the National Archives of Australia are set out below:

Royal Commission	Date of National Archives custody
Oil-for-Food Inquiry	24 November 2026
Royal Commission into Trade Union Governance and Corruption	28 December 2035
NT Royal Commission	17 November 2037
Child Sexual Abuse Royal Commission	15 December 2037
Banking, Superannuation and Financial Services Royal Commission	1 February 2039

This two-step custody arrangement will ensure that the records of a Royal Commission are in the custody of the National Archives of Australia by the time the last of the Royal Commission's records enter the open access period set out in sub-section 3(7) of the *Archives Act 1983*.

Section 12 – Requests for copies of, or access to, records of listed Royal Commissions during interim access period

This section establishes a scheme for access to the records of the Royal Commissions listed in section 11 prior to their custodianship by the National Archives of Australia. The scheme is identical to that currently in operation for records of the NT Royal Commission, the Child Sexual Abuse Royal Commission, and the Banking, Superannuation and Financial Services Royal Commission, with minor, editorial changes. It supplements rights of access under other legislation such as the *Freedom of Information Act 1982* and compulsory court processes.

Sub-section 12(1) sets out the circumstances in which the custodian of a record of a listed Royal Commission may give a copy of or access to the record to a person or body that requests it. The circumstances are that:

- free access to the record is not publically available;
- the requesting person or body gave the Royal Commission the record or information or matter contained in it, or is an authorised representative of that person or body
- in the case of a record of a private session of the Child Sexual Abuse Royal Commission, the requesting person appeared at the private session, or is an authorised representative of that person or body;
- in the case of a record of the NT Royal Commission or the Child Sexual Abuse Royal Commission, the request is not made on behalf of a State or Territory or by a department or agency of a State or Territory; and
- the custodian is reasonably satisfied of the identity of the requestor and, for a representative, their authorisation is genuine and currently effective.

This provision provides a simple means for people or organisations who gave information or documents to a Royal Commission to access copies of that information, without the need to make a request under the *Freedom of Information Act 1982* or other legislation. In relation to private sessions of the Child Sexual Abuse Royal Commission, it allows a person who appeared to obtain access to or a copy of records of their session. State and Territory governments and agencies are excluded from this sub-section in relation to records of the NT Royal Commission or the Child Sexual Abuse Royal Commission, as section 13 provides a specific mechanism for them to access records of those Royal Commissions.

Sub-section 12(2) sets out arrangements for access to the records of listed Royal Commissions for law enforcement purposes. The circumstances in which the custodian of a record of a listed Royal Commission may give a copy of or access to the record to a person or body that requests it are that:

- the record is not publicly available;
- the person or body requesting the record performs a function relating to law enforcement purposes;
- the copy of or access to the record is requested for these purposes; and
- in respect of the Child Sexual Abuse Royal Commission, the record does not contain information relating to private sessions, or about child sexual abuse treated as confidential by the Commission, unless that information was included in the inquiry's reports or recommendations.

This provision engages sub-section 9(11) of the Act, which provides that the custodian may, for law enforcement purposes, provide access to or copies of Royal Commission records to a person or body without obtaining the consent of, giving notice to, giving an opportunity to make submissions to or taking into account submissions made by any person.

Section 13 – NT Royal Commission and Child Sexual Abuse Royal Commission—Requests on behalf of States or Territories etc.

This section relates to records of the NT Royal Commission and the Child Sexual Abuse Royal Commission while they are in the custody of the Secretary of the Attorney-General's Department. It sets out the circumstances in which the custodian may give a copy of or access to a record to a person requesting it on behalf of a State or Territory or a Department of State or agency of a State or Territory. The circumstances are that:

- free access to the record is not publicly available; and
- the record or information or matter contained in it was given to the relevant Royal Commission by any person on behalf of that State or Territory or any Department of State or agency of that State or Territory.

This provision will ensure that a State or Territory government is able to access information provided to the Royal Commissions by its agencies, even if that agency has changed name or function, or ceased to exist.

Section 14 – Ways in which requests for access may be responded to

This section provides that the custodian may give a copy of the record or allow access to the record in any form reasonably considered by the custodian to allow access to the information or matter contained in the record. In particular, the custodian may respond to a request for a

copy of a record by providing access to the record and respond to a request for access to a record by providing a copy of the record.

This provision also allows the custodian to determine the form in which a copy of a record or access to a record will be given to a person. For example, the custodian may provide access to a record which is a recording by allowing the recording to be listened to or by providing a copy of a transcript of that recording.

Part 5 – Application, savings and transitional provisions

Section 15 – Application of Part 2 to Commissions

This section provides that the Regulations apply to a Royal Commission established on or after the day the Regulations commence.

The Regulations also apply to the two Royal Commissions currently underway – the Aged Care Royal Commission, and the Disability Royal Commission.

Transitional arrangements will apply for witnesses who have appeared at the Aged Care Royal Commission prior to commencement of the Regulations, but have not yet been paid witness allowances. Section 7 of the former Regulations will continue to apply in relation to these witnesses. This will ensure the operations of the Royal Commissions are not adversely affected.

Schedule 1 – Historical Royal Commissions

This Schedule sets out the historical Royal Commissions to which section 9 applies.