

**ROYAL COMMISSIONS AMENDMENT (ENHANCING ENGAGEMENT)
REGULATIONS 2023**

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.

The purpose of this instrument is to make amendments to the *Royal Commissions Regulations 2019* (the Regulations). The amendments are consequential to the *Royal Commissions Amendment (Enhancing Engagement) Act 2023*. The instrument makes clear that royal commission records containing information to which section 6OQ of the *Royal Commissions Act 1902* (the Act) applies cannot be disclosed for the purposes of law enforcement except in specified circumstances. The instrument also amends the definition of ‘Defence and Veteran Royal Commission’ in the Regulations, to maintain consistency with the Act.

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. Paragraphs 9(2)(c) and (d) of the Act set out that the Regulations may provide for the circumstances in which the custodian of Royal Commissions records must or may give some, or all of those records, or provide access to records, to other persons or bodies.

Under Section 10 of the Regulations, the Secretary of the Attorney-General’s Department is the custodian of records related to royal commissions that conclude after the commencement of the Regulations (21 September 2019) for a period of 20 years after the record is made, known as the interim access period. This includes the records of the Royal Commission into Defence and Veteran Suicide.

Section 12 of the Regulations provides for the circumstances in which the custodian of royal commission records must, or may, give royal commission records to another body or person. Subsection 12(2) provides that records of a royal commission may be provided to another body or person for law enforcement purposes if the record is not publicly available.

Paragraph 12(2)(d) and subsection 12(3) of the Regulations provide that a record may not be disclosed for law enforcement purposes if the information was given or obtained at a private session, identifies an individual who appeared at a private session, or is information to which sections 6ON or 6OP of the Act applies. Sections 6ON and 6OP apply to certain confidential information given outside of a private session to the Royal Commission into Institutional

Responses to Child Sexual Abuse and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability respectively.

The instrument extends the protection from disclosure for law enforcement purposes to also apply to information to which section 6OQ of the Act applies. Section 6OQ applies to information individuals provide to the Royal Commission in to Defence and Veteran Suicide (the Royal Commission) outside of a private session, about their own, or their knowledge of others', experiences of suicide, suicidality, poor mental health as Australian Defence Force (ADF) Members or veterans, or their own, or another's, experiences of systemic issues related to any period of ADF pre-service, service, transition, separation and post-service that contributed, or may have contributed, to a person's suicide, suicidality or poor mental health. The information must have been given for purposes other than a private session, identify the relevant individual and the Royal Commission must have treated the information as confidential all times after receiving it.

The amendment to the definition of the Royal Commission changes the short name of the Royal Commission to the ***Defence and Veteran Suicide Royal Commission***, to be consistent with the Act, and explicitly states that the definition includes any updated Letters Patent issued. Details of the instrument are set out in the Attachment.

The Act does not specify any conditions that need to be satisfied before the power to make the instrument may be exercised.

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

The instrument commences the later of the day after registration or immediately after the commencement of Schedule 1 to the *Royal Commissions Amendment (Enhancing Engagement) Act 2023*.

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

CONSULTATION

The Government consulted the Royal Commission and key stakeholder groups in the veterans' community on the amendments made by the *Royal Commissions Amendment (Enhancing Engagement) Act 2023*. The amendments made to the Regulations by this instrument are consequential to the *Royal Commissions Amendment (Enhancing Engagement) Act 2023*.

REGULATION IMPACT STATEMENT

No Regulation Impact Statement was completed following consultation with the Office of Impact Analysis (OIA) (reference number OBPR23-03888). OIA advised that based on the information provided the instrument is unlikely to introduce more than minor impacts on individuals, businesses and community organisations. 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 (Enhancing Engagement) Regulations 2023

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 instrument

The instrument clarifies that royal commission records containing information to which section 6OQ of the *Royal Commissions Act 1902* (the Act) applies cannot be disclosed for the purposes of law enforcement except in specified circumstances. This change is to support the confidentiality protections over sensitive information provided to the Royal Commission under section 6OQ, which were introduced into the Act to encourage people to share sensitive information with the Royal Commission in the knowledge that it can be protected.

The instrument also amends the definition of ‘Defence and Veteran Royal Commission’ in the *Royal Commissions Regulations 2019* to maintain consistency with the Act.

Human rights implications

This instrument engages, or may be seen to engage, Article 17 of the International Covenant on Civil and Political Rights (ICCPR) – the prohibition against unlawful or arbitrary interferences with privacy.

By expanding the ways in which sensitive information provided to the Royal Commission can be protected from disclosure, this instrument advances the right to privacy.

Details of the proposed *Royal Commissions Amendment (Enhancing Engagement) Regulations 2023*

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Royal Commissions Amendment (Enhancing Engagement) Regulations 2023*.

Section 2 - Commencement

This section provides for the Regulations to commence the later of the day after the instrument is registered or immediately after the commencement of Schedule 1 to the *Royal Commissions Amendment (Enhancing Engagement) Act 2023*. The provisions will not commence if Schedule 1 of the *Royal Commissions Amendment (Enhancing Engagement) Act 2023* does not commence.

Section 3 - Authority

This section provides that the *Royal Commissions Amendment (Enhancing Engagement) Regulations 2023* is made under the *Royal Commissions Act 1902*.

Section 4 - Schedule(s)

This section explains the effect of the Schedule. It 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

Items 1-2 – the effect of these changes is to insert a new definition for ***Defence and Veteran Royal Commission***. These items provide that a reference to the Defence and Veteran Suicide Royal Commission is a reference to the Royal Commission into Defence and Veteran Suicide, and includes any subsequent variations made to the original Letters Patent that were issued on 8 July 2021. These items also update the short name of the royal commission from ***Defence and Veteran Royal Commission*** to ***Defence and Veteran Suicide Royal Commission***. These changes reflect a new definition inserted into the Royal Commissions Act by the *Royal Commissions Amendment (Enhancing Engagement) Act 2023*, and ensures that this term is defined in the same way in both the Act and the Regulations.

Items 3 and 5 – the effect of these changes is to amend all references to ‘Defence and Veteran Royal Commission’ to ‘Defence and Veteran Suicide Royal Commission’. This reflects the amendment of the definition in items 1-2. Alongside items 1 and 2, these changes are being made to ensure there is strict consistency in the meaning of these terms where they are used in both the Act and the Regulations.

Item 4 – the effect of this change is to ensure that royal commission records containing information to which section 6OQ of the Act applies cannot be disclosed for the purposes of law enforcement, unless the information was included in a report or recommendation of the Royal Commission under section 6OJ of the Act. Section 6OJ provides that the Royal Commission can only include information in a report or recommendation if it is also given under a summons, or if it has been de-identified, which ensures the confidentiality of sensitive personal information given to the Royal Commission.

Prescribing strict restrictions on the disclosure of information is important to support the effectiveness of the new confidentiality protections on information given to the Royal Commission under section 6OQ of the Act. Given that section 6OQ was introduced to give people confidence that sensitive information they wish to disclose to the Royal Commission will be treated strictly in confidence, it is important there are strict limitations around use and disclosure of that information. This approach is equivalent to protections that already apply to information given to the Disability Royal Commission under section 6OP, which section 6OQ has been modelled on.