

Legislation (Exemptions and Other Matters) Regulation 2015

EXPLANATORY STATEMENT

Select Legislative Instrument No. 158, 2015

Issued by the Attorney-General
in compliance with section 15J of the *Legislation Act 2003*

INTRODUCTION

The *Legislative Instruments Act 2003* established a comprehensive regime for the registration, tabling, parliamentary scrutiny and sunseting (automatic repeal) of Commonwealth legislative instruments. That Act also established an authoritative, complete and accessible register of those instruments, including compilations and explanatory statements.

The *Acts and Instruments (Framework Reform) Act 2015* implements a number of recommendations of the *2008 Review of the Legislative Instruments Act 2003*, and makes other amendments to improve the operation and clarity of legislative frameworks for Commonwealth Acts and instruments. The *Acts and Instruments (Framework Reform) Act* consolidates the frameworks for the publication of Commonwealth Acts and the registration of legislative and other instruments by repealing the *Acts Publication Act 1905*, and incorporates the requirements for publishing Commonwealth Acts into the *Legislative Instruments Act*. To reflect this change, the *Legislative Instruments Act* is renamed the *Legislation Act 2003*. These reforms will commence by proclamation or 12 months from the date on which the *Acts and Instruments (Framework Reform) Act* received Royal Assent, which was 5 March 2015.

Section 62 of the *Legislation Act* provides the Governor-General with the power to make regulations prescribing matters required or permitted by that Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to that Act. The making of this Regulation before the commencement of the *Acts and Instruments (Framework Reform) Act* is supported by subsections 4(1) and (2) of the *Acts Interpretation Act 1901*.

OUTLINE

The *Legislation (Exemption and Other Matters) Regulation 2015* repeals and replaces the *Legislative Instruments Regulations 2004*. The *Legislative Instruments Regulations* set out exemptions from legislative instrument status, and disallowance by the Parliament and sunseting (automatic ceasing) for instrument classes and particular instruments.

This Regulation is necessary to implement part of the reforms made by the *Acts and Instruments (Framework Reform) Act*. These reforms involve moving particular content from the *Legislative Instruments Act* to the Regulation.

Sections 7, 44 and 54 of the *Legislative Instruments Act* provide exemptions from registration, disallowance and sunseting. These sections also provide that regulations can be made to exempt further instruments from registration, disallowance and sunseting. The *Acts and Instruments (Framework Reform) Act* removes the tables of exemptions from the *Legislative Instruments Act*.

The Regulation consolidates the tables of exemptions from the *Legislative Instruments Act* and the exemptions prescribed by the *Legislative Instruments Regulations*. Providing a central list of exemptions will make it easier for users to access information about exemptions and is consistent with a recommendation of the *2008 Review of the Legislative Instruments Act 2003*.

The Regulation clarifies the exemptions, modifies or consolidates exemptions where there was overlap between the exemptions in the Legislative Instruments Act and the Legislative Instruments Regulations, and updates exemptions to ensure they reflect current practice. The Regulation also incorporates various exemptions from sunseting that will be removed from enabling Acts by the *Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015*. The Regulation provides a single source of exemptions for users of the legislation, and aligns the language of the exemptions with modern drafting practices. There has been no change to the substance of the exemptions.

Under the new framework, it will continue to be possible to prescribe, by regulation, additional instruments which are not legislative instruments, or are not subject to disallowance or sunseting. It will also continue to be possible to declare in an enabling Act that an instrument is not a legislative instrument, or is not subject to disallowance or sunseting.

PROCESS BEFORE REGULATION WAS MADE

Regulatory impact analysis

Before this Regulation was made, its expected impact was assessed using the Preliminary Assessment tool approved by the Office of Best Practice Regulation (OBPR). That assessment indicated that it would have no or low impact on business, individuals and the economy. This assessment has been confirmed by the OBPR.

Statement of compatibility with human rights obligations

Before this Regulation was made, its impact on human rights was assessed using tools and guidance published by the Attorney-General's Department. It is fully compatible with human rights as defined in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Consultation before making

Before this Regulation was made, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act. The Attorney-General was satisfied that consultation was appropriate and reasonably practicable to be undertaken. The Attorney-General consulted within the Attorney-General's Department and also ensured that government departments and agencies likely to be affected by this regulation had an adequate opportunity to comment on its proposed content by consulting the Departments of Agriculture, Communications, Defence, Education and Training, Employment, Environment, Finance, Foreign Affairs and Trade, Health, Immigration and Border Protection, Industry and Science, Infrastructure and Regional Development, Prime Minister and Cabinet, Social Services, Treasury and Veterans' Affairs.

Statutory preconditions and Parliamentary undertakings relevant to this Regulation

There are no other statutory preconditions or Parliamentary undertakings relevant to the making of this regulation.

PROCESSES FOR REVIEW OF THIS REGULATION

This Regulation is subject to tabling and disallowance under Chapter 3, Part 2 of the Legislation Act.

OTHER ISSUES

Matter incorporated by reference

This Regulation does not apply, adopt or incorporate other matter by reference.

More information

A provision by provision explanation of the Regulation is provided in [Attachment A](#).

Further information about an instrument may be requested from the administering department or its relevant agencies.

Part 1**Section 1 Name of Regulation**

This section provides for the Regulation to be named as the *Legislation (Exemptions and Other Matters) Regulation 2015*. The Regulation may be cited by that name.

Section 2 Commencement

This section provides for the Regulation to commence at the same time as Schedule 1 to the *Acts and Instruments (Framework Reform) Act 2015*. Schedule 1 of that Act will commence on a single day to be fixed by Proclamation. However, if the provisions of that Act do not commence within the period of 12 months beginning on the day the Act received Royal Assent, the provisions will commence on the day after the end of that period. The Acts and Instruments (Framework Reform) Act received Royal Assent on 5 March 2015. Therefore, if a commencement date is not fixed by Proclamation, that Act will commence on 5 March 2016.

Section 3 Authority

This section identifies the Act that authorises the making of the Regulation, the Legislation Act. The making of this Regulation before the commencement of the Acts and Instruments (Framework Reform) Act is supported by subsections 4(1) and (2) of the *Acts Interpretation Act 1901*. Together, these subsections have the effect that where an Act is enacted and will confer power to make a legislative instrument at a later time because it will be amended by an Act that has been enacted but commences at that later time, the power may be exercised before the amending Act has commenced. In this case, the Legislative Instruments Act will be amended by the Acts and Instruments (Framework Reform) Act, which will rename it the Legislation Act and make other amendments. Under subsections 4(1) and (2) of the Acts Interpretation Act, regulations may be made under the Legislation Act prior to the commencement of amendments in the Acts and Instruments (Framework Reform) Act.

Section 4 Schedules

This section provides that each instrument that is specified in a Schedule to this Regulation is amended or repealed as set out by the applicable item, and all other items in a Schedule to this Regulation have effect according to their terms.

Section 5 Definitions

This section provides a list of key terms used in the Regulation which are defined in the Legislation Act, to assist in the interpretation and implementation of the Regulation.

Part 2 – Instruments that are not legislative instruments

Paragraph 8(6)(b) of the Legislation Act provides that an instrument is not a legislative instrument if it is prescribed by regulation for the purposes of that paragraph. Sections 6 and 7 prescribe instrument classes and particular instruments for that purpose.

Section 6 Classes of instruments that are not legislative instruments

Subsection 6(1)

Subsection 6(1) provides that for the purposes of paragraph 8(6)(b) of the Legislation Act, an instrument that is in a class of instruments referred to in the table under subsection 6(1) is not a legislative instrument. These classes of instruments are generally administrative in character. Subsection 6(1) will assist users by clarifying the types of instruments that do not need to be registered.

Some of these classes of instruments were provided for by section 7 of the Legislative Instruments Act. They have been incorporated into the Legislation (Exemption and Other Matters) Regulation in order to improve the accessibility of the law by providing a consolidated list of exemptions. The amendments which have been made clarify the exemptions, modify or consolidate exemptions where there was overlap between the classes in the Legislative Instruments Act and the Legislative Instruments Regulations, and update exemptions to ensure they reflect current practice. The amendments also align the language of the classes with modern drafting practices.

Item 1

Item 1 is an instrument of delegation, including any directions to the delegate. These instruments are administrative in character, as they facilitate the carrying out of powers and functions but do not alter the scope or effect of those powers and functions. This item preserves the exemption in item 1 under Schedule 1, Part 1 of the Legislative Instruments Regulations, which provided for general classes of instruments that are declared not be legislative instruments.

Item 2

Item 2 is an instrument that is a direction to a delegate. This item preserves the exemptions in item 21 of the table in subsection 7(1) of the Legislative Instruments Act. The phrase ‘comprise, in their entirety’ has been omitted from the text, as it is no longer needed due to the general clarification in subsection 6(2), which states that instruments do not fall within the classes of exempt instruments where they have effect other than as provided in the item or any other item of the table. Similar to item 1, this type of instrument is also administrative in character. This exemption is a companion measure to item 1.

Item 3

Item 3 is a Minister’s direction to:

- (a) a Commonwealth company within the meaning of the Public Governance, Performance and Accountability Act 2013; or
- (b) a corporate Commonwealth entity within the meaning of that Act;
other than any such direction:
- (c) that is required to be laid before the Houses of the Parliament under the legislation that authorises the giving of the direction; or
- (d) the full text of which is required to be published in the Gazette or elsewhere under the legislation that authorises the giving of the direction.

This item preserves the exemption in item 5 of the table in subsection 7(1) of the Legislative Instruments Act. These instruments are administrative in character as they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances.

Item 4

Item 4 is an instrument that has the effect of authorising or approving a particular person to take a particular action or act in a particular way. It is also an application for such an instrument.

This item preserves the exemption in item 2 under Schedule 1, Part 1 of the Legislative Instruments Regulations, and amends the text to refer to a 'particular person' rather than a 'specified individual'. This makes clear that the exemption relates to bodies corporate as well as natural persons. The policy intention is not affected by this amendment, as the exempt instruments remain limited to authorisations of individual entities, as opposed to a class of entities.

Item 5

Item 5 is an instrument the effect of which is to approve a matter or method of doing an act. This item preserves the exemption in item 3 under Schedule 1, Part 1 of the Legislative Instruments Regulations and clarifies that the exemption applies to a method of doing an act as well as a manner of doing an act.

These instruments are administrative in character as they do not determine the law or alter the content of the law. Rather, they provide for the manner in which or method by which an action authorised by law is to be carried out.

Item 6

Item 6 is an instrument prescribing or approving a form. This item preserves the exemption in item 5 under Schedule 1, Part 1 of the Legislative Instruments Regulations. Instruments prescribing or approving forms do not determine or alter the content of the law. These instruments are administrative in character because they facilitate the processing of an administrative application or the provision of information.

Item 7

Item 7 is an instrument acknowledging the receipt of a thing. These instruments are not legislative instruments because they do not determine the law or alter the content of the law. Item 7 preserves the exemption in item 18 under Schedule 1, Part 1 of the Legislative Instruments Regulations.

Item 8

Item 8 is an instrument of appointment, engagement or employment, or an instrument of suspension or termination of an appointment, engagement or employment or an instrument authorising a person to hold a particular position or office. This item preserves the exemption in item 9 under Schedule 1, Part 1 of the Legislative Instruments Regulations. These instruments are administrative in character. This exemption is a companion measure to item 10 below.

Item 9

Item 9 is an instrument of resignation. This item preserves the exemption in item 10 under Schedule 1, Part 1 of the Legislative Instruments Regulations. These instruments are not legislative instruments and are merely a means of formalising a notification made to the Governor-General or the executive.

Item 10

Item 10 is an instrument relating to terms and conditions of appointment, engagement, employment or service, or granting leave of absence. This item preserves the exemption in item 11 under Schedule 1, Part 1 of the Legislative Instruments Regulations, and incorporates the effect of the exemption in item 20 of the table in subsection 7(1) of the Legislative Instruments Act. Item 20 provided an exemption for instruments that related to terms and conditions of employment, or to the terms and

conditions of service of members or special members of the Australian Federal Police. This is now encompassed within the general phrase ‘terms and conditions of appointment, engagement, employment or service’. Therefore it is not necessary for item 10 to specifically refer to service in the Australian Federal Police, and the absence of this reference does not change the scope of the exemption.

These instruments are not legislative instruments because they arise from an individual's employment contract. It is not appropriate to treat these instruments as legislative instruments, as treatment as such would hinder employment arrangements.

This item excludes an instrument that is required to be laid before the Parliament under subsection 7(7) of the *Remuneration Tribunal Act 1973*. Subsection 7(7) of the Remuneration Tribunal Act requires the Minister to cause a copy of certain determinations to be laid before each House of the Parliament. Some of the determinations referred to in that subsection are legislative instruments under subsection 7(8) of the Remuneration Tribunal Act.

Item 11

Item 11 is an instrument constituting recommendations or advice. This item preserves the exemption in item 12 under Schedule 1, Part 1 of the Legislative Instruments Regulations. These instruments are not legislative instruments because they do not have substantive effect as they do not determine the law or alter the content of the law.

Item 12

Item 12 is a review or report, including an annual or periodic report or review. This item preserves the exemption in item 13 under Schedule 1, Part 1 of the Legislative Instruments Regulations. That item provided an exemption for annual or periodic reports. Those instruments are not legislative instruments because they do not have substantive effect. The text of the former item has been amended to include reviews or reports which are not periodic, as such documents do not determine the law or alter the content of the law. These materials are administrative in character and are currently considered not to be legislative instrument. Including reviews and non-annual or periodic reports clarifies the status of these documents in accordance with the current practice.

Item 13

Item 13 is an evidentiary certificate. This item preserves the exemption in item 4 under Schedule 1, Part 1 of the Legislative Instruments Regulations. Evidentiary certificates may be issued to assist the proving of a matter before a court or tribunal by a person who has particular knowledge of a matter. Such certificates are not legislative instruments but merely facilitate the proof of a matter in an efficient way.

Item 14

Item 14 is

- (a) an instrument granting, renewing, transferring, suspending, cancelling or terminating a licence or permit that authorises a particular person to do an act
- (b) an instrument of registration of a particular person
- (c) an instrument renewing, transferring, suspending, cancelling or terminating a registration of a particular person
- (d) an instrument refusing to grant, renew or transfer a licence or permit referred to in (a) or a registration referred to in (b), and
- (e) an instrument imposing conditions on such a licence, permit or registration.

The licences and registrations referred to in this item are individual licences or registrations rather than licences or registrations applying to a general class of persons. These instruments do not

determine the law or alter the content of the law, but rather determine how the law does or does not apply in particular cases or circumstances.

Item 14 preserves the exemption in item 14 under Schedule 1, Part 1 of the Legislative Instruments Regulations, and clarifies its operation by separating the categories of exempt instruments into separate paragraphs. The text of the former item 14 is also amended to refer to a ‘particular person’ rather than a ‘specified individual’. This makes it clear that the exemption relates to licences, permits and registration of bodies corporate as well as of natural persons. The policy intention of this exemption is not affected by this amendment, as the exempt instruments remain limited to licences, permits or registration of individual entities, as opposed to a class of entities. Item 14 is also modified to include a reference to ‘terminating’ a licence, permit or registration, as some legislation refers to termination rather than cancellation of such instruments.

Item 15

Item 15 is a warrant, an application for a warrant, or an instrument supporting such an application. These instruments are made as part of a criminal or civil investigation. They are not legislative instruments because they do not determine the law or alter the content of the law; they determine how the law does or does not apply in particular cases or circumstances. Item 15 preserves the exemption in item 15 under Schedule 1, Part 1 of the Legislative Instruments Regulations.

Item 16

Item 16 is

- (a) an instrument authorising the surveillance of a person or thing, the retrieval of a device facilitating such surveillance, or the interception of a thing
- (b) an application for such an instrument
- (c) an instrument supporting such an application.

Similar to the instruments referred to in item 15, the instruments in paragraph (a) are issued as part of a criminal or civil investigation. They are not legislative instruments because they do not determine the law or alter the content of the law, but rather, they determine how the law does or does not apply in particular cases or circumstances. Similarly, applications for such instruments, or instruments which support such applications, are not legislative in character, as they do not determine the law or alter the content of the law. Item 16 combines the exemptions in items 16 and 17 under Schedule 1, Part 1 of the Legislative Instruments Regulations, as they cover related subject matter.

Item 17

Item 17 is an instrument requesting or requiring a person to attend premises, give evidence, answer questions, produce documents, give information or provide assistance. Legislation allows the issuing of these instruments by or on behalf of a court, tribunal or other investigatory body in a range of circumstances. These instruments are administrative in character, assisting the obtaining of material relevant to a proceeding. Item 17 preserves the exemption in item 19 under Schedule 1, Part 1 of the Legislative Instruments Regulations, and updates the text to cover instruments requiring a person to provide assistance. Power to make instruments requiring a person to provide assistance is provided for in some enforcement legislation. These instruments would not generally be regarded as legislative in character. Accordingly, the modification to item 19 reflects existing practice.

