

EXPLANATORY STATEMENT

Select Legislative Instrument No. , 2017

Issued by the authority of the Minister for Justice

Australian Crime Commission Act 2002

Australian Crime Commission Amendment (Witness Expenses) Regulations 2017

The *Australian Crime Commission Act 2002* (the ACC Act) establishes the Australian Crime Commission (ACC), also known as the Australian Criminal Intelligence Commission, and prescribes the functions and powers of the ACC. Section 62 of the ACC Act provides that the Governor-General may make regulations for all matters required or permitted by the ACC Act to be prescribed.

Under the ACC Act, the ACC has a range of information gathering powers that it may exercise in assisting investigations of, or in developing intelligence about, serious and organised crime. Under section 21A of the ACC Act, the ACC may require a person to attend before an examiner or member of the staff of the ACC to produce a specified document or thing relevant to an ACC special operation or investigation. Section 24A of the ACC Act also allows an examiner to conduct coercive examinations for the purposes of an ACC special operation or investigation.

As the powers to issue a notice to produce and summon witnesses are quite extensive, the ACC Act allows specified persons to be reimbursed for their expenses. Section 21F of the ACC Act provides that a person can be reimbursed for expenses they incurred when complying with a notice to produce, in accordance with the prescribed regulations. There is currently no prescribed scale of expenses in the *Australian Crime Commission Regulations 2002* (ACC Regulations) for the purposes of section 21F. Under section 26 of the ACC Act, a witness appearing before an examiner is entitled to be paid the expenses of his or her attendance, which are currently prescribed in schedule 2 of the ACC Regulations.

The *Australian Crime Commission Amendment (Witness Expenses) Regulations 2017* amend the ACC Regulations to provide for appropriate reimbursement of expenses to persons required to produce a document or thing and to witnesses appearing at an ACC examination. For expenses incurred by persons complying with a notice to produce, the amendments allow reimbursement of the costs of travel, meals and accommodation, and any lost wages, salaries or fees. For witnesses appearing before an examiner, the amendments replace the High Court Rules 2004 with the *Royal Commissions Regulations 2001* (RCR) as the relevant scale for payment of expenses to witnesses.

Statement of Compatibility with Human Rights

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

Australian Crime Commission Amendment (Witness Expenses) Regulations 2017

This legislative instrument 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

Under the Australian Crime Commission Act 2002, the Australian Crime Commission (ACC) (also known as the Australian Criminal Intelligence Commission) has a range of coercive powers, which can be used in special operations or investigations to obtain information where traditional law enforcement methods are unlikely to be or have been unsuccessful. These powers include the ability to require persons to produce specified documents or things before an ACC examiner or member of staff of the ACC (section 21A of the ACC Act), and to conduct coercive examinations of witnesses (section 24A).

Section 21F of the ACC Act provides that a person can be reimbursed for expenses they incurred when complying with a notice to produce, in accordance with the prescribed regulations. There is currently no prescribed scale of expenses in the *Australian Crime Commission Regulations 2002* (ACC Regulations) for the purposes of section 21F. Under section 26 of the ACC Act, a witness appearing before an examiner is entitled to be paid the expenses of his or her attendance, which are currently prescribed in schedule 2 of the ACC Regulations.

This legislative instrument amends the ACC Regulations to provide for appropriate reimbursement of the costs of travel, meals and accommodation, and any lost wages, salaries or fees incurred in complying with a notice to produce. Further, this instrument replaces the High Court Rules 2004 with the *Royal Commissions Regulations 2001* as the relevant scale for payment of expenses to witnesses appearing before an examiner.

This legislative instrument does not make any substantive amendments to Commonwealth law or policy.

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.

[The Hon Michael Keenan MP, Minister for Justice]

The Attorney-General's Department consulted the ACC on the Regulations.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Authority: Section 62 of the *Australian Crime Commission Act 2002*

Details of the *Australian Crime Commission Amendment (Witness Expenses) Regulations 2017*

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Australian Crime Commission Amendment (Witness Expenses) Regulations 2017*.

Section 2 – Commencement

This section provides that the Regulations will commence on the day after they are registered on the Federal Register of Legislation.

Section 3 - Authority

This section identifies the *Australian Crime Commission Act 2002* as the authority for the Regulations.

Section 4 – Schedule

This section provides that the *Australian Crime Commission Regulations 2002* are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – regulation 3B

Regulation 3B introduces a new regulation to prescribe the types of expenses that a person complying with a notice to produce, under section 21A of the *Australian Crime Commission Act 2002* (ACC Act), is to be reimbursed.

Section 21F of the ACC Act provides that a person can be reimbursed for expenses they incurred when complying with a notice to produce, in accordance with the prescribed regulations. Sections 21A and 21F were inserted into the ACC Act on 28 June 2015 as part of the *Law Enforcement Legislation Amendment (Powers) Act 2015*. Before these amendments, the ACC CEO held a discretionary power to determine the amount that the person producing a document or thing should be reimbursed under the ACC Act.

Under paragraph 3B(a), a person is entitled to be paid a reasonable amount for travel to and from the place at which they are required to produce a document or thing pursuant to a notice to produce, including meals and accommodation if the person is required to be absent overnight from their usual place of residence.

Subparagraph 3B(b)(i) allows a person, who is remunerated by wages, salary or fees, to be reimbursed for the actual amount lost by his or her attendance before an examiner or member of staff of the Australian Crime Commission (ACC) to produce a document or thing. A person who is not remunerated by wages, salary or fees is entitled to the hourly rate stipulated in subparagraph 3B(b)(ii).

Item [2] – subregulation 5(2)

The amendment replaces the reference to the High Court Rules 2004 (HCR) in subregulation 5(2) with a reference to the *Royal Commissions Regulations 2001* (RCR), as the prescribed scale for the reimbursement of expenses to witnesses appearing at an ACC examination.

The HCR were amended in 2015 and the RCR are now a more suitable basis for the scale of witness fees. Regulation 7 of the RCR provides for a similar scale of fees as schedule 2 of the HCR prior to the amendments.

The amendment to subregulation 5(2) clarifies that a reference to the RCR in schedule 2 of the ACC Regulations should be read as a reference to the RCR as in force from time to time.

Item [3] – regulation 11

This item introduces a new regulation to clarify that the amendments made by schedule 1 to the Regulations apply to an appearance before an examiner (for examinations) and an attendance before an examiner or member of the staff of the ACC (in complying with a notice to produce) that occurs on or after the day the instrument commences.

Items [4]-[6] – clauses 1 and 2 of Schedule 2

The amendments replace references to the HCR in clauses 1 and 2 of Schedule 2 with references to the RCR, as the prescribed scale for the reimbursement of expenses to witnesses appearing at an ACC examination.

The HCR were amended in 2015 and the RCR are now a more suitable basis for the scale of witness fees. Regulation 7 of the RCR provides for a similar scale of fees as schedule 2 of the HCR prior to the amendments.

The amendment to clause 1 in schedule 2 allows witnesses with special skill or knowledge to be reimbursed a set daily rate for attending an examination by reference to the RCR instead of the HCR. This rate is prescribed by reference to Regulation 7 of the RCR.

Clause 2 in schedule 2 provides for payment of other witnesses. Under the amendment to paragraph 2(a), a witness who is remunerated by wages, salary or fee could be paid an allowance for the actual amount lost by his or her attendance at the examination, instead of an amount provided for in the HCR. Under the amendment to paragraph 2(b), a witness who is not remunerated by wages, salary or fees is entitled to the daily rate stipulated by reference to Regulation 7 of the RCR, instead of the rate set out in the HCR.