



Legislation Act 2003

No. 139, 2003

Compilation No. 39

Compilation date:	24 February 2019
Includes amendments up to:	Act No. 130, 2018
Registered:	25 February 2019

This compilation includes commenced amendments made by Act No. 78, 2018

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Legislation Act 2003* that shows the text of the law as amended and in force on 24 February 2019 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 1—Introduction	1
Part 1—Preliminary	1
1 Short title.....	1
2 Commencement	1
3 Object.....	2
3A Simplified outline of this Act.....	3
3AA Norfolk Island	4
4 The Dictionary	4
5 Definitions of <i>amend</i> and <i>modify</i>	7
6 Definitions of <i>rule-maker</i> and <i>responsible person</i>	8
Part 2—Key concepts for legislative instruments and notifiable instruments	10
7 Simplified outline of this Part.....	10
8 Definition of <i>legislative instrument</i>	11
9 Inference of legislative character	13
10 Instruments declared to be legislative instruments	14
11 Definition of <i>notifiable instrument</i>	15
12 Commencement of legislative instruments and notifiable instruments.....	16
13 Construction of legislative instruments and notifiable instruments.....	18
14 Prescribing matters by reference to other instruments.....	19
Chapter 2—Registration of Acts, legislative instruments and notifiable instruments	21
Part 1—The Federal Register of Legislation	21
Division 1—Simplified outline of this Part	21
15 Simplified outline of this Part.....	21
Division 2—Federal Register of Legislation	22
15A Federal Register of Legislation—establishment and maintenance	22
15B Federal Register of Legislation—complete record of registered laws	23
15C Federal Register of Legislation—access to registered material on approved website	23

15D	Federal Register of Legislation—rectification of Register	24
15DA	Requirement for re-tabling and new disallowance period after rectification of Register	25
15E	Federal Register of Legislation—keeping the Register	27
Division 3—Registration on Federal Register of Legislation		28
15F	Registration of Acts	28
15G	Lodgement of legislative instruments and notifiable instruments, and other material	28
15H	Registration of legislative instruments and notifiable instruments, and other documents	29
15J	Explanatory statements	30
15K	Registration—enforceability of legislative instruments	31
15L	Events affecting the currency or accuracy of the Register	31
15M	Rules for lodgement and registration	33
Part 2—Compilations		35
Division 1—Simplified outline of this Part		35
15N	Simplified outline of this Part	35
Division 2—Registration of compilations		36
15P	Registered compilations—information requirements	36
15Q	Definitions of <i>required compilation event</i> and <i>discretionary compilation event</i> etc.	36
15R	Lodgement of compilations of instruments—required compilation events	38
15S	Lodgement of compilations of instruments—discretionary compilation events	39
15T	Registration of compilations	39
15U	Compilations—rules	41
Division 3—Editorial changes and other changes		43
15V	Power to make editorial changes and other changes	43
15W	Editorial changes treated in the same way as amendments	45
15X	Definition of <i>editorial change</i>	45
Part 3—Authorised versions and judicial notice		48
Division 1—Introduction		48
15Y	Simplified outline of this Part	48
15Z	Scope of this Part	48
Division 2—Authorised versions and judicial notice		49
15ZA	Authorised versions	49

15ZB	Judicial notice	51
Chapter 3—Legislative instruments and notifiable instruments		
		53
Part 1—Drafting standards and consultation		
		53
15ZC	Simplified outline of this Part.....	53
16	Measures to achieve high drafting standards for legislative instruments and notifiable instruments	53
17	Rule-makers should consult before making legislative instruments.....	54
19	Consequence of failure to consult.....	55
Part 2—Parliamentary scrutiny of legislative instruments		
		56
36	Simplified outline of this Part.....	56
37	The purpose of the Part.....	56
38	Tabling of legislative instruments.....	56
39	Tabling of explanatory statements.....	57
40	Regulations may specify manner of delivery of certain documents	58
41	Incorporated material may be required to be made available.....	58
42	Disallowance of legislative instruments	58
44	Legislative instruments that are not subject to disallowance.....	60
45	Reviving a legislative instrument, law or provision	60
46	Legislative instruments not to be remade while required to be tabled.....	61
47	Legislative instruments not to be remade while subject to disallowance.....	62
48	Remaking disallowed legislative instruments.....	63
Part 3—Repeal of spent legislative instruments, notifiable instruments and provisions		
		64
Division 1A—Simplified outline of this Part		
		64
48AA	Simplified outline of this Part.....	64
Division 1—Automatic repeal		
		65
Subdivision A—Repeal of amending and repealing instruments		
		65
48A	Automatic repeal of amending and repealing instruments	65
Subdivision B—Repeal of commencement instruments		
		66
48B	Automatic repeal of commencement instruments	66

Subdivision C—Repeal of amending or repealing provisions of instruments containing other matter	67
48C Automatic repeal of amending and repealing provisions	67
Subdivision D—Repeal of commencement provisions of instruments containing other matter	69
48D Automatic repeal of commencement provisions	69
Division 2—Repeal by regulations	71
48E Regulations may repeal instruments or provisions no longer required	71
Part 4—Sunsetting of legislative instruments	72
48F Simplified outline of this Part	72
49 The purpose of the Part	72
50 Sunsetting	73
51 Attorney-General may defer sunsetting in certain circumstances	74
51A Attorney-General may align sunsetting of instruments to be reviewed together	75
52 Attorney-General must lay lists of instruments due for sunsetting before each House of the Parliament	76
53 Resolution that instrument continue in force	76
54 Instruments to which this Part does not apply	77
Chapter 4—Miscellaneous	79
55 Simplified outline of this Chapter	79
56 Legislative instruments—gazettal and other publication and notification requirements	79
57 Effect on existing tabling and disallowance requirements	80
57A Legislative instruments made under power delegated by the Parliament before 1 January 2005	82
58 Delegation	82
59 Review of operation of this Act	82
60 Review of operation of the sunsetting provisions	83
61 Legislative instrument and notifiable instrument amendments by regulations under this Act	83
61A Rules made by First Parliamentary Counsel	84
62 Regulations	84
Endnotes	85
Endnote 1—About the endnotes	85

Endnote 2—Abbreviation key	87
Endnote 3—Legislation history	88
Endnote 4—Amendment history	94
Endnote 5—Editorial changes	101

Legislation Act 2003

v

Compilation No. 39

Compilation date: 24/2/19

Registered: 25/2/19

An Act providing for public access to Acts and instruments, for the making, parliamentary scrutiny and sunseting of legislative instruments and for the repeal of spent instruments and provisions, and for other purposes

Chapter 1—Introduction

Part 1—Preliminary

1 Short title

This Act may be cited as the *Legislation Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1, 2 and 2A and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	17 December 2003
2. Sections 3 to 62	A single day fixed by Proclamation, subject to subsections (3) and (4)	1 January 2005

Section 3

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
3. Schedule 1	Immediately after the commencement of Schedule 1 to the <i>Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003</i>	1 January 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) The date fixed by Proclamation for the purposes of item 2 of the table must be a first day of January or a first day of July occurring after the day on which this Act receives the Royal Assent.
- (4) If the provisions covered by item 2 of the table do not commence under subsection (1) within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day of January or of July, whichever next follows the end of that period.

3 Object

The object of this Act is to provide a comprehensive regime for the management of Acts and instruments by:

- (a) establishing the Federal Register of Legislation as a permanent repository of versions (including authorised versions) of Acts, legislative instruments, notifiable instruments and compilations, together with associated documents and information; and
- (aa) enabling the First Parliamentary Counsel to make editorial changes and some other changes in preparing compilations of Acts, legislative instruments and notifiable instruments, if

those changes do not change the effect of the Acts or instruments; and

- (b) encouraging rule-makers to undertake appropriate consultation before making legislative instruments; and
- (c) encouraging high standards in the drafting of legislative instruments and notifiable instruments to promote their legal effectiveness, their clarity and their intelligibility to anticipated users; and
- (d) improving public access to Acts and instruments; and
- (e) establishing improved mechanisms for Parliamentary scrutiny of legislative instruments; and
- (ea) automatically repealing spent legislative instruments and notifiable instruments (or provisions of those instruments) that merely provide for the amendment, repeal or commencement of Acts or other instruments; and
- (f) establishing mechanisms to ensure that legislative instruments are periodically reviewed and, if they no longer have a continuing purpose, repealed; and
- (g) enabling regulations to be made under this Act amending or repealing legislative instruments and notifiable instruments in some circumstances.

3A Simplified outline of this Act

This Act provides for public access to Commonwealth Acts, legislative instruments and notifiable instruments. The Act also regulates other matters relating to legislative instruments and notifiable instruments.

Acts, legislative instruments and notifiable instruments, compilations and associated documents and information are registered on the Federal Register of Legislation. The public has online access (through an approved website) to authorised versions of registered Acts, instruments and compilations, and to associated documents and information.

Section 3AA

The First Parliamentary Counsel maintains the Register and the approved website. The First Parliamentary Counsel is given the power to make editorial changes and some other changes to registered Acts and instruments in preparing compilations, if those changes do not change the effect of the Acts or instruments.

For legislative instruments and notifiable instruments, the Act deals with commencement, interpretation, incorporation of external material by reference and drafting standards.

Rule-makers for legislative instruments must undertake appropriate and reasonably practicable consultation before the instruments are made. Generally, legislative instruments must be tabled in both Houses of Parliament and are generally subject to disallowance by either House.

Legislative instruments and notifiable instruments (or provisions of those instruments) are automatically repealed if they merely provide for the amendment, repeal or commencement of Acts or other instruments. Legislative instruments are generally repealed automatically (sunsetting) no more than 10 years after being registered.

3AA Norfolk Island

This Act extends to Norfolk Island.

4 The Dictionary

In this Act:

amend: see subsection 5(1).

approved website: see section 15C.

authorised version, of a registered law or explanatory statement: see section 15ZA.

commencement instrument, in relation to an Act, legislative instrument or notifiable instrument, means an instrument providing solely for the commencement of:

- (a) the Act or instrument; or
- (b) a provision of the Act or instrument.

Example: A Proclamation providing solely for the commencement of an Act.

compilation, of an Act, legislative instrument or notifiable instrument, is a document showing the text of the Act or instrument:

- (a) as amended (if at all) and in force on a day (the **compilation date**) stated in the document; or
- (b) as the Act or instrument would be amended and in force on a day (the **compilation date**) stated in the document, by amendments that have not commenced, if the document indicates that the amendments have not commenced; or
- (c) as the Act or instrument is, or would be, modified by an Act or an instrument, and in force on a day (the **compilation date**) stated in the document.

Note: See Part 2 of Chapter 2 for the registration of compilations.

compilation date: see the definition of **compilation** in this section.

disallowable legislative instrument means a legislative instrument to which section 42 applies.

Note: Section 42 provides for the parliamentary disallowance of legislative instruments. Section 42 does not apply to some legislative instruments (see section 44).

discretionary compilation event, for an Act, legislative instrument or notifiable instrument: see section 15Q.

editorial change, in relation to an Act, legislative instrument or notifiable instrument: see section 15X.

enabling legislation, in relation to a legislative instrument or notifiable instrument, means the primary law that authorises the making of the instrument.

Section 4

explanatory statement for a legislative instrument: see section 15J.

Federal Register of Legislation means the register established and maintained under section 15A.

First Parliamentary Counsel means the person appointed to the position of First Parliamentary Counsel under subsection 4(1) of the *Parliamentary Counsel Act 1970*.

initial explanatory statement: see section 15J.

instrument means any writing or other document, and includes an instrument in electronic form.

legislative instrument: see section 8.

Note: This term has the same meaning when used in other Acts and instruments: see the definition of ***legislative instrument*** in section 2B of the *Acts Interpretation Act 1901*.

making, in relation to an instrument, means the signing, sealing or other endorsement of the instrument by the person or body empowered to make it.

modify: see subsection 5(2).

notifiable instrument: see section 11.

Note: This term has the same meaning when used in other Acts and instruments: see the definition in section 2B of the *Acts Interpretation Act 1901*.

Office of Parliamentary Counsel means the office established by subsection 2(1) of the *Parliamentary Counsel Act 1970*.

power delegated by the Parliament: an instrument made under a ***power delegated by the Parliament*** includes:

- (a) an instrument made under a power delegated by the Parliament to a person or body and then, under the authority of the Parliament, further delegated by that person or body to another person or body; and

Section 5

- (b) an instrument that may be made under a power delegated by the Parliament as well as under a power given otherwise by law.

Example: An instrument made under an Act as well as a prerogative power.

primary law means an Act or an instrument made under an Act, or a provision of an Act or an instrument made under an Act.

register means register on the Federal Register of Legislation.

registered law or explanatory statement: see section 15Z.

repeal, in relation to an instrument or a provision of an instrument, includes revoke or rescind the instrument or provision.

Note: Section 5 defines **amend**, for a provision of an instrument, to include the repeal of a provision of the instrument.

replacement explanatory statement: see section 15J.

required compilation event, for an Act, legislative instrument or notifiable instrument: see section 15Q.

responsible person: see section 6.

rule-maker: see section 6.

rules means rules made by the First Parliamentary Counsel under section 61A.

Note: These rules are legislative instruments. Regulations may also be made for the purposes of this Act (see section 62).

supplementary explanatory statement: see section 15J.

text includes any writing.

Note: See the definition of **writing** in section 2B of the *Acts Interpretation Act 1901*.

5 Definitions of *amend* and *modify*

- (1) In this Act, **amend** includes:

Section 6

- (a) for an Act or instrument—repeal, omit, insert, substitute, renumber or relocate a provision of the Act or instrument; and
- (b) for a provision of an Act or instrument—any of the following:
 - (i) repeal or omit the provision (or a part of it);
 - (ii) substitute another provision for the provision (or a part of it);
 - (iii) insert another provision into the provision (or a part of it);
 - (iv) renumber the provision (or a part of it);
 - (v) relocate the provision (or a part of it); and
- (c) for an Act or instrument, or a provision of an Act or instrument—amend by implication; and
- (d) for an Act or instrument, or a provision of an Act or instrument—change its text in any other way.

Note 1: **Repeal**, in relation to a provision of an instrument, includes revoke or rescind the provision (see the definition of **repeal** in section 4).

