

What do the Disability Royal Commission confidentiality amendments mean for me?

Key messages

- The Government has changed the law to improve legal protections for people giving confidential information to the Disability Royal Commission.
- The changes also apply to submissions received before the law changed.
- Call Your Story Disability Legal Support on 1800 77 1800 for legal advice and further information.

What does this apply to?

When making a submission, a person can let the Disability Royal Commission know how they want their submission used. The submission form asks whether you would like your submission to be made:

- public
- anonymous, or
- restricted.

Previously, the Royal Commission could only guarantee that information and documents

marked 'restricted' would be kept fully confidential for the life of the Royal Commission. After this, the information could potentially be accessed through Freedom of Information (FOI) requests.

What has changed?

In August 2021, the Government made changes to the law that provides legal protections to people giving confidential information to the Disability Royal Commission. Now, this information can remain fully confidential beyond the life of the Royal Commission, for 99 years.

There are other protections for information given confidentially:

- Statements and documents can't be used in court.
- Unauthorised use or disclosure of information is an offence.

Are there exceptions?

In limited circumstances, the Royal Commission can pass on information about serious criminal offences or child protection to relevant authorities. If you have concerns, please get legal advice from Your Story Disability Legal Support (Your Story).

What do I have to do for this to apply to my submission?

There are a number of ways you can make sure these protections apply to your submission:

- a. select 'Restricted' on the submission form, or
- b. mark each page you would like to be protected with 'Confidential', or
- c. include in the covering email that you would like it to be confidential.

Do I need to do anything for this to apply to a submission I've already made?

If you have already asked the Royal Commission to keep your submission confidential or 'restricted' then you do not have to do anything else.

How does this affect the Royal Commission's use of notices to produce?

A notice to produce is a way of getting extra protections. In certain situations, a person can request a notice to produce to get these protections. The new law extends some of the protections of a notice to produce automatically to confidential submissions, but not all.

In some situations, a notice to produce will no longer be necessary. However, the new law does not have the same retribution protections as a notice to produce. Whether you still need a notice to produce is something to discuss with a Your Story lawyer.

Does it relate to other royal commissions?

The protections only apply to the Disability Royal Commission.

Can submissions be subpoenaed?

No. Submissions marked confidential or restricted can no longer be accessed by a court via subpoena after the end of the Royal Commission.

How does this affect non-publication orders made by a court?

If you have received a non-publication order about information you'd like to share, this may apply to a submission, depending on what that information is. In some situations, making a confidential submission or attending a private session can protect you from the consequences. It is a good idea to get advice from a Your Story lawyer on the best way forward.

Do the confidentiality protections impact private sessions in any way?

The protections do not impact private sessions. The contents of private sessions remain confidential for 99 years.

Can a person still be protected if they are not directly named?

A person giving information is still protected even if they are only identified indirectly.

A person does not need to use their name to be protected if someone could work their identity out in another way, for example, by the details of their story. This applies to people who give the information, and the people on whose behalf they have given information.

When should I come to Your Story?

We can talk about how these changes affect you. You should seek advice when you would like more information on how these changes apply to your own situation.

We recommend that you approach Your Story when you need to know:

- if the amendments apply to your submission
- if you are protected as a whistleblower
- the implications of each confidentiality option
- what will happen with your information
- whether the changes apply to a submission you've already made.

There may be other legal issues to consider. It is a good idea for anyone thinking about taking part in the Royal Commission to contact Your Story for advice. We can talk to you about your options and how you can share your information safely and confidently.

For free, independent legal support, call Your Story Disability Legal Support on 1800 77 1800 or visit the website for other ways to reach us: yourstorydisabilitylegal.org.au

Disclaimer: This information is intended as a general guide. It should not be relied on as legal advice and we recommend you talk to a lawyer about your particular situation.