

**LEGISLATION (EXEMPTIONS AND OTHER MATTERS) AMENDMENT**  
**(2024 MEASURES NO. 2) REGULATIONS 2024**

**EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Legislation Act 2003* (Legislation Act) establishes a comprehensive regime for the publication of Commonwealth Acts and instruments. It also provides for the registration, tabling, parliamentary scrutiny, disallowance and sunseting of instruments.

Section 62 of the Legislation Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to that Act.

Part 4 of Chapter 3 of the Legislation Act provides for the sunseting of legislative instruments. Sunseting is the process by which instruments are automatically repealed 10 years after they are made unless steps are taken to preserve their operation, or the instruments are exempt from sunseting. As set out in section 49 of the Legislation Act, the purpose of sunseting is to ensure that legislative instruments continue to be fit-for-purpose and are kept up to date through regular review.

Section 54 of the Legislation Act provides for instruments to which the sunseting regime in Part 4 of Chapter 3 does not apply. Instruments which are prescribed by the regulations for the purposes of paragraph 54(2)(b) of the Legislation Act are exempt from sunseting.

The *Legislation (Exemptions and Other Matters) Regulation 2015* (the Principal Regulations) prescribes instruments that are exempt from sunseting. The Principal Regulations prescribe classes of legislative instruments (at section 11) and particular instruments (at section 12) that are exempt from sunseting under paragraph 54(2)(b) of the Act. In this way, the Principal Regulations serve as a central source of sunseting exemptions, facilitating their whole-of-government management and ensuring that accurate sunseting information can be readily provided to Australian Government agencies, the Parliament and the general public.

*The Legislation (Exemptions and Other Matters) Amendment (2024 Measures No. 2) Regulations 2024* (Amendment Regulations) prescribe two additional instruments to be exempt from sunseting under section 12 of the Principal Regulations.

***Exemption from sunseting – Public Governance, Performance and Accountability (Financial Reporting) Rule 2015***

The Amendment Regulations exempt the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* (commonly referred to as the Financial Reporting Rule (FRR)) from sunseting under section 12 of the Principal Regulations.



The FRR is made under section 101 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). This section provides that the Minister has the authority to make rules by legislative instrument to prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the PGPA Act. The FRR sets out the financial reporting requirements for the preparation of annual financial statements and provides consistent financial reporting across the Commonwealth to facilitate comparison between entities. This also allows for the consolidation of the Commonwealth's consolidated financial statements.

It is appropriate that the FRR be exempt from sunseting because it meets the following criteria provided in the Attorney-General's Department's *Guide to managing sunseting of legislative instruments*:

- sufficiently large and complex that the administrative burden associated with remaking the instrument would outweigh any regulatory benefit
- subject to regular review, and
- subject to regular amendment.

#### Sufficiently large and complex

The FRR is a large and complex instrument and remaking the instrument would impose considerable demand on the resources of the Department of Finance and the Office of Parliamentary Counsel in drafting the instrument, and on the resources of Commonwealth reporting entities (175 as at 1 July 2024) in reviewing their systems and processes, with limited to no regulatory benefit.

Amendments to the FRR require reporting entities to update their financial reporting requirements, systems, processes, and policy documents. Progressive amendments to the FRR are highly beneficial to stakeholders and are better suited to the operational context by continually maintaining the health and overall currency of the instrument.

Assurance that the operation and requirements prescribed by the FRR remain beyond ten years would further provide certainty to reporting entities that the requirements for financial statements will continue without adding to the administrative burden and considerable demand on resources caused by new legislative instruments at the time of sunseting. As the governance framework of the instrument has now reached maturation, greater efficiencies could be gained by requiring entities to experience this burden only when required as opposed to every ten years for the foreseeable future.

#### Subject to regular review

The FRR is the subject of at least annual review to ensure that it is maintained and remains responsive to the expectations of Parliament, the changing operational environment of the Commonwealth entities and companies, and complies with the Australian Accounting Standards. This includes annual independent reviews by the Auditor-General through the



Australian National Audit Office and annual surveys undertaken by the Department of Finance involving the Chief Financial Officers (CFOs) of Commonwealth reporting entities.

#### *Annual independent reviews*

The Australian National Audit Office annually publishes results from the Auditor-General's audits of the financial statements of Australian Government entities. The Joint Committee of Public Accounts and Audit (JCPAA) has a duty to examine all reports of the Auditor-General that are tabled in Parliament and to report on any matters connected with those reports that the Committee determines should be drawn to the attention of the Parliament. This review may include recommendations to amend financial reporting requirements which may involve changes in policy guidance or in the FRR. For example, a recommendation from the JCPAA's *Report 463: Commonwealth Financial Statements* resulted in an amendment to the FRR in 2019 (see *PGPA (Financial Reporting) Amendment Rule 2019 (C04)*, effective 26 March 2019 to 4 March 2020).

