

LEGISLATION (GENERAL) REGULATIONS 2025

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Legislation Act 2003* (the Legislation Act) provides for the registration, tabling, parliamentary scrutiny, disallowance and sunset of instruments. Section 62 of the Legislation Act provides that the Governor-General may make regulations, prescribing matters required or permitted by the Legislation Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Legislation Act. Subsection 57(5) of the Legislation Act has the effect that particular disallowance provisions can be prescribed so that they continue to apply to the relevant instruments, instead of the standard disallowance regime under the Legislation Act.

Disallowance under Part 2 of Chapter 2 of the Legislation Act is the process by which instruments are subject to veto by Parliament. It is a mechanism for parliamentary oversight of delegated legislation.

The Regulations have the effect that the particular disallowance provisions in subsections 7(8) and (8A) of the *Remuneration Tribunal Act 1973* (Remuneration Tribunal Act) continue to apply to determination instruments made under that Act, instead of the standard disallowance provisions in the Legislation Act. A bespoke disallowance regime is required to meet the particular needs of the Remuneration Tribunal Act framework, including determinations relating to judicial remuneration and Australian Capital Territory (ACT) offices.

The Regulations are a legislative instrument for the purposes of the Legislation Act. The Regulations commence on the day after registration.

CONSULTATION

The Regulations replace the *Legislation (General) Regulation 2015*, which sunset on 1 October 2025. The Attorney-General's Department (the department) undertook consultation to determine whether the 2015 instrument needed to be replaced ahead of sunset. Consultation occurred with the Australian Public Service Commission and the Department of Prime Minister and Cabinet, being the administering agency for the *Remuneration Tribunal Act 1973*. Both agencies supported the Regulation being remade in substantially the same form, as it fulfils ongoing requirements under the Legislation Act.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Legislation (General) Regulations 2025

This Legislative Instrument is 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*.

Overview of the Legislative Instrument

The *Legislation Act 2003* (the Legislation Act) provides for the registration, tabling, parliamentary scrutiny, disallowance and sunset of instruments. Section 62 of the Legislation Act provides that the Governor-General may make regulations, prescribing matters required or permitted by the Legislation Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Legislation Act. Subsection 57(5) of the Legislation Act has the effect that particular disallowance provisions can be prescribed so that they continue to apply to the relevant instruments, instead of the standard disallowance regime under the Legislation Act.

Disallowance under Part 2 of Chapter 2 of the Legislation Act is the process by which instruments are subject to veto by Parliament. It is a mechanism for parliamentary oversight of delegated legislation.

The *Legislation (General) Regulations 2025* has the effect that the particular disallowance provisions in subsections 7(8) and (8A) of the *Remuneration Tribunal Act 1973* (Remuneration Tribunal Act) continue to apply to determination instruments made under that Act, instead of the standard disallowance provisions in sections 42 to 48 of the Legislation Act. A bespoke disallowance regime is required to meet the particular needs of the Remuneration Tribunal Act framework, including determinations relating to judicial remuneration and ACT offices.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

NOTES ON SECTIONS

Section 1 – Name

This section provides that the title of the instrument is the *Legislation (General) Regulations 2025*.

Section 2 – Commencement

This section provides for the commencement of each provision under the proposed Regulations.

Table item 1 provides that the whole of the proposed Regulations commences the day after registration.

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 this instrument 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.

Section 5 – Definitions

This section provides for definitions to be used for the purpose of the instrument. The section provides that in this instrument, ‘*Act*’ means the *Legislation Act 2003*.

Section 6 – Continuing disallowance provisions

This section provides that the bespoke disallowance regime created by subsections (7)8 and (8A) of the Remuneration Tribunal Act will continue to apply to determination instruments under the Remuneration Tribunal Act instead of the standard disallowance regime under the Legislation Act. Notes 1 and 2 set out this explanation on the face of the instrument to assist readers.

Subsection 7(8) of the Remuneration Tribunal Act has the effect that judicial remuneration determinations do not come into force until the end of the disallowance period. Under the standard disallowance process, legislative instruments come into force once they are registered on the Federal Register of Legislation, upon which the disallowance period commences. The instrument may subsequently cease to have effect if it is disallowed. This could result in the commencement, then later cessation, of a determination of judicial remuneration. This section ensures that subsection 7(8) of the Remuneration Tribunal Act continues to apply to judicial remuneration determinations to ensure compliance with the constitutional requirement that a judge’s remuneration not be reduced while the judge is in office.

Subsection 7(8A) of the Remuneration Tribunal Act provides for disallowance of determinations relating to an ACT office by the Legislative Assembly for the ACT. This appropriately precludes the Commonwealth Parliament from disallowing determinations relating to an ACT office, as would be the case if the disallowance regime under the Legislation Act were to apply.

Schedule 1 – Repeals

Schedule 1 provides for the repeal of the *Legislation (General) Regulation 2015*. This ensures that the *Legislation (General) Regulation 2015* ceases operation concurrently with the commencement of the replacement instrument.