Note 2: For the purposes of Part 2 of Chapter 2 (registration of compilations), an Act or instrument is amended by an Act or instrument, or a provision of an Act or instrument, when the amending Act or provision commences (see subsection 15Q(3)).

- (2) In this Act, **modify** an Act or instrument means modify the operation of the Act or instrument without amending its text.

6 Definitions of *rule-maker* and *responsible person*

Rule-makers

- (1) In this Act, **rule-maker**, for an instrument, means:
 - (a) for an instrument made by the Governor-General that is made under enabling legislation (whether or not it may also be made under any other power)—the Minister currently responsible for administering the provision of the enabling legislation under which the instrument is made; or

- (b) for an instrument made by the Governor-General, in any other case—the Prime Minister, or a Minister prescribed by regulation for the purposes of this paragraph; or
- (c) for an instrument made by a person other than the Governor-General—a person currently authorised to make the instrument.

Responsible persons

- (2) In this Act, **responsible person** means:
 - (a) for an Act or a provision of an Act—the Minister currently responsible for administering the Act or provision; or
 - (b) for an instrument—the rule-maker for the instrument.
- (3) If more than one Minister is currently responsible for administering an Act, or a provision of an Act:
 - (a) each of those Ministers is a **responsible person** for the Act or provision (as the case may be); and
 - (b) the performance of a function or duty under this Act (in relation to the Act or provision administered) by any of the Ministers discharges the function or duty.

Part 2—Key concepts for legislative instruments and notifiable instruments

7 Simplified outline of this Part

What are legislative instruments?

Generally, the following are legislative instruments:

- an instrument described or declared by a law (including this Act) to be a legislative instrument;
- an instrument registered on the Federal Register of Legislation as a legislative instrument;
- an instrument made under a power delegated by the Parliament that determines the law or alters its content.

However, an instrument is not a legislative instrument if an Act (or a regulation under this Act) so provides.

What are notifiable instruments?

Generally, the following are notifiable instruments:

- an instrument described or declared by a law (including this Act or a regulation under this Act) to be a notifiable instrument;
- a commencement instrument;
- an instrument (other than a legislative instrument) that is registered on the Federal Register of Legislation as a notifiable instrument.

Generally, unlike legislative instruments, notifiable instruments are not subject to parliamentary scrutiny, nor are they subject to automatic repeal 10 years after registration.

Other key concepts

A legislative instrument or notifiable instrument commences on the day after the instrument is registered, or on another day provided by the instrument. Generally, the instrument does not apply retrospectively if that would adversely affect rights or impose liabilities.

Generally, the same rules apply to the interpretation of legislative instruments and notifiable instruments as apply to the interpretation of Acts. Some special rules also apply to the construction of instruments.

There are restrictions on the extent to which legislative instruments or notifiable instruments can incorporate matters by reference to external documents.

8 Definition of *legislative instrument*

- (1) A ***legislative instrument*** is an instrument to which subsection (2), (3), (4) or (5) applies.

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.

Primary law provides for something to be done by legislative instrument

- (2) If a primary law gives power to do something by legislative instrument, then:
- (a) if the thing is done, it must be done by instrument; and
 - (b) that instrument is a ***legislative instrument***.

Section 8

Example 1: A primary law provides that “The Minister may, by legislative instrument, determine licence conditions for the purposes of this section.”.

Example 2: A primary law provides as follows:

- “(1) The Chief Executive may, by instrument, determine licence conditions.
- (2) The Chief Executive may, by instrument, exempt a person from the requirement under this Act to hold a licence.
- (3) An instrument made by the Chief Executive under subsection (1) or (2) is a legislative instrument.”.

Instruments registered on the Federal Register of Legislation

- (3) An instrument made under a power delegated by the Parliament is a **legislative instrument** if it is registered as a legislative instrument.

Note: An instrument made under a power delegated by the Parliament may be a legislative instrument because it is registered as a legislative instrument, whether or not it is a legislative instrument because of another provision of this section.

Instruments that determine or alter the law etc.

- (4) An instrument is a **legislative instrument** if:
- (a) the instrument is made under a power delegated by the Parliament; and
 - (b) any provision of the instrument:
 - (i) determines the law or alters the content of the law, rather than determining particular cases or particular circumstances in which the law, as set out in an Act or another legislative instrument or provision, is to apply, or is not to apply; and
 - (ii) has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right, or varying or removing an obligation or right.

Instruments declared to be legislative instruments

- (5) An instrument is a **legislative instrument** if it is declared by section 10 or 57A to be a legislative instrument.

Note: Section 10 declares regulations and some other instruments to be legislative instruments. Section 57A declares some instruments to be legislative instruments that were made under a power delegated by the Parliament before 1 January 2005, when the substantive provisions of this Act commenced.

Instruments that are not legislative instruments

- (6) Despite subsections (4) and (5), an instrument is not a **legislative instrument** if it is:
- (a) declared by an Act not to be a legislative instrument; or
 - (b) prescribed by regulation for the purposes of this paragraph.
- (7) However, subsection (6) does not apply to an instrument that is a legislative instrument under subsection (3) by registration.
- (8) Despite anything else in this section, the following are not legislative instruments, and cannot become legislative instruments under subsection (3) (by being registered as legislative instruments):
- (a) an instrument that is a notifiable instrument because of subsection 11(1) (primary law gives power to do something by notifiable instrument);
 - (b) a commencement instrument;
 - (c) a compilation of a legislative instrument or notifiable instrument;
 - (d) rules of court or a compilation of rules of court;
 - (e) an explanatory statement for a legislative instrument, or rules of court mentioned in paragraph (d).

Note: Rules of court may, however, be registered under this Act, and may be otherwise treated as if they were legislative instruments by their enabling legislation.

9 Inference of legislative character

No implication of legislative character (or otherwise)

- (1) The fact that an instrument is a legislative instrument because of subsection 8(2), (3) or (5) does not imply that the instrument is, or

Section 10

must be, of legislative character (within the ordinary meaning of that term).

- (2) The fact that an instrument is not a legislative instrument because of subsection 8(6) does not imply that the instrument is not, or must not be, of legislative character (within the ordinary meaning of that term).

No inference for other instruments

- (3) In determining whether an instrument made under a provision of a primary law is a legislative instrument under subsection 8(4), no inference may be drawn from the fact that an instrument made under another provision of that primary law, or any other primary law, is a legislative instrument, or is not a legislative instrument.

Example: In determining whether a Ministerial direction under a provision of a primary law is a legislative instrument, no inference may be drawn from the fact that a Ministerial direction under another provision of the primary law is described as a legislative instrument.

10 Instruments declared to be legislative instruments

- (1) For the purposes of subsection 8(5), each of the following is a legislative instrument:
- (a) a regulation or Proclamation (other than a Proclamation that is a commencement instrument) made under a power delegated by the Parliament;
 - (b) a Territory Ordinance covered by subsection (2), or a regulation, rule or by-law under such an Ordinance;
 - (c) an instrument prescribed by regulation for the purposes of this paragraph;
 - (d) an instrument that includes a provision that amends or repeals another legislative instrument.

Note: Commencement instruments, which may be Proclamations, are notifiable instruments: see section 11.

- (2) The following Territory Ordinances are covered by this subsection:

- (a) an Ordinance made under a power delegated by the Parliament in an Act providing for the government of a non-self-governing Territory;
- (b) an Ordinance made under subsection 12(1) of the *Seat of Government (Administration) Act 1910* that has not become an enactment (as defined in the *Australian Capital Territory (Self-Government) Act 1988*).

11 Definition of *notifiable instrument*

What is a notifiable instrument?

- (1) If a primary law gives power to do something by notifiable instrument, then:
 - (a) if the thing is done, it must be done by instrument; and
 - (b) that instrument is a ***notifiable instrument***.

Example 1: A primary law provides that “The Minister may, by notifiable instrument, approve a form for the purposes of this section.”

Example 2: A primary law provides as follows:

- “(1) The Chief Executive may, by instrument, appoint an inspector for the purposes of section [X].
- (2) The Chief Executive may, by instrument, approve a form for the purposes of section [Y].
- (3) An instrument made by the Chief Executive under subsection (1) or (2) is a notifiable instrument.”

- (2) Each of the following is a ***notifiable instrument***:
 - (a) a commencement instrument for an Act, legislative instrument or notifiable instrument, or for a provision of an Act or such an instrument;
 - (b) an instrument, other than a legislative instrument, prescribed by regulation for the purposes of this paragraph;
 - (c) an instrument, other than a legislative instrument, that is registered as a notifiable instrument, if the instrument is made under a power delegated by the Parliament or another power given by law;

Section 12

- (d) an instrument, other than a legislative instrument, that includes a provision that amends or repeals another notifiable instrument.

Note: The effect of paragraph (c) is that an instrument (other than a legislative instrument) may be a notifiable instrument because it is registered as a notifiable instrument, even if it would not otherwise be a notifiable instrument because of this section. For a corresponding provision relating to legislative instruments, see subsection 8(3).

Modification of the operation of this Act

- (3) The enabling legislation for a notifiable instrument, or a regulation under this Act in relation to a notifiable instrument, may modify the operation of this Act in relation to the instrument.

Example: Such a regulation may provide that a provision of this Act about explanatory statements that is expressed to apply in relation to legislative instruments is also to apply to a particular class of notifiable instruments.

Registration to satisfy other publication or notification requirements

- (4) If an Act or an instrument requires an instrument (other than a legislative instrument), or the particulars of the instrument's making, to be published or notified in the Gazette or in any other way, then, unless the contrary intention appears, the requirement is taken to be satisfied if the instrument is registered as a notifiable instrument.

12 Commencement of legislative instruments and notifiable instruments

When do legislative instruments and notifiable instruments commence?

- (1) A legislative instrument or a notifiable instrument commences:
 - (a) at the start of the day after the day the instrument is registered; or

- (b) so far as the instrument provides otherwise—in accordance with such provision.

Note: The instrument may provide for its commencement by enabling a commencement instrument to be made: see subsection (5).

Retrospective commencement

- (1A) Despite any principle or rule of common law, a legislative instrument or notifiable instrument may provide that the instrument, or a provision of the instrument, commences before the instrument is registered.

Note: The effect of this subsection is to allow legislative and notifiable instruments to commence retrospectively (subject to subsection (2)). This subsection is subject to a contrary provision (see subsection (4)).

Retrospective application

- (2) However, if a legislative instrument or notifiable instrument, or a provision of such an instrument, commences before the instrument is registered, the instrument or provision does not apply in relation to a person (other than the Commonwealth or an authority of the Commonwealth) to the extent that as a result of that commencement:
- (a) the person's rights as at the time the instrument is registered would be affected so as to disadvantage the person; or
 - (b) liabilities would be imposed on the person in respect of anything done or omitted to be done before the instrument is registered.

Retrospective commencement or application subject to contrary provision

- (4) The effect of subsection (1A) or (2) in relation to an instrument is subject to any contrary provision in an Act.

Commencement instruments

- (5) Without limiting paragraph (1)(b), for the purposes of that paragraph, a legislative instrument or notifiable instrument may

Section 13

authorise the making of a commencement instrument in relation to the legislative instrument or notifiable instrument.

13 Construction of legislative instruments and notifiable instruments

- (1) If enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument, then, unless the contrary intention appears:
 - (a) the *Acts Interpretation Act 1901* applies to any instrument so made as if it were an Act and as if each provision of the instrument were a section of an Act; and
 - (b) expressions used in any instrument so made have the same meaning as in the enabling legislation as in force from time to time; and
 - (c) any instrument so made is to be read and construed subject to the enabling legislation as in force from time to time, and so as not to exceed the power of the person to make the instrument.
- (2) If the making of a legislative instrument or notifiable instrument would, apart from this subsection, be construed as being in excess of the power to make the instrument, it is to be taken to be a valid instrument to the extent to which it is not in excess of that power.
- (3) If enabling legislation confers on a person the power to make a legislative instrument or notifiable instrument:
 - (a) specifying, declaring or prescribing a matter; or
 - (b) doing anything in relation to a matter;then, in exercising the power, the person may identify the matter by referring to a class or classes of matters.
- (4) For the purposes of subsection (3), *matter* includes thing, person and animal.
- (5) The amendment of a legislative instrument or notifiable instrument by an Act does not prevent the instrument, as so amended, from being amended or repealed by a person who is currently authorised

under the enabling legislation for the instrument to make instruments of the same kind.

Note: This section has a parallel, in relation to instruments other than legislative instruments or notifiable instruments, in subsection 33(3AB) and section 46 of the *Acts Interpretation Act 1901*.

14 Prescribing matters by reference to other instruments

- (1) If enabling legislation authorises or requires provision to be made in relation to any matter by a legislative instrument or notifiable instrument, the instrument may, unless the contrary intention appears, make provision in relation to that matter:
 - (a) by applying, adopting or incorporating, with or without modification, any of the following, as in force at a particular time or as in force from time to time:
 - (i) the provisions of an Act;
 - (ii) the provisions of a legislative instrument covered by subsection (3);
 - (iii) the provisions of rules of court; or
 - (b) subject to subsection (2), by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing as in force or existing at:
 - (i) the time the first-mentioned instrument commences; or
 - (ii) a time before the first-mentioned instrument commences (whether or not the other instrument is still in force, or the other writing still exists, at the time the first-mentioned instrument commences).
 - (2) Unless the contrary intention appears, the legislative instrument or notifiable instrument may not make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.
 - (3) The following legislative instruments are covered by this subsection:
-

Section 14

- (a) disallowable legislative instruments;
- (b) legislative instruments that were disallowable under the *Acts Interpretation Act 1901* or any other Act at any time before 1 January 2005.

Note: The substantive provisions of this Act commenced on 1 January 2005.

Forms

- (4) If a legislative instrument or notifiable instrument provides for a form to be used, this section does not apply in relation to the form.

Note: This section has a parallel, in relation to instruments that are not legislative instruments, in section 46AA of the *Acts Interpretation Act 1901*.

Chapter 2—Registration of Acts, legislative instruments and notifiable instruments

Part 1—The Federal Register of Legislation

Division 1—Simplified outline of this Part

15 Simplified outline of this Part

The Federal Register of Legislation contains the following:

- Acts, legislative instruments and notifiable instruments as made, and explanatory statements for legislative instruments;
- compilations of Acts, legislative instruments and notifiable instruments;
- other relevant documents and information.

