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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Legislative Instruments Bill 2003**

**No.     , 2003**

*(Attorney-General)*

**A Bill for an Act relating to the making, registration,  
Parliamentary scrutiny and periodic repeal of  
legislative instruments, and for related purposes**



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1     **A Bill for an Act relating to the making, registration,**  
2     **Parliamentary scrutiny and periodic repeal of**  
3     **legislative instruments, and for related purposes**

4     The Parliament of Australia enacts:

5     **Part 1—Preliminary**  
6

7     **1 Short title**

8                     This Act may be cited as the *Legislative Instruments Act 2003*.

9     **2 Commencement**

10                    (1) Each provision of this Act specified in column 1 of the table  
11                    commences, or is taken to have commenced, on the day or at the  
12                    time specified in column 2 of the table.

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Section 3

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	
2. Sections 3 to 62	A single day fixed by Proclamation, subject to subsections (3) and (4)	

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Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

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(3) The date fixed by Proclamation for the purposes of item 2 of the table must be a first day of January or a first day of July occurring after the day on which this Act receives the Royal Assent.

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(4) If the provisions covered by item 2 of the table do not commence under subsection (1) within the period of 12 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day of January or of July, whichever next follows the end of that period.

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**3 Object**

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(1) The object of this Act is to provide a comprehensive regime for the management of Commonwealth legislative instruments by:

- (a) establishing the Federal Register of Legislative Instruments as a repository of Commonwealth legislative instruments, explanatory statements and compilations; and
- (b) encouraging rule-makers to undertake appropriate consultation before making legislative instruments; and



## Section 4

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- 1 (c) encouraging high standards in the drafting of legislative  
 2 instruments to promote their legal effectiveness, their clarity  
 3 and their intelligibility to anticipated users; and  
 4 (d) improving public access to legislative instruments; and  
 5 (e) establishing improved mechanisms for Parliamentary scrutiny  
 6 of legislative instruments; and  
 7 (f) establishing mechanisms to ensure that legislative instruments  
 8 are periodically reviewed and, if they no longer have a  
 9 continuing purpose, repealed.

10 **4 Definitions**

11 (1) In this Act, unless the contrary intention appears:

12 *ADJR Act* means the *Administrative Decisions (Judicial Review)*  
 13 *Act 1977*.

14 *certified true copy*, in relation to a legislative instrument, means a  
 15 copy of the instrument certified to be a true copy of the full text of  
 16 the instrument as it was made.

17 *commencing day* means the day on which section 20 of this Act  
 18 commences.

19 *compilation*, in relation to a legislative instrument that has, with  
 20 effect from a particular time, been amended by an Act or Acts or by  
 21 another legislative instrument or legislative instruments, means the  
 22 first-mentioned legislative instrument as amended and in force at  
 23 that time.

24 *enabling legislation*, in relation to a legislative instrument, means  
 25 the Act or legislative instrument, or the part of an Act or of a  
 26 legislative instrument, that authorises the making of the legislative  
 27 instrument concerned.

28 *explanatory statement*, in relation to a legislative instrument,  
 29 means a statement that:

- 30 (a) is prepared by the rule-maker; and  
 31 (b) explains the purpose and operation of the instrument; and

Section 4

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- 1 (c) if any documents are incorporated in the instrument by  
2 reference—contains a description of the documents so  
3 incorporated and indicate how they may be obtained; and  
4 (d) if consultation was undertaken under section 17 before the  
5 instrument was made—contains a description of the nature of  
6 that consultation; and  
7 (e) if no such consultation was undertaken—explains why no  
8 such consultation was undertaken; and  
9 (f) contains such other information as is prescribed.

10 ***inappropriate use of gender-specific language***, in relation to a  
11 legislative instrument, means use of such language in the legislative  
12 instrument in circumstances where it is not necessary to identify  
13 persons by their sex.

14 ***instrument*** does not include an explanatory statement or a  
15 compilation.

16 ***legislative instrument*** has the meaning given by section 5 and  
17 includes instruments that are declared to be legislative instruments  
18 under section 6 but does not include:

- 19 (a) instruments that are declared not to be legislative instruments  
20 under section 7; or  
21 (b) instruments to which section 9 applies.

22 ***lodge***, in respect of a legislative instrument, explanatory statement,  
23 compilation or other document required to be lodged under Part 4,  
24 means lodge in such manner, and in such form or forms, as this Act  
25 or the regulations specify.

26 ***making***, in relation to an instrument that will become, or that is, a  
27 legislative instrument, means the signing, sealing or other  
28 endorsement of the instrument by the person or body empowered to  
29 make it whereby it becomes or became that legislative instrument.

30 ***original legislative instrument*** means:

- 31 (a) the legislative instrument made by the rule-maker; or  
32 (b) an instrument prescribed by the regulations.

33 Note: Examples of a legislative instrument made by the rule-maker are a  
34 signed or sealed instrument.

## Section 4

1 **register**, in relation to an instrument, an explanatory statement, or a  
2 compilation, means recording the instrument, explanatory statement  
3 or compilation in the Register in electronic form.

4 **Register** means the Federal Register of Legislative Instruments  
5 required to be maintained under section 20.

6 **responsible Minister**, in relation to a legislative instrument or a  
7 proposed legislative instrument, means the Minister administering  
8 the enabling legislation for that instrument.

9 **rule-maker** has the meaning given by subsection (3).

10 **Secretary** means the Secretary of the Department.

11 **State** includes the Australian Capital Territory and the Northern  
12 Territory.

13 **working day** means a day that is not a Saturday, a Sunday or a public  
14 holiday in the Australian Capital Territory.

15 (2) In this Act, if an act or thing is required to be done within a specified  
16 number of working days after a particular event, that act or thing can  
17 be done at any time after the event during normal business hours:

18 (a) on the day on which the event occurred (if it is a working day);  
19 or

20 (b) on a working day included in the specified number of working  
21 days next following that day.