Item 18

Item 18 is a notice of a decision or proposed decision, a notice of reasons for a decision or proposed decision, or a notice of rights of review. These instruments generally indicate the commencement of a period for a person to challenge a particular administrative decision. They are not legislative instruments because they do not determine the law or alter the content of the law, but rather they

determine how the law does or does not apply in particular cases or circumstances. Item 18 preserves the exemption in item 20 under Schedule 1, Part 1 of the Legislative Instruments Regulations.

Item 19

Item 19 is an instrument the making or issue of which is

- (a) a decision that is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*,
or
- (b) a decision that would be reviewable under that Act except for an exemption under that Act or another Act
other than an instrument that includes a provision of a kind referred to in paragraph 8(4)(b) of the Legislation Act.

Decisions which are reviewable under the Administrative Decisions (Judicial Review) Act are administrative decisions. This item preserves the exemption in item 21 under Schedule 1, Part 1 of the Legislative Instruments Regulations, and clarifies that the exemption does not apply to instruments referred to in paragraph 8(4)(b) of the Legislation Act. That is, the exemption does not apply to instruments where any provision of the instrument determines or alters the content of the law, or directly or indirectly affects a privilege, interest or right. They are declared to be legislative instruments under subsection 8(4) of the Legislation Act. Accordingly, instruments which have a provision of legislative character will not fall within the exemption. The modification to item 21 makes it clear that it does not override the operation of the Legislation Act in relation to decisions that are reviewable under the Administrative Decisions (Judicial Review) Act. These instruments would not generally fall within this exemption, and the amendment updates the wording to reflect existing practice.

Item 20

Item 20 is an agreement, contract or undertaking authorised to be made or given under legislation, or an instrument made under such an agreement, contract or undertaking. These are not legislative instruments under section 8 of the Legislation Act. They do not determine the law or alter the content of the law, rather they determine how the law does or does not apply in particular cases or circumstances. Item 20 preserves the exemption in item 22 under Schedule 1, Part 1 of the Legislative Instruments Regulations.

Item 21

Item 21 is a consent to, acceptance of, rejection of or withdrawal of an undertaking. Undertakings are not legislative instruments but promises to perform certain actions. Consenting to, accepting, rejecting, or withdrawing an undertaking is an administrative action that does not determine the law or alter the content of the law. Item 21 preserves the exemption in item 22 under Schedule 1, Part 1 of the Legislative Instruments Regulations, and extends the exemption to cover consents to and withdrawals of undertakings. As consents to and withdrawals of undertakings are not considered legislative in character, this modification updates the exemption to reflect existing practice.

Item 22

Item 22 is a nomination, request or invitation, or a withdrawal of a nomination, request or invitation. These instruments directly relate to a particular person or body. They are not legislative instruments as they do not determine the law or alter the content of the law. Item 22 preserves the exemption in item 24 under Schedule 1, Part 1 of the Legislative Instruments Regulations.

Item 23

Item 23 is an application for an order, direction, or other instrument made to a court, a Judge or Magistrate, an officer of a court, a tribunal or the Fair Work Commission, or a member or an officer of a tribunal or the Fair Work Commission. It also covers an order, direction or other instrument made in response to such an application or in proceedings before a relevant person or body.

This item deals with instruments made in the course of a civil, administrative or criminal proceeding or proposed proceeding, and applications for such instruments. Instruments covered by this item are not legislative in character, they do not determine or alter the content of the law.

Item 23 combines and simplifies existing exemptions for court or tribunal instruments and applications for such instruments prescribed in items 25, 26 and 26A under Schedule 1, Part 1 of the Legislative Instruments Regulations, and the exemption for decisions and orders of Fair Work Australia (now the Fair Work Commission) prescribed in item 19 of the table in subsection 7(1) of the Legislative Instruments Act. The exemption in item 19 of the table in subsection 7(1) of the Legislative Instruments Act is modified to include applications for instruments made by the Fair Work Commission, to align the text with the exemptions for applications for court or tribunal instruments. This modification reflects existing practice, as applications for such instruments are not considered to be legislative in character.

Sub-item 23(a) provides an exemption for an application for a court or tribunal instrument, or withdrawal of such an application. This sub-item preserves the existing exemption in item 25 under Schedule 1, Part 1 of the Legislative Instruments Regulations. For ease of reference, item 23(a) defines a ‘relevant person or body’ as the following entities:

- (i) a court
- (ii) a judge or magistrate (including such a person acting in a personal capacity)
- (iii) an officer of a court
- (iv) a tribunal
- (v) the Fair Work Commission
- (vi) a member or an officer of a tribunal or the Fair Work Commission.

Sub-item 23(a) also defines ‘a court or tribunal instrument’ as an order, direction or other instrument. Sub-item 23(b) simplifies the existing exemption in item 26 under Schedule 1, Part 1 of the Legislative Instruments Regulations. This sub-item provides an exemption for a court or tribunal instrument made in response to an application to a relevant person or body, as defined in sub-item 23(a).

Sub-item 23(c) simplifies the existing exemption in item 26A under Schedule 1, Part 1 of the Legislative Instruments Regulations. This sub-item provides an exemption for a court or tribunal instrument made in proceedings before a relevant person or body, as defined in sub-item 23(a). Such instruments are included regardless of whether there has been an application for the court or tribunal instrument.

Item 24

Item 24 is a practice direction made by a court or tribunal. This item preserves the exemption in item 6 under Schedule 1, Part 1 of the Legislative Instruments Regulations. These instruments are administrative in character. They are a means by which a court or tribunal communicates their expectations of parties that come before them. They do not determine or alter the content of the law.

Item 25

Item 25 is an assessment of tax. This item preserves the exemption in item 27 under Schedule 1, Part 1 of the Legislative Instruments Regulations. These instruments relate to a particular person or body.

They are not legislative instruments as they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances.

Item 26

Item 26 is a garnishee notice. This item preserves the exemption in item 28 under Schedule 1, Part 1 of the Legislative Instruments Regulations. These instruments are typically made by a court on application of a party. They do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances.

Item 27

Item 27 is an instrument remitting or waiving a penalty, or discharging or extinguishing a liability, in relation to a particular person. This item preserves the exemption in item 29 under Schedule 1, Part 1 of the Legislative Instruments Regulations. As these instruments are linked to a particular entity, they do not determine the law or alter the content of the law; they determine how the law does or does not apply in particular cases or circumstances.

Item 28

Item 28 is an infringement notice. This item preserves the exemption in item 30 under Schedule 1, Part 1 of the Legislative Instruments Regulations. Typically, such an instrument is an administrative notice given to a person who is believed to have breached a law, and gives the person the option of meeting some lesser penalty rather than being subject to prosecution. Such instruments are not mandatory, and do not determine the law or alter the content of the law.

Item 29

Item 29 is

- (a) an instrument varying, in a particular case, the time for a particular act to be done or a particular event to occur
- (b) an instrument extending or shortening, in a particular case, a time period in which a particular act is to be done or a particular event is to occur

Item 29 preserves the exemption in item 31 under Schedule 1, Part 1 of the Legislative Instruments Regulations. For greater clarity, new item 29 separates the existing exemption into two subclasses contained in separate paragraphs, as these exemptions apply in similar but distinct circumstances. Instruments that fall within this exemption are not legislative instruments as they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances.

Item 30

Item 30 is an instrument that renews, transfers, suspends, cancels or terminates a right created or an obligation imposed by an instrument that is not a legislative instrument. This item preserves the exemption in item 32 under Schedule 1, Part 1 of the Legislative Instruments Regulations. These instruments are not legislative instruments because they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances.

Item 31

Item 31 is an instrument that amends or repeals an instrument that is not a legislative instrument. This item preserves the substantive effect of the exemption in item 33 under Schedule 1, Part 1 of the Legislative Instruments Regulations, and makes amendments to its text. The existing exemption applies to an instrument that ‘varies or revokes’ an instrument that is not a legislative instrument. This has been amended to refer to instruments that amend or repeal an instrument that is not a legislative instrument, for consistency with current drafting practice and the language of the Legislation Act. Such instruments are not legislative instruments as they cannot determine the law or alter the content of the law by repealing or amending an instrument that also does not have the effect of determining the law or altering the content of the law.

Item 32

Item 32 is a corporate plan (however described). This item preserves the substantive effect of the exemption in item 34 under Schedule 1, Part 1 of the Legislative Instruments Regulations, but inserts additional words for clarity. It has been modified to make it clear that the exemption applies to such a plan however described. This means that it applies to plans of management, which may be described differently, but are of the same character as corporate plans. Corporate plans are not legislative in character, as they do not determine the law or alter the content of the law.

Item 33

Item 33 is a law of a self-governing Territory. This item preserves and simplifies the existing exemption in item 14 of the table in subsection 7(1) of the Legislative Instruments Act. This exempts laws which would otherwise be captured by the definition of a legislative instrument, because the power to make these laws has been delegated by the Parliament. It is not appropriate for these instruments to be subject to the requirements of the Legislation Act, as these instruments provide for the continued good governance of self-governing territories. Item 14 of the table in subsection 7(1) of the Legislative Instruments Act excludes the following instruments from those which are declared not to be legislative instruments:

- (a) Ordinances made under subsection 12(1) of the Seat of Government (Administration) Act 1910 that have not become enactments (as defined in the Australian Capital Territory (Self-Government) Act 1988)
- (b) Ordinances made under section 27 of the Norfolk Island Act 1979, and
- (c) rules, regulations and by-laws made under Ordinances described in (a) or (b).

These categories are not reproduced in new item 33 because they are declared to be legislative instruments by the combined operation of paragraphs 10(1)(b), 10(2)(b) and 10(2)(c) of the Legislation Act. As these classes of instrument are declared to be legislative instruments under the Legislation Act, it is not necessary to exclude them from the class of instruments exempt from legislative instrument status under item 34A, due to the operation of paragraph 6(2)(a) of the Regulation.

Item 34

Item 34 is

- (a) a law of a State or self-governing Territory that applies in a non-self-governing Territory
- (b) an instrument made under such a law

Item 34 preserves and simplifies the exemption in item 22 of the table in subsection 7(1) of the Legislative Instruments Act. For greater clarity, new item 34 separates the existing exemption into two subclasses contained in separate paragraphs, as these exemptions apply in related but distinct

circumstances. This item excludes laws that would otherwise be captured by the definition of a legislative instrument, because they are applied as Commonwealth laws. It is not appropriate for these instruments to be subject to the requirements of the Legislation Act, as these instruments provide for the continued good governance of self-governing territories.

Item 35

Item 35 is an Ordinance of the former Colony of Singapore that applies in a non-self-governing Territory, and an instrument made under such an Ordinance. This item preserves the exemption in item 23 of the table in subsection 7(1) of the Legislative Instruments Act. This excludes laws that would otherwise be captured by the definition of a legislative instrument, because they are applied as Commonwealth laws. It is not appropriate for these instruments to be subject to the requirements of the Legislation Act, as these instruments provide for the continued good governance of self-governing territories.

Item 36

Item 36 is a new exemption which confirms that an instrument that is a notifiable instrument referred to in Part 3 of the Legislation (Exemption and Other Matters) Regulation is not a legislative instrument. The addition of this exemption is consequential to the creation of the new category of 'notifiable instruments' under section 11 of the Legislation Act.

Subsection 6(2)

Subsection 6(2) provides for instruments that are not included in the classes referred to in the table in subsection 6(1). Paragraph 6(2)(a) provides that an instrument is not included in a class of instruments referred to in the table in subsection 5(1) if it is of a kind referred to in section 10 of the Legislation Act. Section 10 declares certain instruments to be legislative instruments. Paragraph 6(2)(a) clarifies that the table in subsection 6(1) does not override the operation of section 10 of the Legislation Act.

Paragraph 6(2)(b) provides that an instrument is not included in a class of instruments referred to in the table in subsection 6(1) if it has effect other than as provided in the item or any other item of the table, disregarding any application, saving or transitional provision. This paragraph clarifies that an instrument does not fall within an exemption if it contains other provisions which go beyond the types of instruments or effects prescribed in the table, other than application, saving or transitional provisions.

Section 7 Particular instruments that are not legislative instruments

Section 7 provides that for the purposes of paragraph 8(6)(b) of the Legislation Act, an instrument referred to in the table in section 7 is not a legislative instrument.

There are two general reasons for including an instrument in the table (and thereby excluding it from the requirements of the Legislation Act). The first is to confirm that the instrument is not in fact a legislative instrument in circumstances where there is some prospect of doubt and it is important to provide certainty. The second is to recognise certain strong countervailing policy considerations that make registration undesirable or inappropriate, even though the instruments may be legislative in character. For example, the need to avoid publicising the content of certain instruments, or the need to avoid fettering employment arrangements.

These particular instruments were declared not to be legislative instruments by section 7 of the Legislative Instruments Act or Schedule 1, Part 2 of the Legislative Instrument Regulations. These exemptions have been incorporated into the Legislation (Exemption and Other Matters) Regulation in order to improve the accessibility of the law by providing a consolidated list of exemptions. There has been no change to the substance of the exemptions. The amendments which have been made clarify the exemptions, modify or consolidate exemptions where there was overlap between the exemptions

in the Legislative Instruments Act and the Legislative Instruments Regulations, and update exemptions to ensure they reflect current practice. The amendments also align the section with modern drafting practices.

Item 1

Item 1 is a declaration made under regulation 6 of the *Airspace Regulations 2007* or a determination made under subregulation 9(2) of those Regulations. This item preserves the exemption in item 1A under Schedule 1, Part 2 of the Legislative Instruments Regulations. A declaration made under regulation 6 of the Airspace Regulations or a determination made under subregulation 9(2) of those Regulations is made for the purpose of administering and regulating Australian airspace, taking into consideration the most contemporary Australian Airspace Policy Statement made under section 8 of the *Airspace Act 2007*. These instruments are not legislative in character as they do not determine the law or alter the content of the law.

Item 2

Item 2 is an order made by the Commissioner under section 38 of the *Australian Federal Police Act 1979*. This item preserves the exemption in item 2 of the table in subsection 7(1) of the Legislative Instruments Act. Such an order is issued with respect to the general administration and control of the operations of the Australian Federal Police. These instruments are not legislative in character as they do not determine the law or alter the content of the law.

Item 3

Item 3 is determinations made under section 32 of the *Australian Postal Corporation Act 1989*. Item 4 preserves the exemption in item 3 under Schedule 1, Part 2 of the Legislative Instruments Regulations. Section 32 of the Australian Postal Corporation Act provides that the Board of the Corporation may determine the terms and conditions for the Corporation's services. The terms and conditions are generally administrative or commercial in nature and subject to frequent modification to take into account changing conditions, new initiatives, commercial considerations and competitive market conditions. This is particularly important as Australia Post is facing an unprecedented period of change due to, for example, changing consumer preferences, the availability of alternative digital technologies and increased competition in the parcel business. In addition, these determinations are available to the public at Australia Post offices. For these reasons, it is not appropriate that the requirements of the Legislation Act, including registration, disallowance and sunseting, apply to these instruments.

Item 4

Item 4 is a guideline given under section 8A of the *Australian Security Intelligence Organisation Act 1979*. This item preserves the exemption in item 4 of the table in subsection 7(1) of the Legislative Instruments Act. The Attorney-General's guidelines are given by the Attorney-General to the Australian Security Intelligence Organisation and guide the Organisation in the performance of its functions relating to the obtaining, correlating, evaluating and communicating of intelligence relevant to security and politically motivated violence.

The guidelines are made available to the public. They are a key element of the accountability framework for the Organisation. The Guidelines are subject to regular review and amendment and are responsive to the evolving security environment. Further, it may not be appropriate in all cases for the Guidelines to be made publicly available through the tabling process that applies to legislative instruments, for example where to do so would prejudice security. This is recognised under section 8A, particularly subsection 8A(4) of the Australian Security Intelligence Organisation Act. This enables the Minister to delete material from the version of the Guidelines that is laid before

Parliament where disclosure of information would be contrary to the public interest, or to not cause a copy to be laid before Parliament at all. Accordingly, the Guidelines are not treated as legislative instruments.

Item 5

Item 5 is an instrument made under the *Aviation Transport Security Act 2004* (other than a regulation made under that Act or an instrument made under section 107 of that Act), or an instrument made under a regulation made under that Act. This item preserves the exemption in item 1 under Schedule 1, Part 2 of the Legislative Instruments Regulations. These instruments relate to security and facilitate risk management. In order to be effective, they are necessarily enduring and are therefore not appropriately treated as legislative instruments.

Item 6

Item 6 is a notice given under subsection 10(2) of the *Census and Statistics Act 1905*. It preserves the exemption in item 3AA under Schedule 1, Part 2 of the Legislative Instruments Regulations. Subsection 10(2) of the Census and Statistics Act enables the Statistician to give a notice that requires persons to answer questions or give information as requested for a Census. Instruments under this item are administrative in character as they assist in obtaining information and material. Accordingly, they are not legislative instruments.

Item 7

Item 7 is

- (a) a determination made under section 48, 65, 73, 76 or 76A of the *Commonwealth Electoral Act 1918*
- (b) a direction made under section 59 of that Act
- (c) an instrument made under section 80 of that Act.