Rule-makers for legislative instruments and notifiable instruments are responsible for lodging the instruments for registration (together with explanatory statements for legislative instruments).

Legislative instruments are not enforceable unless registered.

Responsible persons for Acts, and rule-makers for legislative instruments or notifiable instruments, must notify the First Parliamentary Counsel of some events affecting the status of the Acts or instruments.

Division 2—Federal Register of Legislation

15A Federal Register of Legislation—establishment and maintenance

- (1) The First Parliamentary Counsel must establish and maintain a register of Acts, legislative instruments and notifiable instruments, to be known as the Federal Register of Legislation.

Note 1: The contents of the Federal Register of Legislation may be accessed on the approved website (see section 15C).

Note 2: The Federal Register of Legislation in its initial form consists of the following:

- (a) the contents of the Federal Register of Legislative Instruments established under this Act, when this Act was known as the *Legislative Instruments Act 2003*;
 - (b) the contents of the Acts database under the *Acts Publication Act 1905* (which was repealed when this section commenced);
 - (c) other legislative material published on the whole-of-government legislation website known as ComLaw.
- (2) The Register must contain the following:
- (a) Acts as made that are registered under this Part;
 - (b) legislative instruments and notifiable instruments as made that are registered under this Part;
 - (c) compilations, registered under this Part, of Acts, legislative instruments and notifiable instruments;
 - (d) explanatory statements, registered under this Part, for legislative instruments;
 - (e) other documents registered under this Part.
- (3) The Register may contain additional documents if the First Parliamentary Counsel considers that the documents are likely to be useful to users of the Register, including the following (without limitation):
- (a) Acts as made (other than Acts registered under this Part);
 - (b) instruments as made (other than legislative instruments or notifiable instruments registered under this Part);

- (c) Gazette notices;
 - (d) compilations of Acts or instruments (other than compilations registered under this Part);
 - (e) documents that may be considered under section 15AB of the *Acts Interpretation Act 1901* (and that section as applied by section 13 of this Act) in working out the meaning of an Act, legislative instrument or notifiable instrument, for example, an explanatory memorandum for an Act.
- (4) The First Parliamentary Counsel may include in the Register any information that he or she considers likely to be useful to users of the Register.
- (5) Without limiting subsection (1), the First Parliamentary Counsel may, subject to this Act and the rules, do anything he or she considers necessary or desirable to ensure that the Register is accurate and up-to-date, and contains material likely to be useful to users of the Register.

15B Federal Register of Legislation—complete record of registered laws

The Federal Register of Legislation is, for all purposes, taken to be a complete and accurate record of all registered Acts, legislative instruments and notifiable instruments.

Note: For authorised versions of Acts, legislative instruments, notifiable instruments and compilations, and judicial notice of authorised versions, see Part 3 of this Chapter.

15C Federal Register of Legislation—access to registered material on approved website

The First Parliamentary Counsel must ensure that registered Acts, legislative instruments, notifiable instruments and compilations, and other registered documents, are available to the public on a website (an *approved website*) prescribed by the rules.

Section 15D

15D Federal Register of Legislation—rectification of Register

- (1) If:
- (a) the First Parliamentary Counsel becomes aware that the Register contains an error; and
 - (b) the error is that:
 - (i) for an Act as assented to—the text of the Act as it appears in the Register is not the same as the text of the Act as assented to; or
 - (ii) for a legislative instrument or notifiable instrument as made by the rule-maker—the text of the instrument as it appears in the Register is not the same as the text of the instrument as made by the rule-maker; or
 - (iii) for a compilation—the compilation as it appears in the Register does not represent the state of the law that it purports to represent; or
 - (iv) for any other document on the Register—the text of the document as it appears in the Register is not the same as the text of the original document;

the First Parliamentary Counsel must arrange for the error in the Register to be rectified as soon as possible.

Note: A disallowable legislative instrument may be required to be re-tabled in the Parliament as a result of the rectification (see section 15DA).

- (2) The First Parliamentary Counsel must include in the Register a statement that the rectification has been made, and a brief outline of the rectification in general terms.
- (3) The rectification:
- (a) does not affect any right or privilege that was acquired, or that accrued, because of reliance on the content of the Register before the rectification was made; and
 - (b) does not impose or increase any obligation or liability that was incurred before the rectification was made.

Rectification does not affect time of registration

- (4) To avoid doubt, the rectification of an error under subsection (1) in relation to an instrument does not affect the time at which the instrument is taken to have been registered.

Note: For example, subsection (1) does not affect the commencement of an instrument that is expressed to commence on the day after registration.

15DA Requirement for re-tabling and new disallowance period after rectification of Register

- (1) This section applies if:
- (a) the First Parliamentary Counsel rectifies an error in the Register referred to in subparagraph 15D(1)(b)(ii); and
 - (b) the rectification results in a version (the ***originally tabled version***) of a disallowable legislative instrument that was previously registered being replaced by another version (the ***correct version***) of the instrument; and
 - (c) at the time of the rectification, the originally tabled version of the instrument has been laid before either or both Houses of the Parliament under subsection 38(1).

Requirement for re-tabling

- (2) The First Parliamentary Counsel must arrange for a copy of the correct version of the instrument to be delivered to each House of the Parliament to be laid before each House within 6 sitting days of that House after the rectification.

Note: The re-tabling of the instrument does not affect any disallowance of the instrument. In all other cases, the re-tabling of the instrument starts a new disallowance period (see subsections (3) and (4)).

Application of new disallowance period

- (3) The following applies (subject to subsection (4)) for the purposes of this Act:
- (a) the instrument is taken to have been delivered to, and laid before, a House of the Parliament under subsection 38(1)

Section 15DA

when the instrument is delivered to, and laid before, that House under subsection (2) of this section (except for the purposes of subsection 39(2));

- (b) the instrument becomes subject to disallowance under Part 2 of Chapter 3;
 - (c) section 46 applies as if the instrument had been registered at the time of the rectification;
 - (d) if the disallowance period for the originally tabled version has ended—any repeal of the instrument or a provision of the instrument under section 48A or 48C is taken not to have occurred;
 - (e) if:
 - (i) a notice of motion to disallow the instrument or a provision of the instrument has been given in a House of the Parliament; and
 - (ii) the notice has not been withdrawn; and
 - (iii) the motion has not been disposed of;at the time the correct version of the instrument is laid before a House as mentioned in subsection (2)—that notice of motion is taken to have been given in that House on the sitting day of that House after the correct version of the instrument is laid before that House;
 - (f) if a provision of the instrument (but not the whole instrument) has previously been disallowed—the laying before a House of the Parliament as mentioned in subsection (2) does not affect the previous disallowance of the provision.
- (4) Subsection (3) does not apply in relation to an instrument if, at the time the instrument is delivered to a House of the Parliament under subsection (2), the instrument has been disallowed.

Section does not affect time of registration

- (5) To avoid doubt, the laying before a House of the Parliament of an instrument as mentioned in subsection (2) does not affect the time

at which the instrument is taken to have been registered (except as provided by paragraph (3)(c)).

15E Federal Register of Legislation—keeping the Register

The rules may provide for, or in relation to, the following:

- (a) keeping the Federal Register of Legislation;
- (b) giving unique identifiers to registered Acts, legislative instruments, notifiable instruments and compilations, and other registered documents;
- (c) numbering for series of legislative instruments, notifiable instruments and other documents in the Register;
- (d) including additional documents in the Register and removing them from the Register;
- (e) including information in the Register, changing it and removing it from the Register.

Division 3—Registration on Federal Register of Legislation

15F Registration of Acts

The First Parliamentary Counsel must register an Act as soon as practicable after the Act is assented to.

15G Lodgement of legislative instruments and notifiable instruments, and other material

Legislative instruments and notifiable instruments

- (1) The rule-maker for a legislative instrument must lodge the instrument for registration as a legislative instrument as soon as practicable after the instrument is made.
- (2) The rule-maker for a notifiable instrument must lodge the instrument for registration as a notifiable instrument as soon as practicable after the instrument is made.
- (3) The rule-maker for an instrument made under a power delegated by the Parliament, other than a legislative instrument or notifiable instrument, may lodge the instrument for registration as a legislative instrument or notifiable instrument.

Note: For instruments that become legislative instruments by registration, see subsection 8(3). For instruments that become notifiable instruments by registration, see paragraph 11(2)(c).

Explanatory statements for legislative instruments

- (4) The rule-maker for an instrument that is lodged for registration as a legislative instrument must:
 - (a) lodge an initial explanatory statement for the instrument for registration as soon as practicable after the instrument is lodged for registration; and
 - (b) lodge any supplementary explanatory statement or replacement explanatory statement for the instrument for registration as soon as practicable after it is prepared.

Note: For explanatory statements and supplementary and replacement explanatory statements, see section 15J.

Other documents

- (5) The rule-maker for an instrument that is, or that is to be, registered as a legislative instrument or notifiable instrument may lodge a document that relates to the instrument for registration.

15H Registration of legislative instruments and notifiable instruments, and other documents

- (1) If an instrument is lodged for registration as a legislative instrument or notifiable instrument in accordance with section 15G and the rules, the First Parliamentary Counsel must register the instrument:
- (a) if the instrument is lodged for registration as a legislative instrument—as a legislative instrument; or
 - (b) if the instrument is lodged for registration as a notifiable instrument—as a notifiable instrument.
- (2) If an instrument or document is lodged for registration otherwise than as a legislative instrument or notifiable instrument, in accordance with section 15G and the rules, the First Parliamentary Counsel must register the instrument or document accordingly.
- (3) However, the First Parliamentary Counsel must not register an instrument or document if:
- (a) for a document lodged for registration otherwise than as a legislative instrument or notifiable instrument—the First Parliamentary Counsel considers that:
 - (i) the document is not likely to be useful to users of the Register; or
 - (ii) it would otherwise be inappropriate to register the document; or
 - (b) before the instrument or document is registered, the person lodging the instrument or document (or another person acting on behalf of the responsible person for the instrument, or for

Section 15J

the instrument to which the document relates) withdraws the lodgement.

- (4) If the First Parliamentary Counsel does not register an instrument or document because of paragraph (3)(a), he or she must give written notice to the person lodging the instrument or document.

15J Explanatory statements

Definition of explanatory statement

- (1) An ***explanatory statement*** for a legislative instrument is one of the following statements prepared for laying before each House of Parliament:
- (a) a statement (an ***initial explanatory statement***) for the instrument that complies with subsection (2);
 - (b) a statement (a ***replacement explanatory statement***) for the instrument that:
 - (i) replaces an explanatory statement for the instrument that has already been registered; and
 - (ii) complies with subsection (2);
 - (c) a statement (a ***supplementary explanatory statement***) for the instrument that:
 - (i) amends an initial explanatory statement or a replacement explanatory statement; and
 - (ii) complies with subsection (3).

Requirements for initial and replacement explanatory statements

- (2) An initial explanatory statement, or a replacement explanatory statement, for a legislative instrument must:
- (a) be approved by the rule-maker; and
 - (b) explain the purpose and operation of the instrument; and
 - (c) if any documents are incorporated in the instrument by reference—contain a description of the incorporated documents and indicate how they may be obtained; and

- (d) if consultation was undertaken under section 17 before the instrument was made—contain a description of the nature of that consultation; and
- (e) if no such consultation was undertaken—explain why no such consultation was undertaken; and
- (f) if the instrument is a disallowable legislative instrument—contain a statement of compatibility prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*; and
- (g) contain such other information as is prescribed by regulation.

Requirements for supplementary explanatory statements

- (3) A supplementary explanatory statement for a legislative instrument must:
 - (a) be approved by the rule-maker; and
 - (b) contain such other information as is prescribed by regulation.

Single explanatory statements—one or more legislative instruments

- (4) A single explanatory statement may relate to one or more legislative instruments.

15K Registration—enforceability of legislative instruments

- (1) A legislative instrument is not enforceable by or against any person (including the Commonwealth) unless the instrument is registered as a legislative instrument.
- (2) A failure by the rule-maker to lodge an explanatory statement in relation to a legislative instrument for registration as required by subsection 15G(4) does not affect the validity or enforceability of the instrument.

15L Events affecting the currency or accuracy of the Register

- (1) The responsible person for a registered Act, legislative instrument or notifiable instrument must give notice to the First Parliamentary

Section 15L

Counsel of the occurrence of any of the following events in relation to the Act or instrument:

- (a) an event resulting in, or otherwise affecting, the commencement of the Act or instrument (or a provision of the Act or instrument);
- (b) a discretionary compilation event for the Act or instrument;
- (c) an event resulting in the Act or instrument (or a provision of the Act or instrument) being repealed, lapsing, expiring or otherwise ceasing to be in force;
- (d) an event resulting in the Act or instrument, or a provision of the Act or instrument, being (or being declared by a court or tribunal to be) invalid or unenforceable;
- (e) the responsible person's becoming aware of:
 - (i) an error in the Register to which subsection 15D(1) (Federal Register of Legislation—rectification of Register) may apply; or
 - (ii) any other error in the Register;
- (f) another event prescribed by the rules.

Example: If a registered legislative instrument is expressed to commence when a particular treaty comes into force for Australia, paragraph (1)(a) would require the responsible person for the instrument to notify the First Parliamentary Counsel when the treaty comes into force.

- (2) However, subsection (1) does not require the responsible person to give notice to the First Parliamentary Counsel of any of the following events in relation to a registered Act or instrument:
 - (a) the occurrence of a day or time specified in the Act or instrument, or the making of a commencement instrument, resulting in, or otherwise affecting, the commencement of the Act or instrument (or a provision of the Act or instrument);
 - (b) a required compilation event for the Act or instrument;
 - (c) for a disallowable legislative instrument—the disallowance of:
 - (i) the instrument (or a provision of the instrument); or
 - (ii) another legislative instrument (or a provision of another legislative instrument) that amends the instrument;

- (d) for a legislative instrument or notifiable instrument—the amendment or repeal of the instrument by:
 - (i) the operation of Part 3 of Chapter 3 (repeal of spent instruments or provisions); or
 - (ii) the operation of Part 4 of Chapter 3 (sunsetting of legislative instruments);
- (e) another event prescribed by the rules.