22 (3) In this Act, unless the contrary intention appears:

23 (a) a reference to a rule-maker, in relation to a legislative  
24 instrument or a proposed legislative instrument, is a reference  
25 to:

26 (i) if the legislative instrument is, or will be, authorised to  
27 be made by the Governor-General and the reference  
28 appears in section 13—the Governor-General; and

29 (ii) if the legislative instrument is, or will be, authorised to  
30 be made by the Governor-General and the reference  
31 appears in any other provision of this Act—the  
32 responsible Minister; and

Section 5

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- 1 (iii) if the legislative instrument is, or will be, authorised to  
2 be made by a person other than the Governor-General or  
3 by a body—that other person or body; and  
4 (b) a reference in this Act to a rule-maker who makes, or proposes  
5 to make, a legislative instrument includes a reference to the  
6 person who would be taken to be the rule-maker of the  
7 instrument (if the instrument were made) whether or not that  
8 person actually makes the instrument concerned.

9 **5 Definition—a legislative instrument**

- 10 (1) Subject to sections 6, 7 and 9, a *legislative instrument* is an  
11 instrument in writing:  
12 (a) that is of a legislative character; and  
13 (b) that is or was made in the exercise of a power delegated by the  
14 Parliament.
- 15 (2) Without limiting the generality of subsection (1), an instrument is  
16 taken to be of a legislative character if:  
17 (a) it determines the law or alters the content of the law, rather  
18 than applying the law in a particular case; and  
19 (b) it has the direct or indirect effect of affecting a privilege or  
20 interest, imposing an obligation, creating a right, or varying or  
21 removing an obligation or right.
- 22 (3) An instrument that is registered is taken, by virtue of that  
23 registration and despite anything else in this Act, to be a legislative  
24 instrument.
- 25 (4) If some provisions of an instrument are of a legislative character and  
26 others are of an administrative character, the instrument is taken to  
27 be a legislative instrument for the purposes of this Act.

28 **6 Instruments declared to be legislative instruments**

- 29 Without limiting the generality of subsection 5(1), each of the  
30 following instruments is, subject to sections 7 and 9, a legislative  
31 instrument:  
32 (a) an instrument:

## Section 7

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- 1 (i) made in the exercise of a power delegated by the  
2 Parliament before, on or after the commencing day; and  
3 (ii) described as a regulation by the enabling legislation;  
4 (b) an instrument, other than a regulation:  
5 (i) made in the exercise of a power delegated by the  
6 Parliament before the commencing day; and  
7 (ii) required to be printed and sold as a statutory rule under  
8 subsection 5(1) of the *Statutory Rules Publication Act*  
9 *1903* as in force at any time before the commencing day;  
10 (c) an instrument:  
11 (i) made in the exercise of a power delegated by the  
12 Parliament before, on or after the commencing day in an  
13 Act providing for the government of a  
14 non-self-governing Territory; and  
15 (ii) described in that Act as an Ordinance or as a rule,  
16 regulation or by-law made under such an Ordinance;  
17 (d) an instrument made in the exercise of a power delegated by  
18 the Parliament before the commencing day and, in accordance  
19 with a provision of the enabling legislation:  
20 (i) declared to be a disallowable instrument for the purposes  
21 of section 46A of the *Acts Interpretation Act 1901* as in  
22 force at any time before the commencing day; or  
23 (ii) otherwise able to be disallowed under Part XII of the  
24 *Acts Interpretation Act 1901* as in force at any time  
25 before the commencing day;  
26 (e) a Proclamation made before, on or after the commencing day  
27 under enabling legislation.

**7 Instruments declared not to be legislative instruments**

- 28  
29 (1) An instrument is not a legislative instrument for the purposes of this  
30 Act if:  
31 (a) it is included in the table below; or  
32 (b) it is made under an Act or a disallowable legislative  
33 instrument:  
34 (i) that first authorised the making of the first-mentioned  
35 instrument on or after the commencing day; and
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(ii) that declared the first-mentioned instrument not to be a legislative instrument for the purposes of this Act.

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**Instruments that are not legislative instruments for the purposes of the Act**

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**Item Particulars of instrument**

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1	Instruments (other than regulations and other instruments that, immediately before the commencing day, are disallowable) made under the <i>Air Navigation Act 1920</i> , or under the regulations made under that Act, relating to aviation security
2	Commissioner's orders under section 38 of the <i>Australian Federal Police Act 1979</i>
3	General Orders made under section 12 of the <i>Australian Protective Service Act 1987</i>
4	Guidelines under section 8A of the <i>Australian Security Intelligence Organisation Act 1979</i>
5	Ministerial directions to: (a) a Commonwealth company within the meaning of section 34 of the <i>Commonwealth Authorities and Companies Act 1997</i> ; or (b) a Commonwealth authority within the meaning of section 7 of that Act; other than any such direction: (c) that comprises a notification under section 28 or 43 of that Act; or (d) that is required to be laid before the Houses of the Parliament under the legislation that authorises the giving of the directions; or (e) the full text of which is required to be published in the <i>Gazette</i> or elsewhere under that legislation

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## Section 7

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**Instruments that are not legislative instruments for the purposes of the Act**


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<b>Item</b>	<b>Particulars of instrument</b>
6	<p>Instruments (other than regulations and other instruments that, immediately before the commencing day, are disallowable) that are made under the <i>Corporations Act 2001</i> and that, in relation to:</p> <p>(a) a specified person (other than a person specified by membership of a class) or to persons associated with that specified person; or</p> <p>(b) a specified facility (other than a facility specified by membership of a class); or</p> <p>(c) a specified financial product (other than a product specified by membership of a class);</p> <p>have the effect of:</p> <p>(d) exempting the person, facility or product from the rules under the Act; or</p> <p>(e) modifying the operation of the rules under the Act in their application to the person, facility or product</p>
7	Determinations made under section 273 of the <i>Customs Act 1901</i>
8	Instructions under section 9A of the <i>Defence Act 1903</i>
9	Determinations made under section 58B or 58H of the <i>Defence Act 1903</i>
10	Legal Services Directions issued under paragraph 55ZF(1)(b) of the <i>Judiciary Act 1903</i>
11	Schedules to the Murray-Darling Basin Agreement made under clause 50 or 134 of that Agreement (being the Agreement approved under section 5 of the <i>Murray-Darling Basin Act 1993</i> )
12	Designations, or revocations of designations, made under section 11 of the <i>Payment Systems (Regulation) Act 1998</i>
13	Instruments made under section 72 of the <i>Public Service Act 1999</i>