The FRR is also reviewed as a result of changes to the Australian Accounting Standards. The Australian Accounting Standards Board (AASB) is responsible for developing, issuing and maintaining accounting standards. For example, one of the 2021-22 amendments to the FRR related to additional disclosure requirements as a result of the introduction of AASB 1060 *General Purpose Financial Statements – Simplified Disclosures for For-Profit and Not-for-Profit Tier 2 Entities*.

#### *Annual survey*

Since 2015, an annual survey has been conducted by the Department of Finance inviting the CFOs of Commonwealth reporting entities and the Australian National Audit Office to provide feedback on implementation challenges they may have encountered in applying the FRR and to ensure that the instrument remains current and fit-for-purpose.

In accordance with section 17 of the *Legislation Act 2003*, Commonwealth reporting entities required to apply the FRR in preparing their financial statements, including the Australian National Audit Office, have been consulted each year since the FRR commenced in 2015. This arrangement ensures the FRR aligns with the current Australian Accounting Standards, and is kept up-to-date in the future.

#### Subject to regular amendments

Since its commencement in 2015, the FRR has been amended 8 times as a result of regular reviews.

For the reasons outlined above, it is not suitable to subject the FRR to the requirements of sunseting given the instrument is sufficiently large and complex that the administrative burden associated with remaking the instrument would outweigh any regulatory benefit, and it is subject to regular review and amendment.



### ***Exemption from sunseting – A regulation made under the Public Health (Tobacco and Other Products) Act 2023***

The Amendment Regulations exempt a regulation made under the *Public Health (Tobacco and Other Products) Act 2023* (the Tobacco Act) from sunseting under section 12 of the Principal Regulations. The *Public Health (Tobacco and Other Products) Regulations 2024* (Tobacco Regulations) are made under the Tobacco Act. The Tobacco Regulations give technical effect to the substantive provisions in the Tobacco Act.

It is appropriate that the Tobacco Regulations be exempt from sunseting because it meets the following criteria provided in the Attorney-General's Department's *Guide to managing sunseting of legislative instruments*:

- designed to be enduring and not subject to regular review, and
- commercial certainty would be undermined by sunseting.

#### Enduring and not subject to regular review

The Tobacco Regulations implement enduring international obligations under the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC). These include, among other matters, detailed tobacco product requirements (including the requirements relating to health warnings). Many of the requirements are considered enduring and will remain unchanged over time as they implement long-standing international agreements, obligations, and/or standards under the WHO FCTC.

#### Commercial certainty

It is appropriate to exempt the Tobacco Regulations from sunseting to ensure commercial certainty for stakeholders who make decisions in compliance with the Instrument which are intended to be in effect for a longer period than 10 years. In addition, a failure to comply with the Tobacco Regulations may amount to an offence under the Tobacco Act and can result in the imposition of significant penalties and other material losses. Changes to the Tobacco Regulations as a result of the sunseting process may therefore be burdensome for stakeholders, particularly where changes in the Instrument require stakeholders to undergo costly and complex transition process including re-designing or re-developing systems and planning of stock management through transitions. As a result, subjecting the Tobacco Regulations to a 10-yearly review and replacement could reduce the stability and predictability of Australia's tobacco control framework and undermine commercial certainty.

For the reasons outlined above, it is not suitable to subject the Tobacco Regulations to the requirements of sunseting given the instruments are designed to be enduring and not subject to regular review, and commercial certainty would be undermined by sunseting.



## CONSULTATION

Before the Amendment Regulations were issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The Minister for Finance, Senator the Hon Katy Gallagher, who has portfolio responsibility for the FRR, wrote to the Attorney-General requesting that the exemption be made. The Department of Finance has undertaken consultation with relevant Commonwealth reporting entities and the Australian National Audit Office with a focus on the effectiveness, currency and operations of the FRR and its impact on the systems, processes and policies of Commonwealth reporting entities. The Department of Finance also continues to consult internally and externally with the CFOs of Commonwealth reporting entities and other entity staff involved in financial reporting. This stakeholder consultation occurs through communication fora (including the Financial Stewardship Forum, the Portfolio Departments CFO Forum and the Australian Public Service Accounting and Finance profession working group). No issues have been raised by stakeholders in relation to this exemption from sunseting.

