



ATTORNEY-GENERAL

CANBERRA

MC 14/22590

Senator the Hon Ian Macdonald
Chair, Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

20 NOV 2014

Dear Senator Macdonald

A handwritten signature in black ink, appearing to read 'James'.

Thank you for your letter of 14 November 2014 advising me of the Senate Legal and Constitutional Affairs Legislation Committee's questions on notice regarding the Acts and Instruments (Framework Reform) Bill 2014.

I enclose my responses to these questions at **Attachment A**.

I note that the Committee requested a draft of the amended regulations which will consolidate the list of legislative instruments which are exempt from disallowance under the *Legislative Instruments Act 2003* and regulations made under that Act. Accordingly, I enclose the draft Legislation (Instrument Declarations and Exemptions) Regulation 2014 at **Attachment B**.

I trust this information will assist the Committee in its consideration of the Bill.

The responsible adviser for this matter in my Office is James Lambie, who can be contacted on 02 6277 7300.

Thank you again for writing on this matter.

Yours faithfully

(George Brandis)

Encl:

Attachment A: Attorney-General's response to questions on notice from Senate Legal and Constitutional Affairs Legislation Committee - Acts and Instruments (Framework Reform) Bill 2014

Attachment B: Draft Legislation (Instrument Declarations and Exemptions) Regulation 2014

ACTS AND INSTRUMENTS (FRAMEWORK REFORM) BILL 2014

ATTORNEY-GENERAL'S RESPONSES TO SENATE CONSTITUTIONAL AND LEGAL AFFAIRS LEGISLATION COMMITTEE QUESTIONS ON NOTICE

Question 1 Correction of errors in the Register

Legislation Act 2003, new section 15D (Federal Register of Legislation—correction of errors)

Acts and Instruments (Framework Reform) Bill 2014, Schedule 1, item 26.

Question 1 (a)

Proposed new section 15D would require the First Parliamentary Counsel (FPC) to correct an 'error in the Federal Register of Legislation' as soon as possible and would require the FPC to 'include in the Register a statement that the correction has been made, and a brief outline of the correction in general terms'.

(a) Would the requirement for the FPC to correct errors 'as soon as possible' prevent consultation on the meaning of the identified error and the impact of the correction to the Register? Will any consultation occur before a correction is made by the FPC?

Response to Question 1(a)

New section 15D (correction of errors in the Register) preserves, and rewrites more clearly, the essential features of the *Legislative Instruments Act 2003*, section 23, and *Acts Publication Act 1905*, section 8, currently described as dealing with the "rectification" of errors in the Federal Register of Legislative Instruments or the Acts database. No consultation is undertaken before the exercise of rectification powers for instruments or Acts at present.

It is not considered appropriate to undertake any consultation about the correction (rectification) of errors in the Federal Register of Legislation (Register), although the Office of Parliamentary Counsel (OPC) is always responsive to comments from members of the public about the accuracy of the Register.

The FPC only corrects the existing Federal Register of Legislative Instruments in very clear cases, for example, the removal or insertion of text to correct an obvious oversight in the compilation process. In such cases it is considered imperative to act swiftly after the identification of an error to preserve the integrity of the Federal Register of Legislative Instruments and ensure proper access to a correct statement of the law. It is also unclear what public benefit would be achieved by consultation about the correction of such errors.

As is the case with editorial changes (see response to question 2(a)), in no other comparable jurisdiction is there any requirement for prior consultation with a particular person or body before a correction is made.

Question 1(b)

(b) Why is the requirement for the FPC to include a 'brief outline of the correction in general terms', rather than for the FPC to include a detailed explanation in the statement regarding the correction made?

Response to Question 1(b)

Highly specific explanations of corrections are unlikely to significantly assist users of the Register. The detail involved may actually impede users from finding more relevant information about the law. It is considered that a brief outline in general terms is sufficient, and will alert interested users to investigate further. OPC is always ready to respond to user queries.

The existing provisions require the Federal Register of Legislative Instruments or Acts database to be annotated with the nature, day and time of the rectification and the reason for the rectification. The highly detailed nature of the corrections involved, however, makes such specific annotation redundant and overly pedantic, particularly given the additional requirement to state the reason for the rectification. This can be seen from the following examples:

| Examples of rectification of Acts database under <i>Acts Publication Act 1905</i>, section 8 | | |
|---|---|---|
| Act | Annotation | Reason stated |
| <i>Railway Agreement (Western Australia) Act 1961</i> | To remove extra word "the" that was repeated in the first paragraph of the Second Schedule. | The word "the" was incorrectly repeated in the Second Schedule. |
| <i>Parliamentary Entitlements Act 1990</i> | To reinsert text at the end of subsection 49(1). | The amending legislation removed paragraph 49(1)(z), the text at the end of subsection 49(1) was incorrectly removed. |

The requirement to include "a brief outline of the correction in general terms" is not intended to provide less information than is currently provided but to make it easier to provide a clear explanation of the correction in one place. To provide additional transparency, the incorrect version of the law is never removed from the Federal Register of Legislative Instruments or the Acts database. It will also never be removed from the new Federal Register of Legislation.

Question 1(c)

(c) Will the FPC directly notify any relevant affected person that a correction to the Register has been made under proposed new section 15D? Will there be any specific reporting made to the Parliament on the use of this provision by the FPC?

Response to Question 1(c)

Laws by their nature are general in application. A correction of the Register could affect many people and bodies in many different capacities. It is not considered appropriate for

the FPC to give notice to any particular stakeholder or interest group. Public notice is given of every correction of the Register in the form of the statement included on the Register, which is accessible to all.

Given the technical nature of the corrections involved, and the fact that public notice is given in the Register of every correction, it is not intended to directly report to the Parliament about the use of the power to correct the Register for each correction. However, OPC will include a section in its annual reports summarising the use of the correction power in each financial year.

As is the case with editorial changes (see response to question 2(a)), in no other comparable jurisdiction is there any requirement for specific notice to be given to a particular person or body after a correction is made.

Question 2 Editorial change powers

Legislation Act, new Chapter 2, Part 2, Division 3 (Editorial and other changes); section 15P (information to be recorded in compilations)

Acts and Instruments (Framework Reform) Bill 2014, Schedule 1, item 26.

Question 2(a)

Proposed new Division 3 relates to the proposed power of the FPC to make editorial changes 'to any text that is part of [an] Act or instrument' in certain circumstances.

(a) Can you provide the committee with an explanation of how similar editorial powers operate in comparable jurisdictions, who exercises these editorial powers and what mechanisms exist for reporting on and oversight of the use of these editorial powers?

Response to Question 2(a)

All Australian jurisdictions except the Northern Territory and the Commonwealth (currently) allow for editorial changes to be made in the preparation of up-to-date consolidations of the law. A number of other Commonwealth jurisdictions (see table below) also allow for editorial changes.

The new editorial change provisions proposed in this Bill bring the Commonwealth's legislation into line with editorial powers in other jurisdictions. They closely follow the features of the comparable schemes listed in the table below. The nature of the changes allowed is similar in each case, and the legal safeguards and oversight of the process also follows a similar pattern.

The table sets out significant features of all comparable schemes, including the scheme proposed for the Commonwealth in the Acts and Instruments (Framework Reform) Bill.

Officers of the Attorney-General's Department and the OPC reviewed the comparable legislation in detail in the drafting process for the Bill. The following key points emerged:

- In most cases, the types of editorial change allowed are similar. The Bill is based on items covered in the most recently developed schemes, for example New Zealand and the Australian Capital Territory.

