

**SPECIAL ACCESS ARRANGEMENTS UNDER
SUB-SECTION 56(2) OF THE ARCHIVES ACT 1983**

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ARRANGEMENTS FOR SPECIAL ACCESS

INTRODUCTION

The Archives Act 1983 establishes a public right of access to Commonwealth records when they reach the age of 30 years, and thereafter. This right of access applies to all Commonwealth records except those which contain exempt information as provided under section 33 of the Act. While there is no impediment in the Act to a person at his own discretion making records which are not normally open to the public available to the public generally or to an individual, when that person is in a position where he can properly exercise such a discretion, the Act itself provides a basis in section 56 for the exercise of such a discretion. Specifically, sub-section 56(2) allows for access to be granted to Commonwealth records not publicly available in terms of the Act to a person on an individual basis under arrangements approved by the Prime Minister and in circumstances specified in regulations.

Such access, which may only be granted at the discretion of an authorised person responsible for the records concerned (i.e. a person authorised by the Minister, such person herein referred to as the Delegate), is called Special Access. These arrangements deal only with special access under s.56(2).

Terms used throughout these Arrangements are defined in Appendix 3.

1. LEGISLATIVE FRAMEWORK

Authority for Special Access

1.1 Sub-section 56(2) of the Archives Act provides that:

The Minister or a person authorised by the Minister may, in accordance with arrangements approved by the Prime Minister, cause Commonwealth records to be made available to a person in such circumstances as are specified in the regulations notwithstanding that the Commonwealth records concerned are not otherwise available for public access under this Act.

Special Access Regulations

1.2 "Special access to Commonwealth records - specified circumstances for purposes of subsection 56(2) of the Act.

9(1) For the purposes of this regulation, records are, in relation to a person, relevant records in respect of an office formerly held by the person if the records are records that were, or could reasonably be presumed to have been, seen or personally dealt with by the person in the course of the exercise of the duties of that office.

(2) The following circumstances are specified as circumstances in which Commonwealth records may, in accordance with subsection 56(2) of the Act, be made available to a person, namely:

(a) where:

- (i) the Commonwealth records are, in relation to the person, relevant records in respect of an office formerly held by him or her, being:
 - (A) the office of Governor-General;
 - (B) an office of Minister;
 - (C) an office of Secretary (within the meaning of the Public Service Act 1922); or
 - (D) an office in a Commonwealth institution (other than an office referred to in sub-subparagraph (C)) that the Prime Minister has, for the purposes of this paragraph, declared in writing to be an approved office in relation to the person; and
- (ii) the person desires to refresh his or her memory about the Commonwealth records;

(b) where:

- (i) the person is preparing, with the consent of another person or, if that other person has died, the consent of the personal representative of that other person, a biography of that other person; and
- (ii) the Commonwealth records are, in relation to the other person, relevant records in respect of an office formerly held by him or her, being:
 - (A) an office referred to in sub-subparagraph (a)(i)(A), (B) or (C); or
 - (B) an office in a Commonwealth institution (other than office referred to in sub-subparagraph (a)(i)(C)) that the Prime Minister has, for the purposes of this paragraph, declared in writing to be an approved office in relation to the other person;

(c) where:

- (i) the person is not a Commonwealth institution; and
- (ii) the Archives have the custody and management of the Commonwealth records pursuant to an arrangement entered into by the Archives to accept the custody of the records from that person;

(d) where:

- (i) the person is carrying out research for the purpose of preparing a work for publication;

- (ii) the Minister or a person authorised by the Minister for the purposes of subsection 56(2) of the Act has, for the purposes of this paragraph, approved the work referred to in subparagraph (i) on the ground that the work is likely to make a substantial contribution to the recording and assessment of events in the political, social, economic, cultural, scientific or other development of Australia, particularly as that development relates to the administration or affairs of the Government of the Commonwealth; and
- (iii) the Commonwealth records are relevant to the research being so carried out by the person."

Statement of action taken under s.56(2)

- 1.3 Sub-section 56(5) requires that the Minister responsible for the Archives make available to the Advisory Council on Australian Archives at not more than three monthly intervals, a statement setting out:
- (a) each request for access made under sub-section 56(2) during the particular period to which the statement relates;
 - (b) the decision made in relation to each such request.

Conditions of Special Access

- 1.4 Sub-section 56(3) of the Act specifies that:

Where records made available to a person by virtue of sub-section 56(2) are so made available on conditions to be observed by that person, that person shall not contravene those conditions.
Penalty \$2,000.

The mandatory conditions of special access attached to approvals under Regulation 9(2)(d) are set out in paragraph 3.17 of these Arrangements. Provision is made for controlling agencies to nominate additional conditions covering particular circumstances, where this is considered necessary.

Protection Against Defamation, Breach of Confidence and Copyright Infringement

- 1.5 Section 57 of the Archives Act provides protection for the Commonwealth as well as for the officers concerned in the granting of special access, as follows:

"57(1)Where, in the ordinary course of the administration of this Act, access is given to a record as being a record required by this Part to be made available for public access -

- (a) no action for defamation, breach of confidence or infringement of copyright lies, by reason of the authorizing or giving of the access, against the Commonwealth or any person concerned in the authorizing or giving of the access;

- (b) no action for defamation or breach of confidence in respect of any publication involved in, or resulting from, the giving of the access lies against the author of the record or any other person by reason of that author or other person having supplied the record to a Commonwealth institution; and
- (c) a person concerned in the authorizing or giving of the access is not guilty of a criminal offence by reason only of the authorizing or giving of the access.

(1A) Where access to a record is given:

- (a) under arrangements of the kind referred to in subsection 6(2);
- (b) in good faith in the belief that the record is a record to which subsection 31(1) applies; or
- (c) by making the record available;
 - (i) under subsection 56(1), for public access; or
 - (ii) under subsection 56(2), to a person;

the access given to the record shall be taken, for the purposes of subsection (1), to be given to the record as being a record required by this Part to be made available for public access.

- (2) The giving of access to a record (including an exempt record) under this Act shall not be taken, for the purposes of the law relating to defamation or breach of confidence, to constitute an authorization or approval of the publication of the record or of its contents by the person to whom the access was given."

