



Western Australia

Royal Commission (Custody of Records) Act 1992

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Royal Commission (Custody of Records) Act 1992

An Act relating to the manner in which the records and materials held by the Royal Commission appointed by the Governor on 8 January 1991 are to be dealt with after the Commission has completed its inquiries and reports, and for related purposes.

1. Short title

This Act may be cited as the *Royal Commission (Custody of Records) Act 1992*¹.

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent¹.

3. Effect of this Act

(1) This Act has effect notwithstanding —

- (a) the *Royal Commissions Act 1968*;
- (b) the *State Records Act 2000*;
- (c) any other written law whether enacted or made before or after this Act is enacted; or
- (d) any other law.

(2) Notwithstanding any written or other law a record of the Royal Commission shall not be dealt with in a way that prevents it from being dealt with under this Act.

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- (3) Nothing in this Act affects the operation of section 20 of the *Royal Commissions Act 1968*.
- (4) This Act binds the Crown in right of the State and, subject to the limits of the legislative power of the State, the Crown in all its other capacities.

[Section 3 amended: No. 53 of 2000 s. 23.]

4. Definitions

- (1) In this Act, unless the contrary intention appears —
 - administrative record** means a record of an administrative nature relating to the operations of the Royal Commission;
 - confidential record** means —
 - (a) a record obtained by or on behalf of the Royal Commission (whether or not under compulsion) that is the subject of an assurance of confidentiality given by or on behalf of the Royal Commission; or
 - (b) a record of a statement, or of an interview or of information obtained by or on behalf of the Royal Commission, being a statement, or an interview or information (whether or not obtained under compulsion) that is the subject of an assurance of confidentiality given by or on behalf of the Royal Commission,but does not include a transcript record;

copy, in relation to a record, includes a copy that is in a different form or medium than the record itself;

Director of State Records means the Director of State Records under the *State Records Act 2000*;

DPP means the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991*;

former Commissioners means the persons who were the members of the Royal Commission before it delivered its report under the terms of reference;

internal working document means a working record prepared by the Royal Commission or a member or an officer of the Royal Commission for internal purposes of the Royal Commission;

Library Act means the *Library Board of Western Australia Act 1951*;

Library Board means The Library Board of Western Australia constituted under the Library Act;

officer of the Royal Commission means a counsel or other person appointed, employed or engaged to assist the Royal Commission;

prescribed exhibit means an exhibit received by the Royal Commission in the course of a hearing relating to item 1.1, 1.2, 1.3 or 1.4 of Schedule 1 to paragraph (1) 1 of the terms of reference;

private submission means a submission made to the Royal Commission in respect of paragraph (1) 1 (e) or (1) 2 (e) of the terms of reference;

record has the same meaning as it has in the *State Records Act 2000*;

record of the Royal Commission means a confidential record, an internal working document, a private submission, an administrative record, a transcript record or any other record prepared or obtained for the purposes of the Royal Commission by the Royal Commission or a member or an officer of the Royal Commission;

regulatory body means —

- (a) the Police Force;
- (b) the Australian Federal Police;
- (c) the Australian Crime Commission;
- (d) the Police Force of another State or a Territory; or
- (e) any other regulatory, revenue collecting, or prosecuting body or authority whether in the State or elsewhere;

Royal Commission means the Royal Commission constituted by the persons appointed by the commission issued by the Governor on 8 January 1991;

State archives collection has the same definition as in the *State Records Act 2000*;

terms of reference means the terms of reference of the Royal Commission set out in the commission issued by the Governor on 8 January 1991 and amended from time to time;

transcript record means a record of evidence taken by the Royal Commission whether taken in private or not.

- (2) A reference in this Act to the delivery of the Royal Commission's report shall be read as a reference to the delivery of its final report.

[Section 4 amended: No. 67 of 1992 s. 4; No. 53 of 2000 s. 24; No. 74 of 2004 s. 71.]

[5-12. Deleted: No. 53 of 2000 s. 25.]

13. Copies

- (1) If the records of the Royal Commission include a copy of or extract from a record, that copy or extract shall be dealt with in the same way as the record.

[(2), (3) deleted]

[Section 13 amended: No. 53 of 2000 s. 26.]

14. Availability of records as State archives

- (1) This section applies to all records of the Royal Commission that form part of the State archives collection, having been transferred under section 14(2) of the *State Records (Consequential Provisions) Act 2000* to that collection by the Library Board.