- In all cases except Hong Kong, the head of the Government's legislative drafting office (or an authorised employee) is responsible for making editorial changes in preparing laws for publication.
- In all cases editorial changes are not permitted if they would change the substantive effect of the law.
- Public notice of editorial change will be required by the proposed Commonwealth Legislation Act under new section 15P(1)(b). A registered compilation that incorporates editorial changes will be required to include a statement that editorial changes have been, and a brief outline of the changes in general terms. The proposed Commonwealth requirement will require as much, if not more, transparency as is required by any other comparable scheme set out below in terms of public notice requirements (similar to Queensland, New Zealand, Ontario). Some (eg the ACT) only require the recording of the fact of editorial changes. Others do not require any notice of editorial change at all to be included in the compilation.
- In no case is there any requirement for prior consultation with any particular person or body, or specific notice to a particular person or body after a change is made.
- In no case is there any requirement for reporting to Parliament on the use of the power.

Editorial powers in comparable jurisdictions

| Jurisdiction | Legislation | Who exercises power | Public notice of editorial changes in compilation |
|--------------|--|---|---|
| Commonwealth | <i>Legislation Act 2003</i> , Ch 2, Part 2, Div 2 and s 15P (proposed) | FPC | If any editorial changes are made in preparing a compilation, the compilation must include a statement that editorial changes have been made and a brief outline of the changes in general terms (s 15P(1)(b)). |
| ACT | <i>Legislation Act 2001</i> , Part 11.3 | Parliamentary counsel | If a republication of a law is published incorporating any editorial change, the republication must indicate the fact of editorial change in a suitable place (s 118) |
| NSW | <i>Interpretation Act 1987</i> , s 45E | Parliamentary Counsel | None required |
| Qld | <i>Reprints Act 1992</i> , Part 4 | Parliamentary counsel | If a reprint of a law is published incorporating any editorial change, the reprint must: <ul style="list-style-type: none"> (a) indicate the fact of editorial change in a suitable place; and (b) outline the nature of the editorial change in general terms, and in a suitable place. (s 7(2)) |
| SA | <i>Legislation Revision and Publication</i> | Commissioner for Legislation Revision and | None required |

| Editorial powers in comparable jurisdictions | | | |
|---|--|--|---|
| Jurisdiction | Legislation | Who exercises power | Public notice of editorial changes in compilation |
| | <i>Act 2002, s 7</i> | Publication (who is the Parliamentary Counsel or another person employed in the OPC) | |
| Vic | <i>Interpretation of Legislation Act 1987, s 54A, Sch 1</i> | Chief Parliamentary Counsel | None required |
| WA | <i>Reprints Act 1984, s 7</i> | Parliamentary Counsel or other authorised person employed in the PCO | None required |
| Hong Kong | <i>Legislation and Publication Ordinance, CAP 614, ss 12 - 17 (not yet in operation)</i> | Secretary for Justice | An editorially-amended law must indicate in a suitable place the fact that an editorial change has been made (s 14). Secretary for Justice to keep a record describing editorial amendments. An editorial change is ineffective unless recorded. There is no legal requirement to provide public access to the record, however. (ss 15-17) |
| New Zealand | <i>Legislation Act 2012, Part 2, Subpart 2</i> | Chief Parliamentary Counsel | If a reprint of a law is published incorporating any editorial change, the reprint must: (a) indicate the fact of editorial change in a suitable place; and (b) outline the nature of the editorial change in general terms, and in a suitable place. (s 27) |
| Ontario, Canada | <i>Legislation Act 2006, Part 5</i> | Chief Legislative Counsel | CLC must publically notify significant editorial changes by stating the change or the nature of the change. CLC may publically notify other changes (s 43). |

Question 2(b)

(b) Will the use of editorial powers by the FPC be recorded on the Register or recorded in another place? Will the FPC publicly identify corrections to the Register (e.g. on the Register itself)?

Response to Question 2(b)

The FPC will be required to record the use of editorial powers in a statement in the registered compilation concerned (see new section 15P(1)(b)). See the first item in the table above.

Editorial changes share with corrections (or rectifications) of the Register the same detailed characteristics. To appreciate the type of changes involved, consider that most amendments in the Statute Law Revision Bills routinely prepared by the OPC would be able to be made by the editorial change powers as proposed. Reporting at the level of detail currently required for rectification under the Legislative Instruments Act or the Acts Publication Act would have the same effect as described in response to question 1(b) for corrections of the Register. That is, highly specific explanations would not significantly assist users of the Register, and the detail involved may actually impede users from finding more relevant information about the law.

For the same reason, it is considered that the requirement to include "a brief outline of the changes made in general terms" is not intended to withhold information from users of the law, but to make it easier to provide a clear explanation of the editorial changes in one place.

To provide additional transparency, all compilations of the relevant law are retained on the Register (to enable point in time reference). This will preserve clear evidence of editorial changes on the public record.

Question 2(c)

(b) Will the use of editorial powers by the FPC be recorded on the Register or recorded in another place? Will the FPC publicly identify corrections to the Register (e.g. on the Register itself)?

Response to Question 2(c)

Given the minor, formal and detailed nature of the changes involved, and the fact that public notice is required to be given in the Register of every use of the editorial change power, it is not intended to require the FPC to report to the Parliament on this matter. None of the comparable jurisdictions listed in the table require any specific reporting to Parliament on the use of the editorial change power.

The FPC and the OPC are subject to the normal annual reporting requirements applicable to other government agencies. Accordingly, OPC will include a section in its annual report summarising the use of the editorial powers each year.

Question 2(d)

(d) If the FPC made an editorial change which an interested person did not agree met the requirements for an editorial change (e.g. it arguably would change the effect of the Act or instrument), could this editorial change be challenged and reviewed?

Response to Question 2(d)

An editorial change to a law has the status of an amendment of a law, albeit a minor formal amendment not having substantive effect (see new section 15W). The amendment of a law is a legislative action rather than an administrative action. So the decision to make an editorial change to the law would not be subject to administrative challenge.

However, an individual suitably affected by an editorial change to the law may have a right to challenge the validity or effectiveness of the law as changed in a court. This may be

possible by seeking judicial review of the change under section 39B of the *Judiciary Act 1903* or under section 75(v) of the *Constitution*.

In addition, any individual concerned by an editorial change could raise the matter with the FPC who would take any such concerns very seriously.

Question 2(e)

(e) Is there a specific reason the use of editorial powers by the FPC could not be subject to a transparency requirement similar to the one contained in proposed new paragraph 15(1)(b)?

Response to Question 2(e)

New section 15P(1)(b) will apply to editorial changes a transparency requirement in the same terms as the requirement that applies to corrections of the Register under section 15D(1)(b). The requirement is that the registered compilation in which the change is made must include a statement that the changes have been made, and a brief outline of the changes in general terms.

This requirement is at the highest level of transparency of all the comparable jurisdictions listed above (see response to question 2(a) and the table). As discussed in response to question 2(b) and 1(b), it is considered that this approach will be of more use to readers of legislation than a prescriptive requirement to describe each change individually.

Question 2(f)

(f) Will any specific criteria or principles guide the discretion of the FPC in exercising the proposed editorial powers under Division 3?

Response to Question 2(f)

At the broadest level, the FPC has the responsibility of providing the public with improved access to law by improvements in drafting practices and by the vigilant maintenance of the Register to maximise its usefulness. Having regard to the same principle, appropriate editorial changes will only be made if it is clear that they will make the law easier to use and to understand.