2. APPLICATIONS MADE UNDER REGULATION 9(2)(d)

Authorisations under Regulation 9(2)(d)

- 2.1 Special access is not to be granted by a person whose agency does not have administrative responsibility for the relevant records, except with the approval of a person whose agency does have such responsibility.
- 2.2 As far as possible, persons will be authorised to make special access decisions only in respect of records for which they have administrative responsibility. However, it is to be expected that, from time to time, authorised decision makers will be required to consider records for which they do not have exclusive administrative responsibility (e.g. where an agency holds a copy of a document generated within another agency). Consultation in such circumstances is vital, and particularly so in relation to intelligence documents. Under no circumstances is access to be granted to an intelligence document without the approval of a person authorised to make special access decisions for the relevant intelligence agency.
- 2.3 In cases where special access is not granted, a written explanation is to be provided to applicants.
- 2.4 While the level of decision-making will vary according to the category of applicants seeking such access and the sensitivity of the records involved, for the purpose of these Arrangements the parties involved in the special access process can be categorised as follows:
 - . the applicant
 - . the controlling agency (including the relevant Minister)
 - . the Archives

The relative responsibilities of each of these parties are set down in the paragraphs which follow. A table summarising the responsible party for each stage of the special access process is at Appendix 1.

Responsibilities and Obligations of the Applicant

- 2.5 The Applicant
 - (a) is responsible for identifying controlling agencies and relevant records (to the extent possible), using such sources as
 - published sources
 - Freedom of Information section 8 statements
 - Australian Archives' finding aids and, if authorised, agency control records (registers, indexes, consignment lists) in the Archives' custody
 - if authorised, agency control records in agency custody
 - (b) is responsible for seeking approval of the application. This will involve completion and formal submission of the Special Access Application Form to the agency(s) controlling the relevant records;

- (c) is obliged to accept the conditions of access provided for under sub-section 56(3) and detailed in paragraph 3.17 of these Arrangements;
- (d) is obliged to submit the manuscript to relevant controlling agency(s) for examination;
- (e) is obliged to revise the manuscript in order to comply with agreed conditions of access: (sub-section 56(3) provides a \$2,000 penalty for failure to observe conditions of access);
- (f) is responsible for arranging appropriate copyright conditions or waiver of copyright before publication;
- (g) is obliged to make a copy of the published work available for inspection by the controlling agency(s), if required by those agency(s).

Responsibilities of the Agency

2.6 The agency is responsible for:

- (a) assisting the applicant in the identification of relevant records by:
 - either allowing the applicant access to relevant control records, or
 - examining relevant control records on the applicant's behalf
 - establishing the location of relevant records;
- (b) where appropriate, making decision on a special access request; or where decision-making is at ministerial level, recommending approval/disapproval of request;
- (c) where necessary, devising conditions of access additional to the mandatory conditions (e.g. photocopying, determining the limits of access);
- (d) consulting as necessary with the authorities identified in paragraphs 3.9 - 3.16 where records referred to therein are involved;
- (e) advising the applicant and the Australian Archives (and, where appropriate, the Department of the Prime Minister and Cabinet) of the decision regarding special access;
- (f) reviewing, confirming or processing appropriate security clearances for the applicant;
- (g) ensuring that the extent of the applicant's access does not go beyond the records relevant to the subject matter of the work;

- (h) either making material available, when it is located on agency premises, in accordance with sub-section 56(2); or transferring material to the Australian Archives, for use by the applicant in the Archives' search rooms;
- (i) examining the manuscript and advising the applicant, and the Australian Archives, of required amendments necessary for compliance with agreed conditions of special access;
- (j) clearing the work for publication, in so far as it is based on material made available for special access, in accordance with sub-section 56(3);
- (k) advising the Australian Archives of cases of non-compliance under sub-section 56(3).

Responsibilities of the Australian Archives

2.7 The Australian Archives is responsible for:

- (a) assisting the applicant in the use of the Archives' finding aids, the identification of relevant controlling agencies and, where authorised, the use of agency control records held in the Archives' custody;
- (b) providing reasonable assistance to agencies in locating relevant records which have been dispersed as a result of administrative re-arrangements over time;
- (c) where material for which special access has been approved is held in the custody of the Australian Archives, facilitating, co-ordinating where necessary, and supervising its use;
- (d) monitoring requests for special access and reporting to the Advisory Council on Australian Archives in accordance with sub-section 56(5);
- (e) on advice from the controlling agency of non-compliance, instituting legal proceedings under sub-section 56(3).

3. ADMINISTRATIVE PROCEDURES INVOLVED IN HANDLING APPLICATIONS MADE UNDER REGULATION 9(2)(d)

The Administrative Process

- 3.1 The procedures involved in processing special access applications are represented diagrammatically in Appendix 2. The main features can be summarised as follows:
- (a) direct contact between the applicant and the decision maker(s);
 - (b) controlling agency sponsorship and acceptance of responsibility for direct assistance in record identification/location in cases which it supports;
 - (c) responsible Minister/controlling agency to have sole responsibility for:
 - reviewing, confirming or processing the applicant's security clearances where required;
 - authorising special access (subject to such considerations as may be required pursuant to para 3.1(d) to (i), and para 3.3);
 - monitoring security arrangements where research using classified material is conducted on agency's premises;
 - monitoring progress of research;
 - examining final product of the special access arrangement;
 - assessing compliance with the conditions of the special access arrangement;
 - (d) responsibility of the Secretary to Cabinet in relation to Cabinet documents (see para 3.11);
 - (e) responsibility of the Secretary to the Council in relation to Federal Executive Council records (see para 3.16);
 - (f) responsibility of the President of the Senate, or the Speaker of the House of Representatives in relation to records of Parliamentary Committees (see para 3.14);
 - (g) responsibility of the Clerk of the Senate, the Clerk of the House of Representatives, the Secretary of the Joint House Department, the Parliamentary Librarian and the Principal Parliamentary Reporter, as appropriate, in relation to the records of a Parliamentary Department (see para 3.14);
 - (h) responsibility of the responsible Minister or the Head of Agency, as appropriate, in relation to records of the Intelligence and Security agencies (see para 3.9 and 3.10);
 - (i) responsibility of the Official Secretary to the Governor-General in relation to records of the Governor-General (see para 3.12);
 - (j) facilitating and monitoring role of the Australian Archives.