15M Rules for lodgement and registration

The rules may provide for, or in relation to, any of the following:

- (a) the lodgement of instruments and documents for registration, including any or all of the following:
 - (i) the form in which instruments and documents must or may be lodged;
 - (ii) any other matters affecting how instruments and documents must or may be lodged;
 - (iii) the information that must or may be provided with instruments and documents;
 - (iv) the certification of instruments and documents;
 - (v) other requirements to be satisfied for lodgement;
- (b) the identification of instruments and documents lodged for registration, including authorising the First Parliamentary Counsel to do any or all of the following:
 - (i) adding a name to an unnamed instrument or document;
 - (ii) amending the name of an instrument or document;
 - (iii) adding anything to an instrument or document to assist in its identification;
 - (iv) doing anything else in relation to an instrument or document to assist users of the Register to identify or refer to the instrument or document;
- (c) the withdrawal of lodgement of instruments or documents;
- (d) the registration of Acts, instruments and documents;
- (e) the refusal of registration of instruments and documents;

Chapter 2 Registration of Acts, legislative instruments and notifiable instruments

Part 1 The Federal Register of Legislation

Division 3 Registration on Federal Register of Legislation

Section 15M

- (f) alternative arrangements for the registration of Acts, instruments and documents in the event of technical difficulties;
- (g) any other matter relating to the lodgement of instruments and documents;
- (h) any other matter relating to the registration of Acts, instruments and documents.

Part 2—Compilations

Division 1—Simplified outline of this Part

15N Simplified outline of this Part

A compilation shows the text of an Act, legislative instrument or notifiable instrument as amended (if at all) and in force on the compilation date stated in the Act or instrument.

The First Parliamentary Counsel must generally register a compilation after a registered Act or instrument is amended, and in some other circumstances.

A rule-maker for a legislative instrument or notifiable instrument must lodge a compilation for registration if the instrument is amended, or in some circumstances on notice from the First Parliamentary Counsel.

The First Parliamentary Counsel may make editorial changes and some other changes in preparing a compilation of a registered Act or instrument, as long as they do not change the effect of the Act or instrument.

Division 2—Registration of compilations

15P Registered compilations—information requirements

- (1) Without limiting the information that a registered compilation of an Act, legislative instrument or notifiable instrument (the *principal law*) may include, the registered compilation must include the following information:
 - (a) the compilation date;
 - (b) if any editorial changes are made in preparing the compilation—a statement that editorial changes have been made and a brief outline of the changes in general terms;
 - (c) details (including commencement details) of any Act or instrument that amends the principal law;
 - (d) the amendment history of provisions of the principal law;
 - (e) any further information prescribed by the rules.
- (2) However, the information mentioned in any of paragraphs (1)(c) to (e) does not need to be included in the compilation if:
 - (a) the First Parliamentary Counsel is satisfied that the information mentioned in that paragraph is otherwise appropriately available on an approved website to users of the Federal Register of Legislation; and
 - (b) the compilation indicates in general terms how users of the Register may access that information on the approved website.

15Q Definitions of *required compilation event* and *discretionary compilation event* etc.

Definitions

- (1) A *required compilation event* occurs for an Act, legislative instrument or notifiable instrument when:
 - (a) the Act or instrument is expressly amended (otherwise than under section 48C or 48D); or

- (b) in the case of a disallowable legislative instrument:
 - (i) a provision of the instrument is disallowed under section 42; or
 - (ii) a provision of another disallowable legislative instrument has amended a provision of the instrument, but the amending instrument, or the amending provision, is disallowed under section 42; or
 - (c) a provision of the Act or instrument is repealed under another Act or instrument (other than this Act), or because of the making of another Act or instrument; or
 - (d) something else happens that is prescribed by the rules for the purposes of this paragraph.
- (2) A **discretionary compilation event** occurs for an Act, legislative instrument or notifiable instrument when:
- (a) a provision of the Act or instrument commences; or
 - (b) in the case of a legislative instrument or notifiable instrument—the instrument is amended by section 48C or 48D; or
 - (c) the Act or instrument is modified; or
 - (d) the Act or instrument is impliedly amended; or
 - (e) a provision of the Act or instrument is repealed under another provision of that Act or instrument; or
 - (f) if no compilation has been registered for the Act or instrument—the text of the Act or instrument as registered otherwise ceases to show the text of the Act or instrument as in force; or
 - (g) if a compilation has been registered for the Act or instrument—the text of the latest registered compilation otherwise ceases to show the text of the Act or instrument as amended (if at all) and in force; or
 - (h) something else happens that is prescribed by the rules for the purposes of this paragraph.

Note: Sections 48C and 48D provide for the automatic repeal of amending, repealing and commencement provisions of legislative instruments and notifiable instruments.

Section 15R

When an Act or instrument is amended

- (3) For the purposes of this Division, an Act or instrument is (subject to subsection (4)) amended by an Act or instrument, or a provision of an Act or instrument, when the amending Act or provision commences.
- (4) Despite any other provision of this Act, a compilation of an Act or instrument is not required to be prepared or lodged for registration to take account of a retrospective commencement of an amendment of the Act or instrument. However, such a compilation of an Act or instrument may be prepared and lodged for registration.

15R Lodgement of compilations of instruments—required compilation events

Compilation required to be prepared and lodged

- (1) If a required compilation event occurs for a legislative instrument or notifiable instrument, the rule-maker must prepare and lodge for registration a compilation of the instrument for registration.

Compilation date

- (2) The compilation date for the compilation must be the date of the required compilation event.

Time for lodgement

- (3) The rule-maker must lodge for registration the compilation required by subsection (1) within 28 days after the event occurs, or a longer period allowed by the First Parliamentary Counsel.

Exceptions

- (4) This section does not apply to legislative instruments or notifiable instruments, or in circumstances, prescribed by rules made for the purposes of this subsection.

Example: A circumstance prescribed by the rules may be if the First Parliamentary Counsel prepares and registers a compilation of a legislative instrument or notifiable instrument.

15S Lodgement of compilations of instruments—discretionary compilation events

Compilation required to be prepared and lodged if notice given

- (1) If a discretionary compilation event occurs for a legislative instrument or notifiable instrument, the First Parliamentary Counsel may, by written notice given to the rule-maker, require the rule-maker, within a period stated in the notice, to prepare and lodge for registration a compilation of the instrument for registration.

Compilation date

- (2) The compilation date for the compilation must be the date of the discretionary compilation event.

Time for lodgement

- (3) If a notice is given under subsection (1) to a rule-maker for an instrument, the rule-maker must lodge for registration a compilation of the instrument within the period stated in the notice, or a longer period allowed by the First Parliamentary Counsel.

15T Registration of compilations

Required compilation events for Acts

- (1) If a required compilation event occurs for an Act, the First Parliamentary Counsel must prepare and register a compilation of the Act as soon as practicable afterwards.

Section 15T

Required compilation events for instruments

- (2) If a required compilation event occurs for a legislative instrument or notifiable instrument, the First Parliamentary Counsel must register a compilation of the instrument:
 - (a) if a compilation is lodged for registration within 28 days after the event, or within a longer period allowed by the First Parliamentary Counsel—as soon as practicable after lodgement; or
 - (b) if a compilation is not lodged for registration within that period—as soon as practicable after the end of the period.
- (3) However, if a required compilation event occurs for a legislative instrument or notifiable instrument, and section 15R does not apply because of subsection 15R(4), the First Parliamentary Counsel must prepare and register a compilation of the instrument as soon as practicable afterwards.

Discretionary compilation events for Acts and instruments

- (4) If a discretionary compilation event occurs for an Act or a legislative instrument or notifiable instrument, the First Parliamentary Counsel may prepare and register a compilation of the Act or instrument.
- (5) If a discretionary compilation event occurs for a legislative instrument or notifiable instrument, and the First Parliamentary Counsel gives the rule-maker for the instrument a notice under section 15S, the First Parliamentary Counsel must register a compilation of the instrument:
 - (a) if a compilation is lodged for registration within the period stated in the notice, or within a longer period allowed by the First Parliamentary Counsel—as soon as practicable after lodgement; or
 - (b) if a compilation is not lodged for registration within that period—as soon as practicable after the end of the period.

No required or discretionary compilation event for Act or instrument

- (6) The First Parliamentary Counsel may prepare and register a compilation of an Act, legislative instrument or notifiable instrument even if neither a required compilation event nor a discretionary compilation event has occurred for the Act or instrument.

Repeal and disallowance of Act or instrument

- (7) The First Parliamentary Counsel must ensure that a registered compilation of an Act, legislative instrument or notifiable instrument is no longer shown on the Register as a compilation currently in force as soon as practicable after:
- (a) the Act or instrument is repealed; or
 - (b) for a disallowable legislative instrument—the instrument is disallowed under section 42.

15U Compilations—rules

The rules may provide for, or in relation to, any of the following in relation to compilations of Acts, legislative instruments or notifiable instruments:

- (a) the format, layout and printing style required for compilations, and any other presentational aspects of compilations;
- (b) the extent and form of the information mentioned in subsection 15P(1) or (2) that is required to be included in compilations, or made available on an approved website;
- (c) any other matter relating to the preparation of compilations;
- (d) the lodgement of compilations of instruments for registration, including any of the following:
 - (i) the form in which compilations must or may be lodged;
 - (ii) how compilations must or may be lodged;
 - (iii) the information that must or may be provided with or for compilations;

Section 15U

- (iv) the certification of compilations;
- (v) other requirements to be satisfied for compilations;
- (e) the withdrawal of lodgement of compilations of instruments;
- (f) the registration of compilations of Acts and instruments;
- (g) the refusal of registration of compilations of instruments;
- (h) alternative arrangements for the registration of compilations of Acts, and for the lodgement and registration of compilations of instruments, in the event of technical difficulties;
- (i) any other matter relating to the lodgement or registration of compilations of Acts or instruments.

Division 3—Editorial changes and other changes

15V Power to make editorial changes and other changes

Editorial changes

- (1) In preparing a compilation of an Act, legislative instrument or notifiable instrument for registration (including a compilation that has been lodged for registration), the First Parliamentary Counsel may make editorial changes to any text that is part of the Act or instrument.

Note 1: For what is an *editorial change*, see section 15X.

Note 2: For what text forms part of the Act or instrument, see section 13 of the *Acts Interpretation Act 1901* (which applies in relation to instruments under section 13 of this Act).

- (2) The First Parliamentary Counsel may make an editorial change to an Act or instrument under subsection (1) only if he or she considers the change to be desirable to:
- (a) bring the Act or instrument into line, or more closely into line, with legislative drafting practice being used by the Office of Parliamentary Counsel; or
 - (b) correct an error, or ensure that a misdescribed amendment of the Act or instrument is given effect to as intended.

Presentational changes

- (3) In preparing a compilation of an Act, legislative instrument or notifiable instrument for registration (including a compilation that has been lodged for registration), the First Parliamentary Counsel may make changes to the Act or instrument that affect the format, layout or printing style of the Act or instrument, or any other presentational aspect of the Act or instrument.
- (4) The First Parliamentary Counsel may make a change to an Act or instrument under subsection (3) only if he or she considers the change to be desirable to bring the Act or instrument into line, or

Section 15V

more closely into line, with legislative drafting practice being used by the Office of Parliamentary Counsel.

Text not part of an Act or instrument

- (5) In preparing a compilation of an Act, legislative instrument or notifiable instrument (including a compilation that has been lodged for registration), the First Parliamentary Counsel may include, omit or change any text that is not part of the Act or instrument, including (without limitation) any of the following:
- (a) a table of contents or other provision that only describes the arrangement of the Act or instrument (or provisions of the Act or instrument) into groups of provisions;
 - (b) a reader's guide, simplified outline or similar text that only describes the nature or effect of the Act or instrument;
 - (c) text, known as alternative text (or "alt text"), that does not form part of the Act or instrument because of subsection 13(3) of the *Acts Interpretation Act 1901* (including that subsection as applied by section 13 of this Act);
 - (d) for an instrument—instrument-making words.

Note: For paragraph (c), alternative text may, for example, aurally indicate the effect of a graphic image in an Act or instrument to assist users of an approved website who have visual disabilities.

No change of effect

- (6) The First Parliamentary Counsel must not make a change to an Act or instrument under this section that would change the effect of the Act or instrument.
- (7) Subsection (6) does not prevent the First Parliamentary Counsel making a change to an Act or instrument mentioned in paragraph (2)(m) of the definition of ***editorial change*** in subsection 15X(2), or any editorial change consequential on such a change, as mentioned in paragraph (2)(q) of that definition.

Note: Such a change consists of the incorporation into an Act or instrument of an application, savings, transitional, validation or similar provision that is contained in an amending Act or instrument.

15W Editorial changes treated in the same way as amendments

If the First Parliamentary Counsel makes an editorial change to an Act or instrument under section 15V in preparing a compilation, then, after the registration of the compilation:

- (a) the Act or instrument has effect for all purposes as if the change had been made by an amendment of the Act or instrument that commenced on the day the compilation was registered; and
- (b) the Act or instrument may be further amended as if the change had been made by an amendment of the Act or instrument.

15X Definition of *editorial change*

- (1) This section describes the kinds of editorial changes that the First Parliamentary Counsel may make to an Act, legislative instrument or notifiable instrument under section 15V in preparing a compilation of the Act or instrument.

Note: An editorial change cannot be made to an Act, legislative instrument or notifiable instrument if it would change the effect of the Act or instrument (see subsection 15V(6)).

