

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2009 No. 218**

Issued by the authority of the Attorney-General

*Legislative Instruments Act 2003*

*Legislative Instruments Amendment Regulations 2009 (No. 1)*

Section 62 of the *Legislative Instruments Act 2003* (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 LIA establishes a comprehensive regime for the registration, tabling, disallowance and sunseting of all Commonwealth legislative instruments. 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 2009 (No. 1)* (the Regulations) is to amend the Principal Regulations by omitting item 5 of Schedule 2 to the Principal Regulations. Regulation 8 of the Principal Regulations provides that an instrument mentioned in Schedule 2 to the Principal Regulations is not subject to disallowance by Parliament. Item 5 of Schedule 2 refers to an instrument made under subsection 31(1) of the *Disability Discrimination Act 1992* (the DDA).

Section 31 of the DDA has recently been repealed and replaced by a new section 31 pursuant to item 62 of Part 1 of Schedule 2 to the *Disability Discrimination and Other Human Rights Legislation Amendment Act 2009*. That item commenced on 5 August 2009 – 28 days after the Royal Assent was received. New section 31 of the DDA provides that the Attorney-General may, by legislative instrument, formulate standards, to be known as disability standards, in relation to any area under Part 2 of the DDA. Part 2 provides that it is unlawful for a person to discriminate against a person on the ground of a disability of the other person. New subsection 31(4) provides that a legislative instrument made under section 31 does not take effect before the end of a period in which it could be disallowed in either House of the Parliament. This provision for disallowance replaced a power for the standards that were permitted to be made under the repealed section, to be amended by the Parliament. The new section 31, in providing for disallowance, is inconsistent with the provision of Item 5 of Schedule 2 to the Principal Regulations. The Regulations omit the inconsistent reference in consequence of that change.

No consultations have been undertaken in relation to the Regulations. The omission of Item 5 in Schedule 2 of the Principal Regulations is of a machinery nature and consequential upon the amendment of section 31 of the DDA.

The Regulations are a legislative instrument for the purposes of the LIA.

Details of the Regulations are in the [Attachment](#).

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Legislative Instruments Amendment Regulations 2009 (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, Item 5**

This item omits item 5, instruments made under subsection 31(1) of the *Disability Discrimination Act 1992*, from Schedule 2 to the Principal Regulations.

This removes instruments made under subsection 31(1) of the *Disability Discrimination Act 1992* from the exemption from disallowance in Parliament.