

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 375

Issued by the Authority of the Parliamentary Secretary to the Prime Minister

Royal Commissions Act 1902

Royal Commissions Amendment Regulations 2006 (No. 2)

The *Royal Commissions Act 1902* (the Act) provides for the establishment and operation of Royal Commissions.

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.

Section 9 of the Act, inserted by the *Royal Commissions Amendment (Records) Act 2006* on the commencement of that Act, provides for the custody and use of records of Royal Commissions. Subsection 9(2) allows for regulations that may provide for the custody, use or transfer of, or access to, Royal Commission records.

By Letters Patent dated 10 November 2005 (as amended by Letters Patent dated 6 February, 10 March, 17 March, 22 June and 21 September 2006) the Hon Terence Rhoderic Hudson Cole AO RFD QC was appointed under the Act to inquire into Certain Australian Companies in relation to the UN Oil-for-Food Programme (the Cole Inquiry).

The Regulations amend the *Royal Commissions Regulations 2001* (the Principal Regulations) in relation to the custody and use of Cole Inquiry records, to allow law enforcement agencies to access and use relevant Cole Inquiry records without any need for procedural fairness to be provided to those who might be adversely affected by that access and use, in accordance with subsection 9(11) of the Act. Thus, relevant records will be able to be passed quickly to agencies to assist in their investigations of matters arising from the Cole Inquiry.

The Regulations insert new regulation 8 (Custody and use of records of Oil-for-Food Inquiry) into the Principal Regulations. For subsection 9(2) of the Act, subregulation 8(1) provides that regulation 8 applies in relation to the Royal Commission records of the Cole Inquiry, except for records relating to the administration and financial management of the Inquiry. In accordance with normal practice, these records will remain the responsibility of the Attorney-General's Department and there is no need for a regulation dealing with these records at this time.

Subregulation 8(2) provides that all other Cole Inquiry records are to be kept in the custody of the Secretary of the Department of the Prime Minister and Cabinet. While this is also in accordance with normal practice, a regulation was required to enable section 9 of the Act to apply to that department's use of the records.

Subregulation 8(3) sets out the circumstances in which the Secretary of the Department of the Prime Minister and Cabinet must give a certified copy of a record in his or her custody to the owner of that record. The circumstances are that the record has not been returned to the owner and that the owner requests a certified copy.

In most instances, where a document was given to or obtained by the Cole Inquiry, the Inquiry scanned the document into the Inquiry's database with the intention of returning the document. In some cases, this may not have been able to be achieved. Subregulation 8(3) allows the owner of a document which was given to or obtained by the Inquiry to request and receive a certified copy of the document. This is appropriate because, pursuant to subsection 9(10) of the Act, the Secretary of the Department of the Prime Minister and Cabinet is entitled to retain possession of the document for so long as he or she considers it desirable to do so for the purposes of performing his or her duties or exercising his or her powers.

Subregulation 8(4) provides that, for subregulation (3), until a certified copy is provided to the owner, the Secretary of the Department of the Prime Minister and Cabinet must provide the owner, or a person authorised by the owner, reasonable access to the record for the purposes of inspecting, making copies or taking extracts.

Subregulations 8(5) and 8(6) set out the circumstances in which the Secretary of the Department of the Prime Minister and Cabinet may give some or all of those records in his or her custody, or allow access to some or all of those records, to certain persons or bodies. The circumstances are limited to those in which relevant persons or bodies are persons or bodies:

- performing a function relating to law enforcement purposes (as defined in the Act); or
- responsible for advising a Minister of the Commonwealth, of a State or of a Territory about the administration of a law of the Commonwealth, that State or that Territory. This is intended to cover not only persons and bodies which investigate or prosecute but also those which, whilst they may not formally investigate, prosecute or administer legislation, should properly be included in the Principal Regulations because they advise their relevant Minister about administration of a law, including its enforcement.

Consultation was not required due to the limited range of persons who might be affected and the technical nature of the amendments to the Principal Regulations.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on 15 December 2006.