This item preserves the exemption in item 3A under Schedule 1, Part 2 of the Legislative Instruments Regulations. This item removes references in item 3A to subsections 200D(2), 225(1), 227(3) and 227(4) of the Commonwealth Electoral Act, as references to these sections are no longer correct. They have been substantively replaced by subsections 200BA(1), 200BA(1A) and 227(4)(a) of that Act. References to these updated provisions in this item are not necessary as the Commonwealth Electoral Act provides declarations that instruments made under these provisions are not legislative instruments. Instruments made under provisions in this item all concern the redistribution of Divisions or the appointment of polling places, which must be independent of the Parliament. They require certainty in order to be effective. Where there may be doubt as to the character of the instrument, for example, instruments under section 80, this exemption ensures that those instruments are not legislative instruments, therefore providing certainty.

Item 8

Item 8 is certain record-keeping rules made under subsection 151BU(1) of the *Competition and Consumer Act 2010*. Item 9 preserves the exemption in item 16 under Schedule 1, Part 2 of the Legislative Instruments Regulations and updates the legislation name.

The exemption applies to record-keeping rules made for and in relation to one or more specified carriers or one or more specified carriage service providers, other than a carrier or carriage service provider specified by inclusion in a specified class. These rules are an information-gathering tool used for a range of purposes, including enforcement of the obligations in Parts XIB and XIC of the Competition and Consumer Act and the avoidance and resolution of disputes in relation to access to telecommunications infrastructure. Registration and publication of a record-keeping rule in relation to

a specified carrier or carriage service provider could prematurely make public the existence of an investigation into a possible breach by the specified carrier or carriage service provider of its obligations under Part XIB or XIC. For example, if the Commission was investigating a possible breach of the competition rule in Part XIB, registration and publication of a record-keeping rule that applies to the carrier or carriage service provider being investigated could create the impression that the carrier or carriage service provider had engaged in anti-competitive conduct at a stage when such a conclusion had not been reached by the Commission. Disallowance of these kinds of record-keeping rules could also adversely impact on the Commission's capacity to fulfil its statutory functions in investigating possible breaches of Part XIB or XIC or resolving disputes about access to telecommunications services.

Item 9

Item 9 is an instrument (other than a regulation or other instrument that was disallowable before 1 January 2005) made under the *Corporations Act 2001* that, in relation to:

- (a) a specified person (other than a person specified by membership of a class) or to persons associated with that specified person; or
- (b) a specified facility (other than a facility specified by membership of a class); or
- (c) a specified financial product (other than a product specified by membership of a class); has the effect of:
- (d) exempting the person, facility or product from the rules made under that Act; or
- (e) modifying the operation of the rules made under that Act in their application to the person, facility or product.

This item preserves the exemption in item 6 of the table in subsection 7(1) of the Legislative Instruments Act. These instruments relate to specified entities and as such do not have legislative character. Accordingly, they are not legislative instruments.

Item 10

Item 10 is:

- a) an instrument made under section 161J of the *Customs Act 1901*
- b) a determination made under section 273 of that Act
- c) an instrument under Part XVB of that Act.

This item preserves the exemptions in items 4 and 6 under Schedule 1, Part 2 of the Legislative Instruments Regulations, and item 7 under subsection 7(1) of the Legislative Instruments Act. The exemption in item 5 under Schedule 1, Part 2 of the Legislative Instruments Regulations for certain instruments made under the Customs Act before 1 January 2005 has been omitted as it is no longer required.

Notices under section 161J of the Customs Act allow the Comptroller-General of Customs to make determinations in relation to the rates of exchange that assist in the valuation of imported goods, for the purpose of calculating the duty and tax payable. Rates are determined each week day and published on a weekly basis in the Gazette and the Department of Immigration and Border Protection website. Registration of daily rates of exchange on the Federal Register of Legislation is impractical and the rates are already publicly available. For these reasons, is it not appropriate that the requirements of the Legislation Act, including registration, disallowance and sunseting, apply to these instruments.

Under section 273 of the Customs Act the Comptroller-General of Customs may determine, by instrument in writing, that an item or a proposed item of a Customs Tariff that is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-laws shall apply, or be deemed to have

applied, to the particular goods specified in the determination. This item exempts determinations made under section 273 of the Customs Act as they are not legislative in character. They do not determine the law or alter the content of the law, but rather they determine how the law applies or does not apply in particular cases or circumstances.

Instruments under Part XVB of the Customs Act relate to the enforcement of Australia's anti-dumping countervailing duties which are made in continuance of Australia's international obligations under the World Trade Organisation Agreement (the Agreement). As a member of the World Trade Organisation, Australia must strictly adhere to the procedures relating to anti-dumping and countervailing investigations. Subjecting these instruments to registration and potential disallowance could affect their enforceability and conflict with Australia's international obligations. To avoid the possibility of non-compliance with the Agreement, this item exempts instruments made under Part XVB of the Customs Act from being legislative instruments.

Item 11

Item 11 is an instrument made under section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act 1975*. Item 11 preserves the exemption in item 8 under Schedule 1, Part 2 of the Legislative Instruments Regulations. Instruments made under sections 8, 9, 10 or 11 of the Customs Tariff (Anti-Dumping) Act are made in conjunction with the instruments made under Part XVB of the Customs Act (referred to in paragraph (c) at item 11 above). They relate to the enforcement of Australia's anti-dumping countervailing duties which are made in continuance of Australia's international obligations under the World Trade Organisation Agreement.

As a member of the World Trade Organisation, Australia must strictly adhere to the procedures relating to anti-dumping and countervailing investigations. Subjecting these instruments to registration and disallowance requirements could affect their enforceability and conflict with Australia's international obligations. To avoid the possibility of non-compliance with the Agreement, this item exempts instruments made under sections 8, 9, 10 or 11 of the Customs Tariff (Anti-Dumping) Act from being legislative instruments.

Item 12

Item 12 is an instruction issued under section 9A of the *Defence Act 1903* or a determination made under section 58H of that Act. This item preserves the exemptions in items 8 and 9 of the table in subsection 7(1) of the Legislative Instruments Act. Item 9 of the table in subsection 7(1) of the Legislative Instruments Act also exempted determinations made under section 58B of the Defence Act. This exemption has not been incorporated into item 13, as the Legislation Act provides that determinations made under section 58B of the Defence Act are legislative instruments.

Section 9A of the Defence Act authorises the issue of generally applicable instructions for the administration of the Australian Defence Force. These instruments are issued by or with the authority of the Secretary and the Chief of the Defence Force. These instruments are internal Defence materials that facilitate management and processes to create certainty and avoid fettering Defence Force service arrangements. These instruments are not legislative in character as they do not determine the law or alter the content of the law, but rather provide administrative instructions regarding the terms, conditions and management arrangements for Defence personnel.

Determinations made under section 58H of the Defence Act are made by the Defence Force Remuneration Tribunal. Primary jurisdiction of the Tribunal includes the power to determine financial conditions of service for members of the Defence Force. These instruments are not legislative in character as they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances.

Item 13

Item 13 is a determination made under regulation 14 or 23 of the *Defence (Personnel) Regulations 2002*. This item preserves the exemption in item 9 under Schedule 1, Part 2 of the Legislative Instruments Regulations. Regulations 14 and 23 of the Defence (Personnel) Regulations allow the Chief of the Navy, Army or Air Force to determine the conditions that a person must comply with to be eligible for appointment as an officer or enlistment as a member of the relevant Defence service. These instruments are not legislative in character as they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances.

Item 14

Item 14 is a certificate issued under regulation 5A of the *Diplomatic Privileges and Immunities Regulations 1989*. This item preserves the exemption in item 9A under Schedule 1, Part 2 of the Legislative Instruments Regulations. Regulation 5A of the Diplomatic Privileges and Immunities Regulations allows the Minister to issue a certificate requiring the removal of an object where it impairs the dignity of diplomatic premises and staff. Subregulations 5A(3) and (4) provide that a certificate takes effect when it is signed, unless a later time or day is specified, and that certificate has effect for a period of 30 days from the date of signing. Subregulation 5A(4) enables further certificates to be issued for the same matters. These instruments are not legislative in character as they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances.

Item 15

Item 15 is a fair work instrument (within the meaning of the *Fair Work Act 2009*). This item preserves the exemption in item 18 of the table in subsection 7(1) of the Legislative Instruments Act. A 'fair work instrument' is defined by section 12 of the Fair Work Act as a modern award, an enterprise agreement, a workplace determination or an order of the Fair Work Commission. Fair work instruments do not have general application to the community at large, but apply to individuals. They are therefore not legislative instruments. This exemption also ensures certainty for the relevant employers and employees.

Item 16

Item 16 is a transitional instrument or Division 2B State instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*). This item preserves the exemption in item 19A of the table in subsection 7(1) of the Legislative Instruments Act. This item applies to instruments that are equivalent to a 'fair work instrument' is defined by section 12 of the Fair Work Act – a modern award, an enterprise agreement, a workplace determination or an order of the Fair Work Commission. These instruments were made under arrangements that applied during the transition to the new fair work system, facilitated by the Fair Work (Transitional Provisions and Consequential Amendments) Act. They do not have general application to the community at large, but apply to individuals. They are therefore not legislative instruments. This exemption also ensures certainty for the relevant employers and employees.

Item 17

Item 17 is an instrument made under subsection 42(1) of the *Foreign Evidence Act 1994*. This item preserves the exemption in item 10 under Schedule 1, Part 1 of the Legislative Instruments Regulations. Section 42 of the Foreign Evidence Act provides that the Attorney-General may make a

written order prohibiting the production of documents, things or evidence in proceedings in an Australian court where the proceedings are to obtain evidence for a foreign court proceeding. Section 41 limits such orders to circumstances where the Attorney-General is satisfied that it is desirable to do so for the purpose of preventing prejudice to Australia's security. Orders can be made in relation to either an individual case or to a class of evidence, persons or proceedings. This item exempts orders which prohibit information prejudicial to Australia's security being adduced in court.

Such orders made by the Attorney-General are administrative decisions. It is not appropriate for such instruments to be registered as legislative instruments because the information in them may relate to national security and is not suitable for public dissemination. It is not appropriate for such instruments to be disallowable because they may relate to preventing prejudice to national security. Accordingly, they are not treated as legislative instruments.

Item 18

Item 18 is a declaration of a state of emergency made under the *Jervis Bay Territory Emergency Management Ordinance 2015*. It preserves the exemption in item 10A under Schedule 1, Part 1 of the Legislative Instruments Regulations. These instruments should not be legislative instruments because by their nature the declarations under these instruments need to be made effectively and quickly to enable appropriate management of emergency events. The requirement for the ability to react quickly is an ongoing requirement in case of an emergency event, which cannot be predicted. Subjecting these instruments to the requirements of a legislative instrument would delay the capability to respond quickly to emergencies.

Item 19

Item 19 is an order made under subsection 85(1) of the *Jervis Bay Territory Rural Fires Ordinance 2014*. This item preserves the exemption in item 11 under Schedule 1, Part 1 of the Legislative Instruments Regulations. These instruments should not be legislative instruments because by their nature the declarations under these instruments need to be made effectively and quickly to enable appropriate management of emergency events. The requirement for the ability to react quickly is an ongoing requirement in case of an emergency event, which cannot be predicted. Subjecting these instruments to the requirements of a legislative instrument would delay the capability to respond quickly to emergencies.

Item 20

Item 20 is a Legal Services Direction issued under paragraph 55ZF(1)(b) of the *Judiciary Act 1903*. This item preserves the exemption in item 10 of the table in subsection 7(1) of the Legislative Instruments Act. The Legal Services Directions are a set of rules issued by the Attorney-General under the Judiciary Act on the performance of Commonwealth legal work. They are not legislative in character but contain requirements for sound practice in the provision of legal services to the Australian Government. They give Australian Government agencies the freedom to manage their particular risks while providing a supportive framework of good practice.

Item 21

Item 21 is

- (a) an instrument made under the Maritime Transport and Offshore Facilities Security Act 2003 (other than a regulation made under that Act or an instrument made under section 182 of that Act)
- (b) an instrument made under a regulation made under that Act.

This item preserves the exemption in item 12 under Schedule 1, Part 2 of the Legislative Instruments Regulations. These instruments relate to security and facilitate risk management. In order to be effective, they are necessarily enduring and are therefore not appropriately treated as legislative instruments.

Item 22

Item 22 is a designation made under section 11 of the *Payment Systems (Regulation) Act 1998*. This item preserves the exemption in item 12 of the table in subsection 7(2) of the Legislative Instruments Act. Section 11 provides that the Reserve Bank of Australia may designate a payment system where it considers it to be in the public interest.

Designations or revocations of designations made under section 11 of the Payment Systems (Regulation) Act are of an administrative and not legislative character. Further, designations have a commercial nature and are made on considerations relating to financial safety, efficiency, competitiveness and systemic risk. They are fundamental to the powers of the Reserve Bank and specifically exempting them from being legislative instruments ensures their legal status is beyond doubt.

Item 23

Item 23 is an order made under paragraphs 4.1(c) or (f) or subsection 6.2 of the *Programs and Awards Statute 2013*, which is made under the *Australian National University Act 1991*. This item preserves the exemption in item 2 under Schedule 1, Part 2 of the Legislative Instruments Regulations. These instruments prescribe details of, or requirements for or in relation to courses and programs offered or to be offered by the University. The orders deal with the content of courses and programs offered by the University. These instruments are not legislative in character as they do not determine the law or alter the content of the law.

Item 24

Item 24 is an instrument made under section 72 of the *Public Service Act 1999*. This item preserves the exemption in item 13 of the table in subsection 7(1) of the Legislative Instruments Act. Section 72 empowers the Australian Public Service Commissioner, in order to give effect to an administrative re-arrangement, to make determinations moving Australian Public Service employees between and out of agencies and to engage any person as an Australian Public Service employee. Subsection 72(6) provides that administrative re-arrangement means any increase, reduction or re-organisation in Commonwealth functions, including one that results from an order by the Governor-General. Long-standing practice across Governments is that decisions on such administrative re-arrangements, or recommendations to the Governor-General, are at the discretion of the Prime Minister without the intervention of the Parliament.

Item 25

Item 25 is a determination made under subsection 1084(1) or subsection 1118A(2) of the *Social Security Act 1991*. This item preserves the exemption in item 12F under Schedule 1, Part 2 of the Legislative Instruments Regulations.

Subsection 1084(1) of the Social Security Act allows the Minister to determine that specified financial investments, or a specified class of financial investments, are not to be regarded as 'financial assets' for the purposes of sections 1076, 1077 or 1078 of that Act. Those sections describe what is to be deemed income from financial assets for certain types of individuals.

Subsection 1118A(2) of the Social Security Act allows the Minister to determine that a specified investment, or a specified class of investments, in a superannuation fund, an approved deposit fund, a deferred annuity or an ATO small superannuation account is to be disregarded for the purposes of

calculating the value of a person's assets (except for provisions specified in subsection 1118A(1) of that Act).

Many of the determinations contain personal details or information of individuals. This personal information is protected by the Social Security Act and would not otherwise be publicly available without a decision to release the information. These determinations are not legislative instruments as they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances. This item removes any possible uncertainty as to the characterisation of the instruments, and prevents publication of personal information.

Item 26

Item 26 is a determination made under paragraph 154A(4)(c) of the *Superannuation Act 1976*. This item preserves the exemption at item 13 under Schedule 1, Part 2 of the Legislative Instruments Regulations.

By virtue of paragraph 154A(4)(b) of that Act, regulations which were in force immediately before 1 July 1990 and which make provision in relation to interest payable under a range of provisions which are listed in subsection 154A(3) are treated as determinations made by the trustee of the Commonwealth Superannuation Scheme (CSS). Paragraph 154A(4)(c) allows the trustee to amend or repeal these determinations in relation to the rates of interest and notional interest for the purposes of the CSS.

CSS interest determinations provide, amongst other things, for an exit rate of interest which is applied to the accounts of CSS members who leave their scheme. Generally, weekly interest rates are struck. However, from time to time, it can be necessary for daily rates to be determined.

Setting of interest rates is based on commercial considerations that are a matter for the trustee of the relevant scheme. Disallowance of the interest determinations could adversely affect the operation of the schemes by disrupting the orderly distribution of funds to members leaving the schemes. The frequency and number of interest determinations also make registration on the Federal Register of Legislative Instruments impractical. As such, instruments under this item are not legislative instruments.

Item 27

Item 27 is a determination made under paragraph 3.1(d) of the Trust Deed under section 4 of the *Superannuation Act 1990* for the purposes of Public Sector Superannuation Scheme (PSS). This item preserves the exemption at item 14 under Schedule 1, Part 2 of the Legislative Instruments Regulations.

Similar to CSS determinations, PSS interest determinations for an exit rate of interest which is applied to the accounts of PSS members who leave their scheme. Generally, weekly interest rates are struck. However, from time to time, it can be necessary for daily rates to be determined.

Again, setting of interest rates is based on commercial considerations that are a matter for the trustee of the relevant scheme. Disallowance of the interest determinations could adversely affect the operation of the schemes by disrupting the orderly distribution of funds to members leaving the schemes. The frequency and number of interest determinations also make registration on the Federal Register of Legislative Instruments impractical. As such, instruments under this item are not legislative instruments.

