

ROYAL COMMISSION (CUSTODY OF RECORDS) ACT 1992

(No. 43 of 1992)

ARRANGEMENT

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ROYAL COMMISSION (CUSTODY OF RECORDS) ACT 1992

No. 43 of 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.

[Assented to 27 October 1992]

The Parliament of Western Australia enacts as follows:

Short title

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

Commencement

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

Effect of this Act

3. (1) This Act has effect notwithstanding —

- (a) the *Royal Commissions Act 1968*;
- (b) the Library Act;
- (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.

(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.

Definitions

4. (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;

“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 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 Library Act;

“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 an officer of the Royal Commission;

“regulatory body” means —

- (a) the Police Force;
- (b) the Australian Federal Police;
- (c) the National Crime Authority;
- (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;

“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.

DPP to have custody of records

5. Subject to this Act, after the Royal Commission has delivered its report under the terms of reference the DPP has custody of all of the records of the Royal Commission.

Confidential records

6. (1) If the Royal Commission considers that a confidential record should not be dealt with under section 5 the Royal Commission may, at its discretion —

- (a) release the confidential record to any person who appears to the Royal Commission to be entitled to possession of it; or
- (b) transfer the confidential record to the Library Board as a State archive.

(2) If the Royal Commission releases a confidential record under subsection (1) (a) it may transfer a copy of the record to the Library Board as a State archive.

(3) Section 5 does not apply to confidential records released or transferred under this section.

Internal working documents

7. (1) If the Royal Commission considers that an internal working document should not be dealt with under section 5 the Royal Commission may, at its discretion —

- (a) transfer the internal working document to the Library Board as a State archive; or
- (b) destroy the internal working document.

(2) Section 5 does not apply to internal working documents transferred or destroyed under this section.

Private submissions

8. (1) If the Royal Commission considers that a private submission should not be dealt with under section 5 the Royal Commission may, at its discretion —

- (a) return the private submission to the person from whom it was received;
- (b) transfer the private submission to the Library Board as a State archive; or
- (c) destroy the private submission.

(2) Section 5 does not apply to private submissions returned, transferred or destroyed under this section.

Administrative records

9. (1) An administrative record shall be —

- (a) transferred by the Royal Commission to the department of the Public Service principally assisting the Minister administering the *Royal Commissions Act 1968* in the administration of that Act; or

(b) subject to any applicable administrative or statutory requirements, destroyed by the Royal Commission, at the Royal Commission's discretion.

(2) Section 5 does not apply to administrative records.

**Prerequisite for destruction of records
by Royal Commission**

10. (1) Notwithstanding sections 7, 8 or 9 the Royal Commission shall not exercise a discretion to destroy a record unless it has first consulted the State Archivist and obtained the consent of the State Archivist to that destruction.

(2) In the event the State Archivist refuses or fails to consent the Royal Commission may refer the matter to the Standing Committee on Public Records established by the Library Board whose decision shall be final.

Availability of records in custody of DPP

11. (1) This section applies only to records in the custody of the DPP under section 5.

(2) Transcript records and prescribed exhibits are available to the State for the purposes of —

- (a) the investigation and prosecution of offences; and
- (b) the conduct of civil litigation involving the State.

(3) Records other than transcript records and prescribed exhibits are available to the State for the purposes of the prosecution of offences and, subject to subsections (4) and (5), are not available for any other purpose.

(4) The DPP may make a record available to any other regulatory body for use by the body in the course of the performance of its public or statutory functions.

(5) The DPP may make a record available to the former Commissioners for use by them for any purpose arising from the performance of their public functions as members of the Royal Commission.

(6) When a regulatory body has, or the former Commissioners have, finished using a record made available under subsection (4) or (5) it or they shall return the record to the DPP.

Disposal of records in custody of DPP

12. (1) Subject to subsection (2), if the DPP is satisfied that all civil and criminal proceedings likely to be instituted in relation to events the subject of the terms of reference have been completed, the DPP shall transfer all records in the custody of the DPP under section 5 to the Library Board as State archives.

(2) If a record was —

- (a) produced in accordance with a requirement made under a law;
- (b) seized under a search warrant issued under a law;
- (c) retained under section 21 of the *Royal Commissions Act 1968*; or
- (d) produced voluntarily,

the DPP may, instead of dealing with the record under subsection (1), release the record to any person who appears to the DPP to be entitled to possession of it or shall otherwise deal with the record according to law.

(3) The DPP may make a copy of a record and may retain such a copy after the record has been dealt with under this section.

Copies

13. (1) Subject to subsection (2) and section 6 (2), 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) If the Royal Commission is satisfied that a copy of a record will be or is in the custody of the DPP under section 5 or will be or has been dealt with under section 6 (1), 7 (1) (a), 8 (1) (a) or (b) or 9 (1) (a), the Royal Commission may destroy any other copy of, or extract from, that record.

(3) In subsection (2) “**copy**” includes the record itself.

Availability of records as State archives

14. (1) The Library Board shall accept custody and control of a record transferred to it as a State archive under this Act and, subject to this section, shall deal with the record in accordance with the Library Act.

(2) Subject to subsections (3) and (4), no access shall be provided to —

- (a) a confidential record, internal working document or private submission transferred as a State archive under section 6, 7, 8 or 12; or
- (b) a transcript record transferred as a State archive under section 12 being a transcript record 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 is transferred as a State archive under section 12,

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; and
- (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.

(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 provided for in subsection (1) has effect notwithstanding section 32 (1) of the *Library Act*.

**Performance of Royal Commission's
functions under this Act**

15. (1) The functions of the Royal Commission under this Act may be performed by —

- (a) one of the members; or
- (b) 2 or all of the members acting jointly.

(2) The Royal Commission may, in writing, delegate to any person the performance of any of the functions of the Royal Commission under this Act.

(3) After the Royal Commission has delivered its report under the terms of reference the functions conferred on it by this Act become functions of the former Commissioners.

(4) The functions of the former Commissioners under this Act (including the power of delegation under subsection (5)) may be performed by —

- (a) one of them; or
- (b) 2 or all of them acting jointly.

(5) The former Commissioners may, in writing, delegate to any person the performance of any of their functions under this Act.

(6) Subsection (5) ceases to have effect at the end of the period of 3 months after the Royal Commission delivers its report, and any delegation in force under this section at the end of that period also ceases to have effect.

(7) Notwithstanding that the Royal Commission has delivered its report the former Commissioners may retain a record for a period not exceeding 3 months after the delivery of the report in order to determine whether the record should be dealt with under section 6, 7 or 8, and while the record is being retained under this subsection —

- (a) it is not available, and shall not be made available, to any other person for any purpose otherwise than under section 6, 7 or 8; and

(b) section 5 does not apply to it.

(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 this section is liable to be challenged, appealed against, reviewed, quashed or called in question in or by any court on any account.

Protection relating to publication

16. (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.