More specifically, in considering whether to make an editorial change to a law, the FPC must consider (under new section 15V(2)) whether the change is desirable:

- to bring the law into line, or more closely into line, with legislative drafting practice being used by the OPC, or
- to correct an error, or ensure that a misdescribed amendment is given effect to as intended.

An editorial change is not authorised unless it meets these specific criteria.

The FPC will issue further guidance (in the form a Drafting Direction or other publically available document) about cases in which it would be appropriate to use the power.

Question 2(g)

(g) How will the FPC assess that the specific intentions and meaning of the Parliament in relation to the text of an Act are not being altered through an editorial change to the text?

Response to Question 2(g)

It is intended that the editorial change power will be exercised very carefully and with due conservatism. This is the same approach that is taken to the decision about whether to include a formal amendment of a law in the regular Statute Law Revision Bills.

Disputes about whether amendments made by Statute Law Revision Acts have changed the intended effect of the law are almost unheard of. The same rigorous oversight will be extended to editorial changes in compilations to ensure that there is no perceived or actual change to the intended effect of the law concerned.

Question 2(h)

(h) How will the editorial power interact with the existing parliamentary mechanisms for corrections to proposed legislation? For example, if a request for a correction under Senate Standing Order 124 is refused by the Chair of Committees, will the FPC be able to make a same correction following the passage of the legislation using the editorial power proposed in the bill?

Response to Question 2(h)

In practice, it is rare for an OPC request for a Clerk's or Chair's correction of a Bill to be refused. In any case, the FPC would not seek to achieve by editorial amendment what could not be achieved by a parliamentary correction. On the other hand, while a Bill is before the Parliament, if a clear formal error is found, the OPC would seek to make the requisite correction by the established parliamentary process, to ensure that the Bill as enacted is correct.

The power to make editorial changes is designed to correct formal errors in the law after the time for making parliamentary corrections has passed, that is, after enactment. It is not considered that there would be any necessary interaction between the two processes.

Question 3 Legislative instruments that are not subject to disallowance**Legislation Act, section 44****Acts and Instruments (Framework Reform) Bill 2014, Schedule 1, item 47****Question 3(a)**

Existing subsection 44(2) includes a table of instruments exempt from disallowance. This will be repealed under the bill and the EM provides the table will be transferred to the new regulations and consolidated with other exemptions from disallowance already prescribed by regulation.

(a) Can the draft regulations which contain the consolidated list of instruments exempt from disallowance be provided to the committee?

Response to Question 3(a)

An exposure draft of the regulations is at Attachment B. This draft was also provided confidentially to the Senate Standing Committee for the Scrutiny of Bills, the Senate Standing Committee on Regulations and Ordinances, and the Parliamentary Joint Committee on Human Rights before the Bill was introduced. The exposure draft does no more than consolidate all existing exemptions under the Act and the regulations.

Question 3(b)

(b) Will specific justifications for each exemption be provided, even if the intention is to recreate existing categories of exemption?

Response to Question 3(b)

Any changes in the list of exemptions when the draft regulations are finalised will be fully justified in the Explanatory Statement for the regulations.

Due to the number and range of instruments that will continue to be exempt under the draft regulations, it will not be practicable to provide express justifications for existing exemptions. However, all existing exemptions have already been justified in material provided to the Parliament either in relevant Explanatory Memorandums for the exemptions in the Legislative Instruments Act, or Explanatory Statements for exemptions in the existing regulations.

The normal consultation required under section 17 of the Act will be undertaken before the draft regulations containing the new list of exemptions are made, so any issues raised by interested persons or bodies about exemptions will be able to be considered at that stage.

Question 4 Rule-making powers

Legislation Act, new section 8(1)

Acts and Instruments (Framework Reform) Bill 2014, Schedule 1, item 12

Question 4

The submission of the Clerk of the Senate (Submission 2) has raised the issue of general rule-making powers and the definition of 'legislative instrument' in the bill with the committee.

While the new broad rule-making power is in the process of being deployed more widely across Commonwealth legislation, the committee may wish to consider whether there is a need to include in the definition of "legislative instruments" in the Legislative Instruments Act (as amended), these types of legislative rules made under the new broad power, rather than leaving them to be dealt with on a case by case basis (p. 7).

Could you comment on the merits on this suggested possible amendment to the definition of legislative instruments in the bill? Are any changes in relation to this issue being considered?

Response to Question 4

Consistent with the existing provisions of the Legislative Instruments Act, the Bill provides flexibility to specify an appropriate instrument making power in an Act or instrument based on the nature of the proposed instruments and the particular subject matter they will deal with.

It is not practicable or desirable to provide a provision in new section 8 for a categorical declaration that rules made under a broad rule-making power are legislative instruments. This is because it would be difficult to formulate such a provision, and because it is preferable to determine the status of instruments in enabling legislation on a case-by-case basis, and to express that status clearly on the face of the enabling legislation.

Changing the definition of a legislative instrument to include all rules by default could have significant unintended consequences in relation to:

- rules of court, which are currently declared not to be legislative instruments, and
- rules that are not currently required to be registered or subject to disallowance, such as cabling provider rules made under subsection 421(1) of the *Telecommunications Act 1997*.

The broad rule-making power referred to by the Clerk has two limbs, based on the standard regulation-making power:

- rules “required or permitted by this Act to be prescribed”, and
- rules “necessary or convenient to be prescribed for carrying out or giving effect to this Act”.

The first limb requires a specific rule-making power to be found elsewhere in the Act to trigger the exercise of the power. This should not be of concern, since the specific power will in effect be no different from any other power to make a legislative instrument. Rule-making powers can be appropriately limited by specifying the matters for which rules are required or permitted to be made in the enabling legislation. The rule-making power in new section 61A of the Legislation Act is limited in this way, and matters for which the rules are required or permitted to be made are set out in authorising provisions.

If there is a power to make rules that are “necessary or convenient” for carrying out or giving effect to the Act, it is true that such rules are generally legislative in character, and in accordance with established government policy and drafting practice, the enabling legislation is required to declare such rules to be legislative instruments.

However, legislative instruments are described differently in different legislative contexts. The note to new subsection 8(1) of the Legislation Act gives examples of four types of instrument:

- Note: Instruments that can be legislative instruments may be described by their enabling legislation in different ways, for example as regulations, rules, ordinances or determinations.

The description of instruments by enabling legislation varies greatly, as indicated only briefly in the note. What may be called a “rule” by one Act may be called a “principle” in another and a “standard” in yet another Act. Each may well be a legislative instrument under the various tests in new section 8, but need not be. It is considered that the greatest degree of transparency is achieved by including individual declarations of legislative instrument status in each enabling law, to ensure that users of the enabling law have greater certainty about the status of instruments under that law. Accordingly, the status of such instruments will be clear in the immediate context of the enabling law, without requiring users to be familiar with a generic provision in another Act (the Legislation Act).

Questions 5 and 6 Notifiable instruments

Question 5

The Migration Institute of Australia has stated:

It is not clear from the Bill or from the Explanatory Memorandum under what circumstances an instrument would be classified as "legislative" or "notifiable" or what use can be made of notifiable instruments.

This does not provide any assurance that notifiable instruments would not or could not be used to evade the disallowance of legislation.

Could you provide a response to this concern?

Question 6

Proposed new subsection 17(1) would require that before a legislative instrument is made, the rule-maker must be satisfied there has been undertaken any consultation that the rule-maker considers appropriate and is 'reasonably practicable to undertake'.