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Section 7

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**Instruments that are not legislative instruments for the purposes of the Act**

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<b>Item</b>	<b>Particulars of instrument</b>
14	Laws of a self-governing Territory, other than: (a) Ordinances made under subsection 12(1) of the <i>Seat of Government (Administration) Act 1910</i> that have not become enactments (as defined in the <i>Australian Capital Territory (Self-Government) Act 1988</i> ); or (b) Ordinances made under section 27 of the <i>Norfolk Island Act 1979</i> ; or (c) rules, regulations and by-laws made under Ordinances described in paragraph (a) or (b)
15	Instruments (other than regulations and other instruments that, immediately before the commencing day, are disallowable) that are made under the <i>Superannuation Industry (Supervision) Act 1993</i> and 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); have the effect of: (c) exempting the person or product from the rules under the Act; or (d) modifying the operation of the rules under the Act in their application to the person or product
16	Private rulings given under the <i>Taxation Administration Act 1953</i>
17	Public rulings made under the <i>Taxation Administration Act 1953</i>
18	Awards and agreements under the <i>Workplace Relations Act 1996</i>
19	Orders made by the Australian Industrial Relations Commission in proceedings under the <i>Workplace Relations Act 1996</i>

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## Section 7

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**Instruments that are not legislative instruments for the purposes of the Act**


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<b>Item</b>	<b>Particulars of instrument</b>
20	Instruments that relate to terms and conditions of employment of persons, or to the terms and conditions of service of persons, as members or special members of the Australian Federal Police, other than: <ul style="list-style-type: none"> <li>(a) regulations; or</li> <li>(b) instruments that are declared to be disallowable instruments under the enabling legislation; or</li> <li>(c) instruments that are made under section 23 or subsection 24(3) of the <i>Public Service Act 1999</i>; or</li> <li>(d) instruments that are made under section 23 or subsection 24(3) of the <i>Parliamentary Service Act 1999</i>; or</li> <li>(e) instruments that are required to be laid before the Parliament under subsection 7(7) of the <i>Remuneration Tribunal Act 1973</i></li> </ul>
21	Instruments that comprise, in their entirety, directions to delegates
22	Laws of a State or self-governing Territory that apply in a non-self-governing Territory and instruments made under those laws
23	Ordinances of the former Colony of Singapore that apply in a non-self-governing Territory and instruments made under those Ordinances
24	Instruments that are prescribed by the regulations for the purposes of this table

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- 1 (2) The inclusion of an instrument in the table in subsection (1) does  
 2 not imply that an instrument of that kind would, if it were not so  
 3 included, be a legislative instrument under subsection (1).
- 4 (3) If:
- 5 (a) the making of an instrument is authorised before the
  - 6 commencing day; and
  - 7 (b) the instrument is of a kind included in the table in
  - 8 subsection (1) or is not otherwise a legislative instrument; and
  - 9 (c) the instrument is required:

Section 8

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- 1 (i) to have its text, or particulars of its making, published in  
2 the *Gazette*; or  
3 (ii) to be laid before either or both of the Houses of the  
4 Parliament without provision for its disallowance;  
5 that requirement is unaffected by this Act whether the instrument is  
6 made before, on or after the commencing day.

7 **8 Definition—power delegated by the Parliament**

8 A reference in this Act to a power delegated by the Parliament  
9 includes a reference to a power delegated by the Parliament to a  
10 rule-maker and then, under the authority of the Parliament, further  
11 delegated by the rule-maker to another rule-maker.

12 **9 Rules of court are not legislative instruments**

13 Rules of court for the High Court, the Federal Court of Australia,  
14 the Family Court of Australia and the Federal Magistrates Court are  
15 not legislative instruments for the purposes of this Act.

16 Note: Rules of court are treated as if they were legislative instruments by  
17 express amendment of the legislation providing for them to be made.

18 **10 Attorney-General may certify whether an instrument is legislative**  
19 **instrument or not**

- 20 (1) If a person or body having authority to make instruments of a  
21 particular kind is uncertain whether an instrument of that kind:  
22 (a) that was made before the commencing day; and  
23 (b) that is not registered;  
24 is, or is not, a legislative instrument, the person or body may, at any  
25 time before the day that would, under Division 3 of Part 4, be the  
26 last day for lodging the instrument for registration if it were a  
27 legislative instrument, apply, in writing, to the Attorney-General to  
28 determine the matter.
- 29 (2) If a person or body having authority to make an instrument of a  
30 particular kind:  
31 (a) proposes to make an instrument of that kind on or after the  
32 commencing day; and

## Section 11

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- 1 (b) is uncertain whether an instrument of that kind will be, or will  
2 not be, a legislative instrument;  
3 the person or body may apply, in writing, to the Attorney-General to  
4 determine the matter.
- 5 (3) The regulations may make provision in relation to the content and  
6 form of, and manner of making, applications under subsections (1)  
7 and (2).
- 8 (4) If application is made to the Attorney-General in respect of an  
9 instrument, or an instrument of a particular kind, the  
10 Attorney-General must:  
11 (a) determine whether that instrument is, or is not, or whether an  
12 instrument of that kind will be, or will not be, a legislative  
13 instrument; and  
14 (b) issue a certificate, in writing, to that effect, and set out the  
15 reasons for that decision in the certificate; and  
16 (c) give a copy of the certificate to the applicant.
- 17 (5) Subject only to its reconsideration in the circumstance described in  
18 subsection 11(1), a certificate given by the Attorney-General under  
19 this section is, for all purposes, conclusive of the question whether  
20 the instrument to which the certificate relates is, or is not, or  
21 whether an instrument of the kind to which the certificate relates  
22 will be, or will not be, a legislative instrument.
- 23 (6) A certificate issued under this section is a legislative instrument  
24 and, as such, is required under Part 4 to be registered.

