Parliamentary Joint Committee on Intelligence and Security

Review of the Royal Commissions Legislation Amendment (Protections for Providing Information) Bill 2026

Attorney-General's Department

Hearing date: **5 March 2026**

Question date: 6 March 2026

Senator Cash asked the following question:

1. The Human Rights Law Centre has made a number of observations about the Bill in its submission of 5 March 2026:

"The most significant shortcoming of the Bill is that, in providing legal protection for the provision of information to a royal commission, it only applies to intelligence information or operationally sensitive information. Material that is not of that nature, but which may nonetheless be of relevance to a royal commission, and is otherwise covered by secrecy obligations, could not be voluntarily shared with the commission, without the discloser (whistleblower) risking criminal liability."

What are the limits of the Bill in terms of what information is protected for the purposes of a Royal Commission?

2. What protections are currently provided to those who have information covered by secrecy obligations that is not considered intelligence information or information that is operationally sensitive dealt with in this Bill?

The response to the senator's questions 1 and 2 is as follows:

The Bill addresses identified issues and is targeted to enable a person to safely provide intelligence and operationally sensitive information to the Royal Commission, without breaching certain Commonwealth secrecy laws which have been identified as preventing such disclosures.

Intelligence and operationally sensitive information is the information with the potential to cause the most national security harm. If mishandled, this information can compromise national security, intelligence operations or foreign relationships.

Identified issues relating to intelligence or operationally sensitive information include that (a) Commonwealth departments and agencies have encountered issues with some secrecy provisions which are preventing or delaying the provision of certain information to the Royal Commission under compulsory notice, and (b) some secrecy provisions relating to this type of information may operate as such that a person may not be willing to come forward voluntarily unless they have confidence in protections available.

For other types of information, existing secrecy frameworks and Royal Commission powers continue to operate. There are many Commonwealth secrecy provisions that include exceptions to enable disclosures to the Royal Commission.

The Royal Commissions Act also provides strong protections for witnesses who are compelled to appear or provide information, including:

- statements or disclosures made to the Royal Commission are not admissible in evidence in civil or criminal proceedings against that person (section 6DD), and
- it is an offence to cause any violence, punishment, damage, loss, or disadvantage to any person for or on account of being a witness (section 6M).

The existing pathway for a person to disclose other types of information that may be subject to a Commonwealth secrecy offence is to approach the Royal Commission to explain they hold relevant information, and the Royal Commission may decide to issue a compulsory notice requiring the person to provide it.

Senator Cash asked the following question:

3. Who is the arbiter of whether information is considered "intelligence information" or other information outside this definition, but still considered secret?

The response to the senator's question 3 is as follows:

The Bill defines 'intelligence information' as including any information that was acquired or prepared by, or relates to the functions of, an Australian intelligence entity. It also covers information that identifies a person as a staff member or agent of the Australian Secret Intelligence Service or the Australian Security Intelligence Organsiation.

The Bill does not define intelligence information in relation to security classification markers under the Protective Security Policy Framework, such as 'secret'.

The definition of intelligence information will be relevant for (non-exhaustive list):

- the President, Chair or Sole Commissioner and the relevant Commonwealth agencies for the purposes of establishing an intelligence information arrangement.
- a person who is seeking to understand the reasonable excuse provision in proposed section 6PC of the Bill, or rely on the immunities in proposed section 6PD of the Bill, and
- law enforcement and prosecutorial agencies, and the courts, in assessing whether a person has immunities and/or a defence available to them.

The 'intelligence information' definition is not relevant for the purpose of the defence to the Part 5.6 Criminal Code secrecy offences (Schedule 3 of the Bill). The defence would be available where a person communicates, removes, holds or deals with information for the primary purpose of communicating it to a Royal Commission, provided they have a reasonable belief the information is relevant to Royal Commission's inquiries. The defence would apply to both voluntary and compulsory disclosures to established Commonwealth Royal Commissions.

Senator Cash asked the following question:

4. The Human Rights Law Centre has cited the following comments about protections for those with operationally sensitive information, but not other information considered secret:

"…the unusual situation where sensitive intelligence information can be shared with a royal commission, but other government information cannot, without the discloser exposing themselves to possible liability. That may be a problem for the present Royal Commission; while its focus is partially on national security issues, which this Bill largely seeks to address, it has a much broader remit. It may be an even more significant problem for future royal commissions, which do not have a national security focus.