The Explanatory Memorandum to the bill notes that '[t]he consultation requirements for legislative instruments do not apply to notifiable instruments' (p. 14).

The Migration Institution of Australia has raised a concern 'that the use of notifiable instruments may have the possibility of being used to circumvent requirements for consultation'.

Could you provide a response to this concern?

Response to Questions 5 and 6

These questions both relate to the newly created concept of notifiable instruments and its relationship to legislative instruments.

Notifiable instruments are intended to be instruments that are not legislative in character but that, for ease of access and ongoing management, are to be included in a central register. It is therefore intended that this will ensure greater transparency and easier access to this class of instrument.

The definition of a ‘legislative instrument’ has not changed materially, although the Bill does amend it to reduce circularity and to make it clearer on some matters. For example, an

instrument that amends or repeals a legislative instrument is now, by definition, a legislative instrument. This was a matter not covered by the previous definition.

The definition of a 'notifiable instrument' is new, but it is not a new legal concept. Many Acts require certain instruments to be published or notified in the *Gazette*, and in some cases they also require consultation before such instruments can be made. However, imposing a blanket requirement for consultation may be excessive considering the nature and volume of the instruments in question.

To illustrate, and as explained in new section 11 of the Legislation Act as amended by the Bill, examples of notifiable instruments may include notices of appointments and of approved forms. Based on recent *Gazette* notices, additional examples could include factual notices of Royal Assent to Acts, of bond or exchange rates, and of consultation opportunities linked to an application or intention to do something under an Act.

Commonwealth agencies will consult when developing notifiable instruments if it is appropriate to do so. Guidance on when consultation is appropriate is available in the *Australian Government Guide to Regulation* on the Government's Cutting Red Tape website at cuttingredtape.gov.au.

Notifiable instruments will not be subject to disallowance. This is appropriate because notifiable instruments as defined in the Bill (s11) are not legislative in character. They will be administrative in character – they will apply the law rather than determine the law. Any instrument that has a legislative character will be, by definition, a legislative instrument (s8(4)), and therefore subject to disallowance unless exempted (either by the enabling Act, or by regulation made under the Legislation Act). The Bill will prevent an instrument that is a legislative instrument from being registered as a notifiable instrument (s11(2)).

Accordingly, the Bill ensures the new category of notifiable instruments will not be able to be used to avoid parliamentary scrutiny. Further, any provision in a Bill or legislative instrument specifying that an instrument is to be a notifiable instrument will be subject to Parliamentary scrutiny. This scrutiny should ensure instruments that should be legislative instruments are not specified to be notifiable instruments.

In addition, the Act also continues to provide a powerful incentive for rule-makers to identify legislative instruments correctly: a legislative instrument is not enforceable by or against any person unless it is registered as a legislative instrument (new section 15K). As such, any attempt to 'evade' consultation and disallowance processes by lodging a legislative instrument as something else would have substantial legal and other consequences for the rule-maker.



CONSULTATION DRAFT

This consultation draft is a working draft that is supplied in confidence and should be given appropriate protection.

Legislation (Instrument Declarations and Exemptions) Regulation 2014

Select Legislative Instrument No. , 2014

(Attorney-General)

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Part 1—Preliminary

^1 Name of regulation

This regulation is the *Legislation (Instrument Declarations and Exemptions) Regulation 2014*.

^2 Commencement

This regulation commences at the same time as the *Acts and Instruments (Framework Reform) Act 2014*.

^3 Authority

This regulation is made under the *Legislation Act 2003*.

^4 Definitions

In this regulation:

Act means the *Legislation Act 2003*.

Part 2—Instruments declared not to be legislative instruments

^5 Classes of instruments declared not to be legislative instruments

The table in this section prescribes classes of instruments that are not legislative instruments for the purposes of paragraph 8(6)(b) of the Act.

| Classes of instruments that are not legislative instruments | |
|--|---|
| Item | Class of instrument |
| 1 | An instrument of delegation, including any directions to the delegate. |
| 2 | An instrument that comprises, in its entirety, of a direction to a delegate. |
| 3 | An instrument of authorisation (that is, an instrument the effect of which is to authorise a specified individual to take a particular action or act in a particular way) or an application for such an instrument. |
| 4 | An instrument the effect of which is to approve a manner of doing an act. |
| 5 | An evidentiary certificate. |
| 6 | An instrument prescribing or approving a form. |
| 7 | A practice direction made by a court or tribunal. |
| 8 | An instrument of appointment, engagement or employment, or an instrument of suspension or termination of appointment, engagement or employment. |
| 9 | An instrument granting leave of absence or determining terms and conditions of appointment, engagement or employment. |
| 10 | An instrument that relates to terms and conditions of employment of persons, or to the terms and conditions of service of persons as members or special members of the Australian Federal Police, other than: (a) regulations; or (b) instruments that are made under section 23 or subsection 24(3) of the <i>Public Service Act 1999</i> ; or (c) instruments that are made under section 23 or subsection 24(3) of the <i>Parliamentary Service Act 1999</i> ; or (d) instruments that are required to be laid before the Parliament under |

| Classes of instruments that are not legislative instruments | |
|--|---|
| Item | Class of instrument |
| | subsection 7(7) of the <i>Remuneration Tribunal Act 1973</i> . |
| 11 | An instrument of resignation. |
| 12 | An instrument constituting recommendations or advice. |
| 13 | An annual or periodic report. |
| 14 | Each of the following: <ul style="list-style-type: none"> (a) an instrument granting, renewing, transferring, suspending or cancelling a licence or permit that authorises a specified person to do an act, or registration of a specified person; (b) an instrument refusing to grant, renew or transfer such a licence, permit or registration; (c) an instrument imposing conditions on such a licence, permit or registration. |
| 15 | A warrant, an application for a warrant, or an instrument supporting such an application. |
| 16 | An instrument authorising: <ul style="list-style-type: none"> (a) the surveillance of a person or thing; or (b) the retrieval of a device facilitating such surveillance; or (c) the interception of a thing. |
| 17 | An application for an instrument mentioned in item 17, or an instrument supporting such an application. |
| 18 | An instrument acknowledging the receipt of something. |
| 19 | An instrument requesting or requiring a person to attend premises, give evidence, answer questions, produce documents or give information. |
| 20 | Each of the following: <ul style="list-style-type: none"> (a) a notice of a decision or proposed decision; (b) a notice of reasons for a decision or proposed decision; (c) a notice of rights of review. |
| 21 | An instrument the making or issue of which is: <ul style="list-style-type: none"> (a) a decision that is reviewable under the <i>Administrative Decisions (Judicial Review) Act 1977</i>; or (b) a decision that would be reviewable under that Act except for an exemption under that Act or another Act. |
| 22 | An agreement, contract or undertaking authorised to be made or given under legislation, or an instrument made under such an agreement, contract |

| Classes of instruments that are not legislative instruments | |
|--|---|
| Item | Class of instrument or undertaking. |
| 23 | An acceptance or rejection of an undertaking. |
| 24 | A nomination, request or invitation, or a withdrawal of a nomination, request or invitation. |
| 25 | Each of the following: <ul style="list-style-type: none"> (a) an application for an order, direction or other instrument (a <i>court or tribunal instrument</i>), or a withdrawal of such an application, to any of the following (a <i>relevant person or body</i>): <ul style="list-style-type: none"> (i) a court; (ii) a Judge or a Magistrate (including a Judge or Magistrate acting in a personal capacity); (iii) an officer of a court; (iv) a tribunal; (v) a member or an officer of a tribunal; (b) a court or tribunal instrument made in response to an application to a relevant person or body; (c) a court or tribunal instrument made in proceedings before a relevant person or body. |
| 26 | A decision or order of the Fair Work Commission. |
| 27 | An assessment of tax or an amendment of an assessment of tax. |
| 28 | A garnishee notice. |
| 29 | An instrument remitting or waiving a penalty, or discharging or extinguishing a liability, in relation to a particular person. |
| 30 | An infringement notice. |
| 31 | An instrument varying, in a particular case, the time for a particular act to be done or a particular event to occur, or an instrument extending or shortening, in a particular case, a time period in which a particular act is to be done or a particular event is to occur. |
| 32 | An instrument that renews, transfers, suspends, cancels or terminates a right created or an obligation imposed by an instrument that is not a legislative instrument. |
| 33 | An instrument that amends or repeals an instrument that is not a legislative instrument. |
| 34 | A corporate plan. |
| 35 | A notice published in the Gazette that announces the day an international |

