

**ROYAL COMMISSIONS AMENDMENT (WITNESS ALLOWANCES)
REGULATIONS 2021**

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Royal Commissions Amendment (Witness Allowances) Regulations 2021* (the Regulations) amend the *Royal Commissions Regulations 2019* (the Principal Regulations) to increase the daily allowance payable to ‘non-expert’ witnesses appearing before a current or future Royal Commission to \$250.00 per day. The increase reflects the significant value of the contribution of lived experience and other ‘non-expert’ witnesses to the important work of Royal Commissions, including where their inquiry function is focussed on examining issues and protections for vulnerable people.

The *Royal Commissions Act 1902* (the Act) provides for the establishment, powers and operation of Royal Commissions and for the management of Royal Commission records. Section 17 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that the Act requires or permits to be prescribed, or necessary or convenient for carrying out or giving effect to the Act.

The Principal Regulations prescribe a range of matters for the purposes of the Act. Subparagraph 6(1)(a)(ii) of the Principal Regulations provide that if a witness is attending a Royal Commission, other than for the witness’ professional, scientific or other special skill or knowledge, the witness is paid a base amount per day. This provides a base payment to cover the expenses of a ‘non-expert’ witness attending a Royal Commission.

The Regulations amend subparagraph 6(1)(a)(ii) of the Principal Regulations to increase the daily allowance for lived experience and other ‘non-expert’ witnesses from the former base amount of \$123.90 to \$250.00.

Paragraph 6(1)(b) of the Principal Regulations provide that, where a witness’s attendance at a Royal Commission causes them to lose wages, salary or fees, they will be paid an amount equal to the amount of those wages, salary or fees reasonably lost. Whether the loss of wages, salary or fees was reasonable will be determined by an ‘authorised person’. For a ‘non-expert’ witness this payment is in addition to any payment made under subparagraph 6(1)(a)(ii).

The amendments made by the Regulations apply to witnesses attending the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission), or the Royal Commission into Defence and Veteran Suicide (Defence and Veteran Royal Commission) on, or after, 4 November 2019, or a Royal Commission established on or after the day the proposed Regulations would commence. These arrangements ensure that all ‘non-expert’ witnesses who have appeared before either of these ongoing Royal Commissions are treated consistently in terms of their witness expenses.

The date of 4 November 2019 was the first day witnesses appeared at a public hearing of the Disability Royal Commission, the Defence and Veteran Royal Commission having been established under its Letters Patent on 8 July 2021. As this application provision does not commence retrospectively, creates a prospective entitlement, and, in any case, would not disadvantage, or impose any liabilities on any person, it is consistent with the *Legislation Act 2003*.

CONSULTATION

Consistent with the requirements under section 17 of the *Legislation Act 2003*, both the Disability Royal Commission and the Defence and Veteran Royal Commission have been consulted regarding the proposed changes.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation (OBPR) assessed that a Regulation Impact Statement was not required for this instrument as it is unlikely to have more than a minor regulatory impact (OBPR reference is ID 44336).

Details of the Regulation are set out in **Attachment A**.

A Statement of Compatibility with Human Rights is at **Attachment B**.

NOTES ON SECTIONS

Royal Commissions Amendment (Witness Allowances) Regulations 2021

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Royal Commissions Amendment (Witness Allowances) Regulations 2021*.

Section 2 - Commencement

This section provides for the Regulations to commence on the day after the instrument is registered.

Section 3 - Authority

This section provides that the *Royal Commissions Amendment (Witness Allowances) Regulations 2021* is made under the *Royal Commissions Act 1902*.

Section 4 - Schedules

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

Schedule 1 - Amendments

Royal Commissions Regulations 2019

Item [1] – Subparagraph 6(1)(a)(ii)

Existing section 6 sets out the amounts available to a witness for the expense of appearing before a Royal Commission. This item amends subparagraph 6(1)(a)(ii) to increase the daily allowance amount payable to lived experience and other ‘non-expert’ witnesses appearing before a Royal Commission. This item increases the prescribed amount from \$123.90 to \$250.00.

