The Royal Commission into Institutional Responses to Child Sexual Abuse

What to expect if the Royal Commission asks your organisation for documents

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If your organisation is responsible for the care and protection of children, the *Royal Commission into Institutional Responses to Child Sexual Abuse* might ask you to hand over documents it considers are relevant to its work. Failure to comply with such requests, without a reasonable excuse, can amount to a criminal offence.

This factsheet helps you to understand what powers the Royal Commission can use to compel your organisation to hand over documents, what to expect if this happens and how you can respond lawfully. If you are not sure what to do, you might need to ask your employer about getting some specific legal advice.

What documents might the Royal Commission ask us for?

It is not possible to predict exactly what documents the Royal Commission might ask for from any organisation. But the documents must be relevant to its inquiry.

The scope of the Royal Commission's inquiry is set out in a document called its "Terms of Reference." This document can be found on the Royal Commission's website: www.childabuseroyalcommission.gov.au.

Typical documents likely to be relevant might include complaints about child sexual abuse; particular records about a child or a staff member; and an organisation's child protection policies and procedures.

What might a 'document' include?

The law generally says a 'document' is anything on which information is recorded or stored, whether it be handwritten, printed or electronic. It can include photos.

What powers can the Royal Commission use to compel you to hand over documents?

The Royal Commission has different powers under different laws. The law that applies will depend on where your organisation is located and what laws (Commonwealth or State) the Royal Commission chooses to use.

Under most Australian laws, the Royal Commission has two powers to compel you to hand over documents: the power to issue a notice and the power to issue a summons.

The first paragraph in the notice or summons will state what law applies. For example, it might refer to the '*Royal Commission Act 1902* (Cth)'.

The Royal Commission can also obtain search warrants.

Notices to produce documents

A 'notice to produce' is a legal notice requiring you to produce documents to the Royal Commission at a nominated time and place (such as at the Royal Commission's offices).

The documents sought by the Royal Commission will be listed on the notice (in a part called the 'schedule') and may relate to many different aspects of the Royal Commission's inquiry.

Summons to produce documents

A 'summons to produce' is a legal notice requiring you to produce documents to the Royal Commission at a public or private hearing. Like a notice to produce, the

documents sought by the Royal Commission will be listed on a schedule to the summons.

Search warrants

The Royal Commission may also authorise an officer to apply for a search warrant. If granted, a search warrant will allow police officers to enter upon premises or other specified places and to search and seize things identified in the warrant, which may include documents.

How should we be given a notice or summons to produce documents?

Any summons or notice must be properly served. The law generally says that a notice or summons must be handed directly to the person named in the document; or, if your corporation is receiving it, then it can be handed directly to an employee over the age of 16 at your registered office.

What happens if we don't comply with a notice or summons?

If you don't do what the notice or summons asks you to do, by the time specified, and you don't have a reasonable excuse for failing to comply, you might commit a criminal offence.

You should also be aware that under most Australian laws relating to Royal Commissions, it is a criminal offence to conceal, mutilate or destroy a document that a person knows might be required in evidence or required to be produced to a Commission.

If you are unsure about whether you can or should comply with a summons or a notice, you should seek legal advice.

How do we give the Royal Commission the documents they are asking us for?

The notice or summons will say where and to whom you must deliver your documents. The Royal Commission prefers to receive your documents electronically, but it is up to you. You should also look at the Royal Commission's guidelines about handing over documents, called 'Practice Guideline 2'. You can find these guidelines on the Commission's website under the tab 'About Us'.

What can the Royal Commission do with our documents?

Once the Royal Commission receives your documents, it can inspect, hold on to and copy the documents.

The Royal Commission also has the power to hand your documents over to certain government bodies responsible for enforcing the law, like the police.

We don't think we should hand over the documents to the Royal Commission. What should we do?

Sometimes the law might excuse you from handing over your documents. This could be where you have a 'reasonable excuse' or where the documents being asked for are not relevant to the Royal Commission's inquiry.

If you receive a notice or summons and you don't think you should hand over your documents, you should seek legal advice.

Contact knowmore

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