

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 66

Issued by the Authority of the Attorney-General

Legislative Instruments Act 2003

Legislative Instruments Amendment Regulations 2008 (No. 1)

The *Legislative Instruments Act 2003* (the LIA) establishes a comprehensive regime for the registration, tabling, disallowance and sunseting of all Commonwealth legislative instruments. Section 62 of the LIA provides that the Governor-General may make regulations prescribing all matters required or permitted by the LIA to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the LIA.

The *Legislative Instruments Regulations 2004* (the Principal Regulations) facilitate the operation of the LIA by (among other things) providing exemptions from the LIA or parts of the LIA.

The purpose of the *Legislative Instruments Amendment Regulations 2008 (No. 1)* (the Regulations) is to amend the Principal Regulations to provide exemptions from disallowance and sunseting for Fee Waiver Principles made under subsection 91(1B) of the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act).

Part 5 of the LIA provides for the various methods by which a legislative instrument or a provision of such an instrument may be disallowed and cease to have effect. In every case, the pre-condition is that once a legislative instrument has been laid before the Parliament, a notice of motion of disallowance is given within 15 sitting days. The purpose of this Part is to facilitate the scrutiny by the Parliament of legislative instruments.

Part 6 of the LIA provides for the automatic repeal or sunseting of each legislative instrument 10 years after the date that the instrument must be placed on the Register. The purpose of this part is to encourage regular review and re-making of legislative instruments thereby ensuring that they are kept up to date and only remain in force for so long as they are needed".

Section 91 of the Classification Act provides for the waiver of fees payable to the Director of the Classification Board or the Convenor of the Classification Review Board under the Classification Act. The payment of fees may only be waived in accordance with written principles determined by the Minister under subsection 91(1B) of the Classification Act. Fee waiver principles made by the Minister should be specifically made exempt because they are part of an intergovernmental scheme (the National Classification Scheme) and disallowance and sunseting should not be unilaterally determined by the Commonwealth.

The Regulations are minor and of a machinery nature and do not alter existing arrangements. For these reasons, no consultation was undertaken.

Details of the Regulations are set out in the Attachment, including the reasons why the particular exemptions from the LIA were made.

The Regulations are a legislative instrument for the purposes of the LIA and commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Legislative Instruments Amendment Regulations 2008 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 – Amendment of *Legislative Instruments Regulations 2004*

This regulation provides that the *Legislative Instruments Regulations 2004* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Schedule 2, after item 2A

Item [1] inserts a new item 2AA after item 2A in Schedule 2 to the Principal Regulations.

New item 2AA provides an exemption from disallowance for Fee Waiver Principles made under subsection 91(1B) of the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act).

Item 8 of the Table in subsection 44(2) of the *Legislative Instruments Act 2003* (the LIA) identifies Fee Waiver Principles made under subsection 91(1A) of the Classification Act, as a legislative instrument that is not subject to disallowance under section 42 of the LIA. Item 10 of the Table in section 54 of the LIA identifies Fee Waiver Principles made under subsection 91(1A) of the Classification Act as a legislative instrument that is not subject to sunseting pursuant to Part 6 of the LIA.

However, these exemptions are no longer effective following amendments made by the *Classification (Publications, Films and Computer Games) Amendment Act 2007* as the Fee Waiver Principles are now made under subsection 91(1B) of the Classification Act. These amendments commenced on 15 September 2007.

The policy reasons for exempting Fee Waiver Principles made under subsection 91(1A) from disallowance and sunseting continue to apply to Fee Waiver Principles made under subsection 91(1B). Fee Waiver Principles made under subsection 91(1A) were specifically made exempt because they are part of an intergovernmental scheme (the National Classification Scheme) and disallowance and sunseting should not be unilaterally determined by the Commonwealth. The nature of the Fee Waiver Principles has not changed as a result of the re-numbering of the enabling provision.

Item 44 of the Table in subsection 44(2) of the LIA permits exemptions from disallowance to be prescribed in regulations. Regulation 8 of the Principal Regulations provides that for item 44 of the table in subsection 44 (2) of the Act,

legislative instruments mentioned in Schedule 2 the Principal Regulations are prescribed. Consequently, inserting new item 2AA into Schedule 2 is an amendment of a machinery nature to ensure Fee Waiver Principles made under the Classification Act continue to be exempt from disallowance.

Item [2] – Schedule 3, after item 2

Item [2] insert a new item 2A after item 2 in Schedule 3 to the Principal Regulations.

New item 2A provides an exemption from sunseting for fee waiver principles made under subsection 91(1B) of the Classification Act for the same reasons set out above in relation to disallowance.

Item 10 of the Table in subsection 54(2) of the LIA identifies Fee Waiver Principles made under subsection 91(1A) of the Classification Act as a legislative instrument that is not subject to sunseting pursuant to Part 6 of the LIA.

Item 51 of the Table in subsection 54(2) also permits exemptions from sunseting to be prescribed in regulations. Regulation 9 of the Principal Regulations provides that for Item 51 of the Table in subsection 54(2) of the Act, legislative instruments mentioned in Schedule 3 are prescribed. Consequently, inserting new item 2A into Schedule 3 is an amendment of a machinery nature to ensure Fee Waiver Principles made under the Classification Act continue to be exempt from sunseting.