Classes of instruments that are not legislative instruments

| Item | Class of instrument |
|------|---|
| | agreement comes into force for Australia. |

^6 Particular instruments declared not to be legislative instruments

The table in this section prescribes particular instruments that are not legislative instruments for the purposes of paragraph 8(6)(b) of the Act.

Particular instruments that are not legislative instruments

| Item | Instrument |
|------|--|
| 1 | An instrument (other than a regulation) made under the <i>Air Navigation Act 1920</i> , or under the regulations made under that Act, relating to aviation security. |
| 2 | Each of the following: (a) a declaration made under regulation 6 of the <i>Airspace Regulations 2007</i> ; (b) a determination made under subregulation 9(2) of those Regulations. |
| 3 | An order made by the Commissioner under section 38 of the <i>Australian Federal Police Act 1979</i> . |
| 4 | An order made under paragraph 4.1(c) or (f) and subsection 6.2 of the Programs and Awards Statute 2006, made under the <i>Australian National University Act 1991</i> . |
| 5 | A determination made under section 32 of the <i>Australian Postal Corporation Act 1989</i> . |
| 6 | A guideline given under section 8A of the <i>Australian Security Intelligence Organisation Act 1979</i> . |
| 7 | Each of the following: (a) an instrument made under the <i>Aviation Transport Security Act 2004</i> , other than regulations made under that Act or an instrument made under section 2 or 107 of that Act; (b) an instrument made under regulations made under that Act. |
| 8 | A notice under subsection 10(2) of the <i>Census and Statistics Act 1905</i> . |
| 9 | Each of the following: (a) a determination made under section 48, 65, 73, 76 or 76A of the |

| Particular instruments that are not legislative instruments | |
|--|---|
| Item | Instrument |
| | <p><i>Commonwealth Electoral Act 1918</i>;</p> <p>(b) a direction made under section 59 of that Act;</p> <p>(c) a notice under section 80 or subsection 200D(2), 225(1), 227(3) or 227(4) of that Act.</p> |
| 10 | <p>An instrument (other than a regulation) that is made under the <i>Corporations Act 2001</i> and that, in relation to:</p> <p>(a) a specified person (other than a person specified by membership of a class) or to persons associated with that specified person; or</p> <p>(b) a specified facility (other than a facility specified by membership of a class); or</p> <p>(c) a specified financial product (other than a product specified by membership of a class);</p> <p>has the effect of:</p> <p>(d) exempting the person, facility or product from the rules under the Act; or</p> <p>(e) modifying the operation of the rules under the Act in their application to the person, facility or product.</p> |
| 11 | <p>Each of the following:</p> <p>(a) an instrument made under section 161J of the <i>Customs Act 1901</i>;</p> <p>(b) a determination made under section 273 of that Act;</p> <p>(c) an instrument under Part XVB of that Act.</p> |
| 12 | <p>An authorisation under section 16 of the <i>Customs Administration Act 1985</i>.</p> |
| 13 | <p>An instrument made under section 8, 9, 10 or 11 of the <i>Customs Tariff (Anti-Dumping) Act 1975</i>.</p> |
| 14 | <p>Each of the following:</p> <p>(a) an instruction under section 9A of the <i>Defence Act 1903</i>;</p> <p>(b) a determination made under section 58H of that Act.</p> |
| 15 | <p>A determination made under regulation 14 or 23 of the <i>Defence (Personnel) Regulations 2002</i>.</p> |
| 16 | <p>A certificate issued under regulation 5A of the <i>Diplomatic Privileges and Immunities Regulations 1989</i>.</p> |
| 17 | <p>A fair work instrument (within the meaning of the <i>Fair Work Act 2009</i>).</p> |
| 18 | <p>A transitional instrument or Division 2B State instrument (within the</p> |

| Particular instruments that are not legislative instruments | |
|--|--|
| Item | Instrument |
| | meaning of the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>). |
| 19 | An instrument made under subsection 42(1) of the <i>Foreign Evidence Act 1994</i> . |
| 20 | A legal services direction issued under paragraph 55ZF(1)(b) of the <i>Judiciary Act 1903</i> . |
| 21 | Each of the following: <ul style="list-style-type: none"> (a) an instrument made under the <i>Maritime Transport and Offshore Facilities Security Act 2003</i>, other than regulations made under that Act or an instrument made under section 2 or 182 of that Act; (b) an instrument made under regulations made under that Act. |
| 22 | A designation, or revocation of designation, made under section 11 of the <i>Payment Systems (Regulation) Act 1998</i> . |
| 23 | A ministerial direction to: <ul style="list-style-type: none"> (a) a Commonwealth company within the meaning of the <i>Public Governance, Performance and Accountability Act 2013</i>; or (b) a corporate Commonwealth entity within the meaning of that Act; other than any such direction; (c) that is required to be laid before the Houses of the Parliament under the legislation that authorises the giving of the directions; or (d) the full text of which is required to be published in the Gazette or elsewhere under that legislation. |
| 24 | An instrument made under section 72 of the <i>Public Service Act 1999</i> . |
| 25 | A law of a self-governing Territory, other than a Territory Ordinance covered by subsection @10(2) of the Act, or a regulation, rule or by-law under such an Ordinance. Note: Subsection @10(1) of the Act declares Territory Ordinances covered by subsection @10(2) of the Act, and regulations rules and by-laws made under such Ordinances, to be legislative instruments. |
| 26 | A law of a State or self-governing Territory that applies in a non-self-governing Territory and an instrument made under that law. |
| 27 | An Ordinance of the former Colony of Singapore that applies in a non-self-governing Territory and an instrument made under that Ordinance. |
| 28 | A determination made under subsection 1084(1) or 1118B(2) of the <i>Social</i> |

| Particular instruments that are not legislative instruments | |
|--|--|
| Item | Instrument |
| | <i>Security Act 1991.</i> |
| 29 | A determination made under paragraph 3.1(d) of the Trust Deed: (a) made under section 4 of the <i>Superannuation Act 1990</i> ; and (b) as in force from time to time. |
| 30 | A determination made under paragraph 3.1(e) of the Trust Deed made under section 10 of the <i>Superannuation Act 2005</i> . |
| 31 | A determination made under paragraph 154A(4)(c) of the <i>Superannuation Act 1976</i> . |
| 32 | An instrument (other than a regulation or other instrument that was disallowable before 1 January 2005) that is made under the <i>Superannuation Industry (Supervision) Act 1993</i> and that, in relation to: (a) a specified person (other than a person specified by membership of a class) or to persons associated with that specified person; or (b) a specified financial product (other than a product specified by membership of a class); has the effect of: (c) exempting the person or product from the rules under the Act; or (d) modifying the operation of the rules under the Act in their application to the person or product. |
| 33 | A private ruling given or a public ruling made under the <i>Taxation Administration Act 1953</i> . |
| 34 | A record-keeping rule made under subsection 151BU (1) of the <i>Competition and Consumer Act 2010</i> for and in relation to one or more specified carriers or one or more specified carriage service providers, other than a carrier or carriage service provider specified by inclusion in a specified class. |
| 35 | Each of the following: (a) an instrument issued by the Defence Force under paragraph 5B(2)(a) of the <i>Veterans' Entitlements Act 1986</i> ; (b) an instrument made under paragraph 5B(2)(b) of that Act; (c) an instrument made under paragraph 5B(2)(c) of that Act; (d) a determination made under section 5R of that Act; (e) an instrument made under subsection 6D(1) of that Act; (f) a determination made under subsection 46L(1) or 52AA(2) of that Act; |