**11 Reconsideration and review of Attorney-General's certificate**

- 25
- 26 (1) If:
- 27 (a) the Attorney-General issues a certificate under section 10 to  
28 the effect that a particular instrument is, or is not, or that an  
29 instrument of a particular kind will be, or will not be, a  
30 legislative instrument; and
- 31 (b) the decision to issue the certificate is subsequently reviewed:
- 32 (i) by the Federal Court of Australia or the Federal  
33 Magistrates Court under the ADJR Act; or
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Section 11

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- 1 (ii) by the Federal Court of Australia under section 39B of  
2 the *Judiciary Act 1903*; or  
3 (iii) by the High Court of Australia under paragraph 75(v) of  
4 the Constitution;  
5 and an order is made by that court to quash or to set aside the  
6 decision;  
7 the Attorney-General must reconsider the matter and issue a  
8 replacement certificate.
- 9 (2) Despite any provision in a law of the Commonwealth to the  
10 contrary, the order of a court referred to in paragraph (1)(b) to quash  
11 or set aside the decision to issue a certificate under this section takes  
12 effect only from the time immediately before the issue of the  
13 replacement certificate.
- 14 (3) If the Attorney-General decides, on reconsideration of the matter:  
15 (a) that an instrument that he or she has certified to be a  
16 legislative instrument is not such an instrument; or  
17 (b) that an instrument of a kind that he or she has certified will be  
18 a legislative instrument will not be such an instrument;  
19 then, except in relation to an instrument to which subsection 5(3)  
20 applies:  
21 (c) that instrument, or an instrument of that kind made after the  
22 issue of the original certificate, that would, but for its  
23 registration, have been required to be notified in the *Gazette*,  
24 must be so notified as soon as practicable but not later than 3  
25 working days after the issue of the replacement certificate;  
26 and  
27 (d) if the instrument is so notified, it is taken for all purposes  
28 always to have been notified as required; and  
29 (e) any act or thing done in accordance with the instrument,  
30 whether before or after its notification, is validly done.
- 31 (4) If the Attorney-General decides, on reconsideration of the matter:  
32 (a) that an instrument that he or she certified not to be a legislative  
33 instrument is such an instrument; or  
34 (b) that an instrument of a kind that he or she has certified will not  
35 be a legislative instrument will be such an instrument;  
36 then:
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## Section 11

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- 1 (c) that instrument, or an instrument of that kind made after the  
2 issue of the original certificate, must be registered:
- 3 (i) if Division 3 of Part 4 is applicable to the  
4 instrument—by the last day for lodgment for registration  
5 under that Division; or
- 6 (ii) if that Division is not applicable or that day has already  
7 passed—as soon as practicable but not later than 3  
8 working days after the issue of the replacement  
9 certificate; and
- 10 (d) if the instrument is so registered, it is taken, for all purposes of  
11 this Act, to have been so registered within the time required by  
12 this Act for its registration; and
- 13 (e) any act or thing done in accordance with, or in reliance on, the  
14 instrument, whether before or after its registration, is taken to  
15 have been validly done.
- 16 (5) If the Attorney-General decides, on reconsideration of the matter:
- 17 (a) that an instrument that he or she has certified to be a  
18 legislative instrument is such an instrument; or
- 19 (b) that an instrument of a kind that he or she has certified will be  
20 a legislative instrument will be such an instrument;
- 21 then:
- 22 (c) the requirement for registration of that instrument or of an  
23 instrument of that kind is unaffected; and
- 24 (d) any registration of that instrument or of an instrument of that  
25 kind that is already effected remains effective.
- 26 (6) If the Attorney-General decides, on reconsideration of the matter:
- 27 (a) that an instrument that he or she has certified not to be a  
28 legislative instrument is not a legislative instrument; or
- 29 (b) that an instrument of a kind that he or she has certified will not  
30 be a legislative instrument will not be such an instrument;
- 31 then:
- 32 (c) any requirement for notification in the *Gazette* of the making  
33 of that instrument or of an instrument of that kind is  
34 unaffected; and

Section 12

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- 1 (d) any notification in the *Gazette* of the making of that  
2 instrument or of an instrument of that kind that is already  
3 effected remains effective.
- 4 (7) In any case where a court referred to in paragraph (1)(b) makes an  
5 order quashing or setting aside a decision to issue a certificate under  
6 section 10, the Attorney-General must:
- 7 (a) as soon as practicable after that order is made, notify the  
8 person or body having authority to make the instrument, in  
9 writing, of the court's decision; and
- 10 (b) as soon as practicable after the issue of a replacement  
11 certificate—give a copy of the replacement certificate to the  
12 applicant for the original certificate and to the person or body  
13 having authority to make the instrument.
- 14 (8) A replacement certificate issued under this section is a legislative  
15 instrument and, as such, is required under Part 4 to be registered.

16 **12 When do provisions of legislative instruments take effect?**

- 17 (1) Subject to subsection (2), a legislative instrument that is made on or  
18 after the commencing day, or a particular provision of such an  
19 instrument, takes effect from:
- 20 (a) the day specified in the instrument for the purposes of the  
21 commencement of the instrument or provision; or
- 22 (b) the day and time specified in the instrument for the purposes  
23 of the commencement of the instrument or provision; or
- 24 (c) the day, or day and time, of the commencement of an Act, or  
25 of a provision of an Act, or of the occurrence of an event, that  
26 is specified in the instrument for the purposes of the  
27 commencement of the instrument or provision; or
- 28 (d) in any other case—the first moment of the day next following  
29 the day when it is registered.
- 30 Note: There are certain instruments that, by virtue of subsection 55(2), are  
31 made before, but treated as having been made on, the commencing  
32 day.
- 33 (2) If:
- 34 (a) a legislative instrument is expressed to take effect from a time  
35 before it is registered; but

## Section 13

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- 1 (b) the instrument, or a provision of the instrument:  
 2 (i) would adversely affect the rights of a person (other than  
 3 the Commonwealth or an authority of the  
 4 Commonwealth) at a time before the instrument is  
 5 registered; or  
 6 (ii) would result in the imposition of liabilities on a person  
 7 (other than the Commonwealth or an authority of the  
 8 Commonwealth) in respect of anything done, or omitted  
 9 to be done, at a time before the instrument is registered;  
 10 the instrument or provision is taken to be of no effect in respect of  
 11 the period before it is registered to the extent that it would have the  
 12 effect described in subparagraph (b)(i) or (ii).
- 13 (3) The effect of subsections (1) and (2) on a legislative instrument is  
 14 subject to any contrary provision for commencement of the  
 15 instrument in the enabling legislation for the instrument if the  
 16 enabling legislation is an Act or a provision of an Act.