Item 28

Item 28 is a determination made under paragraph 3.1(e) of the Superannuation (PSSAP) Trust Deed under section 10 of the *Superannuation Act 2005*, for the purposes of the Public Sector

Superannuation Accumulation Plan (PSSAP). This item preserves the exemption at item 15 under Schedule 1, Part 2 of the Legislative Instruments Regulations.

Interest rate determinations for the PSSAP are applied to the range of investment options, each with a buy and sell price applied to amounts paid into or withdrawn from the investment option. The buy price determines the number of units allocated to the member in the particular investment option. The sell price determines the value of units that are being withdrawn from a particular investment option. Interest rates and the buy and sell prices of units are determined on a daily basis.

As interest rates are determined on a daily basis, the frequency and number of interest determinations make registration on the Federal Register of Legislative Instruments impractical. Disallowance of interest determinations could adversely affect the operation of the scheme. As such, instruments under this item are not legislative instruments.

Item 29

Item 29 is an instrument (other than a regulation or other instrument that was disallowable before 1 January 2005) made under the *Superannuation Industry (Supervision) Act 1993* that, in relation to:

- (a) a specified person (other than a person specified by membership of a class) or to persons associated with that specified person; or
- (b) a specified financial product (other than a product specified by membership of a class); has the effect of:
- (c) exempting the person or product from the rules made under that Act; or
- (d) modifying the operation of the rules made under that Act in their application to the person or product.

This item preserves the exemption in item 15 of the table in subsection 7(2) of the Legislative Instruments Act. These instruments relate to specified entities and as such do not have legislative character. Accordingly, they are not legislative instruments.

Item 30

Item 30 is a private ruling given or a public ruling made under the *Taxation Administration Act 1953*. This item preserves the exemptions in items 16 and 17 of the table in subsection 7(1) of the Legislative Instruments Act.

The Commissioner of Taxation issues private rulings to taxpayers regarding the application of a provision of the law to particular facts and circumstances. Private rulings only apply to the taxpayer to whom they were issued. However appropriately modified versions of private rulings are published on the Australian Taxation Office's Register of Private Binding Rulings for integrity and transparency purposes.

The Commissioner also issues public rulings that are written advice on the Commissioner's view of the law. All public rulings are published on the Australian Taxation Office's Legal Database.

Given the volume of both public and private rulings, and that the publication practices of the Commissioner align with the respective purposes of each type of ruling, it would not facilitate pragmatic administration for public or private rulings to be classified as legislative instruments. The treatment of private and public rulings as legislative instruments would be inconsistent with privacy considerations that apply to private rulings and the intention that views of the Commissioner in public rulings are subject to review by the Courts and other tribunals.

Item 31

Item 31 is

- (a) an instrument issued by the Defence Force under paragraph 5B(2)(a) of the *Veterans' Entitlements Act 1986*
- (b) an instrument made under paragraph 5B(2)(b) of that Act
- (c) an instrument made under paragraph 5B(2)(c) of that Act
- (d) a determination made under section 5R of that Act
- (e) an instrument made under subsection 6D(1) of that Act
- (f) a determination made under subsection 46L(1) or 52AA(2) of that Act
- (g) a designation made in accordance with paragraph (b) of the definition of Peacekeeping Force in subsection 68(1) of that Act.

This item preserves the exemption in item 17 under Schedule 1, Part 2 of the Legislative Instruments Regulations.

Sub-item 31(a) is an instrument known as an 'instrument of allotment'. These instruments list the persons or units of the Defence Force who are allotted for duty in an operational area described at items 1 to 8 of Schedule 2 of the Veterans' Entitlements Act. Sub-item 31(b) is an instrument of allotment signed by the Vice Chief of the Defence Force. These instruments list the persons or units of the Defence Force who are allotted for duty in an operational area described at items 9 to 14 of Schedule 2 of the Veterans' Entitlement Act. Sub-item 31(c) is an instrument of allotment signed by the Minister for Defence. These instruments list the persons or units of the Defence Force who are taken to have been allotted for duty in an operational area described at item 4 or 8 of Schedule 2 of the Veterans' Entitlements Act. Instruments of allotment are used as a basis for eligibility to certain entitlements.

Sub-item 31(d) is a determination that allows for a person, or persons in a class of persons, to be considered a member of the Defence Force for the purposes of the Veterans' Entitlements Act. These determinations may include personal information of such persons. These instruments are not legislative in character as they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances.

Sub-item 31(e) is an instrument known as an 'instrument of assignment of service'. These instruments apply to members of the Defence Force, or members of units of the Defence Force, that rendered certain post-World War 2 operational service in Asia. A person or unit must be listed in an instrument of assignment of service to be eligible for entitlements under the Veterans' Entitlements Act.

Sub-item 31(f) is a determination that specified financial investments, or a specified class of financial investments, are not to be regarded as 'financial assets' for the purposes of sections 46D or 46E of the Veterans' Entitlement Act. Those sections outline what is to be deemed income from financial assets for certain types of individuals. Section 52AA of the Veterans' Entitlements Act allows the Minister for Veterans' Affairs to determine that a specified investment, or a specified class of investments, in a superannuation fund, an approved deposit fund, a deferred annuity or an ATO small superannuation account is to be disregarded for the purposes of calculating the value of a person's assets (except for provisions specified in subsection 52AA(1) of that Act). These instruments are not legislative in character as they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances.

Sub-item 31(g) is a designation known as an 'instrument of designation'. These instruments enable the Minister for Veterans' Affairs to designate a force to be a peacekeeping force for the purposes of the Veterans' Entitlements Act. These instruments are not legislative in character as they do not determine the law or alter the content of the law; rather they determine how the law does or does not apply in particular cases or circumstances.

Part 3 – Instruments that are notifiable instruments

Section 8 Notifiable Instruments

Paragraph 11(2)(b) of the Legislation Act provides an instrument, other than a legislative instrument, is a notifiable instrument if it is prescribed by regulation for the purposes of that paragraph. Section 8 prescribes a class of instruments for that purpose. Further classes may be added in future.

Section 8 provides that an instrument that announces the day on which an international agreement comes into force for Australia is a notifiable instrument. These instruments are declared to be notifiable instruments to ensure that they are registered and accessible to users. The entering into force of such obligations may trigger the commencement of other instruments and so it is desirable that the instruments specified in section 8 should be easily accessible via the Federal Register of Legislation.

Part 4 – Legislative instruments that are not subject to disallowance

Paragraph 44(2)(b) of the Legislation Act provides that the disallowance requirements of that Act do not apply to legislative instruments prescribed by regulation for the purposes of that paragraph. Sections 9 and 10 prescribe instrument classes and particular instruments for that purpose.

Section 9 Classes of legislative instruments that are not subject to disallowance

This section provides classes of legislative instruments that are not subject to the disallowance regime provided under section 42 of the Legislation Act. A note has been inserted within this section to clarify that including a class of legislative instrument in the table does not imply that every instrument that falls within that class is necessarily a legislative instrument. This note replicates the text of subsection 44(3) of the Legislation Act.

This section includes general classes of exemptions that were previously contained within section 44 of the Legislative Instruments Act. They have been incorporated into the Legislation (Exemption and Other Matters) Regulation in order to improve the accessibility of the law by providing a consolidated list of exemptions. The amendments which have been made clarify the exemptions, modify or consolidate exemptions where there was overlap between the classes in the Legislative Instruments Act and the Legislative Instruments Regulations, and update exemptions to ensure they reflect existing practice. The amendments also align the language of the classes with the modern drafting practices.

Item 1

Item 1 is any instrument that does not commence unless it is approved by either or both Houses of Parliament, in accordance with the provisions of its enabling Act. This item preserves the exemption in item 40 of the table in subsection 44(2) of the Legislative Instruments Act. This exemption prevents the disallowance provisions from overriding the more stringent requirement of approval by Parliament.

Item 2

Item 2 is a direction by a Minister to any person or body. This item preserves the exemption in item 41 of the table in subsection 44(2) of the Legislative Instruments Act. Item 41 of the table in subsection 44(2) of the Legislative Instruments Act referred to this exemption as ‘ministerial directions to any person or body’. This change has been made to update the provision in accordance with current drafting practice and does not affect the substance of the exemption. This exemption recognises that executive control is intended in these instances.

Item 3

Item 3 is an instrument (other than regulations) relating to superannuation. This item preserves the exemption in item 39 of the table in subsection 44(2) of the Legislative Instruments Act. This exemption exists because exposure of superannuation instruments to disallowance would cause commercial uncertainty, as well as uncertainty for superannuation fund members and providers. These instruments are intended to have enduring operation and are not suitable for the disallowance process.

Item 4

Item 4 is instruments made under annual Appropriation Acts. This preserves the exemption in item 38 of the table in subsection 44(2) of the Legislative Instruments Act. Determinations under annual Appropriation Acts are intended to remain within executive control, such as the Advance to the Finance Minister. In these circumstances, a delay until the period for disallowance expires would frustrate a usually urgent matter, often requiring the immediate payment of invoices. It would also be contrary to the nature of the determination.

Section 10 Particular legislative instruments that are not subject to disallowance

Section 10 provides that for the purposes of paragraph 44(2)(b) of the Legislation Act, the disallowance requirements of that Act do not apply to legislative instruments listed in the table in section 10. A note has been inserted within this section to clarify that including a particular kind of instrument in the table does not imply that every instrument listed is necessarily a legislative instrument. This note replicates the text of subsection 44(3) of the Legislation Act.

These particular instruments were prescribed as exempt from disallowance in section 44 of the Legislative Instruments Act and Schedule 2 of the Legislative Instruments Regulations. They have been consolidated into the Legislation (Exemption and Other Matters) Regulation in order to improve the accessibility of the law by providing a consolidated list of exemptions. The amendments which have been made clarify the exemptions, modify or consolidate exemptions where there was overlap between the exemptions in the Legislative Instruments Act and the Legislative Instruments Regulations, and update exemptions to ensure they reflect existing in practice. The amendments also align the language of the exemptions with modern drafting practices.

Item 1

Item 1 is a substituted reference order made under section 19B of the *Acts Interpretation Act 1901*. This item preserves the exemption in item 1 under Schedule 2 of the Legislative Instruments Regulations. The reference to section 19BA of the Acts Interpretation Act in that item is omitted as it will not be relevant following amendments to be made to the Acts Interpretation Act by the *Acts and Instruments (Framework Reform) Act 2015*.

Section 19B of the Acts Interpretation Act (as it will be amended by the Acts and Instruments (Framework Reform) Act) provides for the Governor-General to make substituted reference orders where a provision of an Act refers to a particular authority (a Minister, Department, Agency or office) and there is no longer any such authority, the name of the authority has changed, there is a change in the matters dealt with by the authority or the reference to the authority is no longer appropriate. Substituted reference orders make clear how provisions of Acts should be read when such machinery of government changes have occurred. Accordingly, they are appropriate for executive control. In addition, certainty as to their affect is important for the correct interpretation of legislation. It is not appropriate that they be subject to disallowance.

Item 2

Item 2 is a notice given under subsection 17(1) of the *Air Services Act 1995* or an instruction given under subregulation 3.03(3) or (4) of the *Air Services Regulations 1995*. This item preserves the

exemption in item 1A under Schedule 2 of the Legislative Instruments Regulations. These instruments are not appropriate for disallowance as their ongoing effect is important for the purposes of air traffic management safety.

Item 3

Item 3 is

- (a) a determination made under regulation 5 of the *Airspace Regulations 2007*
- (b) a designation made under regulation 8 of those Regulations
- (c) a designation or determination made under regulation 11 of those Regulations
- (d) a direction given under regulation 12 of those Regulations.

This item preserves the exemption in item 1B under Schedule 2 of the Legislative Instruments Regulations. A determination, designation or direction made under the Airspace Regulations is made for the purposes of administering and regulating the Australian airspace, taking into consideration the most contemporary Australian Airspace Policy Statement made under section 8 of the *Airspace Act 2007*. The nature and operational effect of a determination, designation or direction, which requires certainty and clarity, could result in industry confusion in the event of a disallowance motion.

Item 4

Item 4 is a determination made under subsection 5(2) of the *Australian Citizenship Act 2007*. This item preserves the exemption in item 1 of the table in subsection 44(2) of the Legislative Instruments Act. Subsection 5(2) of the Australian Citizenship Act enables the Minister to make a determination that a person who meets certain requirements is a permanent resident for the purposes of the Citizenship Act. It is appropriate that such determinations remain under executive control as it would not be appropriate for the Parliament to determine citizenship status of individuals.

Item 5

Item 5 is a determination made by the Commissioner of the Australian Federal Police under section 4A of the *Australian Federal Police Act 1979* specifying prohibited drugs for the purpose of employment. This item preserves the exemption in item 2 of the table in subsection 44(2) of the Legislative Instruments Act. Disallowance of such a determination could undermine prohibition on the unlawful use of drugs by employees and special members of the Australian Federal Police. This would impact on the effective operation of the functions of the Australian Federal Police.

Item 6

Item 6 is a statute made under the *Australian National University Act 1991*, or a rule or order made under such a statute. This item preserves the exemption in item 3 of the table in subsection 44(2) of the Legislative Instruments Act. The Australian National University is a self-governing academic institution of higher learning and international renown. Disallowance of instruments listed at item 6 would be incompatible with the University's self-governing status.

Item 7

Item 7 is a rule made under section 60 of the *Australian Research Council Act 2001* or a variation of a set of rules made under section 61 of that Act. This item preserves and consolidates the exemptions in item 5 of the table in subsection 44(2) of the Legislative Instruments Act, and item 2 under Schedule 2 of the Legislative Instruments Regulations. Instruments made under section 60 of the Australian Research Council Act are funding rules that precede legal funding agreements and contracts. These instruments set out the eligibility and accountability requirements and other relevant matters for research programmes which may be funded under the National Competitive Grants Programme. Disallowance of these instruments would frustrate the purpose of the scheme, which supports the

movement of researchers between eligible Australian research organisations and fosters collaboration and networking between national and international researchers.

Item 8

Item 8 is a standard determined by the Australian Communications and Media Authority under section 122 of the *Broadcasting Services Act 1992* and an amendment made under section 128 of that Act to a standard under Part 9 of that Act. Item 8 preserves the exemption in items 6 and 7 of the table in subsection 44(2) of the Legislative Instruments Act.

Standards issued under section 122 of the Broadcasting Services Act apply to commercial television broadcasting licensees and relate to programs for children and the Australian content of programs. Amendments made under section 128 of the Broadcasting Services Act to standards under Part 9 of that Act relates to amendments made by either House of Parliament to standards under sections 122 or 125. As the standards may be directly amended by either House of Parliament, the standards and amendments to them do not also need to be subject to disallowance under the Legislation Act.

Item 9

Item 9 is a notice given under section 12A of the *Civil Aviation Act 1988*. This item preserves the exemption in item 2A under Schedule 2 of the Legislative Instruments Regulations. This instrument is a notice by the Minister to the Civil Aviation Safety Authority Board on strategic direction. The arrangement constitutes circumstances in which the Parliament has intended executive control to operate, and subjecting these instruments to disallowance would undermine this intent.

Item 10

Item 10 is

- (a) an instrument made under paragraph 305A(1A)(a) of the *Commonwealth Electoral Act 1918*
- (b) an instrument made under subsection 246(1) of that Act for the purposes of the meaning of *station*.

This item preserves the exemption in item 2B under Schedule 2 of the Legislative Instruments Regulations. It removes references to 200D(2), 225(1), 227(3) and 227(4) of the Commonwealth Electoral Act as references to these sections are no longer correct. They have been substantively replaced by subsections 200BA(1), 200BA(1A) and 227(4)(a) of that Act. The Commonwealth Electoral Act provides declarations that instruments made under these provisions are not legislative instruments.

Since instruments under those provisions are already not legislative instruments, it is unnecessary to exempt them from disallowance.

Instruments made under 305A(1A)(a) of the Commonwealth Electoral Act determine circumstances in which a person must provide a disclosure return to the Australian Electoral Commission. It is not appropriate for the Parliament to be able to disallow this provision as it might affect an individual parliamentarian.

Instruments made under subsection 246(1) affect the conduct of an election. These are matters which must be independent of the Parliament. Accordingly it is not appropriate to subject these instruments to the disallowance process.

Item 11

Item 11 is a Proclamation made under section 3A or 3B of the *Control of Naval Waters Act 1918*. This item preserves the exemption in item 3 under Schedule 2 of the Legislative Instruments Regulations. These instruments relate to certain vessels or naval waters, so that directions about activities near those vessels or in those protected waters can be given for the protection of Defence facilities, and land and naval vessels. These Proclamations allow for access control to be invoked at times of heightened security. It is appropriate for these instruments to be exempt from disallowance as they allow the Royal Australian Navy to undertake naval operations in an efficient manner and in accordance with current arrangements.