Particular instruments that are not legislative instruments

| Item | Instrument |
|-------------|-------------------|
|-------------|-------------------|

| | |
|--|---|
| | (g) a designation made in accordance with paragraph (b) of the definition of <i>Peacekeeping Force</i> in subsection 68(1) of that Act. |
|--|---|

Part 3—Instruments declared to be notifiable instruments

^7 Notifiable instruments

The table in this section prescribes instruments that are notifiable instruments for the purposes of paragraph 11(1)(b) of the Act.

| Notifiable instruments | |
|-------------------------------|---|
| Item | Instrument |
| 1 | An instrument that announces the day an international agreement comes into force for Australia. |

Part 4—Instruments not subject to disallowance

^8 Classes of legislative instruments not subject to disallowance

The table in this section prescribes classes of legislative instruments that are not subject to disallowance for the purposes of paragraph 44(2)(c) of the Act.

Note: The inclusion of a kind of instrument in this section does not imply that every instrument of that kind is a legislative instrument—see subsection 44(3) of the Act.

| Classes of legislative instruments that are not subject to disallowance | |
|--|---|
| Item | Legislative instrument |
| 1 | An instrument that, in accordance with the provisions of the enabling legislation, does not commence unless it is approved by either or both of the Houses of the Parliament. |
| 2 | An instrument made under an annual Appropriation Act. |
| 3 | An instrument (other than a regulation) relating to superannuation. |
| 4 | A Ministerial direction to any person or body. |

^9 Particular legislative instruments not subject to disallowance

The table in this section prescribes particular legislative instruments that are not subject to disallowance for the purposes of paragraph 44(2)(c) of the Act.

Note: The inclusion of a kind of instrument in this section does not imply that every instrument of that kind is a legislative instrument—see subsection 44(3) of the Act.

| Particular legislative instruments that are not subject to disallowance | |
|--|---|
| Item | Legislative instrument |
| 1 | A notice given under subsection 17(1) of the <i>Air Services Act 1995</i> . |
| 2 | Each of the following: (a) a determination made under regulation 5 of the <i>Airspace Regulations 2007</i> ; |

| Particular legislative instruments that are not subject to disallowance | |
|--|--|
| Item | Legislative instrument |
| | (b) a designation made under regulation 8 of those Regulations; (c) a designation or determination made under regulation 11 of those Regulations; (d) a direction given under regulation 12 of those Regulations; (e) instructions given under subregulation 3.03(3) or (4) of the <i>Air Services Regulations 1995</i> . |
| 3 | A determination under subsection 5(2) of the <i>Australian Citizenship Act 2007</i> . |
| 4 | A determination specifying drugs, made under section 4A of the <i>Australian Federal Police Act 1979</i> . |
| 5 | A statute, rule or order made under the <i>Australian National University Act 1991</i> . |
| 6 | An instrument made under section 32 of the <i>Australian Postal Corporation Act 1989</i> . |
| 7 | Each of the following: (a) a rule made under section 60 of the <i>Australian Research Council Act 2001</i> ; (b) a variation of a set of rules made under section 61 of the <i>Australian Research Council Act 2001</i> . |
| 8 | Each of the following: (a) a standard issued under section 122 of the <i>Broadcasting Services Act 1992</i> ; (b) an amendment under section 128 of that Act to a standard under Part 9 of that Act. |
| 9 | A notice given under section 12A of the <i>Civil Aviation Act 1988</i> . |
| 10 | A fee waiver principle made under subsections 91(1A) and (1B) of the <i>Classification (Publications, Films and Computer Games) Act 1995</i> . |
| 11 | Each of the following: (a) a notice under section 80, subsection 200D(2), 225(1), 227(3) or 227(4) or paragraph 305A(1)(c) of the <i>Commonwealth Electoral Act 1918</i> ; (b) a declaration made under subsection 246(1) of that Act for the purposes of the meaning of "station". |
| 12 | A proclamation made under section 3A or 3B of the <i>Control of Naval Waters Act 1918</i> . |

| Particular legislative instruments that are not subject to disallowance | |
|--|--|
| Item | Legislative instrument |
| 13 | Each of the following: (a) a determination made under section 126DA of the <i>Customs Act 1901</i> ; (b) a determination made under paragraph 153L(1)(c), 153P(2)(c) or 153Q(1)(c) or subsection 153ZIH(2) of that Act; (c) an instrument made under subsection 161J(2) or (3) of that Act; (d) a tariff concession order made under section 269P or 269Q of that Act; (e) an instrument made under section 269SC or 269SD of that Act; (f) a by-law made under section 271 of that Act for the purposes of Schedule 4 to the <i>Customs Tariff Act 1995</i> . |
| 14 | A revocation of a commercial tariff concession order to which section 20 of the <i>Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992</i> applies. |
| 15 | A notice made under subsection 16A(1) of the <i>Customs Tariff Act 1995</i> . |
| 16 | An instrument made under section 59 of the <i>Education Services for Overseas Students Act 2000</i> . |
| 17 | An instrument made under section 303CA, 344 or 350 of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> . |
| 18 | A by-law made under section 165 of the <i>Excise Act 1901</i> for the purposes of the Excise Tariff within the meaning of section 4 of that Act. |
| 19 | A proclamation made under section 5, a warrant made under section 6 or a rule made under section 7, of the <i>Flags Act 1953</i> . |
| 20 | A proclamation made under subsection 31(1) or (3) of the <i>Great Barrier Reef Marine Park Act 1975</i> . |
| 21 | A guideline issued under section 13 of the <i>Higher Education Funding Act 1988</i> . |
| 22 | A certificate made under subsection 51(1) of the <i>Legislation Act 2003</i> . |
| 23 | A legislative instrument (other than a regulation) made under Part 1, 2 or 9 of the <i>Migration Act 1958</i> , or a legislative instrument made under Part 1, 2 or 5, or Schedule 1, 2, 4, 5A, 6, 6A or 8, of the <i>Migration Regulations 1994</i> . |
| 24 | A determination made under subsection 6(1) of the <i>Military Rehabilitation and Compensation Act 2004</i> . |
| 25 | A declaration made under section 32 of the <i>Mutual Recognition Act 1992</i> . |
| 26 | An instrument made under subsection 203AH(1) of the <i>Native Title Act 1993</i> . |