- (2) An ***editorial change*** to an Act, legislative instrument or notifiable instrument is a change made by the First Parliamentary Counsel that:
 - (a) goes only to a matter of spelling, punctuation, grammar or syntax, or the use of conjunctives and disjunctives; or
 - (b) updates a reference to:
 - (i) a law covered by subsection (3) (or a provision of such a law); or
 - (ii) a person, body or other entity, or an office, position, place, document or thing; or

Section 15X

- (c) changes the short title of an Act or the name of an instrument, or the name of the types of provision in an instrument; or
- (d) numbers or renumbers a provision of the Act or instrument; or
- (e) changes the order of definitions or other provisions of the Act or instrument; or
- (f) replaces a reference to a provision of a law covered by subsection (3) with a different form of reference to the provision; or
- (g) changes the way of referring to or expressing a number, year, date, time, amount of money or other amount, penalty, quantity, measurement or other matter, idea or concept;
Example: A reference in a form to “this [blank] day of [blank] 19...” may be changed to “[Date]”.
- (h) changes language that indicates gender or that could be taken to indicate gender; or
- (i) omits or changes a table of contents or other provision that only describes the arrangement of the Act or instrument (or provisions of the Act or instrument) into groups of provisions; or
- (j) omits or changes a reader’s guide, simplified outline or other text that only describes the nature or effect of the Act or instrument; or
- (k) omits a provision, or a reference to a law covered by subsection (3) (or a provision of such a law) that has expired, the operation of which is exhausted or spent, or that is otherwise obsolete or redundant; or
- (l) omits, inserts or changes a term that identifies a provision of the Act or instrument as a provision, or part of a provision, of the Act or instrument; or

Examples: The following are examples of references to provisions:

- (a) of these regulations;
- (b) of this regulation;
- (c) of this section;
- (d) hereof;
- (e) said.

- (m) incorporates into the Act or instrument (the *principal law*) an application, savings, transitional, validation or similar provision that is contained in another Act or instrument that amends the principal law; or
 - (n) shows the effect of any amendment of the Act or instrument, or is consequential on any such amendment; or
Example: The heading to a section may be changed to reflect the effect of an amendment of the section.
 - (o) if an amendment of the Act or instrument is misdescribed by an amending Act or instrument—gives effect to the misdescribed amendment as intended; or
 - (p) corrects an error covered by subsection (4); or
 - (q) is consequential on any other editorial change made to the Act or instrument or to another Act or instrument.
- (3) This subsection covers the following laws:
- (a) an Act;
 - (b) an instrument made under an Act or another power given by law;
 - (c) an Act of a State, a Territory or New Zealand, or an instrument made under such an Act.
- (4) This subsection covers the following errors:
- (a) typographical and clerical errors;
 - (b) grammatical and spelling errors, and errors of punctuation;
 - (c) errors in numbering, cross-referencing and alphabetical ordering;
 - (d) errors in references to laws or instruments, or provisions of such laws, covered by subsection (3);
 - (e) errors in or arising out of an amendment of an Act or instrument, including errors relating to the number of times such an amendment is expressed to be made;
 - (f) any other errors of a nature similar to those mentioned in paragraphs (a) to (e).

Part 3—Authorised versions and judicial notice

Division 1—Introduction

15Y Simplified outline of this Part

Authorised versions of registered Acts, legislative instruments, notifiable instruments, explanatory statements for legislative instruments and compilations may be sourced from the approved website. Judicial notice may be taken of authorised versions and related matters.

15Z Scope of this Part

This Part applies in relation to each of the following documents (a *registered law or explanatory statement*) and, in the same way, to a provision or part of each document:

- (a) a registered Act;
- (b) a registered legislative instrument or notifiable instrument;
- (c) a registered explanatory statement for a legislative instrument;
- (d) a registered compilation of an Act, legislative instrument or notifiable instrument.

Division 2—Authorised versions and judicial notice

15ZA Authorised versions

Authorised electronic versions

- (1) An electronic copy of a registered law or explanatory statement is an **authorised version** of the registered law or explanatory statement if:
- (a) the electronic copy is accessed at, or downloaded from, an approved website in a format prescribed by the rules; and
 - (b) either:
 - (i) the website indicates, in a way prescribed by the rules, that such a copy is an authorised version; or
 - (ii) the electronic copy indicates, in a way prescribed by the rules, that it is an authorised version.

Example: For paragraph (a), a locked pdf file may be a format prescribed by the rules.

- (2) An electronic copy of a registered law or explanatory statement is an **authorised version** of the registered law or explanatory statement if:
- (a) it is in a format prescribed by the rules; and
 - (b) the electronic copy indicates, in a way prescribed by the rules, that it is an authorised version.

Example: For paragraph (a), a locked pdf file may be a format prescribed by the rules.

Authorised printed versions

- (3) A printed copy of a registered law or explanatory statement is an **authorised version** of the registered law or explanatory statement if the copy indicates, in a way prescribed by the rules, that it is an authorised version.
- (4) A printed copy of a registered law or explanatory statement is an **authorised version** of the registered law or explanatory statement

Section 15ZA

if the copy is produced directly from another version of the registered law or explanatory statement that is an authorised version under subsection (1), (2) or (3), or this subsection.

Presumptions about an approved website and registered laws or explanatory statements

- (5) It is presumed, unless the contrary is proved, that:
- (a) a website purporting to be an approved website is an approved website; and
 - (b) if accessed at a website mentioned in paragraph (a), an Act, a legislative instrument, a notifiable instrument, an explanatory statement for a legislative instrument or a compilation of an Act or a legislative instrument or notifiable instrument is registered; and
 - (c) an electronic copy of a registered law or explanatory statement accessed at, or downloaded from, an approved website is an authorised version under subsection (1), if:
 - (i) the website indicates (in any way) that such a copy is an authorised version; or
 - (ii) the copy indicates (in any way) that the copy is an authorised version; and
 - (d) an electronic copy of a registered law or explanatory statement is an authorised version under subsection (2) if the copy indicates (in any way) that it is an authorised version; and
 - (e) a printed copy of a registered law or explanatory statement is an authorised version under subsection (3) or (4) if the copy indicates (in any way) that it is an authorised version; and
 - (f) an authorised version of a registered Act, legislative instrument or notifiable instrument, as made, correctly shows the text of the Act or instrument as made; and
 - (g) an authorised version of a registered explanatory statement for a legislative instrument correctly shows the text of the statement as approved by the rule-maker (under subsection 15J(2) or (3)); and

Section 15ZB

- (h) subject to subsection 15Q(4), an authorised version of a registered compilation of an Act, legislative instrument or notifiable instrument correctly shows the text of the Act or instrument as amended (if at all) and in force on the compilation date.

Forms of indication

- (6) A way of indicating that is prescribed by rules made for the purposes of subsection (1), (2) or (3), or an indication mentioned in paragraph (5)(c), (d) or (e), may include an indication consisting of any text, including one or more of the following:
 - (a) a logo;
 - (b) a form of words;
 - (c) a unique identifier, for a registered law or explanatory statement, prescribed by the rules.

15ZB Judicial notice

- (1) In proceedings in a court or tribunal, proof is not required about any of the following:
 - (a) the assent, and the day of assent, of an Act;
 - (b) the making, and the day of making, of a registered legislative instrument or notifiable instrument;
 - (c) the text of a registered law or explanatory statement;
 - (d) the registration, and day of registration, of a registered law or explanatory statement;
 - (e) the commencement of a registered Act, legislative instrument or notifiable instrument, or any provision of a registered Act, legislative instrument or notifiable instrument;
 - (f) editorial changes made to an Act, legislative instrument or notifiable instrument in preparing a registered compilation of the Act or instrument;
 - (g) the text and compilation date of a registered compilation of an Act, legislative instrument or notifiable instrument;

Section 15ZB

- (h) whether a copy of a registered law or explanatory statement is an authorised version of the registered law or explanatory statement.
- (2) A court or tribunal may inform itself of anything mentioned in subsection (1) in any way it considers appropriate.
- (3) However, the court or tribunal must consider whether the source it intends to use appears to be a reliable source of information.
- (4) For the purposes of subsection (3), an authorised version of a registered law or explanatory statement is, subject to subsection 15Q(4), a reliable source of information.
- (5) This section does not limit any other law providing how a court or tribunal may be informed about a matter mentioned in subsection (1).

Chapter 3—Legislative instruments and notifiable instruments

Part 1—Drafting standards and consultation

15ZC Simplified outline of this Part

The First Parliamentary Counsel is responsible for promoting the legal effectiveness, clarity and intelligibility of legislative instruments and notifiable instruments.

Before a legislative instrument is made, the rule-maker must be satisfied that any consultation that is appropriate and reasonably practicable has taken place.

16 Measures to achieve high drafting standards for legislative instruments and notifiable instruments

- (1) To encourage high standards in the drafting of legislative instruments and notifiable instruments, the First Parliamentary Counsel must cause steps to be taken to promote the legal effectiveness, clarity, and intelligibility to anticipated users, of legislative instruments and notifiable instruments.
- (2) The steps referred to in subsection (1) may include, but are not limited to:
 - (a) undertaking or supervising the drafting of legislative instruments and notifiable instruments; and
 - (b) scrutinising preliminary drafts of legislative instruments and notifiable instruments; and
 - (c) providing advice concerning the drafting of legislative instruments and notifiable instruments; and

Section 17

- (d) providing training in drafting and matters related to drafting to officers and employees of Departments or other agencies; and
 - (e) arranging the temporary secondment to Departments or other agencies of APS employees performing duties in the Office of Parliamentary Counsel; and
 - (f) providing drafting precedents to officers and employees of Departments or other agencies.
- (3) The First Parliamentary Counsel must also cause steps to be taken:
- (a) to prevent the use of gender-specific language in legislative instruments and notifiable instruments in circumstances where it is not necessary to identify persons by their sex; and
 - (b) to advise rule-makers for registered legislative instruments or notifiable instruments if those instruments use gender-specific language in those circumstances; and
 - (c) to notify both Houses of the Parliament about any occasion when a rule-maker is advised under paragraph (b).

17 Rule-makers should consult before making legislative instruments

- (1) Before a legislative instrument is made, the rule-maker must be satisfied that there has been undertaken any consultation that is:
 - (a) considered by the rule-maker to be appropriate; and
 - (b) reasonably practicable to undertake.
- (2) In determining whether any consultation that was undertaken is appropriate, the rule-maker may have regard to any relevant matter, including the extent to which the consultation:
 - (a) drew on the knowledge of persons having expertise in fields relevant to the proposed instrument; and
 - (b) ensured that persons likely to be affected by the proposed instrument had an adequate opportunity to comment on its proposed content.

- (3) Without limiting, by implication, the form that consultation referred to in subsection (1) might take, such consultation could involve notification, either directly or by advertisement, of bodies that, or of organisations representative of persons who, are likely to be affected by the proposed instrument. Such notification could invite submissions to be made by a specified date or might invite participation in public hearings to be held concerning the proposed instrument.

Note: Under subsection 15J(2), an explanatory statement relating to a legislative instrument must include a description of consultation undertaken or, if there was no consultation, an explanation for its absence.

19 Consequence of failure to consult

The fact that consultation does not occur does not affect the validity or enforceability of a legislative instrument.

Part 2—Parliamentary scrutiny of legislative instruments

36 Simplified outline of this Part

The Office of Parliamentary Counsel must generally deliver a legislative instrument for laying before each House of the Parliament within 6 sitting days of that House after the instrument is registered (with the instrument's registered explanatory statement, if applicable).

A legislative instrument (or a provision) may be disallowed by either House within a certain time after the instrument is tabled. A legislative instrument is taken to be repealed if it is disallowed. Some legislative instruments are required to be tabled in Parliament, but are not subject to disallowance.

37 The purpose of the Part

The purpose of this Part is to facilitate the scrutiny by the Parliament of registered legislative instruments and to set out the circumstances and manner in which such instruments, or provisions of such instruments, may be disallowed, as well as the consequences of such disallowance.

Note: Some legislative instruments are not disallowable (see section 44).

38 Tabling of legislative instruments

- (1) The Office of Parliamentary Counsel must arrange for a copy of each registered legislative instrument to be delivered to each House of the Parliament to be laid before each House within 6 sitting days of that House after the registration of the instrument.
- (3) If a copy of a legislative instrument is not laid before each House of the Parliament in accordance with this section, the legislative

instrument is repealed immediately after the last day for it to be so laid.

39 Tabling of explanatory statements

- (1) If an explanatory statement for a legislative instrument is registered, the Office of Parliamentary Counsel must arrange for a copy of the explanatory statement to be delivered to each House of the Parliament, to be laid before each House.
- (2) The delivery to each House of the Parliament must be arranged:
 - (a) in the case of an initial explanatory statement:
 - (i) if practicable, at the same time as a copy of the instrument is delivered to that House under section 38; or
 - (ii) in any other case—within 6 sitting days of that House after registration of the explanatory statement; or
 - (b) in the case of a supplementary explanatory statement or replacement explanatory statement—within 6 sitting days of that House after registration of the explanatory statement.
- (3) If the initial explanatory statement for a legislative instrument is lodged by the rule-maker for registration too late for it to be delivered to a House of the Parliament at the same time as a copy of the instrument, the rule-maker must, as soon as possible, deliver to that House a written statement explaining the lateness of lodgement.
- (4) If a replacement explanatory statement replacing an initial explanatory statement is registered before the initial explanatory statement is delivered to each House of the Parliament under subsection (1):
 - (a) this section stops applying to the initial explanatory statement; and
 - (b) this section applies to the replacement explanatory statement as if it were the initial explanatory statement.

Note: For initial explanatory statements and supplementary and replacement explanatory statements, see section 15J.

Section 40

40 Regulations may specify manner of delivery of certain documents

The regulations may specify the manner, which may include delivery by an electronic means, by which documents required to be laid before a House of the Parliament in accordance with section 38 or 39 may be delivered to that House for that purpose.

41 Incorporated material may be required to be made available

A House of the Parliament may, at any time while a legislative instrument is subject to disallowance, require any document incorporated by reference in the instrument to be made available for inspection by that House:

- (a) at a place acceptable to the House; and
- (b) at a time specified by the House.

42 Disallowance of legislative instruments

(1) If:

- (a) notice of a motion to disallow a legislative instrument or a provision of a legislative instrument is given in a House of the Parliament within 15 sitting days of that House beginning on the first sitting day after a copy of the instrument was laid before that House; and
- (b) within 15 sitting days of that House beginning on the first sitting day after the giving of that notice, the House passes a resolution, in pursuance of the motion, disallowing the instrument or provision;

the instrument or provision so disallowed is repealed immediately after the passing of that resolution.

(2) If:

- (a) notice of a motion to disallow a legislative instrument or a provision of a legislative instrument is given in a House of the Parliament within 15 sitting days of that House beginning on the first sitting day after a copy of the instrument was laid before that House; and

- (b) at the end of 15 sitting days of that House beginning on the first sitting day after the giving of that notice of motion:
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called on, moved and (where relevant) seconded and has not been withdrawn or otherwise disposed of;

the instrument or provision specified in the motion is then taken to have been disallowed and is repealed at that time.