Item 12

Item 12 is:

- a) a determination made under section 126DA of the Customs Act
- b) a determination made under paragraph 153L(1)(c), 153P(2)(c) or 153Q(1)(c) or subsection 153ZIH(2) of that Act
- c) a tariff concession order made under Part XVA of that Act
- d) an instrument made under section 269SC or 269SD of that Act, or
- e) a by-law made under section 271 of that Act for the purposes of Schedule 4 to the *Customs Tariff Act 1995*.

Item 12 preserves the exemptions in items 4 and 6 under Schedule 2 of the Legislative Instruments Regulations, and items 10, 13, 14 and 15 of the table in subsection 44(2) of the Legislative Instruments Act.

Section 126DA of the Customs Act provides for the Comptroller-General of Customs to determine certain information technology requirements and standards for persons who communicate with the Department of Immigration and Border Protection electronically. As these requirements are highly technical in nature, the determinations are not appropriate for disallowance. Accordingly, this item exempts determinations made under section 126DA of the Customs Act.

Determinations made under paragraph 153L(1)(c), 153P(2)(c) or 153Q(1)(c) or subsection 153ZIH(2) of the Customs Act relate to goods originating in Papua New Guinea, Canada, New Zealand and other non-preference countries. Subjecting these determinations to disallowance may conflict with Australia's international obligations.

Part XVA of the Customs Act (including sections 269SC and 269SD) provide for the making and revocation of Tariff Concession Orders (TCOs). TCOs implement Government policy on concessional entry for imported goods where there are no substitutable goods produced in Australia in the ordinary course of business. The making and revocation of TCOs is a consultative process with notices published in the Gazette, which provides an opportunity for all parties who may be affected to have their views taken into consideration before a decision is made. Further, the Customs Act allows the Comptroller-General of Customs to seek submissions and other information from a person the Comptroller-General of Customs considers may oppose the making of a TCO or may be able to supply information relevant to the consideration of an application. This reflects Government policy that the scheme should be open to public scrutiny and provide the most predictable and certain environment for those sections of the community who may be affected by any proposed TCO or proposed revocation of a TCO. They are not subject to disallowance in order to preserve certainty in relation to industry matters.

Section 271 of the Customs Act allows the Comptroller-General of Customs to make by-laws where:

- a) an item of a Customs Tariff, or a proposed item of a Customs Tariff, is expressed to apply to goods, or to a class or kind of goods, as prescribed by by-law, or
- b) under an item of a Customs Tariff, or a proposed item of a Customs Tariff, any matter or thing is expressed to be, or is to be determined, as prescribed or defined by by-law.

These instruments are used to implement Government decisions, international agreements and industry policy. They are not subject to disallowance in order to preserve certainty in relation to these matters.

Item 13

Item 13 is a revocation of a commercial tariff concession order to which section 20 of the *Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992* applies. Item 13 preserves the exemption in item 16 of the table in subsection 44(2) of the Legislative Instruments Act.

The Commercial Tariff Concession System was introduced on 1 July 1983 to implement Government policy on concessional entry for imported goods. Provisions relating to the system were contained in Part XVA of the Customs Act until 1992 when it was repealed and replaced by Tariff Concession Orders (TCOs) under the Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act. Section 20 of the Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act provides transitional provisions to preserve existing Commercial TCOs made under old Part XVA, despite the repeal and substitution of many of the old provisions. The effect of this section is that old Part XVA continues in force in relation to each Commercial TCO made before the commencement of the new scheme, subject to qualifications.

Similar to TCOs, the revocation of Commercial TCOs under Part XVA implements industry policy. They are not subject to disallowance in order to preserve certainty in relation to these matters.

Item 14

Item 14 is a notice made under subsection 16A(1) of the Customs Tariff Act. Item 14 preserves the exemption in item 4A under Schedule 2 of the Legislative Instruments Regulations.

Section 16A of the Customs Tariff Act is concerned with special safeguards for goods imported from Thailand. It gives effect to special safeguard measures in relation to certain sensitive agricultural products in accordance with the Thailand-Australia Free Trade Agreement. Under subsection 16A(1), once imports of safeguard goods exceed a certain trigger level in a calendar year, the Minister for Agriculture may issue a notice in relation to those goods. The effect of the notice is that the Minister may increase the preferential tariffs agreed to under the Agreement in relation to certain agricultural products of Thai origin, to the normal rate of duty applying to other countries once imports of those specified products reach agreed volumes in any given calendar year.

The exemption from disallowance provides certainty in relation to the applicable tariff and allows commercial decisions to be made based on that rate of tariff.

Item 15

This item is an instrument made under section 303CA, 344 or 350 of the *Environment Protection and Biodiversity Conservation Act 1999*. This item preserves the exemption in item 17 of the table in subsection 44(2) of the Legislative Instruments Act.

Section 303CA provides for the establishment and maintenance for the list of CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) Species. Under the Environment

Protection and Biodiversity Conservation Act and the Convention, this list is required to be kept consistent with the Convention. It is therefore not appropriate to subject an instrument under section 303CA to the disallowance process.

Section 344 provides for the declaration of areas as Commonwealth reserves by the Governor-General, and section 350 provides for the revocation or amendment of Proclamations under section 344. These instruments are necessary for the management of Commonwealth reserves and subjecting them to the disallowance process may disrupt this. They are therefore not appropriate for the disallowance process.

Item 16

Item 16 is a by-law made under section 165 of the *Excise Act 1901* for the purposes of the Excise Tariff within the meaning of section 4 of that Act. This item preserves the exemption in item 18 of the table in subsection 44(2) of the Legislative Instruments Act.

Section 165 provides a power for the Commissioner of Taxation to make excise by-laws concerning excisable goods, if a rate of excise duty is expressed to apply to a class of goods prescribed by a by-law or to prescribe other matters concerning the goods. By-laws made under section 165 are not appropriate for the disallowance process as excise treatment requires certainty.

Tariff changes can be made at short notice and therefore excise payers require assurance that excise by-laws which set out the classes of goods subject to duty are not subject to change as a result of disallowance.

Item 17

Item 17 is

- (a) a Proclamation made under section 5 of the *Flags Act 1953*, for the appointment of other flags and ensigns of Australia
- (b) a warrant made under section 6 of that Act which authorises the use of flags by a person, body or authority
- (c) a rule made under section 7 of that Act for the flying or use of flags.

This item preserves the exemption in item 22 of the table in subsection 44(2) of the Legislative Instruments Act. Most official flags can be authorised by methods other than Proclamation, such as by notification in the Government Gazette or by Royal Warrant. Enabling disallowance of such Proclamations would discriminate against the few flags which are authorised by Proclamation. Similarly, while the *Flags (Australian Defence Force Ensign) Rules 2008* were authorised under the Flags Act, most protocols (rules) in relation to flags have developed based on longstanding traditions, customs and precedence and do not require declaration under legislation to have effect. The issuing of Warrants under the Flags Act is largely a procedural matter which essentially provides a mechanism for permission to be granted for a flag to be flown under particular circumstances. Being largely procedural in nature, Warrants should not need to be subjected to Parliamentary scrutiny. Provision is made under other pieces of legislation for similar permissions to be granted via certificates rather than legislative instruments. Accordingly, instruments under this item are not appropriate for the disallowance process.

Item 18

Item 18 is a Proclamation made under section 31 of the *Great Barrier Reef Marine Park Act 1975*. This item preserves the exemption in item 23 of the table in subsection 44(2) of the Legislative Instruments Act. Section 31 of the Great Barrier Reef Marine Park Act provides that the Governor-General may, by Proclamation, declare an area specified in the Proclamation, being an area within the

Great Barrier Reef Region, to be a part of the Marine Park and assign a name or other designation to that area. This instrument is intended to be enduring and affects the management of the Great Barrier Reef Marine Park. Subjecting it to the disallowance process may disrupt this. It is therefore not appropriate for the disallowance process.

Item 19

Item 19 is a certificate issued under subsection 51(1) of the Legislation Act. Item 20 preserves the exemption in item 43 of the table in subsection 44(2) of the Legislative Instruments Act. The references in that item to certificates issued under sections 10 and 11 of the Legislative Instruments Act are omitted as they will not be relevant following amendments made by the Acts and Instruments (Framework Reform) Act.

Under subsection 51(1) of the Legislation Act, the Attorney-General may issue a certificate to defer sunseting of an instrument in particular circumstances. The certificate may provide that an instrument is taken to cease to be in force at a particular time after its sunseting day if the Attorney-General is satisfied, on application by the relevant rule-maker, that the instrument would otherwise cease to be in force within 12 months after its sunseting day, or that an instrument to be made in substitution for that instrument will not be able to be completed before the sunseting day. These instruments are appropriate for Executive control and accordingly they are not subject to disallowance.

Item 20

Item 20 is each of the following:

- a) an instrument (other than a regulation) made under Part 1, 2 or 9 of the *Migration Act 1958*, or
- b) an instrument made under Part 1, 2 or 5 of, or Schedule 1, 2, 4, 5A or 8 to, the *Migration Regulations 1994*.

Item 20 preserves the exemption in item 26 of the table in subsection 44(2) of the Legislative Instruments Act. These instruments made under the Migration Act and Migration Regulations are appropriate for executive control. Item 20 omits the references to Schedules 6 and 6A of the Migration Regulations as these schedules have been repealed.

Item 21

Item 21 is a determination made under subsection 6(1) of the *Military Rehabilitation and Compensation Act 2004*. This item preserves the exemption in item 6A under Schedule 2 of the Legislative Instruments Regulations. Subsection 6(1) of the Military Rehabilitation and Compensation Act enables the Minister for Defence to determine, in writing, that a particular defence service is a 'warlike' or 'non-warlike' service. Such a determination declares a person to have rendered operational or qualifying service, making that person eligible for certain entitlements. It is appropriate that these determinations are exempt from disallowance, as they are made by the Minister for Defence on the advice of the Chief of the Defence Force, who relies on material that is sensitive and frequently classified. This exemption is consistent with the exemption from disallowance for determinations made under subsection 5C(1) of the *Veterans' Entitlements Act 1986*, provided at item 33 below.

Item 22

Item 22 is a declaration made under section 32 of the *Mutual Recognition Act 1992*. This item preserves the exemption in item 27 of the table in subsection 44(2) of the Legislative Instruments Act. These instruments support an intergovernmental agreement between the Commonwealth and the States and Territories. Disallowance of these instruments would frustrate the purpose of the mutual recognition scheme, which facilitates the movement of goods and services by registered persons

between jurisdictions to overcome the barriers that would otherwise be presented by differing regulatory requirements.

Item 23

Item 23 is a regulation made under section 7 of the *National Transport Commission Act 2003*. This item preserves the exemption in item 7 under Schedule 2 of the Legislative Instruments Regulations. These instruments are enduring, and are referred to in state and territory laws. They are therefore not

Item 24

Item 24 is an instrument made under subsection 203AH(1) of the *Native Title Act 1993*. This item preserves the exemption in item 28 of the table in subsection 44(2) of the Legislative Instruments Act. Instruments under s 203AH(1) of the *Native Title Act 1993*, by which recognition of a body as the representative native title body for an area is withdrawn, are only made where the relevant body has ceased to exist or where the body requests recognition to be withdrawn. The Minister has no discretion in the making of the instrument and it is not appropriate for such instruments to be subject to disallowance.

Item 25

Item 25 is

- (a) a direction given under section 20 of the *Parliamentary Service Act 1999*
- (b) an instrument made under section 23 or subsection 24(3) of that Act.

This item preserves the exemptions in items 29 and 30 of the table in subsection 44(2) of the Legislative Instruments Act. Section 20 of the Parliamentary Service Act empowers the Presiding Officers to issue general directions in writing to Secretaries of parliamentary departments relating to the management and leadership of Parliamentary Service employees. Section 23 empowers the Presiding Officers to make rules about classifications of Parliamentary Service employees. Subsection 24(3) empowers the Presiding Officers to determine the terms and conditions of employment applying to Parliamentary Service employees. The instruments made under these provisions are all internal management tools for the effective operation of the Parliamentary Service and therefore not appropriate for the disallowance process.

Item 26

Item 26 is

- (a) an instrument made under Subdivision A of Division 4 of Part 3 of the *Payment Systems (Regulation) Act 1998*;
- (b) an instrument made under section 18 of that Act
- (c) an instrument made under section 25 of that Act.

This item preserves the exemption in item 31 of the table in subsection 44(2) of the Legislative Instruments Act. These instruments relate to the power of the Reserve Bank of Australia relating to the designation of payment systems. These instruments should not be subject to disallowance as doing so would create commercial uncertainty and delay.

Item 27

Item 27 is

- (a) a direction issued under section 21 of the *Public Service Act 1999*
- (b) an instrument made under section 23 or subsection 24(3) of that Act

This item preserves the exemptions in items 32 and 33 of the table in subsection 44(2) of the Legislative Instruments Act.

Section 21 of the Public Service Act empowers the Prime Minister to issue general directions in writing to agency heads relating to the management and leadership of APS employees. Section 23 empowers the Australian Public Service Commissioner to make rules about classifications of Australian Public Service employees. Subsection 24(3) empowers the Public Service Minister to determine the terms and conditions of employment applying to Australian Public Service employees. The instruments made under these provisions are all internal management tools for Government and should continue to be exempt from disallowance.

Item 28

Item 28 is an instrument made under section 2A, 2B or 12, subsection 13(1), section 20B, subsection 26(2) or section 26A of the *Quarantine Act 1908*. This item preserves the exemption in item 34 of the table in subsection 44(2) of the Legislative Instruments Act. These instruments relate to quarantine risk management processes. They are not appropriate for the disallowance process as this process would frustrate quarantine risk management and lead to inadequate management of biosecurity risks.

Item 29

Item 29 is instruments made under subsection 60(1) or 106(1) of the *Radiocommunications Act 1992*. Item 29 preserves the exemption in item 35 of the table in subsection 44(2) of the Legislative Instruments Act.

Subsection 60(1) of the Radiocommunications Act enables the Australian Communications and Media Authority to determine procedures for allocating spectrum licences. Subsection 106(1) enables the Authority to determine price-based allocation systems for allocating certain transmitter licences. Exposure of instruments made under these subsections to potential disallowance could cause commercial delay or commercial uncertainty.

Item 30

Item 30 is instruments made under subsection 463(1) of the *Telecommunications Act 1997*. Item 30 preserves the exemption in item 36 of the table in subsection 44(2) of the Legislative Instruments Act. The relevant instruments create 'allocation systems' for the purposes of allocating numbers to carriage service providers. The potential for disallowance of such instruments could cause commercial delay or commercial uncertainty.

Item 31

Item 31 is a declaration made under section 6 of the *Terrorism Insurance Act 2003*. This item preserves the exemption in item 9A under Schedule 2 of the Legislative Instruments Regulations. The Terrorism Insurance Act establishes an insurance scheme to replace the insurance cover withdrawn by commercial insurers after the terrorist attacks in the United States on 11 September 2001. Section 6 of the Terrorism Insurance Act provides that if a terrorist attack occurs, the Treasurer can invoke the operation of the insurance scheme by declaring a terrorist incident and setting a reduction percentage on the payment of insurance claims. Significant business uncertainty would occur if section 6 declarations were subject to disallowance. As such, they are not appropriate for the disallowance process.

Item 32

Item 32 is a declaration made under section 31 of the *Trans-Tasman Mutual Recognition Act 1997*. This item preserves the exemption in item 37 of the table in subsection 44(2) of the Legislative

Instruments Act. These instruments support an intergovernmental agreement between Australia and New Zealand. Disallowance of these instruments would frustrate the purpose of the mutual recognition scheme, which facilitates the movement of goods and services by registered persons between jurisdictions to overcome the barriers that would otherwise be presented by differing regulatory requirements.

Item 33

Item 33 is a determination made for the purposes of the definition of *non-warlike service* or *warlike service* in subsection 5C(1) of the *Veterans' Entitlements Act 1986*. This item preserves the exemption in item 10 under Schedule 2 of the Legislative Instruments Regulations. A determination made under subsection 5C(1) declares a person to have rendered operational or qualifying service, making that person eligible for certain entitlements. These determinations have implications for the allowances and benefits of members of the Australian Defence Force on deployment. It is appropriate that these determinations are exempt from disallowance, as they are made by the Minister for Defence on the advice of the Chief of the Defence Force, who relies on material that is sensitive and frequently classified. This exemption is consistent with the exemption from disallowance for determinations made under subsection 6(1) of the *Military Rehabilitation and Compensation Act 2004*, provided at item 21.

Part 5 – Legislative instruments that are not subject to sunseting

Paragraph 54(2)(b) of the Legislation Act provides that the sunseting requirements of that Act do not apply to legislative instruments prescribed by regulation for the purposes of that paragraph. Sections 11 and 12 prescribe instrument classes and particular instruments for that purpose.

Section 11 Classes of legislative instruments that are not subject to sunseting

Section 11 provides classes of legislative instruments that are not subject to the sunseting regime under Part 4 of Chapter 3 of the Act. A note has been inserted within this section to clarify that including a class of legislative instrument in the table does not imply that every instrument that falls within that class is necessarily a legislative instrument. This note replicates the text of subsection 54(3) of the Legislation Act.