Special Access Forms

- 3.2 Requests for special access to Commonwealth records under sub-section 56(2) of the Archives Act are to be made formally on Form NAS 1001 "Application for Special Access to Commonwealth Records" and are to be submitted by the applicant to the appropriate controlling agency(s). Decisions by the controlling agency on special access requests are to be recorded on Form NAS 1002, "Certificate of Delegate", one copy of which is to be forwarded to the applicant as notification of approval/disapproval. Should a request be approved, the applicant will be required to complete Form NAS 1003, "Special Access Acceptance Form", which will provide evidence of the applicant's acceptance of the conditions of special access.

Co-ordination and Consultation between controlling agencies

- 3.3 In order to encourage consistency in decision-making and to ensure that such decisions are made in full awareness of all the relevant circumstances, it is important that the various controlling agencies whose records are subject to a special access application consult together about the merit of the request and the appropriateness of either releasing or withholding material of possible administrative, security or legal sensitivity which has been originated by other agencies and copies of which are present on their files. The special access application form requires that the applicant list each of the controlling agencies whose records are involved in the request, and each agency will automatically receive a copy of this summary (Part A) as a normal step in the application process.

Security Clearances

- 3.4 In instances where approved cases involve access to classified material, applicants are required to have a current security clearance appropriate to the level of the records to be consulted before the records can be made available.
- 3.5 The requirement for security clearance should be specified by the agency as an additional condition of special access (see paragraph 3.17(g) below) and involved agencies should consult together about initiating arrangements for the applicant's security clearance.
- 3.6 The applicant should submit an application for the specified level of security clearance through the normal administrative processes employed in the controlling agency. The applicant may or may not receive a security clearance appropriate to the security level of the records detailed in the special access application. In cases where the applicant is not granted the appropriate level of security clearance the controlling agency may re-define the scope of the access.
- 3.7 Controlling agencies granting security clearance for access to classified records are to require the applicant to sign declarations of official secrecy.
- 3.8 The Archives will not release security classified records in its custody to an approved applicant until written notification of the approved security clearance has been received from the co-ordinating agency.

Treatment of Intelligence Records

- 3.9 As stated in paragraph 2.1, special access should not be granted by a person whose agency does not have administrative responsibility for the relevant records, except with the approval of a person whose agency does have such responsibility. Under no circumstances is access to be granted to an intelligence document without the approval of a person authorised to make special access decisions for the relevant intelligence agency.
- 3.10 For the purposes of these Arrangements, an "intelligence document" is a document containing intelligence material
- (a) created by;
 - (b) provided by; or
 - (c) received by or intended ultimately to be received by an agency listed in sub-section 29(8) of the Archives Act.

Treatment of Cabinet Records on Departmental Files

- 3.11 All requests for special access to any Cabinet documentation located on departmental files must be referred to the Secretary of the Department of the Prime Minister and Cabinet for consideration. For the purposes of these Arrangements Cabinet documents include Cabinet Business Lists, Submissions, Memorandums, other documents submitted to Cabinet, Decisions or documents which disclose the deliberations of the Cabinet. Also included are any drafts of such documents. Documents or parts of documents which, although not conforming with the description above, contain material which is either quotation from, or paraphrasing of, such documents are also covered by references in these Arrangements to Cabinet documents. Agency staff are responsible for the identification and referral of any Cabinet documentation located on files held in the Archives' custody to which special access has been granted.

Treatment of the Governor-General's Records on Departmental Files

- 3.12 All requests for special access to records created by, provided by or sent to the Governor-General or the Office of the Official Secretary to the Governor-General which are located on departmental files must be referred to the Official Secretary to the Governor-General.

Treatment of State and Foreign Governments' Records on Departmental Files

- 3.13 All requests for special access to any non-intelligence record shared with or originated by a State or foreign government and which is located on departmental files must be referred to the Secretary of the Department or to the Head of Agency to whom the record is addressed. All requests for special access to intelligence information given by a foreign government, irrespective of the Department through which that information is transmitted, must be referred to the Head of the Security or Intelligence agency being the ultimate destination intended for the material (see also para 3.9).

Treatment of Parliamentary Records on Departmental Files

- 3.14 Records created by departments and authorities which are prepared for and submitted to a Senate, House of Representatives or a Joint Parliamentary committee, as such, become records of the Senate, the House of Representatives or the Parliament, as the case may be. All requests for special access to copies of any such records located on departmental files must be referred for consideration to the President of the Senate or the Speaker of the House of Representatives, as appropriate, or, in the case of records submitted to a joint committee, to the President and the Speaker. Agency staff are responsible for the identification and referral of any such records located on files held in the Archives' custody to which special access has been granted.
- 3.15 All requests for special access to any unpublished records created by a Parliamentary Department which are located on departmental files must be referred to the following, as appropriate:
- Clerk of the Senate
 - Clerk of the House of Representatives
 - Parliamentary Librarian
 - Principal Parliamentary Reporter
 - Secretary, Joint House Department

Treatment of the Federal Executive Council's Records on Departmental Files

- 3.16 All requests for special access to records created by the Executive Council which are located on departmental files must be referred to the Secretary to the Federal Executive Council.

Conditions of Special Access

- 3.17 All records are made available under the following conditions:
- (a) that the applicant report regularly to the Delegate on progress towards completion of the work as described in Entry 3 of the application form;
 - (b) that where the Delegate notifies the applicant that particular information is sensitive, the applicant will protect that information in accordance with the directions of the Delegate;
 - (c) that no use whatsoever be made of information acquired during consultation of records made available under special access other than that necessary to the production of the final text of the work;
 - (d) that before the work is made public in any way
 - those sections of the text based on the records to which special access has been granted, be submitted to the Delegate for examination;

- those sections of the text based on the records to which special access has been granted and deemed by the Delegate to be unsuitable for public release, be deleted or amended to the satisfaction of the Delegate;
 - those sections of the text based on the records to which special access has been granted acknowledge both primary sources and the means by which access was obtained (i.e. special access);
- (e) there will be no quotations from, references to or copies made of documents containing intelligence material to which special access has been granted and which were
- created by
 - provided by
 - received by or intended ultimately to be received by
- a Commonwealth institution specified in s.29(8) of the Archives Act;
- (f) that the applicant will make a copy of the published work available for inspection, if required by the Delegate;
- (g) such further conditions, if any, as the Delegate may lawfully impose.