(3) If:

- (a) notice of a motion to disallow a legislative instrument or a provision of a legislative instrument is given in a House of the Parliament within 15 sitting days of that House beginning on the first sitting day after a copy of the instrument was laid before that House; and
- (b) before the end of 15 sitting days of that House beginning on the first sitting day after the giving of that notice of motion, the House of Representatives is dissolved or expires, or the Parliament is prorogued; and
- (c) at the time of the dissolution, expiry or prorogation, as the case may be:
 - (i) the notice has not been withdrawn and the motion has not been called on; or
 - (ii) the motion has been called on, moved and (where relevant) seconded and has not been withdrawn or otherwise disposed of;

the legislative instrument is taken, for the purposes of subsections (1) and (2), to have been laid before the first-mentioned House on the first sitting day of that first-mentioned House after the dissolution, expiry or prorogation, as the case may be.

Section 44

44 Legislative instruments that are not subject to disallowance

- (1) Section 42 does not apply in relation to a legislative instrument, or a provision of a legislative instrument if the enabling legislation for the instrument (not being the *Corporations Act 2001*):
 - (a) facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States or Territories; and
 - (b) authorises the instrument to be made by the body or for the purposes of the body or scheme;unless the instrument is a regulation, or the enabling legislation or some other Act has the effect that the instrument is disallowable.
- (2) Section 42 does not apply in relation to a legislative instrument, or a provision of a legislative instrument, if:
 - (a) an Act declares, or has the effect, that section 42 does not apply in relation to the instrument or provision; or
 - (b) the legislative instrument is prescribed by regulation for the purposes of this paragraph.
- (3) Prescribing a kind of instrument by regulation for the purposes of paragraph (2)(b) does not imply that every instrument of that kind is a legislative instrument.

45 Reviving a legislative instrument, law or provision

- (2) If:
 - (a) a legislative instrument (the *repealing instrument*) or a provision (the *repealing provision*) of a legislative instrument is repealed by subsection 38(3) or 42(1) or (2) at a particular time (the *repeal time*); and
 - (b) the repealing instrument or repealing provision wholly or partly repealed another legislative instrument or law, or a provision of another legislative instrument or law, that was in force immediately before the repealing instrument or repealing provision commenced;

the instrument, law or provision repealed by the repealing instrument or repealing provision revives from the repeal time as if the repealing instrument or repealing provision had not been made.

- (3) Subsection (2) does not have the effect of reviving a legislative instrument, law or provision if, before the date when it would have been revived, Part 4 (sunsetting of legislative instruments) would have repealed it had it not already been repealed by the repealing instrument or the repealing provision.

46 Legislative instruments not to be remade while required to be tabled

- (1) If a legislative instrument (the *original legislative instrument*) has been registered, no legislative instrument the same in substance as the original legislative instrument is to be made during the period defined by subsection (2) unless both Houses of the Parliament by resolution approve the making of an instrument the same in substance as the original legislative instrument.
- (2) The period referred to in subsection (1) is the period starting on the day on which the original legislative instrument was registered and ending at the end of 7 days after:
- (a) if the original legislative instrument has been laid, in accordance with subsection 38(1), before both Houses of the Parliament on the same day—that day; or
 - (b) if the original legislative instrument was so laid before both Houses on different days—the later of those days; or
 - (c) if the original legislative instrument has not been so laid before both Houses—the last day on which subsection 38(1) could have been complied with.
- (3) An instrument made in contravention of this section has no effect.

Section 47

47 Legislative instruments not to be remade while subject to disallowance

- (1) If notice of a motion to disallow a legislative instrument, or a provision of a legislative instrument, has been given in a House of the Parliament within 15 sitting days of that House beginning on the first sitting day after the instrument was laid before that House, a legislative instrument, or a provision of a legislative instrument, that is the same in substance as the first-mentioned instrument or provision, must not be made unless:
- (a) the notice has been withdrawn; or
 - (b) the instrument or provision is taken to have been disallowed under subsection 42(2); or
 - (c) the motion has been withdrawn or otherwise disposed of; or
 - (d) subsection 42(3) has applied in relation to the instrument.
- (2) If:
- (a) because of subsection 42(3), a legislative instrument is taken to have been laid before a House of the Parliament on a particular day; and
 - (b) notice of a motion to disallow the instrument or a provision of the instrument has been given in that House within 15 sitting days of that House beginning on the first sitting day after that day;
- a legislative instrument, or a provision of a legislative instrument, that is the same in substance as the first-mentioned instrument or provision must not be made unless:
- (c) the notice has been withdrawn; or
 - (d) the first-mentioned instrument or provision is taken to have been disallowed under subsection 42(2); or
 - (e) the motion has been withdrawn or otherwise disposed of; or
 - (f) subsection 42(3) has applied again in relation to the first-mentioned instrument.
- (3) A legislative instrument or a provision of a legislative instrument made in contravention of this section has no effect.

- (4) This section does not limit the operation of section 46 or 48.

48 Remaking disallowed legislative instruments

- (1) A legislative instrument or a provision of a legislative instrument (the *later instrument or provision*) that is the same in substance as a legislative instrument or a provision of a legislative instrument (the *disallowed instrument or provision*) that has been disallowed (or is taken to have been disallowed) under subsection 42(1) or (2) must not be made within 6 months after the day of disallowance.
- (2) However, the later instrument or provision may be made within that time if the relevant House of the Parliament approves, by resolution, the making of a legislative instrument or provision the same in substance as the disallowed instrument or provision.
- (3) For the purposes of subsection (2), the *relevant House of Parliament* is the House of Parliament in which notice was given of the motion to disallow the disallowed instrument or provision.
- (4) A legislative instrument or provision made in contravention of this section has no effect.

**Part 3—Repeal of spent legislative instruments,
notifiable instruments and provisions**

Division 1A—Simplified outline of this Part

48AA Simplified outline of this Part

A legislative instrument or notifiable instrument (or provision) that only repeals or amends another instrument, or provides for its commencement, is itself automatically repealed.

Regulations made under this Act may repeal a legislative instrument or notifiable instrument (or provision) if the Attorney-General is satisfied that the instrument (or provision) to be repealed is spent or is no longer required.

Division 1—Automatic repeal

Subdivision A—Repeal of amending and repealing instruments

48A Automatic repeal of amending and repealing instruments

- (1) Subject to subsection (2), this section repeals a legislative instrument or notifiable instrument whose only legal effect is to amend or repeal one or more other legislative instruments or notifiable instruments, without making any application, saving or transitional provisions relating to the amendment or repeal.
- (1A) For the purposes of subsection (1), a legislative instrument or notifiable instrument is not taken to make an application, saving or transitional provision mentioned in that subsection merely because the instrument amends another such instrument to make an application, saving or transitional provision relating to the amendment or repeal.

Time of repeal

- (2) The repeal of the instrument by this section happens on the day after the latest of the following events occurs, unless the instrument has been repealed earlier by subsection 38(3) or 42(1) or (2):
 - (aa) for a disallowable legislative instrument—the end of the last day on which the instrument or a provision of the instrument may be disallowed in a House of the Parliament;
 - (a) for any legislative instrument or notifiable instrument—whichever of the following is applicable:
 - (i) the commencement of the instrument, or of the last of its provisions to commence;
 - (ii) if the last of its provisions that have not commenced are repealed, or cannot commence because of the occurrence of an event—that repeal, or the occurrence of that event;

Section 48B

- (b) for a legislative instrument to which section 42 does not apply or for a notifiable instrument—the registration of the instrument.

Effect of repeal

- (3) The repeal of the instrument by this section does not affect any amendment or repeal made by the instrument. This does not limit the effect of section 7 of the *Acts Interpretation Act 1901* as it applies in relation to the repeal of the instrument by this section because of section 13 of this Act.

Subdivision B—Repeal of commencement instruments

48B Automatic repeal of commencement instruments

- (1) This section repeals a commencement instrument that provides for the commencement of one of the following (a *primary law*) or a provision (a *primary provision*) of one of the following:
 - (a) an Act;
 - (b) a legislative instrument or notifiable instrument.

Time of repeal

- (2) The repeal of the commencement instrument by this section happens on the day after the later of the following events occurs:
 - (a) whichever of the following is applicable:
 - (i) the commencement (or the last commencement) the commencement instrument provides for;
 - (ii) if the commencement instrument provides for the commencement of a primary law, and the last of the provisions of the primary law that have not commenced are repealed—that repeal;
 - (iii) if the commencement instrument provides for the commencement of a primary law, and the primary law (or the last of the provisions of the primary law) cannot commence because of the occurrence of an event—the occurrence of that event;

- (iv) if the commencement instrument provides for the commencement of a primary provision or primary provisions, and the primary provision (or the last of those primary provisions) is repealed, or cannot commence because of the occurrence of an event—that repeal, or the occurrence of that event;
- (b) the registration of the commencement instrument.

Effect of repeal

- (3) The repeal of the instrument by this section does not affect any commencement the instrument provides for. This does not limit the effect of section 7 of the *Acts Interpretation Act 1901* as it applies in relation to the repeal of the instrument by this section because of section 13 of this Act.

Subdivision C—Repeal of amending or repealing provisions of instruments containing other matter

48C Automatic repeal of amending and repealing provisions

- (1) Subject to subsection (2), this section repeals a provision of a legislative instrument or notifiable instrument if:
 - (a) the instrument is not an instrument described in subsection 48A(1); and
 - (b) the only legal effect of the provision (alone or in conjunction with other provisions of the instrument) is:
 - (i) to amend or repeal one or more other legislative instruments or notifiable instruments; or
 - (ii) to amend the instrument containing the provision.

Time of repeal

- (2) The repeal of the provision by this section happens immediately after the latest of the following events occurs, unless the provision has been repealed earlier by subsection 38(3) or 42(1) or (2):
 - (aa) if the provision is in a disallowable legislative instrument—the end of the last day on which the instrument or a provision

Section 48C

of the instrument may be disallowed in a House of the Parliament;

- (a) if the provision is in any legislative instrument or notifiable instrument—whichever of the following is applicable:
 - (i) the commencement of the provision;
 - (ii) if the provision cannot commence because of the occurrence of an event—the occurrence of that event;
- (b) if the provision is in a legislative instrument to which section 42 does not apply or is in a notifiable instrument—the registration of the legislative instrument or notifiable instrument.

Effect of repeal

- (3) The repeal of the provision by this section does not affect any amendment or repeal made by the provision. This does not limit the effect of section 7 of the *Acts Interpretation Act 1901* as it applies in relation to the repeal of the provision by this section because of section 13 of this Act.

Repeal of associated provisions

- (5) If subsection (1) repeals a provision of a legislative instrument or notifiable instrument, this section also repeals the following provisions:
 - (a) any other provision (for example, a Schedule) of the instrument that only identifies another instrument or provision that is amended or repealed;
 - (b) any other provision (for example, a Part heading) of the instrument that only identifies (or groups) provisions that are amended or repealed.

Note: See also subsection 45(2).

Subdivision D—Repeal of commencement provisions of instruments containing other matter

48D Automatic repeal of commencement provisions

- (1) Subject to subsection (2), this section repeals a provision (a *commencement provision*) of a legislative instrument or notifiable instrument, other than a commencement instrument, if the commencement provision provides solely for the commencement of one of the following (a *primary law*) or a provision (a *primary provision*) of one of the following:
- (a) the instrument;
 - (b) an Act;
 - (c) another instrument that is a legislative instrument or notifiable instrument.

Time of repeal

- (2) The repeal of the commencement provision by this section happens immediately after the latest of the following events occurs, unless the commencement provision has been repealed earlier by subsection 38(3) or 42(1) or (2):
- (aa) if the commencement provision is in a disallowable legislative instrument—the end of the last day on which the instrument or a provision of the instrument may be disallowed in a House of the Parliament;
 - (a) if the commencement provision is in any legislative instrument or notifiable instrument—whichever of the following is applicable:
 - (i) the commencement (or the last commencement) the commencement provision provides for;
 - (ii) if the commencement provision provides for the commencement of a primary law, and the last of the provisions of the primary law that have not commenced are repealed—that repeal;
 - (iii) if the commencement provision provides for the commencement of a primary law, and the primary law

Chapter 3 Legislative instruments and notifiable instruments

Part 3 Repeal of spent legislative instruments, notifiable instruments and provisions

Division 1 Automatic repeal

Section 48D

(or the last of the provisions of the primary law) cannot commence because of the occurrence of an event—the occurrence of that event;

- (iv) if the commencement provision provides for the commencement of a primary provision, and the primary provision is repealed, or cannot commence because of the occurrence of an event—that repeal, or the occurrence of that event;
- (b) if the commencement provision is in a legislative instrument to which section 42 does not apply or is in a notifiable instrument—the registration of the legislative instrument or notifiable instrument.

Effect of repeal

- (3) The repeal of the provision by this section does not affect any commencement the provision provides for. This does not limit the effect of section 7 of the *Acts Interpretation Act 1901* as it applies in relation to the repeal of the provision by this section because of section 13 of this Act.

Division 2—Repeal by regulations

48E Regulations may repeal instruments or provisions no longer required

- (1) The regulations may repeal a legislative instrument or notifiable instrument or a provision of a legislative instrument or notifiable instrument.
- (2) Before the Governor-General makes a regulation for the purposes of subsection (1), the Attorney-General must be satisfied that the legislative instrument or notifiable instrument or provision to be repealed is spent or is no longer required.

Part 4—Sunsetting of legislative instruments

48F Simplified outline of this Part

Legislative instruments are automatically repealed after a fixed period of time (subject to some exceptions). The automatic repeal is called sunsetting.

Generally, legislative instruments sunset on the first 1 April or 1 October on or after the tenth anniversary of their registration. The Attorney-General may (by legislative instrument) defer sunsetting in some circumstances.

The Attorney-General must arrange for the tabling in each House of Parliament of a list of legislative instruments that are due for sunsetting on the same day. The Office of Parliamentary Counsel must then arrange for each rule-maker to be given a copy of the list.

Either House of Parliament may resolve to continue in force a legislative instrument that would otherwise sunset.

A legislative instrument does not sunset if this Act or a regulation under this Act, or another Act, provides or has the effect that this Part does not apply to the instrument.