### 17 13 Construction of legislative instruments

- 18 (1) If enabling legislation confers on a rule-maker the power to make a  
 19 legislative instrument, then, unless the contrary intention appears:  
 20 (a) the *Acts Interpretation Act 1901* applies to any legislative  
 21 instrument so made as if it were an Act and as if each  
 22 provision of the legislative instrument were a section of an  
 23 Act; and  
 24 (b) expressions used in any legislative instrument so made have  
 25 the same meaning as in the enabling legislation; and  
 26 (c) any legislative instrument so made is to be read and construed  
 27 subject to the enabling legislation, and so as not to exceed the  
 28 power of the rule-maker.
- 29 (2) If any legislative instrument would, but for subsection (1), be  
 30 construed as being in excess of the rule-maker's power, it is to be  
 31 taken to be a valid instrument to the extent to which it is not in  
 32 excess of that power.
- 33 (3) If enabling legislation confers on a rule-maker the power to make a  
 34 legislative instrument:  
 35 (a) specifying, declaring or prescribing a matter or thing; or
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Section 14

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1 (b) doing anything in relation to a matter or thing;  
2 then, in exercising the power, the rule-maker may identify the  
3 matter or thing by referring to a class or classes of matters or things.

4 Note: This section has a parallel, in relation to instruments that are not  
5 legislative instruments, in section 46 of the *Acts Interpretation Act*  
6 *1901*.

7 **14 Prescribing matters by reference to other instruments**

8 (1) If enabling legislation authorises or requires provision to be made in  
9 relation to any matter in a legislative instrument, the legislative  
10 instrument may, unless the contrary intention appears, make  
11 provision in relation to that matter:

12 (a) by applying, adopting or incorporating, with or without  
13 modification, the provisions of any Act, or of any  
14 disallowable legislative instrument, as in force at a particular  
15 time or as in force from time to time; or

16 (b) subject to subsection (2), by applying, adopting or  
17 incorporating, with or without modification, any matter  
18 contained in any other instrument or writing as in force or  
19 existing at the time when the first-mentioned legislative  
20 instrument takes effect.

21 (2) Unless the contrary intention appears, the legislative instrument  
22 may not make provision in relation to a matter by applying, adopting  
23 or incorporating any matter contained in an instrument or other  
24 writing as in force or existing from time to time.

25 Note: This section has a parallel, in relation to instruments that are not  
26 legislative instruments, in section 46AA of the *Acts Interpretation*  
27 *Act 1901*.

28 **15 Effect of repeal of legislative instrument**

29 The repeal of any legislative instrument, or of any provision of a  
30 legislative instrument, does not, unless the contrary intention  
31 appears in the Act or legislative instrument effecting the repeal:

32 (a) revive anything not in force or existing at the time at which the  
33 repeal takes effect; or



Section 15

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- (b) affect the previous operation of the instrument or provision or anything duly done or suffered under the instrument or provision; or
  - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the instrument or provision; or
  - (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the instrument or provision; or
  - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;
- and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act or instrument had not been enacted or made.

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## Part 2—Drafting standards

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### 16 Measures to achieve high drafting standards for legislative instruments

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(1) To encourage high standards in the drafting of legislative instruments, the Secretary must cause steps to be taken to promote the legal effectiveness, clarity, and intelligibility to anticipated users, of legislative instruments.

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(2) The steps referred to in subsection (1) may include, but are not limited to:

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(a) undertaking or supervising the drafting of legislative instruments; and

(b) scrutinising preliminary drafts of legislative instruments; and

(c) providing advice concerning the drafting of legislative instruments; and

(d) providing training in drafting and matters related to drafting to officers and employees of other Departments or agencies; and

(e) arranging the temporary secondment to other Departments or agencies of APS employees performing duties in the Department; and

(f) providing drafting precedents to officers and employees of other Departments or agencies.

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(3) The Secretary must also cause steps to be taken:

(a) to prevent the inappropriate use of gender-specific language in legislative instruments; and

(b) to advise rule-makers of legislative instruments that have already been made if those legislative instruments make inappropriate use of such language; and

(c) to notify both Houses of the Parliament about any occasion when a rule-maker is advised under paragraph (b).

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## **Part 3—Consultation before making legislative instruments**

### **17 Rule-makers should consult before making legislative instruments**

- (1) Before a rule-maker makes a legislative instrument, and particularly where the proposed instrument is likely to:
  - (a) have a direct, or a substantial indirect, effect on business; or
  - (b) restrict competition;
 the rule-maker must be satisfied that any consultation that is considered by the rule-maker to be appropriate and that is reasonably practicable to undertake, has been undertaken.
  
- (2) In determining whether any consultation that was undertaken is appropriate, the rule-maker may have regard to any relevant matter, including the extent to which the consultation:
  - (a) drew on the knowledge of persons having expertise in fields relevant to the proposed instrument; and
  - (b) ensured that persons likely to be affected by the proposed instrument had an adequate opportunity to comment on its proposed content.
  
- (3) Without limiting, by implication, the form that consultation referred to in subsection (1) might take, such consultation could involve notification, either directly or by advertisement, of bodies that, or of organisations representative of persons who, are likely to be affected by the proposed instrument. Such notification could invite submissions to be made by a specified date or might invite participation in public hearings to be held concerning the proposed instrument.

Note: The definition of *explanatory statement* in subsection 4(1) requires that the explanatory statement prepared in respect of each legislative instrument include a description of consultation undertaken or, if there was no consultation, an explanation for its absence.