| Particular legislative instruments that are not subject to disallowance | |
|--|---|
| Item | Legislative instrument |
| 27 | A regulation made under section 7 of the <i>National Transport Commission Act 2003</i> . |
| 28 | Each of the following: (a) a direction issued under section 20 of the <i>Parliamentary Service Act 1999</i> ; (b) an instrument made under section 23 or subsection 24(3) of that Act. |
| 29 | Each of the following: (a) an access regime made under section 12 of the <i>Payment Systems (Regulation) Act 1998</i> ; (b) a variation of an access regime under section 14 of that Act; (c) a revocation of an access regime under section 15 of that Act; (d) a determination or variation of a standard under section 18 of that Act; (e) an instrument made under section 25 of that Act. |
| 30 | Each of the following: (a) a direction issued under section 21 of the <i>Public Service Act 1999</i> ; (b) an instrument made under section 23 or subsection 24(3) of that Act. |
| 31 | An instrument made under section 2A, 2B, or 12, subsection 13(1), section 20B, subsection 26(2) or section 26A of the <i>Quarantine Act 1908</i> . |
| 32 | An instrument made under subsection 60(1) or 106(1) of the <i>Radiocommunications Act 1992</i> . |
| 33 | An instrument made under subsection 463(1) of the <i>Telecommunications Act 1997</i> . |
| 34 | A determination made under section 16 of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> . |
| 35 | A declaration made under section 6 of the <i>Terrorism Insurance Act 2003</i> . |
| 36 | A declaration made under section 31 of the <i>Trans-Tasman Mutual Recognition Act 1997</i> . |
| 37 | A determination made for the purposes of the definition of <i>non-warlike service</i> or <i>warlike service</i> in subsection 5C(1) (Eligibility related definitions) of the <i>Veterans' Entitlements Act 1986</i> . |

Part 5—Instruments not subject to sunseting

^10 Classes of legislative instruments not subject to sunseting

The table in this section prescribes classes of instruments that are not subject to sunseting for the purposes of paragraph 54(2)(b) of the Act.

Note: The inclusion of a kind of instrument in this section does not imply that every instrument of that kind is a legislative instrument—see subsection 54(3) of the Act.

| Classes of legislative instruments that are not subject to sunseting | |
|---|--|
| Item | Legislative instrument |
| 1 | An instrument the sole purpose of which, or a primary purpose of which, is to give effect to an international obligation of Australia. |
| 2 | An instrument the sole purpose of which, or a primary purpose of which, is to confer heads of power on a self-governing Territory. |
| 3 | An instrument that establishes a body having power to enter into contracts for the purposes of the body's functions. |
| 4 | A ministerial direction to any person or body. |
| 5 | An Ordinance of a non-self-governing Territory. |
| 6 | An instrument (other than a regulation) relating to superannuation. |
| 7 | An instrument made under an annual Appropriation Act. |

^11 Particular legislative instruments not subject to sunseting

The table in this section prescribes particular instruments that are not subject to sunseting for the purposes of paragraph 54(2)(b) of the Act.

Note: The inclusion of a kind of instrument in this section does not imply that every instrument of that kind is a legislative instrument—see subsection 54(3) of the Act.

| Legislative instruments that are not subject to sunseting | |
|--|---|
| Item | Legislative instrument |
| 1 | An instrument made under section 8 or 9 of the <i>Aboriginal Land Grant</i> |

| Legislative instruments that are not subject to sunseting | |
|--|---|
| Item | Legislative instrument |
| | <i>(Jervis Bay Territory) Act 1986.</i> |
| 2 | A regulation made under the <i>Aboriginal Land Rights (Northern Territory) Act 1976.</i> |
| 3 | A rule made under section 229 (AML/CTF Rules) of the <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006.</i> |
| 4 | An instrument relating to aviation security made under the <i>Air Navigation Act 1920</i> or under a regulation made under that Act. |
| 5 | An instrument relating to aviation safety made under the <i>Air Services Act 1995</i> or made under a regulation made under that Act. |
| 6 | A national capital plan made under the <i>Australian Capital Territory (Planning and Land Management) Act 1988.</i> |
| 7 | A determination specifying drugs, made under section 4A of the <i>Australian Federal Police Act 1979.</i> |
| 8 | A statute, rule or order made under the <i>Australian National University Act 1991.</i> |
| 9 | An instrument made under section 32 of the <i>Australian Postal Corporation Act 1989.</i> |
| 10 | A regulation made under the <i>Aviation Transport Security Act 2004.</i> |
| 11 | An instrument made under section 25 or 26 of the <i>Broadcasting Services Act 1992.</i> |
| 12 | A determination made under subsection 70A(4) (determinations relating to recognised settlement systems) of the <i>Cheques Act 1986.</i> |
| 13 | An instrument relating to aviation safety made under the <i>Civil Aviation Act 1988</i> , the <i>Civil Aviation Regulations 1988</i> or the <i>Civil Aviation Safety Regulations 1998.</i> |
| 14 | A principle made under subsection 91(1A) or (1B) (fee waiver principles) of the <i>Classification (Publications, Films and Computer Games) Act 1995.</i> |
| 15 | Each of the following: <ul style="list-style-type: none"> (a) an instrument made under section 104 or 105 (safety standards) of Schedule 2 (The Australian Consumer Law) to the <i>Competition and Consumer Act 2010</i> (including a prescribed consumer product safety standard made under section 65C of the <i>Trade Practices Act 1974</i> that was in force immediately before the commencement of item 4 of Schedule 7 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i>); |

| Legislative instruments that are not subject to sunseting | |
|--|--|
| Item | Legislative instrument |
| | <p>(b) an instrument made under section 114 (permanent bans) of Schedule 2 (The Australian Consumer Law) to the <i>Competition and Consumer Act 2010</i> (including a notice under subsection 65C(7) of the <i>Trade Practices Act 1974</i> that was in force immediately before the commencement of item 3 of Schedule 7 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i>);</p> <p>(c) an instrument made under section 134 or 135 (information standards) of Schedule 2 (The Australian Consumer Law) to the <i>Competition and Consumer Act 2010</i> (including a prescribed consumer product information standard made under section 65D of the <i>Trade Practices Act 1974</i> that was in force immediately before the commencement of item 5 of Schedule 7 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i>).</p> |
| 16 | A proclamation made under section 3A (proclamation of vessels as exempt vessels) or 3B (proclamation of waters as naval waters) of the <i>Control of Naval Waters Act 1918</i> . |
| 17 | Each of the following: <p>(a) a standard made under section 334 (Accounting standards) or 336 (Auditing standards) of the <i>Corporations Act 2001</i>;</p> <p>(b) a rule made under section 798G (Market integrity rules) of that Act;</p> <p>(c) an instrument made under section 827D (Reserve Bank may determine financial stability standards) of that Act.</p> |
| 18 | A regulation made under the <i>Cross-Border Insolvency Act 2008</i> . |
| 19 | Each of the following: <p>(a) a regulation made solely for the purposes of section 50 (Prohibition of the importation of goods) or 112 (Prohibited exports) of the <i>Customs Act 1901</i>;</p> <p>(b) a determination made under paragraph 153L(1)(c), 153P(2)(c) or 153Q(1)(c) or subsection 153ZIH(2) of that Act;</p> <p>(c) an instrument made under subsection 161J(2) or (3) of that Act;</p> <p>(d) a tariff concession order made under Part XVA of that Act.</p> |
| 20 | An instrument made under section 178, 181, 183, 184, 207A, 248, 249, 303CA, 303DB, 303DC, 303EB, 303EC, 303FG, 344 or 350 of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> . |
| 21 | Excise by-law No. 75, 114, 127, 129, 151 or 154 made under section 165 of the <i>Excise Act 1901</i> . |

