

## **EXPLANATORY STATEMENT**

Issued by the authority of the Minister for Finance

*Public Works Committee Act 1969*

*Public Works Committee Regulation 2016*

The *Public Works Committee Act 1969* (the Act) established the Parliamentary Standing Committee on Public Works (the Committee) to inquire into and report on public works referred to it by the Parliament. A public work is a work that is proposed to be carried out by or for the Commonwealth and for which moneys are appropriated by the Parliament.

Section 40 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 and in particular providing for the payment of fees and expenses to assessors and to witnesses appearing before the Committee.

The purpose of the *Public Works Committee Regulation 2016* (Regulation) is to remake the *Public Works Committee Regulations 1969* (the 1969 Regulations) which are integral to the effective operation of the Committee.

According to the timetable set out under section 50 of the *Legislation Act 2003* (Legislation Act), legislative instruments made in the 1960s, such as the 1969 Regulations, sunset on 1 April 2017. The Legislation Act provides that legislative instruments are automatically repealed or sunset after a fixed period of time unless action is taken to preserve or exempt them.

The Regulation prescribes the following:

- matters included in the definition of **work** in accordance with paragraph 5(f) of the Act;
- authorities of the Commonwealth to which the Act does not apply;
- the forms for oaths, affirmations, summons and warrants;
- fees and expenses of witnesses and assessors; and
- the repeal of the 1969 Regulations.

Schedule 3 of the 1969 Regulations (Schedule 3) listed the authorities of the Commonwealth to which the Act does not apply under subsection 6A(3) of the Act. Section 7 of the Regulation updates Schedule 3 through:

- removing the entities that are no longer **authorities of the Commonwealth** as defined under section 5 of the Act;
- updating entity names if the entities are renamed after listing on Schedule 3; and
- specifying the entity names of the ASC Group in Item 2 of Schedule 3.

The Regulation has improved readability and clarity of the provisions regarding fees and expenses of witnesses and assessors and incorporates the High Court Rules 2004 that are in force from time to time in relation to the rate for witnesses' expenses.

A Statement of Compatibility with Human Rights is provided in Attachment A. Details of the Regulation are set out in Attachment B.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

This Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

### **Commencement**

The Regulation commences on the day after registration on the Federal Register of Legislation and Schedule 2 of the Regulation operates prospectively.

### **Consultation**

The Committee and its Secretariat have been consulted for the remaking of the 1969 Regulations. An exposure draft of the Regulation has been provided to the Committee for consultation in accordance with subsection 40(2) of the Act.

In the context of updating Schedule 3 of the 1969 Regulations by removing the entities that are no longer authorities of Commonwealth, the relevant Commonwealth departments with portfolio responsibilities for those entities have been consulted.

### **Regulatory Impact**

The Office of Best Practice Regulation (OBPR) has agreed that the proposal of remaking the 1969 Regulations has no regulatory impact on businesses, individuals or community organisations, and therefore a Regulation Impact Statement is not required. OBPR reference ID Number: 20981.

Authority: Section 40 of the  
*Public Works Committee Act 1969*

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Public Works Committee Regulation 2016***

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

This Legislative Instrument remakes the *Public Works Committee Regulations 1969*. According to the timetable set out under section 50 of the *Legislation Act 2003* (Legislation Act), legislative instruments made in the 1960s, such as the 1969 Regulations, sunset on 1 April 2017. The Legislation Act provides that legislative instruments are automatically repealed or sunset after a fixed period of time unless action is taken to preserve or exempt them.

This Regulation prescribes the following:

- matters included in the definition of *work* in accordance with paragraph 5(f) of the Act;
- authorities of the Commonwealth to which the Act does not apply;
- the forms for oaths, affirmations, summons and warrants;
- fees and expenses of witnesses and assessors; and
- the repeal of the 1969 Regulations.

This Regulation improves readability and clarity of certain provisions in the *Public Works Committee Regulations 1969* and makes necessary updates to reflect current drafting practices.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Mathias Cormann**  
**Minister for Finance**

**Details of the *Public Works Committee Regulation 2016***

**Part 1 - Preliminary**

**Section 1- Name of Regulation**

This section provides that the title of the Regulation is the *Public Works Committee Regulation 2016*.

**Section 2 – Commencement**

This section provides that the Regulation commences in accordance with column 2 of the table in subsection 2(1).

Item 1 of the table provides that the whole of the instrument commences on the day after the Regulation is registered on the Federal Register of Legislation.

**Section 3 – Authority**

This section provides that the Regulation is made under the *Public Works Committee Act 1969* (the Act).

**Section 4 – Schedules**

This section provides that each instrument specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

**Section 5 – Definitions**

This section defines certain terms for the purposes of the Regulation and notes that a number of expressions used in the Regulation are defined in the Act.

**Part 2 – Definitions in, and application of, Act**

**Section 6 – Matters included in the definition of *work* in section 5 of Act**

This section declares matters for the purposes of paragraph (f) of the definition of *work* in section 5 of the Act.