Section 18

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1 **18 Circumstances where consultation may be unnecessary or**  
2 **inappropriate**

- 3 (1) Despite section 17, the nature of an instrument may be such that  
4 consultation may be unnecessary or inappropriate.
- 5 (2) The following are examples of instruments having a nature such that  
6 the rule-maker may be satisfied that consultation is unnecessary or  
7 inappropriate:
- 8 (a) an instrument that is of a minor or machinery nature and that  
9 does not substantially alter existing arrangements; or
  - 10 (b) an instrument that is required as a matter of urgency; or
  - 11 (c) an instrument that gives effect, in terms announced in the  
12 Budget, to a decision:
    - 13 (i) to repeal, impose or adjust a tax, fee or charge; or
    - 14 (ii) to confer, revoke or alter an entitlement; or
    - 15 (iii) to impose, revoke or alter an obligation; or
  - 16 (d) an instrument that is required because of an issue of national  
17 security; or
  - 18 (e) an instrument in relation to which appropriate consultation  
19 has already been undertaken by someone other than the  
20 rule-maker; or
  - 21 (f) an instrument that relates to employment; or
  - 22 (g) an instrument that relates to the management of, or to the  
23 service of members of, the Australian Defence Force.

24 **19 Consequence of failure to consult**

25 The fact that consultation does not occur does not affect the validity  
26 or enforceability of a legislative instrument.  
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2 **Part 4—The Federal Register of Legislative**  
3 **Instruments**

4 **Division 1—The Register**

5 **20 Federal Register of Legislative Instruments**

- 6 (1) The Secretary is to cause to be maintained a register to be known as  
7 the Federal Register of Legislative Instruments.
- 8 (2) The Register comprises, at any time, a database of all legislative  
9 instruments, all explanatory statements in relation to legislative  
10 instruments made on or after the commencing day, and all  
11 compilations in relation to legislative instruments, that have been  
12 registered under this Act.

13 **21 Manner of keeping Register**

- 14 (1) The regulations may prescribe the manner in which the Register is  
15 to be kept.
- 16 (2) Without limiting the generality of subsection (1), regulations made  
17 under that subsection may require that any person required to lodge  
18 a legislative instrument for registration must also lodge such  
19 information relating to the legislative instrument as the regulations  
20 provide, in such form as the regulations provide, to ensure that the  
21 Register is as useful as possible to persons wishing to use it.
- 22 (3) Without limiting the generality of subsection (1), regulations made  
23 under that subsection may provide:
- 24 (a) for the manner in which the Register is required to be kept  
25 including:
- 26 (i) the manner of recording information required to be  
27 included in the Register; and
- 28 (ii) the manner of altering information required to be  
29 included in the Register; and
- 30 (b) for giving a unique identifier to each legislative instrument  
31 that is registered; and
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**Section 22**

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- 1 (c) for giving a unique identifier to each compilation, in relation  
2 to a legislative instrument, that is registered.

**22 The status of the Register and judicial notice of legislative  
instruments and compilations**

- 3 (1) The Register is, for all purposes, to be taken to be a complete and  
4 accurate record of all legislative instruments that are included in the  
5 Register.  
6  
7 (2) A compilation that is included in the Register and that relates to a  
8 particular legislative instrument is to be taken, unless the contrary is  
9 proved, to be a complete and accurate record of that legislative  
10 instrument as amended and in force at the date specified in the  
11 compilation.  
12  
13 (3) In any proceedings, proof is not required about the provisions and  
14 coming into operation (in whole or in part) of a legislative  
15 instrument as it appears in the Register.  
16  
17 (4) A court or tribunal may inform itself about those matters in any way  
18 that it thinks fit.  
19  
20 (5) It is presumed, unless the contrary is proved, that a document that  
21 purports to be an extract from the Register is what it purports to be.  
22  
23 (6) If:  
24 (a) subsection (5) applies to a document; and  
25 (b) the document purports to be a copy of, or a copy of a part of, a  
26 legislative instrument that was registered on a particular day  
27 and at a particular time;  
28 then it is presumed, unless the contrary is proved and subject to the  
operation of section 36 in the circumstances described in that  
section, that the legislative instrument was registered on that day  
and at that time.

**23 Rectification of Register**

- 29 (1) If:  
30 (a) the Secretary becomes aware that the Register is erroneous  
31 because of a mistake or omission; and  
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Section 23

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(b) the Secretary is satisfied that:

(i) so far as legislative instruments are concerned—the error lies in the text, in electronic form, of such a legislative instrument as it appears in the Register and not in the original legislative instrument, or other evidence of the text of that instrument, lodged under subsection 25(2) or 29(3); and

(ii) so far as compilations are concerned—the error lies in the text, in electronic form, of such a compilation as it appears in the Register in that the text does not represent the state of the law that it purports to represent;

the Secretary must arrange for the Register to be altered to rectify the error as soon as possible.

(2) An alteration of the Register under subsection (1):

(a) does not affect any right or privilege that was acquired, or that accrued, by reason of reliance on the content of the Register before that alteration was made; or

(b) does not impose or increase any obligation or liability that was incurred before that alteration was made.

Section 24

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**Division 2—Registration of legislative instruments made, or treated as made, on or after commencing day**

**24 Legislative instruments required to be registered under this Division**

If a legislative instrument:

(a) is made on or after the commencing day; or

(b) is to be treated, under subsection 55(2), as if made on that day; the legislative instrument must be registered in accordance with this Division.

Note: See subsection 29(2) concerning the lodgment for registration of instruments made before the commencing day that are amended by instruments made on or after that day.

**25 Lodgment for registration under this Division**

(1) If a legislative instrument is required to be registered under this Division, the rule-maker must, as soon as practicable after making that legislative instrument, lodge the instrument in electronic form with the Department for registration.

(2) At the time of, or as soon as practicable after, the lodgment of the legislative instrument under subsection (1), the rule-maker must also lodge:

(a) the original legislative instrument; or

(b) if the rule-maker cannot comply with paragraph (a)—a certified true copy of the original legislative instrument; or

(c) if:

(i) the rule-maker cannot comply with paragraph (a) or (b); and

(ii) the enabling legislation required that the full text of the original legislative instrument be published in the *Gazette* or elsewhere;

the full text of that original legislative instrument as so published; or



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- 1 (d) if the rule-maker cannot comply with paragraph (a), (b) or  
2 (c)—such other evidence of the text of the original legislative  
3 instrument as the Secretary considers acceptable.

