

ROYAL COMMISSIONS AMENDMENT (CUSTODY OF RECORDS)
REGULATIONS 2022

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

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.

The purpose of this instrument is to correct drafting oversights and ensure that the *Royal Commissions Regulations 2019* (the Regulations) can operate as intended. It provides for the handling of requests for copies of, or access to, records of the Royal Commission into National Natural Disaster Arrangements (the Natural Disaster Royal Commission), the Royal Commission into Aged Care Quality and Safety (the Aged Care Royal Commission), and royal commissions that are yet to be finalised or commenced. The amendments will also clarify the custodianship of the records of the Royal Commission into the Home Insulation Program (the Home Insulation Royal Commission).

Section 10 of the Regulations provides that custody of records of royal commissions that conclude after the commencement of the Regulations (21 September 2019) vests with the Secretary of the Attorney-General's Department during a 20-year interim period, prior to the records being kept in the custody of the National Archives of Australia. This means that the Secretary of the Attorney-General's Department is currently the custodian of the records of the Natural Disaster Royal Commission and the Aged Care Royal Commission.

Section 12 of the Regulations provides for requests for copies of, or access to records for royal commissions listed in the table in section 11 of the Regulations, while section 14 provides the way in which those requests are responded to.

It is an apparent drafting oversight that section 10 provides for the custody of records of future royal commissions, whereas sections 12 and 14 only refer to records for royal commissions listed in the table in section 11. As that table represents a point in time when the Regulations were made in September 2019, it has resulted in the anomaly that the Secretary of the Attorney-General's Department is the custodian of the records of both the Natural Disaster Royal Commission and the Aged Care Royal Commission, but there are no provisions to handle requests for copies of, or access to, those records.

The amendments made by the Regulations will enable the Attorney-General's Department to handle requests for copies of, or access to, these records in the same way that requests are handled for records of other past royal commissions for which the Secretary of the Attorney-General's Department is the custodian. The amendments reflect the original intention of the provision to enable the custodian of records to be able to handle requests for copies of, or access to, those records.

A further amendment relates to the Home Insulation Royal Commission, which is not currently listed in the table in section 11 of the Regulations. The Attorney-General's Department has consulted the Office of Parliamentary Counsel and the Department of the Prime Minister and Cabinet and it appears the Home Insulation Royal Commission was inadvertently omitted from the table. The amendment clarify that the Secretary of the Department of the Prime Minister and Cabinet is the custodian of the Home Insulation Royal Commission records.

The amendments made by the Regulations specify that:

- Sections 12 and 14 also apply to the Natural Disaster Royal Commission and the Aged Care Royal Commission, as well as to royal commissions that are yet to be finalised or commenced.
- The Secretary of the Department of the Prime Minister and Cabinet is the custodian of the Home Insulation Royal Commission records.

Details of the Regulations are set out in the Attachment.

The Act does not specify any 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*.

CONSULTATION

Consultation was considered unnecessary as the legislative instrument is of a minor nature and does not substantially alter existing arrangements.

REGULATION IMPACT STATEMENT

No Regulation Impact Statement was completed following consultation with the OBPR (OBPR reference is OBPR22-02126). OBPR advised that based on the information provided OBPR considers that the determination is machinery in nature. As Cabinet is not the decision-maker, a Regulation Impact Statement is not required for this proposal.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Royal Commissions Amendment (Custody of Records) Regulations 2022

The Regulations are 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 of the Bill

The Regulations reflect the original intent of the provision to enable the Attorney-General's Department, as custodian of the records of a royal commission that concluded after 21 September 2019 (the date of commencement of the Royal Commissions Regulations), to handle requests for copies of, or access to, records of the royal commission.

The Regulations provide for the handling of requests for copies of, or access to, records of the Royal Commission into National Natural Disaster Arrangements (the Natural Disaster Royal Commission), the Royal Commission into Aged Care Quality and Safety (the Aged Care Royal Commission), and royal commissions that are yet to be finalised or commenced.

The Regulations also clarify the custodianship of records of the Royal Commission into the Home Insulation Program.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms. The amendments are operational in nature and do not impact on individual rights or freedoms. They are designed to correct drafting oversights, clarify custodianship of records and provide a lawful basis for the handling of records.

Conclusion

This instrument is compatible with human rights as it does not raise any human rights issues.

NOTES ON SECTIONS

DETAILS OF THE PROPOSED *ROYAL COMMISSIONS AMENDMENT (CUSTODY OF RECORDS) REGULATIONS 2022*

Preliminary

Section 1 – Name of Regulations

1. This section provides the instrument is the *Royal Commissions Amendment (Custody of Records) Regulations 2022*.

Section 2 – Commencement

2. This section provides the whole of the instrument will commence on the day after the instrument is registered.

Section 3 - Authority

3. This section provides that the *Royal Commissions Amendment (Custody of Records) Regulations 2022* is made under the *Royal Commissions Act 1902*.