49 The purpose of the Part

The purpose of this Part is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Note: Section 54 provides that certain instruments are exempted from the operation of this Part.

50 Sunsetting

- (1) This subsection repeals a legislative instrument on the first 1 April or 1 October falling on or after the tenth anniversary of registration of the instrument, unless the instrument was registered on 1 January 2005.
- (2) This subsection repeals a legislative instrument on the day worked out using the table if the instrument was registered on 1 January 2005.

Day of repeal of legislative instrument registered on 1 January 2005		
	Year the instrument was made	Day of repeal
1	A year before 1930	1 April 2015
2	A year in the decade starting on 1 January 1930	1 October 2015
3	A year in the decade starting on 1 January 1940	1 April 2016
4	A year in the decade starting on 1 January 1950	1 October 2016
5	A year in the decade starting on 1 January 1960	1 April 2017
6	A year in the decade starting on 1 January 1970	1 October 2017
7	A year in the decade starting on 1 January 1980	1 April 2018
8	1990, 1991, 1992, 1993 or 1994	1 October 2018
9	1995, 1996, 1997, 1998 or 1999	1 April 2019
10	2000, 2001 or 2002	1 October 2019
11	2003 or 2004	1 April 2020

Relationship with other provisions

- (3) This section has effect subject to Part 3 (repeal of spent legislative instruments, notifiable instruments and provisions) and sections 51, 51A, 53 and 54.

Note: A legislative instrument may be repealed under Part 3 before it could be repealed by this section. Section 51 or 51A may repeal a legislative instrument at a time different from the time when it would be repealed by this section. Sections 53 and 54 may prevent a legislative instrument from being repealed by this section.

Section 51

51 Attorney-General may defer sunsetting in certain circumstances

- (1) If:
- (a) a legislative instrument would (apart from this section) be repealed by section 50 or 51A on a particular day (the *sunsetting day*); and
 - (b) the Attorney-General is satisfied, on written application by the rule-maker:
 - (i) that the instrument would (apart from the operation of this Part) be likely to cease to be in force within 24 months after the sunsetting day; or
 - (ii) that an instrument proposed to be made in substitution for the instrument will not be able to be completed before the sunsetting day for reasons that the rule-maker could not have foreseen and avoided or because the dissolution or expiration of the House of Representatives or the prorogation of the Parliament renders it inappropriate to make a replacement instrument before a new government is formed; or
 - (iii) that the Attorney-General has approved this Part not applying to the instrument;
- then:
- (c) the Attorney-General may issue a certificate providing that the first-mentioned instrument is repealed by this section on a 1 April or 1 October that is on or before the second anniversary of the sunsetting day and that is specified in the certificate; and
 - (d) if the Attorney-General issues the certificate, the first-mentioned instrument is repealed by this section on the specified day instead of the sunsetting day, unless the instrument has been repealed earlier.
- (3) A certificate issued under paragraph (1)(c) is a legislative instrument.
- (4) Section 42 does not apply to a certificate issued under paragraph (1)(c) if the day specified in the certificate is on or before the first anniversary of the sunsetting day.

- (5) The explanatory statement for a certificate issued under paragraph (1)(c) must include a statement of the reasons for the issue of the certificate.

51A Attorney-General may align sunsetting of instruments to be reviewed together

- (1) The Attorney-General may by legislative instrument (the *sunset-altering instrument*) declare that 2 or more other legislative instruments (the *instruments to be reviewed*) are repealed by this section on a single specified day, if he or she is satisfied, on application by the rule-maker of the instruments to be reviewed, that:
- (a) all the instruments to be reviewed:
 - (i) would, apart from this section, be repealed by section 50 or 51; and
 - (ii) are or will be the subject of a single review; and
 - (b) the making of the declaration will facilitate the undertaking of the review or the implementation of its findings.
- (2) The day specified in the sunset-altering instrument:
- (a) must be 1 April or 1 October of a year; and
 - (b) must be not more than 5 years after the earliest day on which any of the instruments to be reviewed would be repealed by section 50 or 51 apart from this section; and
 - (c) may be the same as, or different from, any of the days on which any of the instruments to be reviewed would be repealed by section 50 or 51 apart from this section.
- (3) The sunset-altering instrument has effect according to its terms (subject to Part 2 (parliamentary scrutiny of legislative instruments), and to section 53 operating on the instruments to be reviewed).
- (4) The explanatory statement for the sunset-altering instrument must include a statement of the reasons for the making of the instrument.

Section 52

52 Attorney-General must lay lists of instruments due for sunsetting before each House of the Parliament

(1) In this section:

list tabling day, in relation to a sunsetting day and to a House of the Parliament, means the first sitting day of that House occurring within 18 months before that sunsetting day.

sunsetting day means the first possible day on which any legislative instrument will be repealed by this Part and each 1 April and 1 October occurring after that day.

- (2) The Attorney-General must arrange for the laying before each House of the Parliament, on each list tabling day in relation to that House, of a list of legislative instruments that will be repealed by section 50, 51 or 51A on the sunsetting day to which that list tabling day relates.
- (3) As soon as practicable after the laying before either House of the Parliament of a list in accordance with subsection (2), the Office of Parliamentary Counsel must arrange for a copy of that list to be provided to the rule-maker responsible for each legislative instrument appearing on the list.
- (4) If subsection (2) requires the Attorney-General to arrange for the laying of a list of the kind referred to in that subsection before the Houses of the Parliament on different days, subsection (3) need only be complied with in relation to the earlier of those days.

53 Resolution that instrument continue in force

- (1) A legislative instrument that would otherwise be repealed on a day (the *repeal day*) by section 50, 51 or 51A continues in force, despite those sections, if:
- (a) the instrument is mentioned in:
- (i) a copy of a certificate under section 51 that is laid before a House of the Parliament in accordance with section 38; or

- (ii) a list laid before a House of the Parliament under section 52; and
 - (b) the House indicates, by resolution passed before the repeal day, that the instrument should continue in force.
- (2) The legislative instrument continues in force, subject to:
- (a) sections 50, 51 and 51A, which apply to it after the passage of the resolution as if it were registered on the day on which it would have been repealed by section 50, 51 or 51A apart from this section; and
 - (b) any later instrument amending or repealing it.

Note: The legislative instrument is not required to be tabled again, and is not liable to disallowance again.

54 Instruments to which this Part does not apply

- (1) This Part does not apply in relation to a legislative instrument if the enabling legislation for the instrument (not being the *Corporations Act 2001*):
- (a) facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States or Territories; and
 - (b) authorises the instrument to be made by the body or for the purposes of the body or scheme.
- (2) This Part does not apply in relation to a legislative instrument if:
- (a) an Act provides, or has the effect, that this Part does not apply in relation to the instrument; or
 - (b) the legislative instrument is prescribed by regulation for the purposes of this paragraph; or
 - (c) the legislative instrument is a regulation made for the purposes of:
 - (i) paragraph 8(6)(b) (which covers instruments that are not legislative instruments); or
 - (ii) paragraph 10(1)(c) (which covers instruments that are legislative instruments); or

Section 54

- (iii) paragraph 11(2)(b) (which covers instruments that are notifiable instruments); or
 - (iv) paragraph 44(2)(b) (which covers instruments that are not subject to disallowance); or
 - (v) paragraph (b) of this subsection.
- (3) Prescribing a kind of instrument by regulation for the purposes of paragraph (2)(b) does not imply that every instrument of that kind is a legislative instrument.

Chapter 4—Miscellaneous

55 Simplified outline of this Chapter

This Chapter deals with miscellaneous matters, such as the following:

- publication requirements for legislative instruments other than publication by registration;
- parliamentary scrutiny requirements for instruments other than legislative instruments or notifiable instruments, other than scrutiny under this Act;
- delegation powers of the First Parliamentary Counsel;
- a review of Part 4 of Chapter 3 (sunsetting of legislative instruments) in 2027;
- the First Parliamentary Counsel’s power to make rules for this Act (rules are legislative instruments);
- the power to make regulations under this Act, including a regulation that amends any legislative instrument or notifiable instrument with the agreement of the rule-maker for the instrument.

56 Legislative instruments—gazettal and other publication and notification requirements

Gazettal requirements satisfied by registration

- (1) If a primary law requires a legislative instrument made under that law or other enabling legislation, or particulars of the making of the instrument, to be published or notified in the Gazette, the

Section 57

requirement is taken to be satisfied if the instrument is registered as a legislative instrument.

Other publication or notification requirements in addition to registration

- (2) Subsection (3) applies if a primary law as enacted or made, or as amended, on or after 1 January 2005 requires a legislative instrument made under that law or other enabling legislation, or particulars of the making of the instrument, to be published or notified otherwise than in the Gazette.

Note: The substantive provisions of this Act commenced on 1 January 2005.

- (3) The requirement for publication or notification is taken to be in addition to a requirement under this Act for the legislative instrument to be registered as a legislative instrument.

57 Effect on existing tabling and disallowance requirements

- (1) If, before 1 January 2005, a law required a document that is a legislative instrument for the purposes of this Act to be laid before the Parliament within a certain time, and in a certain way, compliance with section 38 on and after 1 January 2005 is taken to constitute full compliance with those requirements.
- (2) If, before 1 January 2005, a law provided for the disallowance of a document that is a legislative instrument for the purposes of this Act, sections 42 to 48 are taken to apply in respect of the document, subject to subsection (5), to the exclusion of the provision for disallowance in that law.
- (3) If provisions in force immediately before 1 January 2005 in relation to a document that is a legislative instrument specify particular consequences that follow a particular circumstance, namely:
- (a) the laying of that document, or the failure to lay that document, before the Houses of the Parliament in accordance with those provisions; or

- (b) the disallowance or non-disallowance, in accordance with those provisions, of a document that is so laid:
those same consequences follow a like circumstance under this Act, namely:
- (c) the laying of that document, or the failure to lay that document, before the Houses of the Parliament in accordance with this Act; and
 - (d) the disallowance or non-disallowance of that document, in accordance with this Act, of a document that is laid before the Houses of the Parliament in accordance with this Act;
- as if the circumstance referred to in paragraph (c) or (d) were a circumstance referred to in paragraph (a) or (b).
- (4) If provisions in force immediately before 1 January 2005 in relation to a document that is a legislative instrument:
- (a) require the document to be laid before the Houses of the Parliament; and
 - (b) specify particular requirements to be complied with before, or at the same time as, that document is so laid;
- those provisions continue to have effect, on and after 1 January 2005, as if they were requirements to be complied with before, or at the same time as, the document is laid before the Houses of the Parliament in accordance with this Act.
- Note: This subsection applies, for example, if the enabling legislation in respect of a legislative instrument required that a report concerning any such instrument be prepared and laid before the Parliament at the same time as the instrument is so laid.
- (5) If particular disallowance provisions of the kind referred to in subsection (2) are prescribed as provisions to which subsection (2) does not apply, then those provisions continue to apply, on and after 1 January 2005, despite the provisions to different effect in sections 42 to 48.

Note: The substantive provisions of this Act commenced on 1 January 2005.

Section 57A

57A Legislative instruments made under power delegated by the Parliament before 1 January 2005

For the purposes of subsection 8(5) (meaning of *legislative instrument*), an instrument is a legislative instrument if:

- (a) it is made under a power delegated by the Parliament before 1 January 2005; and
- (b) in accordance with a provision of the enabling legislation, the instrument:
 - (i) is declared to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* as in force at any time before 1 January 2005; or
 - (ii) is otherwise able to be disallowed under Part XII of the *Acts Interpretation Act 1901* as in force at any time before 1 January 2005.

Note: The substantive provisions of this Act commenced on 1 January 2005.

58 Delegation

The First Parliamentary Counsel may, by signed instrument, delegate to:

- (a) a Second Parliamentary Counsel (appointed under subsection 4(1) of the *Parliamentary Counsel Act 1970*); or
- (b) an SES employee in the Office of Parliamentary Counsel; or
- (c) an SES employee in the Department;

any of the powers or functions of the First Parliamentary Counsel under this Act.

59 Review of operation of this Act

- (1) During the 3 months starting on the fifth anniversary of the commencement (the *framework reform commencement*) of Schedule 1 to the *Acts and Instruments (Framework Reform) Act 2015*, the Attorney-General must appoint persons to a body to review the operation of this Act.

- (2) A person appointed to the body may resign from it by giving the Attorney-General a signed notice of resignation.
- (3) The body must review all aspects of the operation of this Act and any related matters that the Attorney-General specifies.
- (4) The body must give the Attorney-General a written report on the review within 15 months after the fifth anniversary of the framework reform commencement.
- (5) The Attorney-General must cause the report to be laid before each House of the Parliament within 6 sitting days of the House after the Attorney-General receives the report.

60 Review of operation of the sunseting provisions

- (1) Between 1 January and 31 March 2027, the Attorney-General must appoint persons to a body to review the operation of Part 4 of Chapter 3 (sunseting of legislative instruments).
- (2) A person appointed to the body may resign from it by giving the Attorney-General a signed notice of resignation.
- (3) The body referred to in subsection (1) must review all aspects of the operation of Part 4 of Chapter 3 and any related matters that the Attorney-General specifies.
- (4) The body must give the Attorney-General a written report on the review before 1 October 2027.
- (5) The Attorney-General must cause the report to be laid before each House of the Parliament within 6 sitting days of the House after the Attorney-General receives the report.

61 Legislative instrument and notifiable instrument amendments by regulations under this Act

- (1) A regulation under this Act may amend a legislative instrument or notifiable instrument.

Section 61A

- (2) Regulations made for the purposes of subsection (1) may include amendments providing for any matters of a transitional nature (including saving or application provisions) that are necessary or convenient to be prescribed for amendments of the instrument concerned.
- (3) Before the Governor-General makes a regulation for the purposes of subsection (1) amending an instrument, the Attorney-General must be satisfied that the rule-maker for the instrument has agreed to the amendment.

61A Rules made by First Parliamentary Counsel

The First Parliamentary Counsel may, by legislative instrument, make rules prescribing all matters required or permitted by this Act to be prescribed by the rules.