4 **26 Explanatory statements**

- 5 (1) If a legislative instrument is lodged for registration under this  
6 Division, the rule-maker must also lodge for registration, at the  
7 same time or as soon as practicable thereafter, the explanatory  
8 statement in electronic form that relates to that instrument.
- 9 (2) A failure by the rule-maker to lodge the explanatory statement in  
10 relation to an instrument in accordance with subsection (1) does not  
11 affect the validity or enforceability of the instrument.

12 Note: The obligation imposed on a rule-maker to comply with this section is  
13 not affected by the rule-maker's compliance with subsection 39(2).

14 **27 Registration under this Division**

- 15 (1) The Secretary is to cause to be registered each legislative instrument  
16 lodged under subsection 25(1) and each explanatory statement  
17 lodged under subsection 26(1).
- 18 (2) The regulations may specify the procedure to be followed in  
19 registering a legislative instrument lodged under subsection 25(1) or  
20 an explanatory statement lodged under subsection 26(1).

21 Note: Section 31 describes what happens if a legislative instrument required  
22 to be registered under this Division is not registered as required.  
23

Section 28

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2 **Division 3—Registration of certain legislative instruments**  
3 **made before commencing day**

4 **28 Legislative instruments required to be registered under this**  
5 **Division**

6

If:

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(a) a legislative instrument was made before the commencing  
8 day; and

9

(b) the legislative instrument is not required to be treated under  
10 subsection 55(2) as if it had been made on the commencing  
11 day; and

12

(c) the legislative instrument is in force;

13

the legislative instrument must, unless it has already been  
14 registered, be registered under this Division.

15

15 **29 Lodgment for registration under this Division**

16

(1) If:

17

(a) a legislative instrument is required to be registered under  
18 section 28; and

19

(b) the legislative instrument is made during a period referred to  
20 in the table below;

21

the rule-maker must, unless the regulations otherwise provide,  
22 before the day set out in the table in respect of the period, lodge for  
23 registration, in electronic form, with the Department:

24

(c) the legislative instrument; and

25

(d) if the legislative instrument amends another legislative  
26 instrument (the *principal legislative instrument*) that has not  
27 already been registered:

28

(i) the principal legislative instrument; and

29

(ii) each other legislative instrument (if any) that is required  
30 to be registered under this Division and that amends the  
31 principal legislative instrument.

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Section 29

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**Lodgment of legislative instruments made before commencing day**

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<b>Item</b>	<b>Period within which legislative instrument made</b>	<b>Day before which lodgment required</b>
1	The period of 5 years ending immediately before the commencing day	The first day of the 12th month after the commencing day
2	The period ending immediately before the start of the period referred to in item 1	The first day of the 36th month after the commencing day

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- 1 (2) If:
- 2 (a) a legislative instrument is made on or after the commencing
- 3 day; and
- 4 (b) the legislative instrument amends another legislative
- 5 instrument (the *principal legislative instrument*) made before
- 6 the commencing day that has not already been registered;
- 7 the rule-maker must, unless the regulations otherwise provide,
- 8 before the day determined in accordance with subsection (4), lodge
- 9 for registration, in electronic form, with the Department:
- 10 (c) the principal legislative instrument; and
- 11 (d) any other legislative instrument made before the commencing
- 12 day that is required to be registered under this Division and
- 13 that amends the principal legislative instrument.
- 14 (3) At the time of, or as soon as practicable after, the lodgment of the
- 15 legislative instrument, or each legislative instrument, required to be
- 16 lodged under subsection (1) or (2), the rule-maker must also lodge:
- 17 (a) the original legislative instrument; or
- 18 (b) if the rule-maker cannot comply with paragraph (a)—a
- 19 certified true copy of the original legislative instrument; or
- 20 (c) if:
- 21 (i) the rule-maker cannot comply with paragraph (a) or (b);
- 22 and
- 23 (ii) the enabling legislation required that the full text of the
- 24 original instrument be published in the *Gazette* or
- 25 elsewhere;
- 26 the full text of that original legislative instrument as so
- 27 published; or

**Part 4** The Federal Register of Legislative Instruments

**Division 3** Registration of certain legislative instruments made before commencing day

**Section 30**

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- 1 (d) if the rule-maker cannot comply with paragraph (a), (b) or  
2 (c)—such other evidence of the text of the original legislative  
3 instrument as the Secretary considers acceptable.
- 4 (4) For the purposes of subsection (2), the day by which instruments  
5 must be lodged for registration is:
- 6 (a) the day that would have been determined under subsection (1)  
7 if there had been no amendment of the principal legislative  
8 instrument (within the meaning of that subsection) after the  
9 commencing day; or
- 10 (b) the day occurring 28 days, or such longer period as the  
11 regulations provide, after the registration of the  
12 first-mentioned legislative instrument in subsection (2);  
13 whichever first occurs.
- 14 (5) Subsection 32(3) (which provides for some legislative instruments  
15 to continue in force even if they are not lodged for registration as  
16 required by this section) does not affect the requirements of this  
17 section. This subsection is for the avoidance of doubt.

**30 Registration under this Division**

- 18
- 19 (1) The Secretary is to cause to be registered each instrument lodged  
20 under section 29.
- 21 Note: Section 32 describes what happens if a legislative instrument required  
22 to be registered under this Division is not lodged for registration on or  
23 before the last day for lodging the instrument for registration.
- 24 (2) The regulations may specify the procedure to be followed in  
25 registering legislative instruments lodged under section 29.  
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**Division 4—Effect of registration**

**31 Effect of failure to register a legislative instrument required to be registered under Division 2**

- (1) A legislative instrument that is required to be registered under Division 2 is not enforceable by or against the Commonwealth, or by or against any other person or body, unless the instrument is registered.

Note: Division 2 deals with the registration of legislative instruments made on or after the commencing day.

- (2) If:

- (a) a legislative instrument is required to be registered under Division 2; and  
(b) because of technical difficulties the instrument is temporarily unable to be so registered;

the Secretary may cause the instrument to be published in full in the *Gazette*.