Section 4 – Schedule(s)

4. This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Royal Commissions Regulations 2019

Item 1 – section 4 – would be amended by inserting a definition of “***Home Insulation Royal Commission***”

Item 2 - section 4 – would be amended by repealing the definition of “***interim-access period***” and substituting a definition of “***interim-access period for a Royal Commission***”

Item 3 – section 4 – would be amended by inserting a definition of “***Natural Disaster Royal Commission***”.

Item 4 – subsection 10(2) – would be amended by inserting, after “Governor-General”, “(the *interim-access period* for that Royal Commission)”.

Item 5 – subsection 10(3) – would be amended by omitting “After the end of that 20-year period”, and substituting “After the end of the *interim-access period*”.

Item 6 – section 11 (after table item 2) – would be amended by inserting in the ‘Item’ column “2A”; inserting in column 1 “Royal Commission records of the Home Insulation Royal Commission” and inserting in column 2 “Secretary of the Department of the Prime Minister and Cabinet”.

Item 7 – section 11 (after note 1) – would be amended by inserting “Note 1A: The Final Report for the Home Insulation Royal Commission was presented to the Governor-General on 29 August 2014 and tabled in the Parliament on 1 September 2014”.

Item 8 - Division 3 of Part 4 (heading) – would be amended by omitting “listed”.

Item 9 – Section 12 (heading) – would be amended by omitting “listed”.

Item 10 – Paragraph 12(1)(a) – would be amended by inserting, after “listed Royal Commission”, “,or a Royal Commission to which section 10 applies,”.

Item 11 – Subparagraph 12(1)(d)(i) – would be amended by omitting “listed”.

Item 12 – Subparagraph 12(1)(d)(ii) – would be amended by omitting “the Child Sexual Abuse Royal Commission under section 6OB of the Act”, and substituting “a Royal Commission to which Part 4 of the Act applies”.

Item 13 – Paragraph 12(1)(f) – would be amended by omitting “in the case of a record of the NT Royal Commission or the Child Sexual Abuse Royal Commission”, and substituting “in the case of a record to which section 13 applies”.

Item 14 – Subsection 12(2) – would be amended by omitting “record of a listed Royal Commission may give a copy of the record to a person or body during the interim access period for the listed Royal Commission”, and substituting “record of a listed Royal Commission, or a Royal Commission to which section 10 applies, may give a copy of the record to a person or body during the interim access period for the Royal Commission”.

Item 15 – Paragraph 12(2)(d) – would be amended by omitting “the Child Sexual Abuse Royal Commission” (first occurring), and substituting “a Royal Commission to which Part 4 of the Act applies”.

Item 16 – Subparagraphs 12(2)(d)(i) and (iii) – would be amended by omitting “Child Sexual Abuse”.

Item 17 – Subsection 12(3)(a) – would be amended by omitting “Child Sexual Abuse”.

Item 18 – Paragraph 12(3)(b) – would be amending be inserting, after “6ON”, “or 6OP”.

Item 19 - At the end of section 12 – would be amended by adding:

Note 7: In 2022, the Aged Care Royal Commission website could be viewed at <https://agedcare.royalcommission.gov.au>.

Note 8: In 2022, the Natural Disaster Royal Commission website could be viewed at <https://naturaldisaster.royalcommission.gov.au>.

Note 9: In 2022, archived versions of the Home Insulation Royal Commission website could be viewed at the National Library of Australia’s Trove

website
(<https://trove.nla.gov.au/website>).¹

Item 20 – Section 13 (heading) – would be amended by repealing the heading and substituting:

“13 Requests on behalf of States or Territories etc for certain Royal Commissions”

Item 21 – At the end of subsection 13(1) – would be amended by adding:

- ; and (c) Royal Commission records of the Natural Disaster Royal Commission; and
- (d) Royal Commission records of a Royal Commission:
 - (i) that has conducted an inquiry by virtue of a commission issued by the Governor of a State in conjunction with its inquiry under a commission issued by the Governor-General; and
 - (ii) that is established after the commencement of this paragraph.”

Item 22 – Paragraph 13(2)(d) – would be amended by omitting “the NT Royal Commission, or the Child Sexual Abuse Royal Commission,”, and substituting “the Royal Commission”.

Item 23 – At the end of section 13 – would be amended by adding:

Note 3: In 2022, the Aged Care Royal Commission website could be viewed at <https://agedcare.royalcommission.gov.au>.

Note 4: In 2022, the Natural Disaster Royal Commission website could be viewed at <https://naturaldisaster.royalcommission.gov.au>.

Item 24 – Section 14 – would be amended by inserting, after “listed Royal Commission”, “or a Royal Commission to which section 10 applies”.

Item 25 – At the end of Part 5 – would be amended by adding:

17 Application of the Royal Commissions Amendment (Custody of Records) Regulations 2022

The amendments of this instrument by the *Royal Commissions Amendment (Custody of Records) Regulations 2022* apply in relation to requests made on or after the commencement of that instrument for copies of, or access to, Royal Commission records (whether the Royal Commission to which the records relate was established before, on or after that commencement).

¹ The website can be found by entering “homeinsulationroyalcommission.gov.au” in the search bar of the Trove website.