3.18 The applicant is to be notified of the conditions under which special access has been approved on Form NAS 1003 "Special Access Acceptance Form" which has provision for the controlling agency to impose extra conditions if it is considered necessary to do so. Agencies are to indicate on the form:

- (a) the frequency with which the applicant is to report on progress, e.g. at six monthly intervals;
- (b) the location(s) at which the applicant may inspect the records which are to be made available under the special access approval, e.g. agency premises, Australian Archives Regional Offices; and
- (c) the special control and security requirements which are to be observed in the handling of copied or other material developed from the records to which special access has been granted.

3.19 This form serves as the formal record of acknowledgement by the applicant of the conditions of access, and must be signed and returned by the applicant to the controlling agency. A copy is to be forwarded to the Australian Archives for monitoring purposes.

Record of Decision

3.20 The decision on the approval/disapproval of the special access application is to be recorded by the Delegate on Form NAS 1002 "Certificate of Delegate". In cases where the application is not approved, an explanation is to be provided to the applicant.

Notification of Decision

- 3.21 The duplicate copy (pink copy) of the Certificate of Delegate form, accompanied as appropriate by either an explanation for the decision or a Special Access Acceptance Form is to be forwarded to the applicant by the controlling agency as formal notification of the decision regarding the special access request.

Acknowledgement of Conditions of Special Access

- 3.22 No records may be made available under sub-section 56(2) arrangements until the applicant has formally acknowledged the stipulated conditions of access and has notified the controlling agency and the Australian Archives of his or her acceptance. The Australian Archives will not release relevant records in its custody to an approved special access applicant until the signed copy of the Special Access Acceptance Form has been received.

Forms Distribution

- 3.23 The forms developed as part of the special access arrangements are:

Form NAS 1001	Application for Special Access to Commonwealth Records
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Form NAS 1002	Certificate of Delegate
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Form NAS 1003	Special Access Acceptance Form
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Form NAS 1001 Application for Special Access to Commonwealth Records

- (a) Distribution by applicant: commencement of application process

Original (white copy)	To controlling agency
Duplicate (pink copy)	To Australian Archives
Triplicate (green copy)	Retained by applicant

Form NAS 1002 Certificate of Delegate

Original (white copy)	To be retained by agency as record of decision
Duplicate (pink copy)	To Australian Archives
Triplicate (green copy)	To applicant as notification of decision

Form NAS 1003 Special Access Acceptance Form

- (a) Distribution by agency: to accompany notification of approval

Original (white copy)	To applicant for signature as acceptance of conditions
Duplicate (pink copy)	To applicant for signature as acceptance of conditions
Triplicate (green copy)	To applicant for retention

(b) Distribution by applicant following acceptance of conditions

Original (white copy)	Signed original returned by applicant to controlling agency
Duplicate (pink copy)	Signed duplicate forwarded by applicant to Australian Archives

Provision of Special Access

3.24 Arrangements for the inspection of Commonwealth records under special access arrangements will be influenced by:

- (a) the security classification of the records;
- (b) the location of records (e.g. agency/Archives' custody);
- (c) the quantity involved, in respect of records held on agency premises;
- (d) the availability of suitable facilities and staffing resources sufficient to permit supervised inspection on agency premises.

Transfer of Records to the Australian Archives

3.25 Whenever possible, and where appropriate, records which are transferred to the Archives' custody for special access purposes should remain in the custody of the Archives.

3.26 Arrangements for transfer should be made in accordance with the Local Transfer Instructions issued by the Regional Offices of the Australian Archives. Prior notification of the intention to transfer is required, in order that work programs can be adjusted to meet these ad hoc requests.

Provision of Photocopies

3.27 Photocopying of Cabinet and Executive Council documents is not permitted. As a general rule, the provision of photocopies of Commonwealth records made available under special access will not be permitted. However, if a person to whom access has been granted believes good reasons exist why photocopies should be provided, he or she may put such reasons to the agency controlling the records.

3.28 The controlling agency will decide either:

- (a) that no photocopies can be provided; or
- (b) that photocopies can be provided subject to the specific condition that no copies be taken of the photocopies provided and that the photocopies be returned, either to the controlling agency or to the Archives, depending on which agency prepared the photocopy. (In circumstances where photocopies are classified, condition 3.17(b) of these Arrangements should be invoked); or
- (c) that photocopies can be provided on an unrestricted basis.

- 3.29 The decision and conditions, if any, should be provided in writing to the applicant by the agency controlling the records. If photocopying is to be permitted, it should be made clear to the applicant that the publication of any photocopied materials should be in accordance with the Copyright Act and that he or she is responsible for seeking copyright approval from the appropriate authorities.
- 3.30 The Archives will not provide photocopies of records in its custody to an approved applicant until written advice of the approval to do so and conditions, if any, is received from the controlling agency.

4. GUIDELINES FOR THE ASSESSMENT OF SPECIAL ACCESS APPLICATIONS UNDER REGULATION 9(2)(d)

Introduction

- 4.1 These guidelines set out factors to be taken into account in assessing special access applications. They are provided for the assistance of prospective applicants as well as for officials responsible for decisions to be made under section 56(2) of the Act and regulation 9(2)(d).
- 4.2 Factors to be taken into account include
- . intent to publish
 - . the qualifications of the applicant
 - . the benefits and costs of granting special access
 - . other factors

Intent to publish

- 4.3 There must be a clear statement in writing by the applicant that he or she is carrying out research for the preparation of a work for publication, and that the application for special access relates to that research.

The Applicant

- 4.4 The applicant would normally be expected to fall into one of the following categories:
- . a person who possesses an outstanding record in research and publication;
 - . a person who possesses an established record of outstanding achievement in his or her chosen field of work.

In exceptional circumstances, consideration might be given to a person who has a unique and special association with the subject matter of the work.