- (1a) Subject to this section, the Director of State Records shall keep the records to which this section applies as State archives in accordance with the *State Records Act 2000*.
- (2) Subject to subsections (3) and (4), no access shall be provided to —
- (a) a confidential record, internal working document or private submission to which this section applies; or
 - (b) a transcript record to which this section applies that is the subject of a direction by the Royal Commission prohibiting its publication,
- except to the State, for the purposes of the investigation and prosecution of offences, or to the former Commissioners for any purpose arising from the performance of their public functions as members of the Royal Commission.
- (3) Access to —
- (a) a transcript record referred to in subsection (2)(b); or
 - (b) a prescribed exhibit that is a confidential record and a record to which this section applies,
- shall be provided to the State for the purposes of the conduct of civil litigation involving the State.
- (4) Access to a record referred to in subsection (2)(a) or (b) shall be provided to a person if the Supreme Court so orders.
- (5) An order shall not be made under subsection (4) unless the Supreme Court is satisfied —
- (a) that it is in the public interest for the confidentiality or restriction on publication applicable to the document to be dispensed with to the extent provided by the order;
 - (b) that it is in the public interest for the person concerned to be provided with access to the record;
 - (c) that at least 5 years have elapsed since the completion of all civil and criminal proceedings relating to events the subject of the terms of reference; and

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- (d) that in the case of a record that is a restricted access archive under the *State Records Act 2000*, the provision of access to the record would not contravene or be inconsistent with the restrictions on access to the record under that Act.
- (6) An order under subsection (4) may be made on such conditions as the Supreme Court thinks fit.
- (7) An application to the Supreme Court for an order under subsection (4) may be made in accordance with Rules of Court.
- (8) Without limiting section 3(1), the prohibition in subsection (2) has effect notwithstanding Part 6 of the *State Records Act 2000*.
- (9) This section ceases to have effect in relation to a confidential record, internal working document, private submission or transcript record, as the case may be, when it becomes 75 years old as determined under section 3(6) of the *State Records Act 2000* unless under section 48 of that Act, the State Records Commission has directed that it is an exceptionally sensitive archive in which case that section applies to it.

[Section 14 amended: No. 67 of 1992 s. 7; No. 53 of 2000 s. 27.]

15. Performance of Royal Commission's functions under this Act

[(1)-(7) deleted]

- (8) No action of the Royal Commission or the former Commissioners, or failure or omission of the Royal Commission or the former Commissioners to act, under section 6, 7, 8, 9 or 13, or under the Library Act as applied by section 10 or 14, or under this section (as this Act and that Act operated before the commencement of the *State Records (Consequential Provisions) Act 2000*) is liable to be challenged, appealed against, reviewed, quashed or called in question in or by any court on any account.

[Section 15 amended: No. 67 of 1992 s. 8; No. 53 of 2000 s. 28.]

16. Protection relating to publication

- (1) In this section “**prescribed person**” means —
- (a) the Crown in right of the State;
 - (b) the Royal Commission;
 - (c) a person who is or has been —
 - (i) a member of the Royal Commission;
 - (ii) an officer of the Royal Commission; or
 - (iii) a person appointed, employed or engaged by the Crown in right of the State;
- or
- (d) a person to whom a function has been delegated under section 15.
- (2) No action for defamation or breach of confidence lies against a prescribed person in respect of the publication of any record of the Royal Commission —
- (a) in the ordinary course of the conduct of the inquiry of the Royal Commission under the terms of reference; or
 - (b) in the performance of functions under this Act.

Notes

¹ This is a compilation of the *Royal Commission (Custody of Records) Act 1992* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Royal Commission (Custody of Records) Act 1992</i>	43 of 1992	27 Oct 1992	27 Oct 1992 (see s. 2)
<i>Royal Commission (Custody of Records) Amendment Act 1992</i>	67 of 1992	11 Dec 1992	27 Oct 1992 (see s. 2)
<i>State Records (Consequential Provisions) Act 2000 Pt. 9</i>	53 of 2000	28 Nov 2000	1 Dec 2001 (see s. 2 and <i>Gazette</i> 30 Nov 2001 p. 6067)
Reprint 1: The Royal Commission (Custody of Records) Act 1992 as at 6 Feb 2004 (includes amendments listed above)			
<i>Australian Crime Commission (Western Australia) Act 2004 s. 71</i>	74 of 2004	8 Dec 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
administrative record	4(1)
confidential record	4(1)
copy	4(1)
Director of State Records	4(1)
DPP	4(1)
former Commissioners	4(1)
internal working document	4(1)
Library Act	4(1)
Library Board	4(1)
officer of the Royal Commission	4(1)
prescribed exhibit	4(1)
private submission	4(1)
record	4(1)
record of the Royal Commission	4(1)
regulatory body	4(1)
Royal Commission	4(1)
State archives collection	4(1)
terms of reference	4(1)
transcript record	4(1)