This section includes general classes of exemptions from sunseting that were previously contained within section 54 of the Legislative Instruments Act. They have been incorporated into the Legislation (Exemption and Other Matters) Regulation in order to improve the accessibility of the law by providing a consolidated list of exemptions. The amendments which have been made clarify the exemptions, modify or consolidate exemptions where there was overlap between the classes in the Legislative Instruments Act and the Legislative Instruments Regulations, and update exemptions to ensure they reflect existing in practice. The amendments also align the language of the classes with modern drafting practices.

There are a range of reasons why sunseting may be inappropriate for particular classes of instruments.

Item 1

Item 1 is an instrument whose sole or primary purpose is to give effect to an international obligation of Australia. This item preserves the exemption in item 43 of the table in subsection 54(2) of the Legislative Instruments Act. Sunseting in these instances is inappropriate as the multilateral obligation will not cease upon a unilateral sunseting process.

Item 2

Item 2 is an instrument that establishes a body having power to enter into contracts for the purposes of the body's functions. This item preserves the exemption in item 45 of the table in subsection 54(2) of the Legislative Instruments Act. Sunsetting of such instruments would undermine commercial certainty in contracts entered into by these bodies.

Item 3

Item 3 is a direction by a Minister to any person or body. This item preserves the exemption at item 46 of the table in subsection 54(2) of the Legislative Instruments Act. Item 46 of the table in subsection 54(2) of the Legislative Instruments Act referred to this exemption as 'ministerial directions to any person or body'. This change has been made to update the provision in accordance with current drafting practice and does not affect the substance of the exemption. Sunsetting is not appropriate for such directions which are intended to remain in place until revoked by the relevant Minister.

Item 4

Item 4 is an instrument whose sole or primary purpose of which is to confer heads of power on a self-governing Territory. This item preserves the exemption in item 44 of the table in subsection 54(2) of the Legislative Instruments Act. Such instruments are intended to have enduring operation and it is not necessary that they be subject to regular review.

Item 5

Item 5 is an Ordinance made under a power delegated by the Parliament in an Act providing for the government of a non-self-governing Territory. This item preserves the exemption in item 47 of the table in subsection 54(2) of the Legislative Instruments Act. It is not appropriate for these instruments to be subject to the sunsetting requirements of the Legislation Act, as these instruments provide for the continued good governance of self-governing territories.

Item 6

Item 6 is an instrument (other than a regulation) relating to superannuation. This item preserves the exemption in item 42 of the table in subsection 54(2) of the Legislative Instruments Act. Sunsetting of instruments relating to superannuation could cause commercial uncertainty, as well as uncertainty for superannuation fund members and providers. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunsetting.

Item 7

Item 7 is instruments made under an annual Appropriation Act. This item preserves the exemption at item 41 of the table in subsection 54(2) of the Legislative Instruments Act. Determinations under an annual Appropriation Act, such as an Advance to the Finance Minister, are by their nature 'exhausted' once the funds appropriated are expended. The appropriations provided by the Appropriation Acts are exhausted in a similar way. Repealing the determinations would thus normally have no effect. However, there may be cases of determinations which are not exhausted and so remain 'active'. In such instances, from 2014-15 onwards, the determinations would sunset at the time of the primary Appropriation Act repealing, which is currently set at three years. It would also be anomalous for the determinations to be subject to repeal when the parent Appropriation Acts are not, such as prior year Acts.

Section 12 Particular legislative instruments that are not subject to sunseting

Section 12 provides for the purposes of paragraph 54(2)(b) of the Legislation Act, the sunseting requirements of that Act do not apply to legislative instruments listed in the table in section 12. These instruments were exempt from sunseting by section 54 of the Legislative Instruments Act, Schedule 3 of the Legislative Instruments Regulations, or provisions in primary enabling legislation.

These exemptions have been incorporated into the Legislation (Exemption and Other Matters) Regulation in order to improve the accessibility of the law by providing a consolidated list of exemptions. Exemptions that were provided by provisions of primary enabling legislation will be removed from those enabling Acts by the *Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015*. The amendments which have been made clarify the exemptions, modify or consolidate exemptions where there was overlap between the exemptions in the Legislative Instruments Act and the Legislative Instruments Regulations, and update exemptions to ensure they reflect existing in practice. The amendments also align the language of the exemptions with modern drafting practices. There has been no change to the substance of the exemptions.

Item 1

Item 1 is a substituted reference order made under section 19B of the *Acts Interpretation Act 1901*. This item preserves the exemption in item 2 under Schedule 3 of the Legislative Instruments Regulations. The reference to section 19BA of the Acts Interpretation Act in that item is omitted as it will not be relevant following amendments to be made to the Acts Interpretation by the *Acts and Instruments (Framework Reform) Act 2015*.

Section 19B of the Acts Interpretation Act (as it will be amended by the Acts and Instruments (Framework Reform) Act) provides for the Governor-General to make substituted reference orders where a provision of an Act refers to a particular authority (a Minister, Department, Agency or office) and there is no longer any such authority, the name of the authority has changed, there is a change in the matters dealt with by the authority or the reference to the authority is no longer appropriate. Substituted reference orders make clear how provisions of Acts should be read when such machinery of government changes have occurred. As these instruments are intended to be enduring, it is not appropriate that they be subject to sunseting.

Item 2

Item 2 is an instrument made under section 8 or 9 of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*. This item preserves the exemption in item 1 of the table in subsection 54(2) of the Legislative Instruments Act. Instruments under sections 8 and 9 of the Aboriginal Land Grant (Jervis Bay Territory) Act have the effect of granting land as Aboriginal land. Such grants are perpetual in nature and should not be subject to sunseting.

Item 3

Item 3 is a regulation made under the *Aboriginal Land Rights (Northern Territory) Act 1976*. This item preserves the exemption in item 1 under Schedule 3 of the Legislative Instruments Regulations. Regulations under the Aboriginal Land Rights (Northern Territory) Act prescribe matters of enduring significance, for example, the delineation of boundaries of 80 and 99 year leases held by Aboriginal land trusts. The regulations are intended to be enduring and not subject to regular review, therefore they are not appropriate for the sunseting process.

Item 4

Item 4 is an instrument relating to aviation safety made under the *Air Services Act 1995*, or an instrument made under a regulation made under that Act. This item preserves the exemption in item 3 of the table in subsection 54(2) of the Legislative Instruments Act. These instruments relate to air traffic management and safety, and are intended to have enduring operation. As such, it would not be appropriate to subject these instruments to sunseting.

Item 5

Item 5 is a statement under subsection 8(1) of the *Airspace Act 1976*. This item preserves the exemption in subsection 8(5) of the Airspace Act. This exemption will be removed from the Airspace Act by the Acts and Instruments (Framework Reform) (Consequential Provisions) Act to facilitate the consolidation of exemptions in this Regulation. Section 8 of that Act empowers the Minister to make an Australian Airspace Policy Statement. Section 10 of the Airspace Act requires the Statement to be reviewed every three years, which makes sunseting unnecessary in light of these more stringent review requirements.

Item 6

Item 6 is a rule made under section 229 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. This item preserves the exemption in item 4 under Schedule 3 of the Legislative Instruments Regulations. Section 229 of the Anti-Money Laundering and Counter-Terrorism Financing Act concerns the ability of the Australian Transaction Reports and Analysis Centre (AUSTRAC) CEO to make rules, prescribing matters required by any other provision of the Anti-Money Laundering and Counter-Terrorism Financing Act, under the *Anti-Money Laundering and Counter Terrorism Financing Rules 2007*. The Anti-Money Laundering and Counter Terrorism Financing Rules impose obligations on businesses to counter money laundering and the financing of terrorism. Industry has made a significant investment to comply with these rules, and commercial certainty would be undermined by the sunseting of these rules.

Item 7

Item 7 is a national capital plan made under the *Australian Capital Territory (Planning and Land Management) Act 1988*. This item preserves the exemption in item 4 of the table in subsection 7(1) of the Legislative Instruments Act. This instrument has been enacted to provide for the enduring planning and management of land in the Territory and as such it should not be subject to sunseting.

Item 8

Item 8 is a determination made by the Commissioner of the Australian Federal Police under section 4A of the *Australian Federal Police Act 1979*, which specifies prohibited drugs. This item preserves the exemption in item 5 of the table in subsection 54(2) of the Legislative Instruments Act. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunseting.

Item 9

Item 9 is a statute made under the *Australian National University Act 1991*, or a rule or order made under such a statute. This item preserves the exemption in item 6 of the table in subsection 54(2) of the Legislative Instruments Act. The Australian National University is a self-governing academic institution of higher learning and international renown. Subjecting instruments listed at item 10 to sunseting would be incompatible with the University's self-governing status.

Item 10

Item 10 is a statement made under subsection 34C(1) of the *Australian Security Intelligence Organisation Act 1979*. This item preserves the sunset exemption in subsection 34C(5) of the Australian Security Intelligence Organisation Act. This exemption will be removed from that Act by the Acts and Instruments (Framework Reform) (Consequential Provisions) Act to facilitate the consolidation of exemptions in this Regulation. Subsection 34C(1) of the Australian Security Intelligence Organisation Act provides that the Director-General of Security may prepare a written statement of procedures to be followed in the exercise of authority under warrants issued under Division 3 of Part III of that Act. The procedures, originally a protocol, were developed as a policy document giving effect to Parliament's intent for the basic standard applicable when a person is questioned, or questioned and detained under a warrant issued under Division 3 of Part III. Division 3 of Part III has an existing sunset provision at section 34ZZ which provides that the Division will cease to have effect on 7 September 2018. Accordingly, it is not necessary that these statements be subject to the general sunset regime under the Legislation Act.

Item 11

Item 11 is a regulation made under the *Aviation Transport Security Act 2004*. The primary purpose of the *Aviation Transport Security Act 2004* is to establish a regulatory framework to safeguard against unlawful interference with aviation. To achieve this purpose, the Act establishes minimum security requirements for civil aviation in Australia by imposing obligations on persons engaged in civil aviation related activities. In particular, it obliges certain aviation industry participants to develop, and comply with, aviation security programs. Another purpose of the Act is to meet Australia's obligations under the Convention on International Aviation (also known as the Chicago Convention). It is therefore not suitable to subject these instruments to sunset.

Item 12

Item 12 is an instrument made under subsection 5(8) or section 16AD or 70C of the *Banking Act 1959*. This item preserves the exemptions in subsections 5(9), 16AD(6) and 70C(7) of the Banking Act. These exemptions will be removed from the Banking Act by the Acts and Instruments (Framework Reform) (Consequential Provisions) Act to facilitate the consolidation of exemptions in this Regulation. Instruments made under this item allow the Minister to activate the Early Access Facility for Depositors (EAFD) to ensure that depositors in a failed authorised deposit-taking institution have timely access to their deposit funds. The declaration requires certainty and is exempt from sunset to avoid any potential for the scheme to be disrupted.

Item 13

Item 13 is instruments made under section 26 of the *Broadcasting Services Act 1992*. Item 14 preserves the exemption at item 8 of the table in subsection 54(2) of the Legislative Instruments Act. The reference to section 25 of the Broadcasting Services Act has been omitted as that section has been repealed.

Instruments made under section 26 of the Broadcasting Services Act include licence area plans made by the Australian Communications and Media Authority under subsection 26(1) and television licence area plans made by the Authority under subsection 26(1B). These instruments provide for the planning of broadcasting services. They are intended to be enduring to provide certainty for industry in making significant investment decisions concerning the provision of broadcasting services in the relevant licence areas.

Item 14

Item 14 is a determination made under subsection 70A(4) of the *Cheques Act 1986*. This item preserves the exemption in item 6 under Schedule 3 of the Legislative Instrument Regulations. These determinations allow for the Reserve Bank of Australia to declare a system as a recognised settlement system for the purposes of the Act. Commercial certainty for financial institutions would be undermined by the sunseting of these determinations.

Item 15

Item 15 is an instrument relating to aviation safety made under the *Civil Aviation Act 1988*, the *Civil Aviation Regulations 1988* or the *Civil Aviation Safety Regulations 1998*. This item preserves the exemption in item 9 of the table in subsection 54(2) of the Legislative Instruments Act. These instruments may deal with aviation safety matters that, once identified, require a risk response or treatment plan. As such, these instruments are intended to have enduring operation and it would not be appropriate to subject them to sunseting.

Item 16

Item 16 is

- (a) an instrument made under section 104 or 105 of Schedule 2 to the *Competition and Consumer Act 2010* (including a prescribed consumer product safety standard made under section 65C of the *Trade Practices Act 1974* that was in force immediately before the commencement of item 4 of Schedule 7 to the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*);
- (b) an instrument made under section 114 of Schedule 2 to the *Competition and Consumer Act 2010* (including a notice given under subsection 65C(7) of the *Trade Practices Act 1974* that was in force immediately before the commencement of item 3 of Schedule 7 to the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*);
- (c) an instrument made under section 134 or 135 of Schedule 2 to the *Competition and Consumer Act 2010* (including a prescribed consumer product information standard made under section 65D of the *Trade Practices Act 1974* that was in force immediately before the commencement of item 5 of Schedule 7 to the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*).

This item preserves the exemptions in items 8, 9 and 10 under Schedule 3 of the Legislative Instruments Regulations.

Instruments under section 104 or 105 of Schedule 2 to the Competition and Consumer Act set mandatory product safety standards. Instruments made under section 114 of Schedule 2 create mandatory and permanent bans on consumer goods or product related services. Instruments made under section 134 or 135 of Schedule 2 set mandatory product safety information standards about consumer goods. All these instruments, by their nature, are intended to be enduring and not subject to regular review. They are not appropriate for sunseting.

Item 17

Item 17 is a Proclamation made under section 3A or 3B of the *Control of Naval Waters Act 1918*. This item preserves the exemption in item 11 of the table under Schedule 3 of the Legislative Instruments Regulations. These instruments relate to certain vessels or naval waters, so that directions about activities near those vessels or in those protected waters can be given for the protection of Defence facilities, and land and naval vessels. These Proclamations allow for access control to be invoked at times of heightened security. It is appropriate for these instruments to be exempt from

sunsetting as they allow the Royal Australian Navy to undertake naval operations in an efficient manner and in accordance with current arrangements.

Item 18

Item 18 is

- (a) a standard made under section 334 or 336 of the *Corporations Act 2001*
- (b) a rule made under section 798G of that Act
- (c) an instrument made under section 827D of that Act.

This item preserves exemptions in items 12, 13 and 14 under Schedule 3 of the Legislative Instruments Regulations.

Standards made under sections 334 and 336 set accounting and auditing standards in Australia which are consistent with standards set by the relevant international bodies. A more stringent statutory review process than sunsetting applies to these provisions and should be preserved to ensure Australia's regime remains consistent with international standards.

Rules made under section 798G provide for market integrity rules which regulate the operation of financial markets. Commercial certainty would be undermined by the sunsetting of these rules.

Instruments made under section 827D create financial stability standards for clearing and settlement facility licences. The instruments are subject to annual review by the Reserve Bank of Australia. This statutory review process is more stringent than that provided by sunsetting and should be preserved to ensure compliance of licensees with their statutory obligations.

Item 19

Item 19 is a regulation under the *Cross-Border Insolvency Act 2008*. This item preserves the exemption in item 15 under Schedule 3 of the Legislative Instruments Regulations. The Cross-Border Insolvency Act gives the UNCITRAL (United Nations Commission on International Trade Law) Model Law on Cross-Border Insolvency the force of law in Australia. The regulations made under the Cross-Border Insolvency Act provide for the exclusion of authorised deposit-taking institutions, general insurers and life companies from the operation of the Model Law. Commercial certainty and Australia's ability to comply with its international obligations would be undermined by the sunsetting of these regulations.

Item 20

Item 20 is

- (a) a determination made solely for the purposes of either or both of sections 13 and 13A of the *Currency Act 1965*
- (a) a regulation made under that Act.

This item preserves the exemptions in items 15A and 15B under Schedule 3 of the Legislative Instruments Regulations. These instruments for the specifications of money are intended to endure more than ten years and are not intended to be subject to regular review. This exemption from sunsetting is critical to support long term commercial decisions by business partners.

Item 21

Item 21 is each of the following:

- a) a regulation made solely for the purposes of section 50 or 112 of the Customs Act 1901
- b) a determination made under paragraph 153L(1)(c), 153P(2)(c) or 153Q(1)(c) or subsection 153ZIH(2) of that Act, or
- c) a tariff concession order made under Part XVA of that Act.

This item preserves the exemptions in items 16 and 17 under Schedule 2 of the Legislative Instruments Regulations and item 12 of the table in subsection 54(2) of the Legislative Instruments Act.

Sections 50 and 112 of the Customs Act provide for the making of regulations in relation to prohibited exports and prohibited imports. The majority of regulations made under these sections are exempt from sunseting because they relate to intergovernmental schemes or have the sole or primary purpose of giving effect to an international obligation of Australia. Subjecting these regulations to sunseting may conflict with Australia's international obligations and with ongoing intergovernmental arrangements.