Benefits and Costs

- 4.5 The following should be weighed:
- . the likely benefits to the Commonwealth, in terms of:
 - increased awareness and understanding of the working of government in order to support current and future policy formulation and decision-making;
 - increased awareness and understanding of the workings of government by the public in order that interaction between the two is facilitated and is more effective;
 - . the likely benefits to the Australian community in providing an authoritative account of significant political, social and economic events in Australia's history;

- . the significance of the topic in its own right or in terms of promoting greater understanding of the role, objectives, policies and operations of Commonwealth government since federation;
- . the extent of substantial and authoritative research already carried out and published on the topic selected by the applicant;
- . the costs to the Commonwealth in granting the request, i.e.
 - resources which will be required for the identification, location and examination of relevant records;
 - where necessary, resources which will be required in co-ordinating record identification, decision-making and record clearance operations with other involved agencies and, where appropriate, State or foreign governments;
 - resources which will be required, where necessary, in arranging security clearances and intelligence briefings;
 - resources which will be required, where appropriate, in supervising the use of records on agency premises;
 - resources which will be required in monitoring progress of the research and ensuring that the work is submitted for examination;
 - resources which will be required in examining both the manuscript and the completed/published work in accordance with the conditions of approval.

Other Factors

4.6 Other factors to be taken into account include:

- . any current sensitivity or controversy attaching to the records involved;
- . any national defence, international relations or security considerations;
- . any possible repercussions for individuals including those still active in public life;
- . any potential intrusions into the privacy of an individual or individuals named in the material to which access is requested.

Summary

4.7 In summary, an assessment needs to be made whether the proposed publication is likely to have sufficient value for government and public purposes to justify the resources required of the government in order to support its preparation. Other factors, such as those relating to the security of the material, also need to be taken into account.

5. APPLICATIONS UNDER REGULATION 9(2)(a) AND (b)

General

- 5.1 Requests for special access made under Regulation 9(2)(a) and (b) will usually be handled less formally than the generality of applications made under Regulation 9(2)(d), and the procedures outlined in Sections 2, 3 and 4 do not apply. Consistent with the former, long established 'refreshment of memory' convention, those persons eligible to seek special access under Regulation 9(2)(a) and (b) will continue to approach:
- (a) the Official Secretary to the Governor-General, in the case of a former Governor-General; or
 - (b) the Secretary to the Department of the Prime Minister and Cabinet, in the case of a former Prime Minister, a former Minister, a former holder of an Office of Secretary or a person authorised by the Prime Minister.

Form of request

- 5.2 It is not expected that these requests should comply with a standard format. However, it is necessary that they describe as precisely and clearly as possible the records to which access is sought in order to enable accurate identification. The application should also indicate whether or not publication is intended.

Advice of Action taken under s.56(2)

- 5.3 In order that the Minister responsible for the Australian Archives may report to the Advisory Council on Australian Archives on special access, as required in sub-section 56(5) of the Act, the Archives requires advice from decision-makers on:
- (a) particulars of each request made under sub-section 56(2);
 - (b) the decision made in relation to each such request.

The Minister is required to report to the Council at three monthly intervals.

Governor-General's Records

- 5.4 The records of the Governor-General and the Office of the Official Secretary of the Governor-General are subject to the Archives Act 1983 and therefore to Special Access Arrangements. However, the Act does not apply to the private and personal records of a Governor-General, including direct personal correspondence with the Monarch or personal correspondence with the Monarch through the Monarch's Private Secretary, nor does it apply to any records created by or held by the Secretary of the Order of Australia.

Cabinet Records

- 5.5 The Secretary to Cabinet is the formal custodian of Cabinet records and is responsible for all records of successive governments which have created them. He or she is the officer enabled to authorise access to them. When requests for special access are received, the Secretary to Cabinet consults the present leader of the political party in government at the time the relevant records were created (i.e. the present Leader of the Opposition or the Prime Minister) and is guided by that party leader's response.

Non-Cabinet Records

- 5.6 The Secretary to the Department of the Prime Minister and Cabinet is authorised by the Prime Minister to co-ordinate requests for special access by former Prime Ministers, former Ministers, former Secretaries and other persons authorised under Regulation 9(2)(a)(iv) for the purpose of refreshing their memory and will consult as necessary with other departments and Ministers currently occupying portfolios relevant to a request. In particular, the Minister responsible for a security or intelligence agency, or the agency, will be notified in situations where it is likely, given the nature of the material sought, that the records of that agency will be among the records to be made available.

Federal Executive Council Records

- 5.7 All requests for special access to Executive Council documents are to be referred to the Secretary to the Federal Executive Council for advice in his or her capacity as custodian of the records of the Executive Council.

Parliamentary Records

- 5.8 All requests for special access to the records of a Parliamentary Department are to be referred, as appropriate, to the Clerk of the Senate, the Clerk of the House of Representatives, the Secretary of the Joint House Department, the Parliamentary Librarian or to the Principal Parliamentary Reporter for advice in his or her capacity as custodian of the records of the respective Parliamentary Department. All requests for special access to Parliamentary Committee records are to be referred either to the President of the Senate or the Speaker of the House of Representatives, as appropriate, or to both in respect of joint committees, for consideration.

Categories of Records Relevant to a Request

- 5.9 In considering a 'refreshment of memory' request, the categories of records to which access should be granted would include:
- (a) all Cabinet material which the former Governor-General, former Prime Minister, former Minister, former Secretary or a person authorised by the Prime Minister under Regulation 9(2)(a)(iv) had personally dealt with or seen or could reasonably be presumed to have personally dealt with or seen in the course of his or her official duties;

- (b) correspondence sent to or received from the former Governor-General, the former Prime Minister, the former Minister, former Secretary or a person authorised by the Prime Minister under Regulation 9(2)(a)(iv) which was personally dealt with or seen by that person, or which could reasonably be presumed to have been personally dealt with or seen by that person in the course of his or her official duties;
- (c) departmental submissions which the former Governor-General, the former Prime Minister, the former Minister, former Secretary or a person authorised by the Prime Minister under Regulation 9(2)(a)(iv) had personally dealt with or had seen or which could reasonably be presumed to have been personally dealt with or seen in the course of his or her official duties;
- (d) any other departmental records which, having regard to the nature of the records, are likely to have been seen by the former Governor-General, the former Prime Minister, the former Minister, the former Secretary or a person authorised by the Prime Minister under Regulation 9(2)(a)(iv) in the course of his or her official duties.