62 Regulations

The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed by regulation; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnotes

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Legislative Instruments Act 2003	139, 2003	17 Dec 2003	s 3–42, 44–62 and Sch 1: 1 Jan 2005 (s 2(1) items 2, 3) Remainder: 17 Dec 2003 (s 2(1) item 1)	
Law and Justice Legislation Amendment Act 2004	62, 2004	26 May 2004	Sch 1 (items 46–50): 1 Jan 2005 (s 2(1) item 12)	—
Australian Federal Police and Other Legislation Amendment Act 2004	64, 2004	22 June 2004	Sch 2 (item 8): 1 Jan 2005 (s 2(1) item 10)	—
Protection of the Sea (Powers of Intervention) Amendment Act 2006	44, 2006	22 May 2006	Sch 1 (item 1): 23 May 2006 (s 2)	—
Customs Legislation Amendment (New Zealand Rules of Origin) Act 2006	166, 2006	12 Dec 2006	Sch 1 (items 18–21): 1 Jan 2007 (s 2)	—
Australian Citizenship (Transitionals and Consequential) Act 2007	21, 2007	15 Mar 2007	Sch 1 (item 38): 1 July 2007 (s 2(1) item 2)	—
Native Title Amendment Act 2007	61, 2007	15 Apr 2007	Sch 1 (item 47A): 15 Apr 2007 (s 2(1) item 2)	—
Maritime Legislation Amendment Act 2007	150, 2007	24 Sept 2007	Sch 1 (items 21, 22): 1 Jan 2008 (s 2(1) item 2)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Framework Legislation Amendment Act (No. 1) 2007	166, 2007	25 Sept 2007	Sch 1 (items 19, 21): 1 Jan 2008 (s 2(1) items 8, 10) Sch 1 (items 20, 22): 25 Sept 2007 (s 2(1) items 9, 11)	—
Commonwealth Authorities and Companies Amendment Act 2008	20, 2008	26 May 2008	Sch 2 (items 4–7): 1 July 2008 (s 2(1) item 7)	Sch 2 (item 7)
Great Barrier Reef Marine Park and Other Legislation Amendment Act 2008	125, 2008	25 Nov 2008	Sch 3 (item 48): 26 Nov 2008 (s 2(1) item 2)	—
Evidence Amendment Act 2008	135, 2008	4 Dec 2008	Sch 3 (item 8): 4 Dec 2009 (s 2(1) item 3)	—
Water Amendment Act 2008	139, 2008	8 Dec 2008	Sch 2 (item 2): 15 Dec 2008 (s 2(1) item 3)	—
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 5 (item 42): 1 July 2009 (s 2(1) item 13)	—
Fair Work Amendment (State Referrals and Other Measures) Act 2009	124, 2009	9 Dec 2009	Sch 2 (item 133): 1 Jan 2010 (s 2(1) item 12)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 1 (items 111–116) and Sch 3 (items 1, 9, 11): 27 Dec 2011 (s 2(1) items 2, 12)	Sch 3 (items 1, 9, 11)
Financial Framework Legislation Amendment Act (No. 1) 2011	89, 2011	4 Aug 2011	Sch 3: 1 Sept 2011 (s 2(1) item 4)	—

Legislation Act 2003

89

Compilation No. 39

Compilation date: 24/2/19

Registered: 25/2/19

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Legislative Instruments Amendment (Sunsetting) Act 2011	98, 2011	15 Sept 2011	16 Sept 2011 (s 2)	Sch 1 (item 4)
Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Act 2011	187, 2011	7 Dec 2011	Sch 1 (item 4): 4 Jan 2012 (s 2(1) item 3)	—
Parliamentary Counsel and Other Legislation Amendment Act 2012	107, 2012	22 July 2012	Sch 2 (items 12–46, 48): 1 Oct 2012 (s 2(1) item 2)	Sch 2 (items 46, 48)
Navigation (Consequential Amendments) Act 2012	129, 2012	13 Sept 2012	Sch 2 (item 16): 1 July 2013 (s 2(1) item 2)	—
Legislative Instruments Amendment (Sunsetting Measures) Act 2012	135, 2012	22 Sept 2012	Sch 1: 23 Sept 2012 (s 2)	—
Fair Work Amendment Act 2012	174, 2012	4 Dec 2012	Sch 9 (item 1281): 1 Jan 2013 (s 2(1) item 5)	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 2 (item 2): 12 Apr 2013 (s 2(1) item 3)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 9 (items 214, 215) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 1 (items 1–89, 166–179): 5 Mar 2016 (s 2(1) item 2)	Sch 1 (items 166–179)
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 3 (items 1, 6): 5 Mar 2016 (s 2(1) item 8)	Sch 3 (item 6)
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	s 4: 26 May 2015 (s 2(1) item 1) Sch 1 (item 144): 18 June 2015 (s 2(1) item 2) Sch 1 (items 184–203): 27 May 2015 (s 2(1) item 3) Sch 1 (items 204–206): 5 Mar 2016 (s 2(1) item 4)	s 4 and Sch 1 (items 184–203, 206)

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 2 (items 3, 4): never commenced (s 2(1) item 5) Sch 2 (items 5–7): 10 Mar 2016 (s 2(1) items 6, 7) Sch 3 (items 3–6): 5 Mar 2016 (s 2(1) item 8)	Sch 2 (item 7) and Sch 3 (item 6)
Treasury Laws Amendment (Fair and Sustainable Superannuation) Act 2016	81, 2016	29 Nov 2016	Sch 10 (item 112): 1 Jan 2017 (s 2(1) item 8)	—
Treasury Laws Amendment (2017 Measures No. 2) Act 2017	55, 2017	22 June 2017	Sch 1 (item 20): 22 June 2017 (s 2(1) item 3) Sch 1 (item 21): <u>awaiting commencement</u> (s 2(1) item 4)	—
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 1 (item 14): 20 Sept 2017 (s 2(1) item 2)	—
Legislation Amendment (Sunsetting Review and Other Measures) Act 2018	78, 2018	24 Aug 2018	Sch 1 (items 22–74) and Sch 2 (items 5–10): 25 Aug 2018 (s 2(1) items 2, 3) Sch 2 (items 11–13): 24 Feb 2019 (s 2(1) item 4)	Sch 1 (item 74) and Sch 2 (items 10, 13)
Civil Law and Justice Legislation Amendment Act 2018	130, 2018	25 Oct 2018	Sch 8: 26 Oct 2018 (s 2(1) item 11)	—

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) (SLI No. 50, 2006)	17 Mar 2006 (F2006L00820)	Sch 39: 27 Mar 2006 (r 2(b))	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Title.....	am No 135, 2012 rs No 10, 2015 ed C32
Chapter 1	
Chapter 1 heading.....	ad No 10, 2015
Part 1	
Part 1 heading.....	rs No 10, 2015
s 1.....	am No 10, 2015
s 2A.....	rep No 10, 2015
s 3.....	am No 135, 2012; No 10, 2015
s 3A.....	ad No 10, 2015 am No 78, 2018
s 3AA.....	ad No 59, 2015
s 4.....	am No 98, 2011; No 187, 2011; No 107, 2012; No 135, 2012 rs No 10, 2015
s 5.....	rs No 10, 2015 ed C39
s 6.....	rs No 10, 2015
Part 2	
Part 2 heading.....	ad No 10, 2015
s 7.....	am No 62, 2004; No 64, 2004; SLI No 50, 2006; No 20, 2008; No 139, 2008; No 54, 2009; No 124, 2009; No 174, 2012; No 62, 2014 rs No 10, 2015
s 8.....	rs No 10, 2015 am No 126, 2015
s 9.....	am No 13, 2013 rs No 10, 2015
s 10.....	rs No 10, 2015

Endnote 4—Amendment history

Provision affected	How affected
	am No 59, 2015
s 11.....	am No 13, 2013
	rs No 10, 2015
s 12.....	rs No 10, 2015
	am No 78, 2018
s 13.....	am No 46, 2011; No 10, 2015; No 93, 2017
s 14.....	am No 10, 2015; No 126, 2015; No 78, 2018
Chapter 2	
Chapter 2.....	ad No 10, 2015
Part 1	
Division 1	
s 15.....	rep No 135, 2012
	ad No 10, 2015
Division 2	
s 15A.....	ad No 10, 2015
	am No 126, 2015
s 15B.....	ad No 10, 2015
s 15C.....	ad No 10, 2015
s 15D.....	ad No 10, 2015
	rs No 78, 2018
s 15DA.....	ad No 78, 2018
s 15E.....	ad No 10, 2015
Division 3	
s 15F.....	ad No 10, 2015
s 15G.....	ad No 10, 2015
s 15H.....	ad No 10, 2015
	am No 126, 2015
s 15J.....	ad No 10, 2015
	am No 81, 2016; No 55, 2017 (<u>Sch 1 item 21</u>)
s 15K.....	ad No 10, 2015
s 15L.....	ad No 10, 2015

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am No 78, 2018
s 15M.....	ad No 10, 2015
Part 2	
Division 1	
s 15N.....	ad No 10, 2015
Division 2	
s 15P	ad No 10, 2015
s 15Q.....	ad No 10, 2015
	am No 130, 2018
s 15R.....	ad No 10, 2015
s 15S	ad No 10, 2015
s 15T	ad No 10, 2015
	am No 130, 2018
s 15U.....	ad No 10, 2015
	am No 130, 2018
Division 3	
s 15V.....	ad No 10, 2015
s 15W.....	ad No 10, 2015
s 15X.....	ad No 10, 2015
	ed C32
Part 3	
Division 1	
s 15Y.....	ad No 10, 2015
s 15Z	ad No 10, 2015
Division 2	
s 15ZA	ad No 10, 2015
	am No 130, 2018
s 15ZB.....	ad No 10, 2015
	am No 130, 2018
Chapter 3	
Part 2 heading	rep No 10, 2015

Endnote 4—Amendment history

Provision affected	How affected
Chapter 3 heading.....	ad No 10, 2015
Part 1	
Part 1 heading.....	ad No 10, 2015
s 15ZC.....	ad No 10, 2015
s 16.....	am No 107, 2012; No 10, 2015
Part 3 heading.....	rep No 10, 2015
s 17.....	am No 135, 2012; No 10, 2015
s 18.....	rep No 10, 2015
Part 4.....	rep No 10, 2015
s 20.....	am No 107, 2012 rep No 10, 2015
s 21.....	rep No 10, 2015
s 22.....	rep No 10, 2015
s 23.....	am No 107, 2012 rep No 10, 2015
s 24.....	rep No 10, 2015
s 25.....	am No 107, 2012 rep No 10, 2015
s 26.....	am No 135, 2012 rep No 10, 2015
s 27.....	am No 107, 2012 rep No 10, 2015
s 28.....	rep No 10, 2015
s 29.....	am No 107, 2012 rep No 10, 2015
s 30.....	am No 107, 2012 rep No 10, 2015
s 31.....	am No 107, 2012 rep No 10, 2015
s 32.....	rep No 10, 2015
s 33.....	am No 107, 2012; No 135, 2012

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	rep No 10, 2015
s 34.....	am No 107, 2012; No 135, 2012
	rep No 10, 2015
s 35.....	rep No 10, 2015
s 35A.....	ad No 135, 2008
	rep No 10, 2015
Part 2	
Part 5 heading.....	rep No 10, 2015
Part 2 heading.....	ad No 10, 2015
s 36.....	rs No 10, 2015
s 37.....	am No 10, 2015
s 38.....	am No 107, 2012; No 10, 2015; No 78, 2018
s 39.....	am No 107, 2012
	rs No 10, 2015
s 42.....	am No 62, 2004; No 10, 2015; No 78, 2018
s 44.....	am No 62, 2004; No 166, 2006; No 21, 2007; No 150, 2007; No 166, 2007; No 20, 2008; No 89, 2011; No 10, 2015; No 78, 2018
s 45.....	am No 135, 2012; No 10, 2015; No 78, 2018
s 47.....	am No 78, 2018
s 48.....	rs No 10, 2015
Part 3	
Part 5A heading.....	rep No 10, 2015
Part 3 heading.....	ad No 10, 2015
Part 5A.....	ad No 135, 2012
Division 1A	
Division 1A heading.....	ad No 10, 2015
s 48AA.....	ad No 10, 2015
	am No 78, 2018
Division 1	
Subdivision A	
s 48A.....	ad No 135, 2012

Endnote 4—Amendment history

Provision affected	How affected
	am No 10, 2015; No 78, 2018
Subdivision B	
s 48B	ad No 135, 2012 am No 10, 2015
Subdivision C	
Subdivision C heading.....	rs No 10, 2015
s 48C	ad No 135, 2012 am No 10, 2015; No 78, 2018
Subdivision D	
Subdivision D heading.....	rs No 10, 2015
s 48D.....	ad No 135, 2012 am No 10, 2015; No 78, 2018
Division 2	
s 48E	ad No 135, 2012 am No 10, 2015
Part 4	
Part 6 heading	rep No 10, 2015
Part 4 heading	ad No 10, 2015
s 48F	ad No 10, 2015
s 50.....	am No 98, 2011 rs No 135, 2012 am No 10, 2015
s 51.....	am No 135, 2012; No 10, 2015; No 78, 2018
s 51A.....	ad No 135, 2012 am No 10, 2015; No 78, 2018
s 52.....	am No 107, 2012; No 135, 2012
s 53.....	rs No 135, 2012 am No 78, 2018
s 54.....	am No 62, 2004; No 44, 2006; No 166, 2006; No 61, 2007; No 150, 2007; No 166, 2007; No 20, 2008; No 125, 2008; No 89, 2011; No 129, 2012; No 135, 2012; No 10, 2015; No 78, 2018

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Chapter 4	
Part 7 heading	rep No 10, 2015
Chapter 4 heading	ad No 10, 2015
s 55	rs No 10, 2015 am No 78, 2018
s 56	rs No 10, 2015
s 57	am No 10, 2015
s 57A	ad No 10, 2015
s 58	rs No 107, 2012 am No 10, 2015
s 59	rs No 10, 2015
s 60	am No 10, 2015; No 78, 2018
s 61	rs No 10, 2015
s 61A	ad No 10, 2015
s 62	am No 10, 2015
Schedule 1	rep No 10, 2015

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Section 5 (heading)

Kind of editorial change

Change to typeface

Details of editorial change

This compilation was editorially changed to insert bold on the word “and” in the heading to section 5 to bring the section heading into line with legislative drafting practice.