Take a hypothetical example. An employee at the Department of Education is aware of information of relevance to Royal Commission's inquiry into 'security arrangements for the Jewish community', in relation to, say, childcare. There are secrecy offences in federal laws relating to childcare. They may be applicable to the relevant information. Say the Department of Education employee voluntarily provides the information to the Royal Commission. They may be in breach of those specific secrecy offencess. Moreover, they may be prima facie liable under the Criminal Code; required to rely on the new proposed defence, and the burden of proof in establishing that defence would fall on them. It is not clear why an intelligent agent should have the benefit of this new regime, but the Department of Education employee should not, when both are seeking to do the same thing, in the public interest – provide relevant information to the Royal Commission to assist its inquiries.

Is this example accurate? Are there different standards for intelligence agencies and other Government bodies?

The response to the senator's question 4 is as follows:

See response above to Questions 1-2. While we cannot comment on the specific scenario, the fact there is other information subject to Commonwealth secrecy provisions would not necessarily prevent its disclosure to the Royal Commission.

Senator Cash asked the following question:

5. What would be the process for a Government Department to provide information to the Royal Commission where the information provided may be subject to secrecy or confidentiality provisions?

The response to the senator's question 5 is as follows:

Commonwealth departments and agencies are already responding to compulsory Notices issued by the Royal Commission on Antisemitism and Social Cohesion, and have produced thousands of documents to date, including many documents subject to Commonwealth secrecy provisions.

Commonwealth departments and agencies are producing documents consistent with the procedures established in accordance with the information protection arrangements finalised on 27 February 2026 or in accordance with other applicable exceptions or authorisations.

However, certain Commonwealth secrecy provisions have prevented – and continue to prevent or delay – the production of some important and sensitive intelligence or operational material to the Royal Commission. These include provisions under the *Telecommunications*

(Interception and Access) Act 1979 (Cth) and the *Surveillance Devices Act 2004* (Cth). There has been dialogue with the Royal Commission about these issues.

The immunities in Schedule 1 to the Bill will enable Commonwealth departments and agencies to disclose this outstanding intelligence or operationally sensitive information to the Royal Commission, where the disclosure is consistent with procedures established in accordance with an arrangement agreed between the Royal Commission and the Commonwealth or an Australian intelligence entity.

These arrangements will be publicly available and will set out agreed procedures for the Royal Commission to obtain and receive this information from individuals.

Senator Cash asked the following question:

6. What arrangements does the Government have in place to review the changes in this Bill following the Royal Commission's interim report, due on 30 April 2026?

The response to the senator's question 6 is as follows:

The department continues to ensure that legislation administered by the Attorney-General's portfolio, including the Royal Commissions Act and the Criminal Code, is effective and appropriate. This includes ensuring Royal Commissions have the necessary legislative settings to carry out its functions. The department will continue dialogue with the office of the Royal Commission on Antisemitism and Social Cohesion about whether the measures in this Bill address the identified challenges.

The Government will consider any recommendations provided in the Royal Commission on Antisemitism and Social Cohesion's interim report.

Senator Cash asked the following question:

7. Will the Department monitor and provide parliament with information about which submissions accepted by the Royal Commission into Antisemitism and Social Cohesion have been included as a result of this Bill, which otherwise would have been rejected?

The response to the senator's question 7 is as follows:

It is a matter for the Royal Commission on Antisemitism and Social Cohesion to determine which submissions are accepted, and the publication of these submissions on its website.

Senator Cash asked the following question:

8. Schedule 1 of the Bill establishes a specific regime for the protection of intelligence and operationally sensitive information provided to a Royal Commission, which includes a requirement that disclosures be consistent with formal intelligence information or operationally sensitive information arrangements.

Schedule 3 separately amends Division 122 of the Criminal Code to provide a defence for persons who communicate or deal with Commonwealth information for the primary purpose

of providing it to a Royal Commission. As Division 122 applies to Commonwealth information broadly, this defence would appear to extend to intelligence information.