Research Assistants

- 5.10 The use of a research assistant by a person granted special access under Regulation 9(2)(a) must receive specific approval and should be subject to a formal condition that no use or disclosure of the information be made outside that person's research duties. The Conditions of Special Access outlined in paragraph 3.17 of the Arrangements should be used as a model.

Biographers

- 5.11 Under Regulation 9(2)(b), authorised biographers of former Governors-General, former Prime Ministers, former Ministers, former Secretaries or other persons authorised by the Prime Minister under Regulation 9(2)(a)(iv) may be granted special access to the full range of Cabinet and non-Cabinet records personally dealt with by the subject of the biography. Consideration should be given to the need to impose formal conditions of special access along the lines set out in paragraph 3.17.

Security Clearances

- 5.12 The requirements set out in paragraphs 3.4 - 3.7 of these Arrangements must be met by Research Assistants and Biographers granted special access before any classified records may be released.
- 5.13 The Australian Archives will not release security classified records in its custody until written notification of the approved security clearance has been received.

Provision of Photocopies

- 5.14 Photocopying of Cabinet and Executive Council documents is not permitted. As a general rule, the provision of photocopies of other Commonwealth records made available under special access will not be permitted. However, if a person to whom access has been granted believes good reasons exist why photocopies should be provided, he or she may put such reasons in writing to the Official Secretary to the Governor-General (in the case of former Governors-General) or to the Secretary to the Department of the Prime Minister and Cabinet (in the case of a former Prime Minister, former Minister, former Secretary or other authorised person). The Official Secretary or the Secretary to the Department, as the case may be, will then decide either:
- (a) that no photocopies can be provided; or
 - (b) that photocopies can be provided subject to the specific conditions that no copies be taken of the photocopies provided and that the photocopies provided be returned to the Official Secretary, the Secretary to the Department or the Australian Archives; or
 - (c) that photocopies can be provided on an unrestricted basis.

The decision and conditions, if any, will be provided in writing to the special access recipient by the Official Secretary or the Secretary to the Department.

- 5.15 The Archives will not provide photocopies of records in its custody to the special access recipient until written advice of the approval and conditions, if any, is received from the Official Secretary or the Secretary to the Department.

Submission of Manuscript

- 5.16 Where the intention behind a request for special access is to prepare a work for publication, decision-makers might require that the manuscript be submitted for examination as a condition of that access. The need for such a requirement will depend on:
- (a) the nature of the official position(s) formerly held by the person requesting access;
 - (b) the degree of sensitivity (both personal and security classified) present in the records to be made available;
 - (c) other sensitivities associated with the particular events documented in the records and with the personalities involved.

6. APPLICATIONS MADE UNDER REGULATION 9(2)(c)

Procedures for Access

- 6.1 Where a person has given custody of private records to the Australian Archives under sub-section 6(2) of the Archives Act, his or her access to those records will be automatic.
- 6.2 Where a person has given custody of Commonwealth records to the Australian Archives under sub-section 6(2) of the Archives Act, he or she will be entitled to access to those records under Regulation 9(2)(c).
- 6.3 Requests for special access under Regulation 9(2)(c) should be made in advance of a personal visit to the Archives and should be addressed to the appropriate Regional Director of the Australian Archives. Special access to any Commonwealth records contained in a Personal Records collection will be granted only in accordance with the following conditions.

Limits of the 'Refresher' Arrangements

- 6.4 The right of access to Commonwealth records in accordance with Regulation 9(2)(c) extends only to the person who deposited those records with the Archives. That is, access is granted on a personal basis and cannot be extended to personal assistants or researchers employed by the depositor.

Forms of Access

- 6.5 The relevant documents will be made available for inspection on the Archives' premises. While depositors are free to withdraw the purely personal component of their collection, either temporarily or permanently, any Commonwealth records remain the property of the Commonwealth and may not be removed from the premises of the Australian Archives. The provisions relating to photocopying Commonwealth documents to which special access is provided are set out at paragraphs 3.27 - 3.30 of these Arrangements.

Cabinet Records

- 6.6 The right of special access to Commonwealth records in the Personal Records collection does not extend to Cabinet records, which remain within the control of the Secretary to Cabinet. All applications for special access to Cabinet records in the Personal Records collection are to be made in writing to the Secretary to Cabinet.

Federal Executive Council Records

- 6.7 The right of special access to Commonwealth records in the Personal Records collection does not extend to records of the Federal Executive Council which remain within the control of the Secretary to the Council. All applications for special access to Federal Executive Council records in the Personal Records collection are to be made in writing to the Secretary to the Federal Executive Council.

Parliamentary Records

- 6.8 The right of special access to Commonwealth records in the Personal Records collection does not extend to the records of Parliamentary Committees or of Parliamentary Departments. All applications for special access to Parliamentary records in the Personal Records collection should be made in writing to the appropriate custodian, as indicated in paragraph 3.14.

**Summary of Responsibilities in Relation to
Special Access Arrangements**

SUMMARY OF RESPONSIBILITIES IN RELATION TO SPECIAL ACCESS ARRANGEMENTS
UNDER REGULATION 9(2)(d)

CIRCUMSTANCES AS SPECIFIED IN REGULATIONS ISSUED UNDER S.56(2) OF THE ARCHIVES ACT 1983		RESPONSIBLE PARTY	REMARKS
ACTIVITY			
Identification of controlling agencies and relevant records	Regulation 9(2)(d)	Applicant	1. Australian Archives to assist in the use of its own finding aids and, where authorised, the use of agency control records in the Archives' custody
			2. Agencies which support application to assist in the identification of relevant records by either: <ul style="list-style-type: none">authorising the applicant's use of closed period control records held in the Archives' custodymaking control records in their custody available to applicants; orundertaking identification and location of relevant records
			3. Australian Archives will assist in establishing the current location of <u>identified</u> source material which has been dispersed as a result of administrative re-arrangements

