



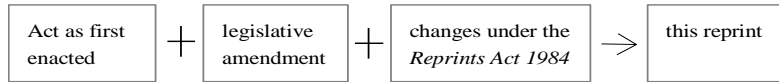
Western Australia

Royal Commission (Custody of Records) Act 1992

Reprint 1: The Act as at 6 February 2004

Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

Reprint numbering and date

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3rd reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Reprinted under the
Reprints Act 1984 as
at 6 February 2004

Western Australia

Royal Commission (Custody of Records) Act 1992

CONTENTS

| | | |
|-----|---|---|
| 1. | Short title | 1 |
| 2. | Commencement | 1 |
| 3. | Effect of this Act | 1 |
| 4. | Definitions | 2 |
| 13. | Copies | 4 |
| 14. | Availability of records as State archives | 4 |
| 15. | Performance of Royal Commission's functions under this Act | 6 |
| 16. | Protection relating to publication | 7 |
| | Notes | |
| | Compilation table | 8 |



Western Australia

Reprinted under the
Reprints Act 1984 as
at 6 February 2004

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.

s. 4

- (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.
- (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 by 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 National Crime Authority;

s. 13

- (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 by No. 67 of 1992 s. 4; No. 53 of 2000 s. 24.]

[5-12. Repealed by 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) repealed]

[Section 13 amended by 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;

s. 15

- (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
 - (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 by No. 67 of 1992 s. 7; No. 53 of 2000 s. 27.]

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

[(1)-(7) repealed]

- (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 by 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 reprint is a compilation as at 6 February 2004 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) | | | |