| Legislative instruments that are not subject to sunseting | |
|--|---|
| Item | Legislative instrument |
| 22 | A plan of management made under section 17 of the <i>Fisheries Management Act 1991</i> and an instrument amending such plans made under section 20 of that Act. |
| 23 | A proclamation made under section 5, warrants made under section 6, or rules made under section 7, of the <i>Flags Act 1953</i> . |
| 24 | A regulation made under the <i>Foreign Acquisitions and Takeovers Act 1975</i> . |
| 25 | Each of the following: <ul style="list-style-type: none"> (a) a proclamation made under section 31 of the <i>Great Barrier Reef Marine Park Act 1975</i>; (b) a plan of management prepared in accordance with Part VB of that Act; (c) an instrument made under section 39ZG of that Act amending a plan of management; (d) an instrument made under section 39ZH of that Act revoking a plan of management. |
| 26 | Each of the following: <ul style="list-style-type: none"> (a) an approval given under subsection 16-25(1) (approvals of higher education providers) of the <i>Higher Education Support Act 2003</i>; (b) an approval given under subclause 6(1) or (1A) (approvals of VET providers) of Schedule 1A (VET FEE-HELP Assistance Scheme) to that Act. |
| 27 | A regulation made under the <i>Judges' Pensions Act 1968</i> . |
| 28 | A regulation made under the <i>Maritime Transport and Offshore Facilities Security Act 2003</i> . |
| 29 | A determination made under section 6 (Kinds of service to which this Act applies) or 8 (Ministerial determinations that other people are members) of the <i>Military Rehabilitation and Compensation Act 2004</i> . |
| 30 | An instrument made under section 7 or 9 of the <i>Motor Vehicle Standards Act 1989</i> . |
| 31 | A declaration made under section 32 of the <i>Mutual Recognition Act 1992</i> . |
| 32 | A regulation made solely for the purposes of section 7 (Regulations setting out model legislation and road transport legislation) of the <i>National Transport Commission Act 2003</i> . |
| 33 | Each of the following: |

| Legislative instruments that are not subject to sunseting | |
|--|--|
| Item | Legislative instrument |
| | <ul style="list-style-type: none"> (a) a determination made under paragraph 26(3)(b) (determinations relating to excluded Acts) of the <i>Native Title Act 1993</i> as in force immediately before 30 September 1998; (b) an instrument made under subparagraph 26(1)(c)(iv), subsection 26A(1), 26B(1) or 26C(2), paragraph 43(1)(b) or 43A(1)(b), subsection 207A(1), 207B(3), 245(4) or 251C(4) or (5), or paragraph (i) of the definition of <i>infrastructure facility</i> in section 253, of the <i>Native Title Act 1993</i>; (c) a regulation made solely for the purposes of Division 6 (Native title functions of prescribed bodies corporate and holding of native title in trust) or Division 7 (Financial matters) of Part 2 (Native Title) of that Act. |
| 34 | A regulation made under the <i>Papua New Guinea (Staffing Assistance) Act 1973</i> . |
| 35 | A regulation made under the <i>Parliamentary Contributory Superannuation Act 1948</i> . |
| 36 | Each of the following: <ul style="list-style-type: none"> (a) a direction issued under section 20 of the <i>Parliamentary Service Act 1999</i>; (b) an instrument made under section 23 or subsection 24(3) of that Act. |
| 37 | Each of the following: <ul style="list-style-type: none"> (a) a regulation made under the <i>Payment Systems and Netting Act 1998</i>; (b) an approval made under section 9 of that Act. |
| 38 | Each of the following: <ul style="list-style-type: none"> (a) a declaration made under subsection 9(3) (facilities not purchased payment facilities) of the <i>Payment Systems (Regulation) Act 1998</i>; (b) an access regime imposed under section 12 of that Act; (c) a variation of an access regime under section 14 of that Act; (d) a revocation of an access regime under section 15 of that Act; (e) a standard determined, or instruments varying or revoking such standards, under section 18 of that Act; (f) an instrument made under section 25 of that Act; (g) a regulation made under that Act. |
| 39 | A regulation made under section 23 of the <i>Protection of the Sea (Powers of Intervention) Act 1981</i> |

| Legislative instruments that are not subject to sunseting | |
|--|---|
| Item | Legislative instrument |
| 40 | Each of the following: (a) an order made under subsection 34(1) of the <i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i> ; (b) a regulation made under subsection 33(1) of that Act. |
| 41 | A regulation made under the <i>Protection of Word "Anzac" Act 1920</i> . |
| 42 | Each of the following: (a) a direction issued under section 21 of the <i>Public Service Act 1999</i> ; (b) an instrument made under section 23 or subsection 24(3) of that Act. |
| 43 | Each of the following: (a) a notice given under section 36 (Designation of parts of the spectrum for spectrum licences) of the <i>Radiocommunications Act 1992</i> ; (b) a declaration made under section 153B (Spectrum re-allocation declaration) of that Act. |
| 44 | An instrument required to be laid before the Parliament under subsection 7(7) of the <i>Remuneration Tribunal Act 1973</i> |
| 45 | Each of the following: (a) a declaration made under subparagraph (c)(iii) (declaration that body corporate is Commonwealth authority) of the definition of Commonwealth authority in subsection 4(1) of the <i>Safety, Rehabilitation and Compensation Act 1988</i> ; (b) a declaration made under section 4A (Declaration that ACT a Commonwealth authority) of that Act; (c) an instrument made under subsection 5(6) (notices declaring persons to be Commonwealth employees) of that Act; (d) a declaration made under subparagraph 6(1)(h)(ii) (declaration relating to places outside Australia), or (i)(ii) (declaration relating to classes of employees outside Australia), of that Act; (e) a declaration made under section 100 (Minister may declare a corporation eligible to be granted a licence under this Part) of that Act. |
| 46 | A regulation made under the <i>Superannuation Act 1922</i> . |
| 47 | A regulation made under the <i>Superannuation Act 1976</i> , except regulations made solely for the purposes of section 153AN (fees for reconsideration) or subsection 160(1) (costs of administration) of that Act. |
| 48 | A regulation made under the <i>Superannuation (Productivity Benefit) Act 1988</i> . |

Legislative instruments that are not subject to sunseting

| Item | Legislative instrument |
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| 49 | Each of the following: (a) a code made under subclause 37(1) (access codes) of Schedule 1 (Standard carrier licence conditions) to the <i>Telecommunications Act 1997</i> ; (b) a declaration made under subclause 4(1) (protection zone declarations) of Schedule 3A (Protection of submarine cables) to that Act. |
| 50 | A declaration made under subsection 6N(2) (Declaration of staff members of State Police Forces) or section 34 (Declaration of an eligible authority of a State as an agency) of the <i>Telecommunications (Interception and Access) Act 1979</i> . |
| 51 | Each of the following: (a) a declaration made under section 6 (Declared terrorist incidents) of the <i>Terrorism Insurance Act 2003</i> ; (b) a regulation made under that Act. |
| 52 | A declaration made under section 31 of the <i>Trans-Tasman Mutual Recognition Act 1997</i> . |
| 53 | Each of the following: (a) a determination made for the purposes of the definition of non-warlike service or warlike service in subsection 5C(1) (<i>Eligibility</i> related definitions) of the <i>Veterans' Entitlements Act 1986</i> ; (b) a determination made under subsection 5R(1) (determinations relating to relevant service) of that Act; (c) an instrument made under subsection 69B(6) (requirements for British nuclear test defence service) of that Act; (d) a determination made for the purposes of the definition of hazardous service in subsection 120(7) of that Act. |