

EXPLANATORY STATEMENT

Issued by First Parliamentary Counsel
In compliance with section 15G of the *Legislation Act 2003*

Legislation Amendment Rules 2024

Overview

Section 61A of the *Legislation Act 2003* authorises First Parliamentary Counsel to make, by legislative instrument, rules prescribing all matters required or permitted by the *Legislation Act 2003* to be prescribed by the rules. Section 15M of the *Legislation Act 2003* specifies a range of matters that the rules may provide for, concluding with paragraph 15M(h) which specifies “any other matter relating to the registration of Acts, instruments and documents”.

In reliance on this, the *Legislation Amendment Rules 2024* amend the *Legislation Rule 2016* to authorise First Parliamentary Counsel to redact personal information from a document on the Federal Register of Legislation, provided the document is neither a legislative instrument nor a notifiable instrument.

Statement of compatibility with human rights

Matters relating to the publication of personal information engage the right to privacy. The publication of personal information on a public register has the potential to constitute an interference with privacy, which is prohibited by article 17 of the International Convention on Civil and Political Rights. The object of the *Legislation Amendment Rules 2024* is to provide a means for ensuring that personal information can be redacted from a document published on the Federal Register of Legislation, as long as the document is not a legislative instrument or notifiable instrument. The documents of primary concern here are explanatory statements. While on occasions it may be appropriate for such a document to include limited personal information, it is also possible for personal information to be included inadvertently. Before the making of the *Legislation Amendment Rules 2024*, there was no means to address such a situation. The new provision ensures that there is an avenue to address an unintended interference with privacy. Accordingly, the instrument does not infringe on, and is compatible with, human rights.

Consultation

Section 17 of the *Legislation Act 2003* requires a rule-maker to be satisfied, before making a legislative instrument, that any appropriate and reasonably practicable consultation has been undertaken. In this instance, limited consultation was undertaken, principally with the legal section of a Department responsible for an explanatory statement which inadvertently included personal information. Any further consultation was not reasonably practicable due to the need to redact the personal information that was publicly available as soon as practicable. First Parliamentary Counsel was satisfied that this consultation was appropriate in the circumstances, due to the urgent need to address the situation.

ATTACHMENT A

Details of the Legislation Amendment Rules 2024

Section 1 - Name

This section provides that the name of the instrument is the *Legislation Amendment Rules 2024*.

Section 2 - Commencement

This section provides that the instrument commences immediately after the instrument is registered.

Section 3 - Authority

This section provides that the instrument is made under paragraph 15M(h) of the *Legislation Act 2003*.

Section 4 - Schedules

This section provides that each instrument specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule has effect according to its terms.

Schedule 1 - Amendments

Legislation Rule 2016

The *Legislation Rule 2016* is identified in the Schedule as the instrument being amended or repealed, as specified in section 4 of the instrument.

Item 1

Item 1 inserts a new section 6A in the *Legislation Rule 2016*. New section 6A provides that First Parliamentary Counsel may redact personal information, within the meaning of the *Privacy Act 1988*, from a document on the Federal Register of Legislation (the **Register**) that is neither a legislative instrument nor a notifiable instrument.

The Register is maintained by the Office of Parliamentary in accordance with the *Legislation Act 2003*. It is located at <https://www.legislation.gov.au>. Under section 15A of the *Legislation Act 2003*, the Register is required to include Acts, legislative instruments and notifiable instruments as made and compilations of Acts, legislative instruments and notifiable instruments. The Register is also required to include explanatory statements for legislative instruments and any other documents registered under Part 1 of Chapter 2 of the *Legislation Act 2003*.

Subsection 6(1) of the *Privacy Act 1988* defines personal information as follows:

personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

While on occasions documents on the Register to include limited personal information, it is also possible for explanatory statements to include such information inadvertently. Before the making of

the *Legislation Amendment Rules 2024*, there was no means to address such a situation. New section 6A allows First Parliamentary Counsel to redact such information from a document published on the Register, as long as the document is not a legislative instrument or a notifiable instrument.

First Parliamentary Counsel intends:

- only to use this power in circumstances where the personal information is inadvertently included in an explanatory statement; and
- to ensure that the document as published on the Register indicates that redaction has occurred.