Determinations made under paragraph 153L(1)(c), 153P(2)(c) or 153Q(1)(c) or subsection 153ZIH(2) of the Customs Act relate to goods originating in Papua New Guinea, Canada, New Zealand and other non-preference countries. The determinations are made by the Comptroller-General of Customs in parallel with the relevant country for trade purposes and are exempt from disallowance under item 12 of section 10 of the Legislation (Exemptions and Other Matters) Regulation. Subjecting these determinations to sunseting may conflict with Australia's international obligations.

Part XVA of the Customs Act allows Tariff Concession Orders to be made where an importer can establish that there are no substitutable goods produced in Australia in the ordinary course of business. These instruments are used to implement industry policy and are exempt from disallowance under item 12 of section 10 of the Legislation (Exemptions and Other Matters) Regulation. They are not subject to sunseting as they are intended to be enduring.

Item 22

Item 22 is a determination made under subsection 6(4) of the *Defence Housing Australia Act 1987*. This item preserves the sunseting exemption in subsection 6(5) of the Defence Housing Australia Act. This exemption will be removed from the Defence Housing Australia Act by the Acts and Instruments (Framework Reform) (Consequential Provisions) Act, to facilitate the consolidation of exemptions in this Regulation. Under subsection 6(4) of the Defence Housing Australia Act, the Minister may determine to whom services can be provided, the kind of services that can be provided and any other matter. Each individual contractual arrangement that is within the scope of the determination does not need to be approved by the Minister. It is not appropriate that such determinations be subject to sunseting because their ongoing effect preserves commercial certainty for Defence Housing Australia in its performance of additional functions as it provides housing and housing related services to other government agencies as approved by the Minister.

Item 23

Item 23 is a disability standard made under section 31 of the *Disability Discrimination Act 1992*. This item preserves the exemption in item 17A under Schedule 3 of the Legislative Instruments Regulations. The Disability Standards set out rights and responsibilities with more detail than is provided under the Act. A more stringent statutory review process than sunseting applies to these provisions and should be preserved. Commercial certainty would also be undermined by the sunseting of these rules.

Item 24

Item 24 is an instrument made under section 178, 181, 183, 207A, 248, 303CA, 303DB, 303EB, 303FG, 324G, 341G or 344 of the *Environment Protection and Biodiversity Conservation Act 1999*.

This item preserves the exemptions in item 15 under subsection 54(2) of the Legislative Instruments Act. It also preserves the sunseting exemptions in subsections 324G(3) and 341G(3) of the Environment Protection and Biodiversity Conservation Act. These exemptions will be removed from that Act by the Acts and Instruments (Framework Reform) (Consequential Provisions) Act to facilitate the consolidation of exemptions in this Regulation.

Sections 178 and 181 provide for the listing of threatened species and threatened ecological communities. These lists affect the management of threatened species and threatened ecological communities, for example, through binding recovery plans. Section 183 provides for the listing of key threatening processes. This affects the management of key threatening processes, for example, through binding threat abatement plans. Section 207A provides for the register of critical habitats for threatened species and ecological communities, which relate to the content of recovery plans. Section 248 provides for the listing of marine species, which relate to the content of wild life conservation plans. Instruments made under these sections are necessarily enduring and are not appropriate for the sunseting process.

Section 303CA provides for the establishment and maintenance for the list of CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) Species. Under the Environment Protection and Biodiversity Conservation Act and the Convention, this list is required to be kept consistent with the Convention. It undergoes international review during the CITES Conference of the Parties every three years and is updated accordingly under the Act. As it is subject to regular review, it is not necessary to subject it to sunseting. Sunseting would also interfere with compliance with international obligations.

Section 303DB establishes the list of exempt native specimens. The list of exempt native specimens is an instrument with ongoing effect, which is amended regularly and controls which species are exempt from export controls under the Environment Protection and Biodiversity Conservation Act. It is therefore not appropriate to subject it to sunseting.

Section 303EB provides for the listing of specimens suitable for live import. Section 303FG establishes the list of native household pet animals. These instruments are intended to be enduring and are not appropriate for the sunseting process.

Section 324G and section 341G define the 'assessment period' used for National and Commonwealth Heritage List nominations and assessments. As the nomination and assessment provisions are ongoing with annual processes, the instruments under these sections should remain ongoing, and exempt from sunseting.

Section 344 provides for the declaration of Commonwealth reserves by Proclamation. These instruments are intended to be enduring and are not appropriate for the sunseting process.

Item 25

Item 25 is each of the following instruments made under section 165 of the *Excise Act 1901*:

- (a) Excise By-law No. 75
- (b) Excise By-law No. 114
- (c) Excise By-law No. 127
- (d) Excise By-law No. 129
- (e) Excise By-law No. 151
- (f) Excise By-law No. 154.

This item preserves the exemption in item 16 of the table in subsection 54(2) of the Legislative Instruments Act. Section 165 provides a power for the Commissioner of Taxation to make excise by-laws concerning excisable goods, if a rate of excise duty is expressed to apply to a class of goods prescribed by a by-law or to prescribe other matters concerning the goods. By-laws made under

section 165 are intended to be enduring and provide certainty for excise payers. They are not appropriate for the sunseting process.

Item 26

Item 26 is a regulation made under the *Extradition Act 1988*. This item preserves the exemption in item 17B under Schedule 3 of the Legislative Instruments Regulations. Regulations under the *Extradition Act 1988* implement extradition arrangements with other nations that are of treaty status, less than treaty status or reciprocal arrangements with other nations. Sunsetting the regulations would risk Australia's ability to fulfil its international obligations and cooperate to secure important criminal justice outcomes. The regulations are intended to be enduring and not subject to regular review, therefore they are not appropriate for sunseting.

Item 27

Item 27 is an instrument made under subsection 14(4) of the *Fair Work Act 2009*. This item preserves the exemption from sunseting in subsection 14(8) of the Fair Work Act. These exemptions will be removed from the Fair Work Act by the Acts and Instruments (Framework Reform) (Consequential Provisions) Act to facilitate the consolidation of exemptions in this Regulation.

Section 14 of the Fair Work Act defines 'national system employer' and 'national system employee'. These terms operate together to provide the constitutional support for most parts of the Fair Work Act. Section 14(2) allows a State or Territory to declare that an employer established for a public purpose under a State or Territory law is not a 'national system employer' under the Fair Work Act. Any such declaration by a State or Territory must be endorsed by the Commonwealth Minister under s 14(4) in order for it to have effect. A declaration by a State or Territory, endorsed by the Commonwealth Minister under s 14(4), would have the effect that the employees of that State or Territory employer would not be covered by significant parts of the Fair Work Act. This exemption is designed to ensure certainty for the employment arrangements that apply to the relevant State or Territory employers and employees. It is enduring and not appropriate for sunseting.

Item 28

Item 28 is a Proclamation made under any of the following provisions of the *Family Law Act 1975*:

- (a) subsection 39(7)
- (b) subsection 39(7A)
- (c) subsection 40(3)
- (d) subsection 41(2)
- (e) subsection 60E(6) as in force before its repeal by the *Family Law Reform Act 1995* (see subsection 69ZF(3) of the Family Law Act).

This item preserves the exemptions in item 17C under Schedule 3 to the Legislative Instruments Regulation. References to other sections of the Family Law Act in that item are omitted as they are no longer relevant. Proclamations made under the provisions referred to in paragraphs (a) to (d) define which Federal, State and Territory courts have jurisdiction to hear matters arising under the Family Law Act. Proclamations made under the provisions referred to in paragraph (e) deal with the application of certain provisions of Part VII of the Family Law Act in matters involving children who are subject to a child welfare law in Queensland, Tasmania, New South Wales, or Victoria. These proclamations are part of an intergovernmental scheme and are intended to be enduring. Accordingly, it is not appropriate that they be subject to sunseting.

Item 29

Item 29 is a plan of management made under section 17 of the *Fisheries Management Act 1991*. This item preserves the exemption in item 20 of the table in subsection 54(2) of the Legislative Instruments Act. Plans of Management grant Statutory Fishing Rights (SFRs) under the Fisheries Management Act. SFRs exist for the life of the Plan and confer stable and ongoing rights upon the concession holder. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunseting.

Item 30

Item 30 is

- (a) a Proclamation made under section 5 of the *Flags Act 1953*, for the appointment of other flags and ensigns of Australia
- (b) a warrant made under section 6 of that Act which authorises the use of flags by a person, body or authority
- (c) a rule made under section 7 of that Act for the flying or use of flags.

This item preserves the exemptions in item 22 of the table in subsection 44(2) of the Legislative Instruments Act. Most official flags can be authorised by methods other than Proclamation, such as by notification in the Government Gazette or by Royal Warrant. Enabling disallowance of such Proclamations would discriminate against the few flags which are authorised by Proclamation. Similarly, while the *Flags (Australian Defence Force Ensign) Rules 2008* were authorised under the Flags Act, most protocols (rules) in relation to flags have developed based on longstanding traditions, customs and precedence and do not require declaration under legislation to have effect. The issuing of Warrants under the Flags Act is largely a procedural matter which essentially provides a mechanism for permission to be granted for a flag to be flown under particular circumstances. Being largely procedural in nature, Warrants should not need to be subjected to Parliamentary scrutiny. Provision is made under other pieces of legislation for similar permissions to be granted via certificates rather than legislative instruments. Accordingly, instruments under this item are not appropriate for the sunseting process.

Item 31

Item 31 is a regulation made under the *Foreign Acquisitions and Takeovers Act 1975*. These regulations relate to foreign investment, such as fees on foreign investment applications. They are necessarily enduring to provide commercial certainty for foreign investors. They also give effect to Australia's international obligations under trade agreements, such as foreign investment screening commitments. As such these instruments are not appropriate for sunseting.

Item 32

Item 32 is

- a) a Proclamation made under section 31 of the *Great Barrier Reef Marine Park Act 1975*
- b) a zoning plan prepared in accordance with Division 2 of Part V of that Act
- c) a plan of management prepared in accordance with Part VB of that Act.

This item preserves the exemption in item 23 of the table under subsection 44(2) of the Legislative Instruments Act. It also preserves the sunseting exemptions under Division 2 of Part V of the Great Barrier Reef Marine Park Act. These sunseting exemptions will be removed from the Great Barrier Reef Marine Park Act by the Acts and Instruments (Framework Reform) (Consequential Provisions) Act to facilitate the consolidation of exemptions in this Regulation.

Section 31 of the Great Barrier Reef Marine Park Act provides that the Governor-General may, by Proclamation, declare an area specified in the Proclamation, being an area within the Great Barrier Reef Region, to be a part of the Marine Park and assign a name or other designation to that area. This is an instrument designed to be enduring and not subject to regular review. It is therefore unnecessary to subject it to sunseting.

Zoning plans prepared in accordance with Division 2 of Part V of the Great Barrier Reef Marine Park Act are the primary basis for management of the Great Barrier Reef Marine Park. They are subject to ongoing assessment and evaluation. Section 54 of the Great Barrier Reef Marine Park Act requires the five-yearly preparation of a "Great Barrier Reef Outlook Report". Reports must include an assessment of measures to protect and manage the Great Barrier Reef, which includes zoning plans. Zoning plans may be revoked (and replaced) or amended only every seven years (at a minimum). This is designed to ensure there is sufficient time for plans to become established, social and biological systems to respond and the effects to be monitored and understood. These are sufficient measures for ensuring zoning plans are periodically reviewed to ensure they remain necessary and adapted to purpose. It is therefore unnecessary to subject these instruments to sunseting.

For plans of management prepared in accordance with Part VB of the Great Barrier Reef Marine Park Act, the rule maker has been given a statutory role independent of Government. They are therefore appropriately not subject to sunseting.

Item 33

Item 33 is an approval given under subsection 16-25(1) of the *Higher Education Support Act 2003*, or an approval given under subclause 6(1) or (1A) of Schedule 1A to that Act. This item preserves the exemptions in items 19 and 20 of the table under Schedule 3 of the Legislative Instruments Regulations.

Sub-item 34(a) is an approval that allows a body corporate to participate in the Higher Education Loan Program. A stringent statutory review process applies to these instruments, which ensures approved providers remain compliant with their statutory obligations. Sub-item 34(b) is an approval that allows a body corporate or a specified body, which provides vocational education and training, to participate in the Higher Education Loan Program for vocational education and training providers. It would not be appropriate to subject these instruments to sunseting as stringent statutory review processes currently apply to these instruments, which ensure approved providers remain compliant with their statutory obligations.

Item 34

Item 34 is

- (a) a declaration made under section 62ZZC of the *Insurance Act 1973*
- (b) an authorisation made under section 131A of that Act.

This item preserves the sunseting exemptions in subsections 62ZZC(6) and 131A(7) of the Insurance Act. These exemptions will be removed from the Insurance Act by the Acts and Instruments (Framework Reform) (Consequential Provisions) Act to facilitate the consolidation of exemptions in this Regulation.

Declarations made under section 62ZZC allow the Minister to activate the Policyholder Compensation Facility (PCF) to protect eligible insurance policyholders in the event that their general insurer fails. The automatic sunseting of these declarations may disrupt the conduct of litigation relating to insurance claims covered by the PCF even if it occurs many years after the declaration is made.

Authorisations made under section 131A allow the Minister to make contracts or arrangements for the purposes of protecting the interests of policyholders and financial stability in Australia. Commercial certainty would be undermined if these authorisations were to sunset even if it occurs many years later.

Item 35

Item 35 is a regulation made under the *International Transfer of Prisoners Act 1997*. This item preserves the exemption in item 17B under Schedule 3 of the Legislative Instruments Regulations. Regulations made under the *International Transfer of Prisoners Act 1997* underpin Australia's ability to fulfil enduring international transfer of prisoner obligations with over sixty countries under the *Council of Europe Convention on the Transfer of Sentenced Persons* and a number of bilateral arrangements. Sunsetting the regulations would risk Australia's ability to fulfil its international obligations and pursue the rehabilitation, humanitarian and criminal justice objectives of the International Transfer of Prisoners Scheme. Therefore instruments under this item are not appropriate for sunsetting.

Item 36

Item 36 is a regulation made under the *Judges' Pensions Act 1968*. This item preserves the exemption in item 21 under Schedule 3 of the Legislative Instruments Regulations. These regulations relate to the administration of the scheme established under the Judges' Pensions Act for the provision of retirement and other benefits to and in respect of Judges. A number of scheme members remain covered by the scheme. The defined benefit superannuation entitlements provided are intended to be enduring for the life of these schemes and not subject to regular review. It is therefore not appropriate for these regulations to sunset.

Item 37

Item 37 is an authorisation made under section 251A of the *Life Insurance Act 1995*. This item preserves the exemption in subsection 251A(7) of the Life Insurance Act. This exemption will be removed from the Life Insurance Act by the Acts and Instruments (Framework Reform) (Consequential Provisions) Act to facilitate the consolidation of exemptions in this Regulation. These authorisations allow the Minister to make contracts or arrangements for the purposes of protecting the interests of policyholders and financial stability in Australia. Commercial certainty would be undermined if these authorisations were to sunset even if it occurs many years later.

Item 38

Item 38 is a regulation made under the *Maritime Transport and Offshore Facilities Security Act 2003*. This item preserves the exemption in item 22 under Schedule 3 of the Legislative Instruments Regulations. The primary purpose of the *Maritime Transport and Offshore Facilities Security Act 2003* is to give effect to an international obligation of Australia. In particular, the *Maritime Transport and Offshore Facilities Security Act 2003* was developed to implement the International Ship and Port Facility Security (ISPS) Code. The ISPS Code was adopted by the International Maritime Organisation as a security-related amendment to the International Convention on the Safety of Life at Sea 1974 (SOLAS Convention 1974) in December 2002 following on from the terrorism events on 11 September 2001. These regulations are intended to have enduring effect and therefore should not be subject to sunsetting.

Item 39

Item 39 is a determination made under section 6 or 8 of the *Military Rehabilitation and Compensation Act 2004*. This item preserves the exemption in item 23 of the table under Schedule 3 of the Legislative Instruments Regulations.

Subsection 6(1) of the Military Rehabilitation and Compensation Act enables the Minister for Defence to determine, in writing, that a particular defence service is a 'warlike' or 'non-warlike' service. Such a determination declares a person to have rendered operational or qualifying service, making that person eligible for certain entitlements. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunset. This exemption is consistent with the exemption from sunset for determinations made under subsection 5C(1) of the *Veterans' Entitlements Act 1986*, provided at item 66 below.

Subsection 8(1) of the Military Rehabilitation and Compensation Act enables the Minister for Defence to determine, in writing, that a person, or a class of persons, who engage, or have engaged, in activities or who perform, or have performed, acts on behalf of the Defence Force are taken to be, or to have been, members for the purposes of the Act. A person covered by an instrument under subsection 8(1) is entitled to the same benefits as service personnel. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunset.

Item 40

Item 40 is an instrument made under section 7 or 9 of the *Motor Vehicle Standards Act 1989*. This item preserves the exemption in item 24 of the table in subsection 54(2) of the Legislative Instruments Act. These instruments support the design, manufacture and testing of road vehicles to regulate safety, theft protection and emissions control. Standards are most relevant at the time of manufacture, but they remain relevant for the life of the vehicle. As such, these instruments are intended to have enduring operation. It would not be appropriate to subject these instruments to sunset as this may impact the ongoing regulation of vehicles by both the Commonwealth and State and Territory Governments, and reduce certainty for industry (where there are significant lead times in vehicle design and manufacture).