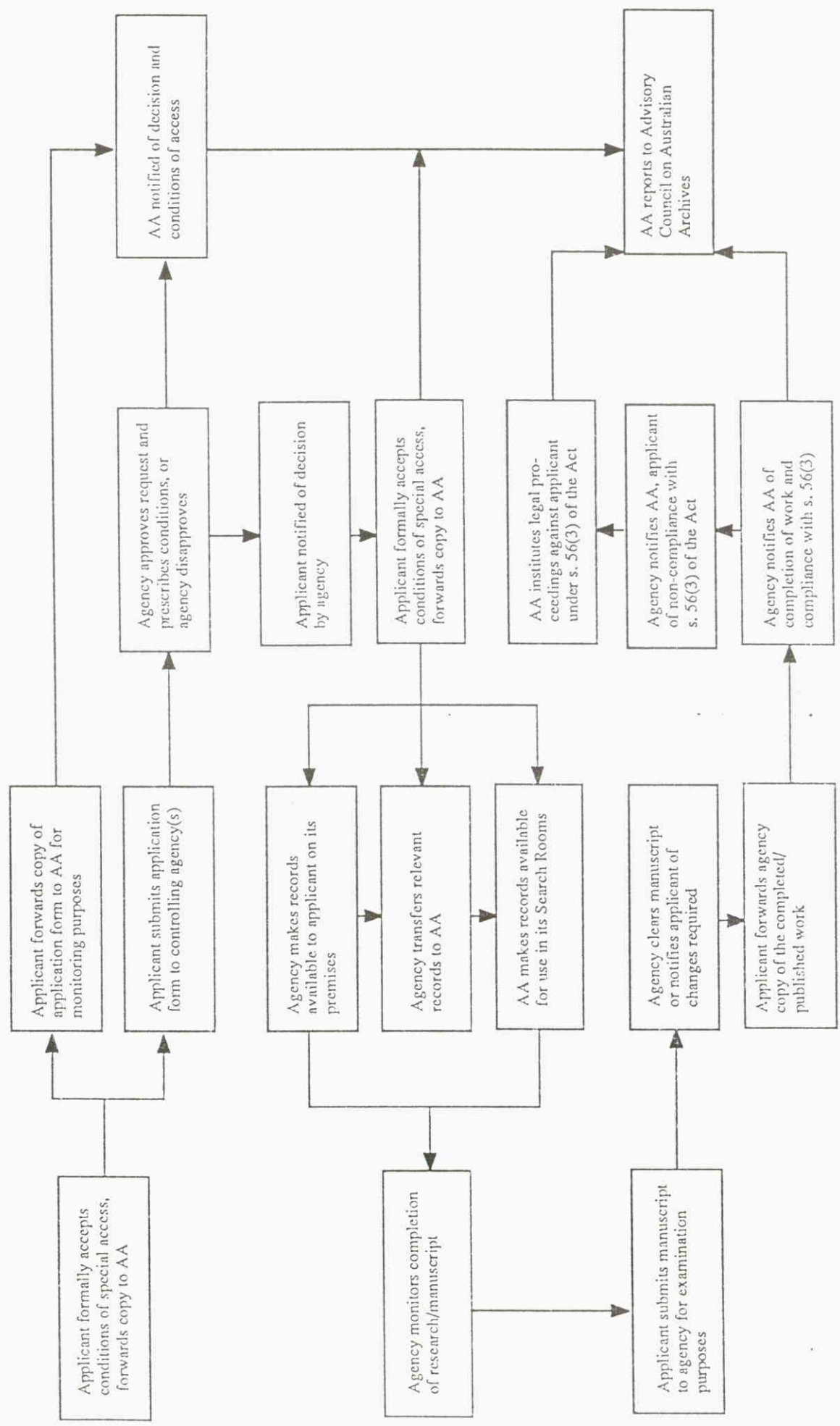
CIRCUMSTANCES AS SPECIFIED IN REGULATIONS ISSUED UNDER S.56(2) OF THE ARCHIVES ACT 1983				RESPONSIBLE PARTY	REMARKS
ACTIVITY					
Submission of application for approval	Regulation 9(2)(d)	Applicant			
<ul style="list-style-type: none"> Controlling agency(s) Copy forwarded to Australian Archives 					
Assessment of:	Regulation 9(2)(d)	Controlling agencies			
<ul style="list-style-type: none"> Eligibility of applicant Purpose of special access 					
Approval/Disapproval of Application	Regulation 9(2)(d)	Controlling agency			
Consultation between agencies concerning release of records, particularly those containing material originated by the Governor-General, Cabinet, Federal Executive Council, Parliamentary Departments, Intelligence and Security agencies, State and Foreign governments	Regulation 9(2)(d)	Agencies receiving applications for special access			See Section 3 of the Special Access Arrangements, particularly paragraphs 3.3, 3.9 - 3.16 inclusive

CIRCUMSTANCES AS SPECIFIED IN REGULATIONS ISSUED UNDER S.56(2) OF THE ARCHIVES ACT 1983				RESPONSIBLE PARTY	REMARKS
ACTIVITY					
Notification of Approval/Disapproval	Regulation 9(2)(d)	Controlling agency	Controlling agency to forward copy of notification to the Australian Archives		
Formal acceptance of conditions	Regulation 9(2)(d)	Applicant	Acceptance forwarded to controlling agency. Copy forwarded to the Australian Archives		
Requests by Personal Records depositors for access to Commonwealth records deposited under s.6(2) of the Act	Regulation 9(2)(c)	Australian Archives	Unqualified access to non-Cabinet records to be granted on a personal basis; i.e. limited to the depositor of the records. Cabinet Office to determine access to Cabinet records, Federal Executive Council to determine access to Federal Executive Council records, Parliamentary Departments to determine access to records of the Parliament.		
Provision of facilities for consultation of records to be made available under special access rules	Regulations 9(2)(a)-(d)	Australian Archives	In relation to records held in its custody, in accordance with controlling agency authorisation.		<u>NOTE:</u> In some instances, the agency might prefer to give access on its own premises
Monitor completion of manuscript for examination purposes	Regulation 9(2)(d)	Controlling agency	It will be a condition of special access that applicant reports regularly to agency on progress with research and estimated completion date		
Submission of manuscript based on records consulted under special access rules	Regulation 9(2)(d)	Applicant	Manuscript to be forwarded to relevant controlling agencies		

