

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 319**

Subject: *Legislative Instruments Act 2003*

*Legislative Instruments Amendment Regulations 2010 (No. 1)*

Section 62 of the *Legislative Instruments Act 2003* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act establishes a comprehensive regime for the management of Commonwealth legislative instruments and the *Legislative Instruments Regulations 2004* (the Principal Regulations) facilitates the operation of the Act by, among other things, providing exemptions from the whole or part of the Act.

The purpose of the *Legislative Instruments Amendment Regulations 2010 (No. 1)* (the Regulations) is to amend the Principal Regulations to provide an exemption from the whole of the Act for rules made under section 15 of the *Intelligence Services Act 2001* (the Intelligence Services Act).

Section 15 of the Intelligence Services Act requires the Ministers responsible for Intelligence Services Act agencies to make written rules regulating the way that they communicate and retain intelligence information concerning Australian persons, known as Privacy Rules. The exemption from the Act addresses doubt surrounding the characterisation of the Privacy Rules and removes the requirement for the Privacy Rules to be registered and subject to disallowance and consultation requirements in the Act. The Privacy Rules are instead subject to Parliamentary oversight and consultation under the Intelligence Services Act. This Act requires consultation on any amendments to the Privacy Rules with the Attorney-General, the Inspector-General of Intelligence and Security and the Parliamentary Joint Committee on Intelligence and Security.

Regulation 7 of the Principal Regulations provides that an instrument mentioned in Schedule 1 to the Principal Regulations is declared not to be a legislative instrument for the purposes of the Act. The Regulations insert a new paragraph (ba) into item 11, Part 2 of Schedule 1 to the Principal Regulations to prescribe an exemption for rules made under section 15 of the Intelligence Services Act.

The Regulations are minor and of a machinery nature and do not alter existing arrangements. The Regulations were developed following consultation with the Minister for Defence, Minister for Foreign Affairs and the Inspector-General of Intelligence and Security, who are responsible for Intelligence Services Act agencies and the Attorney-General.

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

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

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

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Details of the *Legislative Instruments Amendment Regulations 2010 (No. 1)*****Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Legislative Instruments Amendment Regulations 2010 (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 the Schedule.

**Schedule – Amendments****Item [1] – Schedule 1, Part 2, item 11, after paragraph (b)**

Item 1 of the Regulations inserts new material into Part 2 of Schedule 1 to the Principal Regulations. Part 2 of Schedule 1 lists instruments made under particular provisions that are declared not to be legislative instruments for the purposes of the *Legislative Instruments Act 2003* (the Act).

Item 1 inserts a new paragraph (ba) in Schedule 1, Part 2 to the Principal Regulations. Paragraph (ba) inserts an exemption from the Act for rules made under section 15 of the *Intelligence Services Act 2001*.