

Legislation (General) Regulation 2015

EXPLANATORY STATEMENT

Select Legislative Instrument No. 159, 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. It 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 incorporating 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 (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 (General) Regulation 2015* preserves item 2 under Schedule 4 to the *Legislative Instruments Regulations 2004*. Under this item, subsection 57(2) of the Legislative Instruments Act does not apply to the disallowance provisions set out in subsections 7(8) and (8A) of the *Remuneration Tribunal Act 1973*.

The Legislation (General) Regulation is made for the purposes of subsection 57(5) of the Legislation Act. Subsection 57(5) provides that if particular disallowance provisions for legislative instruments are prescribed by regulation as provisions to which subsection 57(2) of the Legislation Act does not apply, then subsection 57(2) does not apply to those instruments. Subsection 57(2) provides that if provisions in force before 1 January 2005 provided for the disallowance of a legislative instrument, the general disallowance provisions of the Legislation Act apply to those instruments. Accordingly, the effect of prescribing particular disallowance provisions for the purposes of subsection 57(5) of the Legislation Act is that those particular disallowance provisions continue to apply to the relevant instruments despite the general disallowance regime set out in the Legislation Act.

This item is preserved in a separate instrument from the Legislation (Exemption and Other Matters) Regulation 2015, which repeals and replaces the Legislative Instruments Regulations. This is

because under paragraph 54(2)(c) of the Legislation Act, the matters provided for in the Legislation (Exemption and Other Matters) Regulation (exemptions from legislative instrument status, disallowance and sunseting for classes of instruments and particular instruments) are not subject to the sunseting provisions of the Legislation Act. However, regulations prescribing particular disallowance provisions to which subsection 57(2) of the Legislation Act does not apply will be subject to the sunseting regime. Accordingly, these need to be prescribed in a separate regulation from the Legislation (Exemption and Other Matters) Regulation.

Details of the Legislation (General) Regulation are set out in the Attachment.

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 that was appropriate and reasonably practicable had been undertaken. The Attorney-General 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 the Prime Minister and Cabinet and the Australian Public Service Commission.

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 and sunseting under Chapter 3, Part 4 of that 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 (General) 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 prior to 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 2003* will be amended by the Acts and Instruments (Framework Reform) Act, which will rename it the *Legislation Act 2003* and makes 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 the amendments in the Acts and Instruments (Framework Reform) Act.

Section 4 Definitions

This section provides that in this instrument, *Act* means the Legislation Act.

Part 2 – Continuing disallowance provisions**Section 5 Continuing disallowance provisions**

Section 5 provides that subsection 57(2) of the Legislation Act does not apply to the disallowance provisions in subsections 7(8) and (8A) of the *Remuneration Tribunal Act 1973*. Subsection 57(2) provides that if provisions in force before 1 January 2005 provided for the disallowance of a legislative instrument, the general disallowance provisions of the Legislation Act apply to those instruments. Accordingly, the effect of section 5 is that the particular disallowance provisions in subsections 7(8) and (8A) of the Remuneration Tribunal Act continue to apply to the relevant instruments despite the general disallowance regime set out in the Legislation Act.

Subsection 7(8) of the Remuneration Tribunal Act provides that either House of Parliament may disapprove a determination made by the Tribunal within 15 sitting days of it being laid before that House. If neither House disapproves the determination, it will continue in force.

Subsection 7(8A) of the Remuneration Tribunal Act provides that the Legislative Assembly of the Australian Capital Territory can disapprove a determination that relates to an ACT office within 30 sitting days of the determination being given to the Chief Minister. If the Legislative Assembly does not disapprove the determination, it will continue in force.

In the case of judicial appointments, the Remuneration Tribunal Act provides that the determinations do not enter into force until the end of the disapproval period. This is to comply with the constitutional requirements that Parliament fix judicial remuneration and that that remuneration not be reduced while the judge is in office.

The *2008 Review of the Legislative Instruments Act 2003* recommended that the Legislative Instruments Act should provide the only disallowance regime, unless there are reasons to the contrary. This item allows the existing disallowance provisions in the Remuneration Tribunal Act to continue, in order to meet the particular needs of the Remuneration Tribunal Act, including continued Parliamentary oversight of judicial remuneration.

As the sunseting regime under Chapter 3, Part 4 of the Legislation Act applies to this Regulation, it will be subject to review to determine whether it is still required.