Consistent with the 1969 Regulations, this section clarifies that activities as described in paragraphs 5(a) to (d) of the Act are applicable to temporary and demountable buildings or structures.

**Section 7 – Authorities of the Commonwealth to which the Act does not apply**

This section provides a list of authorities of the Commonwealth that are exempt from the Act under subsection 6A(3) of the Act. This list provides the following updates to Schedule 3 of the 1969 Regulations:

- removing the entities that are no longer *authorities of the Commonwealth* as defined in section 5 of the Act;

- updating entity names:
  - Australian Grape and Wine Authority, formerly listed as Australian Wine and Brandy Corporation;
  - Australian Postal Corporation, formerly listed as Australian Postal Commission;
- specifying the entities of ASC Group:
  - ASC Pty Ltd and its wholly owned subsidiaries including ASC Engineering Pty Ltd, ASC Shipbuilding Pty Ltd and Deep Blue Tech Pty Ltd; and
  - the wholly owned subsidiaries of ASC Shipbuilding Pty Ltd including ASC AWD Shipbuilder Pty Ltd and ASC Modules Pty Ltd.

### **Part 3 – Forms relating to witnesses**

#### **Section 8 – Forms of oath and affirmation by witness**

Subsection 8(1) provides that Part 1 of Schedule 1 prescribes a form of an oath of a witness for the purposes of subsection 20(2) of the Act.

Subsection 8(2) provides that Part 2 of Schedule 1 prescribes a form of an affirmation of a witness for the purposes of subsection 20(2) of the Act.

#### **Section 9 – Form of summons to witness**

This section provides that Part 3 of Schedule 1 prescribes a form of a summons to a person to appear to give evidence for the purposes of subsection 21(2) of the Act.

#### **Section 10 – Form of warrant for apprehension of summoned witness**

This section provides that, for the purposes of subsection 22(2) of the Act, Part 4 of Schedule 1 prescribes a form of a warrant for the apprehension of a person who has been summoned to give evidence and has failed to appear, or to continue to attend, as a witness.

### **Part 4 – Fees and expenses of witness and assessors**

#### **Section 11 – Fees and expenses of witnesses and assessors**

This section sets out fees and travel expenses that are allowed to pay for a witness appearing before, or an assessor attending, the Committee or a Sectional Committee.

Changes have been made to this section to improve readability and clarity by consolidating regulations 6-10 and Schedule 2 of the 1969 Regulations to provide consistent provisions referring to fees and expenses of witnesses and assessors in one section.

This section incorporates the rate specified for witnesses' expenses in the *High Court Rules 2004*, as in force from time to time, in working out the minimum amount of a fee for an expert witness or an assessor, or a fee for an ordinary witness, to give evidence to, or attend, the Committee or Sectional Committee.

The *High Court Rules 2004* is a disallowable legislative instrument for the purposes of section 14 of the Legislation Act by virtue of section 86 of the *Judiciary Act 1903*. Those Rules (and any amendments of them) are published on the Federal Register of Legislation and any amendments are disallowable.

## Section 12 – No double payment for attending both Committee meeting and Sectional Committee meeting

This section prevents double payment under section 11 of the Regulation. A witness or an assessor who is required to appear before, or attend, both the Committee and a Sectional Committee on the same day would be allowed to claim only the greater amount, not both, of the fees and expenses that they would, apart from this section, be entitled to be paid.

## Schedule 1 – Forms relating to witnesses

### Part 1 – Form for oath of witness

Part 1 of Schedule 1 prescribes a form of an oath of a witness for the purposes of subsection 20(2) of the Act.

### Part 2 – Form for affirmation of witness

Part 2 of Schedule 1 prescribes a form of an affirmation of a witness for the purposes of subsection 20(2) of the Act.

### Part 3 – Form for summons to witness

Part 3 of Schedule 1 prescribes a form of summons to a person to appear to give evidence for the purposes of subsection 21(2) of the Act.

The wording of this form has been changed from that in Form 3 of the 1969 Regulations to reflect the wording of paragraph 28(1)(b) of the Act which is relevant to witnesses in all cases, rather than paragraph 22(1)(c) of the Act which is relevant only as a prerequisite to the issue of a warrant for apprehending a witness.

This form includes options for Chair of the Committee, Member of the Committee, Chair of a Sectional Committee or Deputy Chair of a Sectional Committee to issue the summons. This change reflects the effect of subsection 21(1) and subsection 11(2) of the Act.

### Part 4 – Form of warrant for apprehension of summoned witness

Part 4 of Schedule 1 prescribes a form of a warrant for the apprehension of a person who has been summoned to give evidence and has failed to appear, or to continue to attend, as a witness, for the purposes of subsection 22(2) of the Act.

This form includes options for Chair of the Committee, Member of the Committee, Chair of a Sectional Committee or Deputy Chair of a Sectional Committee to issue the summons. This change reflects the effect of subsection 21(1) and subsection 11(2) of the Act.

## Schedule 2 – Repeals

Schedule 2 provides that *the Public Works Committee Regulations 1969* are repealed.