Can the Department clarify whether the Schedule 3 defence is intended to apply to the **actual handover** of intelligence information to a Royal Commission, or whether it is intended to be limited to preparatory acts only? If the Schedule 3 defence does apply to the handover of intelligence information, how does the Government reconcile this with the formal arrangements requirement under Schedule 1 - given that a person could potentially rely on Schedule 3 to disclose intelligence information to a Royal Commission without complying with those arrangements?

The response to the senator's question 8 is as follows:

Schedule 1 of the Bill introduces a targeted immunity, where a person voluntarily or compulsorily discloses intelligence or operationally sensitive information in accordance with an arrangement agreed between the Royal Commission and the Commonwealth. The effect of the immunity is that a person does not commit an offence and is not liable to any penalty under **any** Commonwealth secrecy provision.

The new defence to the Part 5.6 Criminal Code secrecy offences in Schedule 3 of the Bill will apply to a broader range of conduct, including:

- information relevant to the Part 5.6 Criminal Code secrecy offence (broader than intelligence or operationally sensitive information), or

- where the information is intelligence or operationally sensitive information but is not disclosed consistently with an arrangement, or where there is no arrangement in place.

The defence applies to the Part 5.6 Criminal Code secrecy offences but does not extend or apply to other Commonwealth secrecy offences, for example in the *Australian Security Intelligence Organisation Act 1979*, the *Intelligence Services Act 2001* or the *Telecommunications (Interception and Access) Act 1979*.

If a person discloses intelligence or operationally sensitive information to the Royal Commission, but does not disclose it consistently with the arrangement, the defence to the Part 5.6 Criminal Code secrecy offences would be available. However, the immunity providing protection from liability in the Royal Commissions Act would not be available, and the person may still commit other Commonwealth secrecy offences. This reflects the Bill is targeted to enable a person to safely provide intelligence and operationally sensitive information to the Royal Commission, without breaching certain Commonwealth secrecy laws which have been identified as preventing such disclosures.

Schedule 3 of the Bill would apply to a person who 'communicated, removed, held or otherwise dealt' with relevant information. It is intended to apply to the actual communication and dealing of information by a person to the Royal Commission, as well as preparatory acts.

Additional Questions on Notice provided by the PJCIS to the CDPP, which have been redirected to AGD as the responsible policy agency:

4. *Schedule 3 of the Bill provides a defence "where a person communicates or deals with information for the primary purpose of providing it to the Royal Commission and the person has a reasonable belief that the information was relevant to the Royal Commission's inquiry"*

    a. *A scenario: If an intelligence official removes a classified document from a secure facility with the intent of providing it to the Royal Commission - and determines to do so voluntarily without prior approval from their agency - under this Bill would they have an immunity from prosecution or they could still be charged but would have access to a defence?*
    b. *How will you understand voluntary disclosure, does it include instances in which an official decides on their own and essentially in secret to provide information to the Royal Commission outside of an agency process?*

    While AGD cannot provide legal advice on hypothetical scenarios, the intention of the Bill is that an immunity from prosecution at 6PD(2) (in Schedule 1 of the Bill) will apply to a person where relevant information is disclosed to the Royal Commission consistent with the procedures established in accordance with an arrangement.

    A voluntary disclosure would include engagement with the Royal Commission that is not done under a compulsory process in the Royal Commissions Act (for example, a summons to appear to give evidence, or a written notice requiring production of documents under section 2).

5. *The new Section 6PD provides that a person's disclosure to the Royal Commission has a use immunity for future court proceedings against them, but only where the disclosure is conducted in-line with the arrangements. Does this mean a voluntary disclosure made outside of arrangements would not have this use immunity in other proceedings?*

    While AGD cannot provide legal advice on hypothetical scenarios, the intention of the Bill is that the use immunity at 6PD(3) of the Bill is available where a disclosure is conducted in accordance with 6PD(1), including that it is consistent with procedures established in accordance with an arrangement.

7. *Based on your understanding of the Bill, do you see key differences between how an intelligence official and a non-intelligence official interacts with secrecy offences?*
        i. *Do you believe they have the same immunities?*
        ii. *If not, could it be the case that you may pursue prosecution of a non-intelligence official for a disclosure that had they been an intelligence official they would have had immunities?*

    See AGD response above to Question 1-2.