ACTIVITY	CIRCUMSTANCES AS SPECIFIED IN REGULATIONS ISSUED UNDER S.56(2) OF THE ARCHIVES ACT 1983			RESPONSIBLE PARTY	REMARKS
Examination of manuscript	Regulation 9(2)(d)	Controlling agency	Agency to notify applicant of required changes to work		
Examination of published work	Regulation 9(2)(d)	Controlling agency	If necessary, controlling agency to notify the Australian Archives of applicant's non-compliance with special access conditions		
Monitoring compliance with s.56(3) of the Archives Act 1983 and where required, initiating legal proceedings in respect of non-compliance	Regulation 9(2)(d)	Australian Archives	On the basis of advice received from controlling agencies		
Reporting to the Advisory Council on Australian Archives, in accordance with s.56(5) of the Archives Act 1983	Regulation 9(2)(a)-(d)	Australian Archives	On the basis of advice received from controlling agencies and other decision-makers		

Flowchart: Special Access Process under
Archives Regulation 9(2)(d)

FLOWCHART: Special Access Process under Archives Regulation 9(2)(d)



Definitions

GUIDELINES ON SPECIAL ACCESS DEFINITIONS

Authority of the Commonwealth means -

- (a) an authority, body, tribunal or organisation, whether incorporated or unincorporated, established for a public purpose -
 - (i) by, or in accordance with the provision of, an Act, regulations made under an Act or a law of a Territory other than the Northern Territory or Norfolk Island;
 - (ii) by the Governor-General; or
 - (iii) by, or with the approval of, a Minister;
- (b) the holder of a prescribed office under the Commonwealth; or
- (c) a prescribed company or association over which the Commonwealth is in a position to exercise control;

but does not include a court, the Northern Territory or the Administration of an External Territory;

Cabinet documents -

For the purposes of these Arrangements, Cabinet documents include:

- (a) Cabinet Business Lists, Submissions, Memorandums, other documents submitted to Cabinet, Decisions or documents which disclose the deliberations of Cabinet;
- (b) drafts of documents described in (a) above; and
- (c) drafts or documents which although not conforming with those described in (a) above, contain material which is either quotation from, or paraphrasing of such documents;

Cabinet notebook means -

A notebook or other like record that contains notes of discussions or deliberations taking place in a meeting of the Cabinet or of a committee of the Cabinet, being notes made in the course of those discussions or deliberations, or under the authority of, the Secretary to the Cabinet;

Commonwealth institution means -

- (a) the official establishment of the Governor-General;
- (b) the Executive Council;
- (c) the Senate;
- (d) the House of Representatives;
- (e) a Department;
- (f) a Federal court or a court of a Territory other than the Northern Territory or Norfolk Island;
- (g) an authority of the Commonwealth; or
- (h) the Administration of an external Territory other than Norfolk Island;

Commonwealth record means -

- (a) a record that is the property of the Commonwealth or of a Commonwealth institution; or
- (b) a record that is to be deemed to be a Commonwealth record by virtue of a regulation under sub-section 3(6) or by virtue of section 22 of the Archives Act 1983;

but does not include a record that is a Cabinet notebook, is exempt material, or is a register or guide maintained in accordance with Part VIII of the Archives Act 1983;

Controlling agency means -

the Commonwealth institution to whose functions the records are most closely related;

Delegate means -

an officer authorised by the Minister to make Commonwealth records available to a person under s.56(2) of the Archives Act 1983;

Department means -

- (a) a Department of the Australian Public Service that corresponds to a Department of State of the Commonwealth;
- (b) a Parliamentary Department;

Exempt material means

- (a) material included in the memorial collection within the meaning of the Australian War Memorial Act 1980, other than material to which a regulation under sub-section 3(6) applies;
- (b) material included in the collection of library material maintained by the National Library of Australia;
- (c) material included in the collection of works of art maintained by the Australian National Gallery;
- (d) material included in the historical material in the possession of the Museum of Australia; or
- (e) material included in a collection maintained by an institution declared by the regulations to be a custodial institution for the purposes of this definition,

other than material (if any) that came to be so included by reason of a contravention of section 24 of the Archives Act 1983;

Head of agency means -

- (a) the officer responsible for the general working of, and for all business conducted by, a Commonwealth institution; and, in particular
- (b) the persons having responsibility to act on behalf of the Commonwealth institutions listed in s.29(8) of the Archives Act 1983;

Intelligence document means -

An "intelligence document" is a document containing intelligence material

- (a) created by;
- (b) provided by; or
- (c) received by or intended ultimately to be received by, a Commonwealth institution listed in s.29(8) of the Archives Act.

Record means -

a document (including any written or printed material) or object (including a sound recording, coded storage device, magnetic tape or disc, microform, photograph, film, map, plan or model or a painting or other pictorial or graphic work) that is, or has been, kept by reason of any information or material that it contains or can be obtained from it or by reason of its connection with any event, person, circumstance or thing;

Responsible Minister, in relation to a Commonwealth record, means -

the Minister to whose ministerial responsibilities the record is most closely related;

The Minister, in relation to authorisations under s.56(2) means -

the Minister responsible for the Australian Archives.

Special Access Forms

APPLICATION FOR SPECIAL ACCESS TO COMMONWEALTH RECORDS

(See Notes on Completion of the Special Access Application Form before completing this form.)

1. APPLICATION TO AGENCY CONTROLLING THE RECORDS

Agency Title: _____

Agency Address: _____

Postcode: _____

2. PERSONAL PARTICULARS OF APPLICANT

Surname: _____ Other Names: _____

Postal Address: _____

Postcode: _____

Telephone Number: _____ (work) _____ (home)

Occupation: _____

Institutional Affiliation (if any): _____

Name of Study Supervisor (if applicable): _____

3. DESCRIPTION OF WORK**4. DESCRIPTION OF RECORDS TO WHICH SPECIAL ACCESS IS SOUGHT****5. ALL OTHER COMMONWEALTH AGENCIES WHOSE RECORDS ARE RELEVANT TO RESEARCH****6. STATEMENT BY APPLICANT**

In accordance with sub-section 56(2) of the Archives Act 1983, I wish to apply for special access to Commonwealth records as described in section 4 above. I have read the conditions attached to special access given on the Notes on Completion of the Application for Special Access to Commonwealth Records Form and I am aware that should my application be approved, I will be required to accept these and any other conditions specified by the Delegate before relevant records will be made available.

In support of my application I attach:

☐Statement on
Research Proposal☐Record of Publication
and Research☐

Testimonials

☐Statement of
Qualifications_____
Signature of Applicant_____
Date