The Minister for Health and Aged Care, the Hon Mark Butler MP, who has portfolio responsibility for the Tobacco Regulations, wrote to the Attorney-General requesting that the exemption be made. It was not considered necessary to consult on the proposal for an exemption given the nature of the Tobacco Regulations as reflecting public health policy that has already been the subject of extensive consultation. In their development, the Tobacco Regulations were designed to be enduring. By not sunseting, there will be a benefit to stakeholders by providing commercial certainty. For these reasons, wider consultation on the exemption proposal was not considered necessary.

## REGULATION IMPACT STATEMENT

The Amendment Regulations do not have any regulatory impact. The Office of Impact Analysis (OIA) reference is OIA24-07965.

## OTHER DETAILS

A Statement of Compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is at Attachment A.

Details of the Amendment Regulations are set out in Attachment B.

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

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



The Amendment Regulations commence the day after their registration.  
The Amendment Regulations, the Principal Regulations and the Legislation Act are available on the Federal Register of Legislation <https://www.legislation.gov.au/>.



## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### ***Legislation (Exemptions and Other Matters) Amendment Regulations 2024***

The *Legislation (Exemptions and Other Matters) Amendment (2024 Measures No. 2) Regulations 2024* (the Amendment Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Human Rights Act).

### **Overview**

The *Legislation Act 2003* (Legislation Act) establishes a comprehensive regime for the publication of Commonwealth Acts and Instruments and provides for the sunseting of legislative instruments. Sunseting is the process by which instruments are automatically repealed approximately 10 years after they are made unless steps are taken to preserve their operation or the instruments are exempt from sunseting.

The *Legislation (Exemptions and Other Matters) Regulation 2015* (the Principal Regulation) prescribe classes of instruments (at section 11) and particular instruments (at section 12) that are exempt from sunseting under paragraph 54(2)(b) of the Legislation Act.

The Amendment Regulations are made under section 62 of the Legislation Act and amend the Principal Regulation by adding items 53A and 53B in section 12 of the Principal Regulations to create exemptions from sunseting for the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* (FRR), and a regulation made under the *Public Health (Tobacco and Other Products) Act 2023* (Tobacco Regulations).

The sunseting exemptions made by the Amendment Regulations are in accordance with established policy criteria for the granting of exemptions, provided for in the Attorney-General's Department's *Guide to managing sunseting of legislative instruments*. The FRR is sufficiently large and complex that the administrative burden associated with remaking the instrument would outweigh any regulatory benefit, and it is subject to regular review and to regular amendment. The Tobacco Regulations are designed to be enduring and not subject to regular review, and sunseting would undermine commercial certainty within the relevant tobacco industry.

### **Human Rights Implications**

The Amendment Regulations provide exemptions from sunseting for the FRR and the Tobacco Regulations. The exemptions from sunseting of these instruments do not raise human



rights issues as the content of the exempted instruments is not altered, nor do the exemptions affect the rights engaged under the original instruments. All instruments that amend the FRR and the Tobacco Regulations are assessed for compatibility with human rights and accordingly includes compatibility statements.

#### *Public Governance, Performance and Accountability Rule 2015*

The FRR does not engage any of the applicable rights or freedoms outlined in the *Human Rights (Parliamentary Scrutiny) Act 2011*. It also does not limit any human right, nor propose any offences or penalties. The FRR is therefore compatible with the human rights and freedoms as it does not raise any human right issues.

#### *Public Health (Tobacco and Other Products) Regulations 2024*

The Tobacco Regulations engage the right to health, the right to freedom of expression, and the right to life.

##### Right to health

Article 12(2)(c) of the International Covenant on Economic, Social and Cultural Rights requires States Parties to take steps to achieve the full realisation of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, including those steps necessary for the prevention, treatment and control of diseases. The Committee on Economic, Social and Cultural Rights considers that this “requires the establishment of prevention and education programmes for behavior-related health concerns... and the promotion of social determinants of good health”.

The Tobacco Regulations promote the right to health by aiming, through the achievement of the Act’s objectives, and as part of a comprehensive range of tobacco control measures, to contribute to efforts to reduce smoking rates and thereby reduce the significant health and economic effects of tobacco usage. The Regulations also seek to address the health risks posed by vaping and e-cigarette products by supporting the Act’s prohibition (with limited exceptions) on advertising and promotion of e-cigarettes.