Item 41

Item 41 is a regulation made under the *Mutual Assistance in Business Regulation Act 1992*. This item preserves the exemption in item 23A under Schedule 3 of the Legislative Instruments Regulations. These regulations are crucial in implementing the Mutual Assistance in Business Regulation Regime by setting out essential components to the primary legislation. This means that the regulations have enduring importance.

The primary purpose of these instruments is to implement Australia's international obligations to provide assistance to foreign business regulators. This instrument forms part of a cooperative international regulatory framework that allows Australia to similarly benefit from the assistance of foreign regulators. This instrument is updated from time to time as issues are raised through fora such as the Financial Sector Assessment Program, and is required to, amongst other things, keep Australia in line with international best practice. It is therefore not appropriate to sunset instruments under this item.

Item 42

Item 42 is a declaration made under section 32 of the *Mutual Recognition Act 1992*. This item preserves the exemption in item 25 of the table in subsection 54(2) of the Legislative Instruments Act. These instruments support an intergovernmental agreement between the Commonwealth and the

States and Territories. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunseting.

Item 43

Item 43 is

- (a) a determination of the National Land Transport Network made under subsection 5(1) of the *National Land Transport Act 2014*
- (b) an instrument determining conditions made under section 27, 44, 86 or 90 of that Act.

This item preserves the exemptions in subsections 5(4), 27(5), 86(4) and 90(4) of the National Land Transport Act. These exemptions will be removed from the National Land Transport Act by the Acts and Instruments (Framework Reform) (Consequential Provisions) Act to facilitate the consolidation of exemptions in this Regulation. Instruments under subsection 5(1) determine the National Land Transport Network, which includes existing and proposed roads and railways connecting major cities. The nature of this instrument is enduring and it is not appropriate for sunseting.

Instruments under sections 27, 44, 86 and 90 of the National Land Transport Act determine conditions regarding Commonwealth funding for various infrastructure programs provided by that Act, such as the Roads to Recovery Program. These instruments are enduring in nature and are not appropriate for sunseting.

Item 44

Item 44 is a regulation made solely for the purposes of section 7 of the *National Transport Commission Act 2003*. This item preserves the exemption in item 24 under Schedule 3 of the Legislative Instruments Regulations. These instruments are enduring, and are referred to in state and territory laws. They are not appropriate for the sunseting process.

Item 45

Item 45 is

- (a) a determination made under paragraph 26(3)(b) of the *Native Title Act 1993* as in force immediately before 30 September 1998
- (b) an instrument made under subparagraph 26(1)(c)(iv), subsection 26A(1), 26B(1) or 26C(2), paragraph 43(1)(b) or 43A(1)(b), subsection 207A(1), 207B(3), 245(4) or 251C(4) or (5), or paragraph (i) of the definition of *infrastructure facility* in section 253, of that Act
- (c) a regulation made solely for the purposes of Division 6 or 7 of Part 2 of that Act.

This item preserves the exemptions in item 26 of the table in subsection 54(2) of the Legislative Instruments Act and item 26 under Schedule 3 of the Legislative Instruments Regulations.

There is currently one determination made under paragraph 26(3)(b) of the Native Title Act, the Native Title (Right to Negotiate (exclusion) – NSW Land) Determination No. 1 of 1996. This instrument excludes certain acts, namely the granting or renewal of specified New South Wales exploration licences and prospecting authorities, from the right to negotiate provisions of the Native Title Act, provided relevant activities are not carried out over land where native title exists without the prior written consent of the New South Wales Minister for Mineral Resources. Paragraph 26(3)(b) was repealed by the *Native Title Amendment Act 1998*. This Act contains a transitional provision which provides that the new ‘right to negotiate’ provisions do not apply to an act that is covered by the repealed paragraph 26(3)(b) of the Native Title Act, until such time as the determination is revoked in writing by the Commonwealth Minister. The determination has not been revoked. It remains necessary as the New South Wales Government may issue certain licences or authorities on the basis of an exclusion from the right to negotiate provisions under the Native Title Act. This

instrument relates to the application of state or territory laws and is intended to be enduring. It is therefore not appropriate to subject this determination to sunset.

Instruments made under subsections 26A(1), 26B(1), 26C(2), 245(4), 251C(4) and 251C(5), and paragraph (i) of the definition of *infrastructure facility* in section 253 of the Native Title Act relate to the Minister's approval for certain acts such as exploration acts, gold mining acts and opal mining acts. These instruments are intended to be enduring and are not appropriate for sunset.

Instruments made under subparagraph 26(1)(c)(iv), paragraph 43(1)(b) and paragraph 43A(1)(b) of the Native Title Act relate to the application of state or territory laws, such as the approval of equivalent state or territory provisions. As such they are not appropriate for sunset.

Division 6 and Division 7 of Part 2 of the Native Title Act provide for various instrument making powers relating to native title functions of prescribed bodies corporate and holding of native title in trust, and associated finance matters. These instruments relate to land rights and the holding of titles in trust and are intended to be enduring. They are therefore not appropriate for sunset.

Item 46

Item 46 is a regulation made under the *Papua New Guinea (Staffing Assistance) Act 1973*. This item preserves the exemption in item 27 under Schedule 3 of the Legislative Instruments Regulations. These regulations relate to the administration of the superannuation scheme established under the Papua New Guinea (Staffing Assistance) Act. A number of scheme members remain covered by the scheme. The defined benefit superannuation entitlements provided are intended to be enduring for the life of these schemes and not subject to regular review. It is therefore not appropriate for these regulations to sunset.

Item 47

Item 47 is a regulation made under the *Parliamentary Contributory Superannuation Act 1948*. This item preserves the exemption in item 28 under Schedule 3 of the Legislative Instruments Regulations. These regulations administer a superannuation scheme that has now closed. The defined benefit superannuation entitlements provided by this scheme are intended to endure for life and a number of scheme members remain. In this context, these regulations are intended to be enduring and not subject to regular review.

Item 48

Item 48 is

- (a) a direction made under section 20 of the *Parliamentary Service Act 1999*
- (b) an instrument made under section 23 or subsection 24(3) of that Act.

This item preserves the exemptions in items 29 and 30 of the table in subsection 54(2) of the Legislative Instruments Act. Section 20 of the Parliamentary Service Act empowers the Presiding Officers to issue general directions in writing Secretaries of parliamentary departments relating to the management and leadership of Parliamentary Service employees. Section 23 empowers the Presiding Officers to make rules about classifications of Parliamentary Service employees. Subsection 24(3) empowers the Presiding Officers to determine the terms and conditions of employment applying to Parliamentary Service employees. The instruments made under these provisions are all internal management tools for effective operation of the Parliamentary Service, and are therefore not appropriate for sunset.

Item 49

Item 49 is

- (a) a regulation made under the *Payment Systems and Netting Act 1998*;
- (b) an approval made under section 9 of that Act.

This item preserves the exemptions in item 29 under Schedule 3 of the Legislative Instruments Regulations and item 31 of the table in subsection 54(2) of the Legislative Instruments Act. Regulations under the Payment Systems and Netting Act create arrangements in relation to payment systems and ‘netting’. Netting is a function which allows institutions to pay only their net daily obligations to one another rather than meeting each obligation individually as they are incurred. Commercial certainty would be undermined by the sunsetting of these regulations. Similarly, sunsetting of instruments made under section 9 of that Act would also undermine commercial certainty.

Item 50

Item 50 is

- (a) a declaration made under subsection 9(3) of the *Payment Systems (Regulation) Act 1998*
- (b) an instrument made under Subdivision A of Division 3 of Part 3 of that Act
- (c) an instrument made under section 18 of that Act
- (d) an instrument made under section 25 of that Act
- (e) a regulation made under that Act.

This item preserves the exemptions in items 30 and 31 under Schedule 3 of the Legislative Instruments Regulations, and item 32 of the table in subsection 54(2) of the Legislative Instruments Act. The sunsetting of the instruments under this item would undermine commercial certainty.

Item 51

Item 51 is a regulation made under section 23 of the *Protection of the Sea (Powers of Intervention) Act 1981*. This item preserves the exemption in item 34 of the table in section 7(1) of the Legislative Instruments Act. Instruments under this Act are intended to be enduring and to meet Australia’s international treaty obligations. They are also regularly reviewed to ensure that they meet their intended purpose. It is not necessary to subject them to sunsetting.

Item 52

Item 52 is

- (a) a regulation made under subsection 33(1) of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983;
- (b) an order made under subsection 34(1) of that Act.

This item preserves the exemption in item 34 of the table in subsection 54(2) of the Legislative Instruments Act. Instruments under this Act are intended to be enduring and to meet Australia’s international treaty obligations. They are also regularly reviewed to ensure that they meet their intended purpose. It is not necessary to subject them to sunsetting.

Item 53

Item 53 is a regulation made under the *Protection of Word “Anzac” Act 1920*. This item preserves the exemption in item 51 of the table under Schedule 3 of the Legislative Instruments Regulations. These regulations prohibit the use of the word “Anzac” in connection with trade and commerce, and as a name for some streets, roads and parks. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunsetting.

Item 54

Item 54 is

- (a) a direction issued under section 21 of the *Public Service Act 1999*
- (b) an instrument made under section 23 or subsection 24(3) of that Act.

This item preserves the exemptions in items 37 and 38 of the table in subsection 54(2) of the Legislative Instruments Regulations.

Section 21 of the Public Service Act empowers the Prime Minister to issue general directions in writing to agency heads relating to the management and leadership of APS employees. Section 23 empowers the Australian Public Service Commissioner to make rules about classifications of Australian Public Service employees. Subsection 24(3) empowers the Public Service Minister to determine the terms and conditions of employment applying to Australian Public Service employees. The instruments made under these provisions are all internal management tools for Government, intended to have ongoing effect, and should continue to be exempt from sunseting.

Item 55

Item 55 are notices made under section 36 and declarations made under section 153B of the *Radiocommunications Act 1992*. Item 56 preserves the exemptions in items 32 and 33 under Schedule 3 of the Legislative Instruments Regulations.

Section 36 of the Radiocommunications Act enables the Minister to designate parts of the spectrum for allocation by the Australian Communications and Media Authority in spectrum licences. Section 153B enables the Minister to declare parts of the spectrum that are encumbered by existing apparatus licences to be subject to re-allocation by the Authority, either by issuing apparatus licences or spectrum licences. Commercial certainty would be undermined by the sunseting of these notices or declarations.

Item 56

Item 56 is an instrument required to be laid before the Parliament under subsection 7(7) of the *Remuneration Tribunal Act 1973*. This item preserves the exemption in item 39 of the table in subsection 54(2) of the Legislative Instruments Act. Under section 7 of the Remuneration Tribunal Act, such an instrument under subsection 7(7) is a determination relating to remuneration, allowances or leave for parliamentarians and public office holders. The Remuneration Tribunal has a statutory role independent of Government and its determinations are intended to be of continuing effect until revisited by the Tribunal. Consequently, they are not appropriate for sunseting.

Item 57

Item 57 is

- (a) a declaration made under subparagraph (c)(iii) of the definition of **Commonwealth authority** in subsection 4(1) of the *Safety, Rehabilitation and Compensation Act 1988*
- (b) a declaration made under section 4A of that Act
- (c) an instrument made under subsection 5(6) of that Act
- (d) a declaration made under subparagraph 6(1)(h)(ii), or (i)(ii), of that Act
- (e) a declaration made under section 100 of that Act.

These instruments broadly allow individuals and bodies who would otherwise not be covered under the Safety, Rehabilitation and Compensation Act to be covered if an instrument is in force. It is not appropriate that these declarations or instruments be subject to sunseting as this would result in individuals or bodies who had been covered under the Act to be inadvertently not covered due to the

relevant instrument sunseting. Excluding these instruments from sunseting provides certainty as to which bodies and individuals are covered by the Act.

Item 58

Item 58 is a regulation made under the *Superannuation Act 1922*. This item preserves the exemption in item 39 under Schedule 3 of the Legislative Instruments Regulations. These regulations relate to the administration of the superannuation scheme established under the Superannuation (Productivity Benefit) Act. A number of scheme members remain covered by the scheme. The defined benefit superannuation entitlements provided are intended to be enduring for the life of these schemes and not subject to regular review. It is therefore not appropriate for these regulations to sunset.

Item 59

Item 59 is a regulation made under the *Superannuation Act 1976*, other than regulations made solely for the purposes of section 153AN or subsection 160(1) of that Act. This item preserves the exemption in item 40 under Schedule 3 of the Legislative Instruments Regulations. These regulations relate to administration of the Commonwealth Superannuation Scheme (CSS). A number of scheme members remain covered by the CSS. The defined benefit superannuation entitlements provided by the CSS are intended to be enduring for the life of CSS and not subject to regular review. It is therefore not appropriate for these regulations to sunset.

Item 60

Item 60 is a regulation made under the *Superannuation (Productivity Benefit) Act 1988*. This item preserves the exemption in item 41 under Schedule 3 of the Legislative Instruments Regulations. These regulations relate to the administration of the superannuation scheme established under the Superannuation (Productivity Benefit) Act. A number of scheme members remain covered by the scheme. The defined benefit superannuation entitlements provided are intended to be enduring for the life of these schemes and not subject to regular review. It is therefore not appropriate for these regulations to sunset.

Item 61

Item 61 is codes made under subclause 37(1) of Schedule 1 to the Telecommunications Act and declarations made under subclause 4(1) of Schedule 3A to that Act. Item 62 preserves the exemptions in items 42 and 43 under Schedule 3 of the Legislative Instruments Regulations.

The relevant codes set out conditions relating to the provision of access to telecommunications facilities to access seekers. Compliance with such codes is a standard carrier licence condition. These codes are intended to be enduring and sunseting of such codes could cause commercial delay or commercial uncertainty. The declarations create protection zones around submarine cables. These declarations are intended to be enduring and not subject to regular review under the Legislation Act.

Item 62

Item 62 is a declaration made under subsection 6N(2) or section 34 of the *Telecommunications (Interception and Access) Act 1979*. Item 63 preserves the exemptions in item 44 under Schedule 3 of the Legislative Instruments Regulations.

Section 6N(2) of the Telecommunications (Interception and Access) Act provides a mechanism by which unsworn members of State and Territory police forces can execute the authority conferred by telecommunications interception warrants. Section 34 of the Telecommunications (Interception and Access) Act authorises the Minister to declare eligible authorities of a state as an agency for the purposes of the TIA Act, upon the request of the Premier of that State.

These instruments are intended to be enduring. They are important for allowing agencies with a central role in investigating serious criminal offences to maintain their investigative functions. Accordingly, they are not subject to sunseting.

Item 63

Item 63 is

- (a) a declaration made under section 6 of the *Terrorism Insurance Act 2003*
- (b) a regulation made under that Act.

This item preserves the exemptions in items 45 and 46 under Schedule 3 of the Legislative Instruments Regulations. The main purpose of these regulations is to exclude certain types of insurance and other contracts from the application of the Terrorism Insurance Act. A more stringent statutory review process applies to the entire Act, requiring the relevant Minister to review the continuing need for the Act at least every three years. Exempting these regulations from sunseting will preserve this more stringent statutory review process.

Item 64

Item 64 is a declaration made under section 31 of the *Trans-Tasman Mutual Recognition Act 1997*. This item preserves the exemption in item 40 of the table in subsection 54(2) of the Legislative Instruments Act. These instruments support an intergovernmental agreement between Australia and New Zealand. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunseting.

Item 65

Item 65 is

- (a) a determination made for the purposes of the definition of non-warlike service or warlike service in subsection 5C(1) of the Veterans' Entitlements Act 1986
- (b) an instrument made under subsection 69B(6) of that Act
- (c) a determination made for the purposes of the definition of hazardous service in subsection 120(7) of that Act.

This item preserves and consolidates the exemptions in items 47, 49 and 50 of the table under Schedule 3 of the Legislative Instruments Regulations.

Sub-item 66(a) is a determination made under subsection 5C(1) that declares a person to have rendered operational or qualifying service, which makes that person eligible for certain entitlements. These determinations have implications for the allowances and benefits of members of the Australian Defence Force on deployment. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunseting. This exemption is consistent with the exemption from sunseting for determinations made under subsection 6(1) of the *Military Rehabilitation and Compensation Act 2004*, provided at item 40.

Sub-item 66(b) is an instrument which extends the right to receive veterans' benefits to people who participated in British nuclear tests carried out in Australia. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunseting.

Sub-item 66(c) is a determination made by the Minister for Defence that prescribes particular defence service as 'hazardous service'. Persons listed in the determination are eligible for certain entitlements under the Veterans' Entitlements Act. Section 120 of the Veterans' Entitlements Act extends benefits

under Part IV of the Act to members of the Defence Force who are not otherwise eligible for such benefits. These instruments are intended to have enduring operation and it would not be appropriate to subject them to sunseting.

Schedule 1—Repeals

Schedule 1 repeals the whole of the *Legislative Instruments Regulations 2004*, as they will be replaced by this Regulation.