Item [2] – Section 15 (heading)

This item substitutes a new heading to section 15 of the Principal Regulations, ‘Application of this instrument as made.’ Existing section 15 is an application provision and the insertion of this new heading is consequential to the insertion of new section 16 into the Principal Regulations by item 3 below.

Item [3] – At the end of Part 5

Item 3 inserts new section 16 at the end of Part 5 of the Principal Regulations which includes application, saving and transitional provisions. New section 16 provides that the amendment of section 6 made by the Regulations applies in relation to the attendance of a witness on or

after 4 November 2019 at the Disability Royal Commission, the Defence and Veteran Royal Commission, or a Royal Commission established on or after the day these Regulations commence.

This application provision applies prospectively so that any lived experience or other ‘non-expert’ witness who attended the Disability Royal Commission or the Defence and Veteran Royal Commission after 4 November 2019, but before the commencement of the Regulations, would have an entitlement to a further amount of \$126.50 for each day that they appeared (reflecting the new ‘non-expert’ witness allowance of \$250 for each day of their appearance). This provision applies to the Disability Royal Commission and the Defence and Veteran Royal Commission in this way to reflect that these two Royal Commissions, both established before the Regulations commence, remain ongoing. This application provision is intended to ensure that all ‘non-expert’ witnesses who have appeared before either of these ongoing Royal Commissions are treated consistently in terms of their witness expenses. The date of 4 November 2019 was the first day witnesses appeared at a public hearing of the Disability Royal Commission, the Defence and Veteran Royal Commission having been established under its Letters Patent on 8 July 2021.

Section 16 also includes a note to explain that this section means that a ‘non-expert’ witness who attended the Disability Royal Commission or the Defence and Veteran Royal Commission before the commencement of the Regulations would be entitled to an additional \$126.50 in expenses for each day attended.

As this application provision has not commenced retrospectively, creates a prospective entitlement, and, in any case, does disadvantage, or impose any liabilities on any person, it is consistent with the *Legislation Act 2003*.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Royal Commissions Amendment (Witness Allowances) Regulations 2021

This Disallowable 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 Disallowable Legislative Instrument

The *Royal Commissions Amendment (Witness Allowances) Regulations 2021* (the Regulations) amend the *Royal Commissions Regulations 2019* (the Principal Regulations) to increase the daily allowance payable to ‘non-expert’ witnesses appearing before a current or future Royal Commission to \$250.00 per day. The increase reflects the significant value of the contribution of lived experience and other ‘non-expert’ witnesses to the important work of Royal Commissions, including where their inquiry function is focussed on examining issues and protections for vulnerable people.

The *Royal Commissions Act 1902* (the Act) provides for the establishment, powers and operation of Royal Commissions and for the management of Royal Commission records. Section 17 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that the Act requires or permits to be prescribed, or necessary or convenient for carrying out or giving effect to the Act.

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The Regulations amend subparagraph 6(1)(a)(ii) of the Principal Regulations to increase the daily allowance for lived experience and other ‘non-expert’ witnesses from the former base amount of \$123.90 to \$250.00.

Paragraph 6(1)(b) of the Principal Regulations provide that, where a witness’s attendance at a Royal Commission causes them to lose wages, salary or fees, they will be paid an amount equal to the amount of those wages, salary or fees reasonably lost. Whether the loss of wages, salary or fees was reasonable will be determined by an ‘authorised person’. For a ‘non-expert’ witness this payment is in addition to any payment made under subparagraph 6(1)(a)(ii).

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Commission established on or after the day the proposed Regulations would commence. These arrangements ensure that all ‘non-expert’ witnesses who have appeared before either of these ongoing Royal Commissions are treated consistently in terms of their witness expenses. The date of 4 November 2019 was the first day witnesses appeared at a public hearing of the Disability Royal Commission, the Defence and Veteran Royal Commission having been established under its Letters Patent on 8 July 2021. As this application provision does not commence retrospectively, creates a prospective entitlement, and, in any case, would not disadvantage, or impose any liabilities on any person, it is consistent with the *Legislation Act 2003*.

Human rights implications

The Regulations do not engage any of the applicable rights or freedoms.

Conclusion

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