##### Right to freedom of expression

Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) protects the right to freedom of expression, which extends to any medium, including written and oral communications, the media, public protest, broadcasting and artistic works, and may include commercial advertising.



Article 19(3)(b) of the ICCPR states that public health is a basis on which the right to freedom of expression can be limited. This right may be limited as provided for by law and when necessary for respect of the rights or reputations of others, for the protection of national security, public order, or of public health or morals. Limitations must be prescribed by legislation necessary to achieve the desired purpose and proportionate to the need on which the limitation is predicated. It is possible that, by restricting the appearance of tobacco products and their retail packaging (Chapter 3 of the Tobacco Regulations), the Act limits the right to freedom of expression. This may also be the case in relation to the restrictions on online point-of-sale advertising of tobacco and e-cigarette products (Chapter 2 of the Tobacco Regulations).

However, these restrictions are directed to the desired purpose of reducing tobacco and e-cigarette uptake and supporting those who already smoke to quit. This is a legitimate public health objective consistent with the World Health Organisation Framework Convention on Tobacco Control and accordingly the prohibition is necessary to achieve the desired purpose and proportionate to the need on which the limitation is predicated.

#### Right to life

Article 6(1) of the ICCPR recognises that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”. By seeking to reduce the incidence of smoking and vaping, and thereby reducing the associated health risks, the Regulations promote the right to life.

#### **Conclusion**

Exemptions from sunseting do not alter the content of the laws to which those exemptions apply. Sunseting exemptions merely ensure that the legislative instruments in question are not automatically repealed on the first 1 April or 1 October that falls on or after the tenth anniversary of their registration. The Amendment Regulation is compatible with human rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This is because where the instruments exempt from sunseting engage with human rights, they promote the protection of human rights and, to the extent that they may also limit human rights, those limitations are reasonable, necessary and proportionate. As amending instruments are assessed for compatibility with human rights, the compatibility with human rights of any replacement instrument for the FRR or the Tobacco Regulations will be assessed if such an instrument is made.



## NOTES ON SECTIONS

### **Details of the proposed *Legislation (Exemptions and Other Matters) Amendment (2024 Measures No. 2) Regulations 2024***

#### Section 1 - Name

This section provides that the title of the instrument is the *Legislation (Exemptions and Other Matters) Amendment (2024 Measures No. 2) Regulations 2024* (Amendment Regulations).

#### Section 2 - Commencement

This section provides that the instrument is to commence on the day after it is registered.

#### Section 3 - Authority

This section provides that the instrument is made under the *Legislation Act 2003*.

#### Section 4 - Schedules

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

#### Schedule 1 - Amendments

Schedule 1 amends section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (the Principal Regulations) to insert two new exemptions from sunseting.

For the purposes of paragraph 54(2)(b) of the Legislation Act, section 12 of the Principal Regulations provides that instruments contained in the table to that section are not subject to sunseting.

#### Item 1: Section 12 (table item 53A)

Item 1 repeals and substitutes table item 53A in the table at section 12 of the Principal Regulations. New table item 53A reinserts the previous item 53A as (a) the *Public Governance, Performance and Accountability Rule 2014*, and inserts the new exemption from sunseting at (b), being the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015* (FRR).

Pursuant to the policy criteria provided for in the Attorney-General's Department's *Guide to managing sunseting of legislative instruments*, the exemption is appropriate as the FRR is:

- sufficiently large and complex that the administrative burden associated with remaking the instrument would outweigh any regulatory benefit,



- subject to regular review, and
- subject to regular amendment.

The sunseting exemption created by the Amendment Regulations is justified on this basis.

Item 2: Section 12 (after table item 53A)

Item 2 inserts new table item 53B into the table at section 12 of the Principal Regulations. New item 53B provides an exemption from sunseting for a regulation made under the *Public Health (Tobacco and Other Products) Act 2023*. The *Public Health (Tobacco and Other Products) Regulations 2024* (Tobacco Regulations) is made under the *Public Health (Tobacco and Other Products) Act 2023*.

Pursuant to the policy criteria provided for in the Attorney-General's Department's *Guide to managing sunseting of legislative instruments*, the exemption is appropriate on the basis that it is designed to be enduring and not subject to regular review and to ensure commercial certainty is not undermined for stakeholders who make decisions in compliance with the Instrument which are intended to be in effect for a longer period than 10 years. In particular, the Tobacco Regulations implement longstanding international obligations under the World Health Organisation Framework Convention on Tobacco Control and are integral to long-term decision-making by stakeholders. The sunseting exemption created by the Amendment Regulations is justified on this basis.