- (3) If the Secretary causes a legislative instrument to be published in the *Gazette* in the circumstances referred to in subsection (2):

- (a) this Act has effect as if the instrument had been registered at the time when it was published in the *Gazette*; and  
(b) the Secretary must, as soon as practicable after the instrument is able to be entered in the Register, cause the instrument to be so entered with an annotation as to the day and time at which the instrument is taken to have been registered.

**32 Effect of failure to lodge for registration a legislative instrument required to be registered under Division 3**

- (1) This section applies to a legislative instrument if:

- (a) the instrument is required to be registered under Division 3; and  
(b) the instrument is not lodged for registration on or before the last day for lodging the instrument for registration (the *last lodgment day*) worked out under section 29.

Section 32

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Note: Division 3 deals with the registration of certain legislative instruments made before the commencing day.

- (2) On the day after the last lodgment day, the instrument:
  - (a) ceases to be enforceable by or against the Commonwealth, or by or against any other person or body; and
  - (b) is taken to have been repealed by this Act.
  
- (3) Despite subsection (2), and, if the operation of subsection 12(2) would otherwise cause the instrument not to have taken effect, despite that subsection, the instrument is taken to have continued in force after the last lodgment day if:
  - (a) the instrument is connected with the collection of revenue; and
  - (b) the Attorney-General certifies in writing that:
    - (i) he or she is satisfied that the responsible officer was unaware of the requirement to register the instrument; and
    - (ii) in the circumstances it was reasonable for the responsible officer to be unaware of the requirement; and
  - (c) the instrument is lodged for registration within 28 days after the responsible officer becomes aware of the requirement for registration.
  
- (4) For the purposes of subsection (3), the *responsible officer* for a legislative instrument is:
  - (a) if the enabling legislation for the instrument is a taxation law (as defined in the *Taxation Administration Act 1953*)—the Commissioner of Taxation; or
  - (b) if the enabling legislation is a law of customs (as defined in the *Customs Administration Act 1985*)—the Chief Executive Officer of Customs; or
  - (c) if the enabling legislation for the instrument is not described in paragraph (a) or (b)—the Secretary of the Department that is administered by the responsible Minister.

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2 **Division 5—Compilations**

3 **33 Compilations to be registered**

4 (1) Subject to subsections (2) and (3), if a legislative instrument (the  
5 *principal legislative instrument*) is amended:

6 (a) by an Act; or

7 (b) by another legislative instrument (the *amending legislative*  
8 *instrument*);

9 the Secretary must cause to be registered a compilation, in  
10 electronic form, in relation to the principal legislative instrument, as  
11 soon as practicable:

12 (c) after the provision or provisions of that Act that amend that  
13 instrument have commenced; or

14 (d) after the amending legislative instrument is registered and has  
15 commenced.

16 (2) If:

17 (a) the Secretary causes a compilation to be registered in relation  
18 to a principal legislative instrument; and

19 (b) an amending legislative instrument, the effect of which is  
20 incorporated within the compilation, is subsequently  
21 disallowed, in whole or in part; and

22 (c) the effect of the disallowance is that:

23 (i) a compilation is no longer required because the principal  
24 legislative instrument is no longer amended in any  
25 respect; or

26 (ii) a compilation is still required but the compilation as  
27 registered ceases to represent the state of the law;

28 the Secretary must:

29 (d) if a compilation is no longer required—cause the Register to  
30 be annotated to explain why a compilation is no longer  
31 required; and

32 (e) if a compilation is still required but the compilation as  
33 registered ceases to represent the state of the law:

Section 34

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- 1 (i) cause the Register to be annotated to explain why the  
2 compilation as registered has ceased to represent the  
3 state of the law; and  
4 (ii) cause to be registered, with effect from the date of the  
5 disallowance, a new compilation taking account of that  
6 disallowance.
- 7 (3) Subsections (1) and (2) do not require the registration of a  
8 compilation in relation to a principal legislative instrument until the  
9 registration of that principal legislative instrument occurs.

10 **34 Secretary may require provision of compilations for registration**  
11 **purposes**

- 12 (1) If:  
13 (a) a rule-maker is required to lodge for registration a legislative  
14 instrument; and  
15 (b) the legislative instrument amends another legislative  
16 instrument (the *principal legislative instrument*);  
17 the Secretary may, by written notice given to the rule-maker of the  
18 amending instrument:  
19 (c) require the rule-maker to lodge a compilation, in electronic  
20 form, in relation to the principal legislative instrument; and  
21 (d) if other legislative instruments also amend the principal  
22 legislative instrument with effect from the same  
23 time—require the compilation to incorporate the text of those  
24 other legislative instruments.
- 25 (2) If an Act amends a legislative instrument (the *principal legislative*  
26 *instrument*), the Secretary may, by written notice given to the  
27 rule-maker of the principal legislative instrument, require the  
28 rule-maker to lodge a compilation, in electronic form, in relation to  
29 the principal legislative instrument.
- 30 (3) If:  
31 (a) a compilation in relation to a legislative instrument (the  
32 *principal legislative instrument*) has been registered; and  
33 (b) the Secretary is satisfied that, because of the disallowance, in  
34 whole or in part, of a legislative instrument amending the



Section 35

1 principal legislative instrument, the compilation as registered  
2 has ceased to represent the state of the law;  
3 the Secretary may, by written notice given to the rule-maker of the  
4 legislative instrument that has been wholly or partly disallowed,  
5 require the rule-maker to lodge a revised compilation, in electronic  
6 form, in relation to the principal legislative instrument that takes  
7 account of the disallowance.

8 (4) A notice under subsection (1) must require the lodgment of the  
9 compilation concerned as soon as practicable after lodgment for  
10 registration of the amending legislative instrument or the principal  
11 legislative instrument, whichever last occurs.

12 (5) A notice under subsection (2) must require the lodgment of the  
13 compilation concerned as soon as practicable after the coming into  
14 force of the provision or provisions of the amending Act or the  
15 lodgment for registration of the principal legislative instrument,  
16 whichever last occurs.

17 (6) A notice under subsection (3) must require the lodgment of the  
18 compilation concerned as soon as practicable after the giving of the  
19 notice.

20 **35 Information to be included with a compilation**

21 Any compilation, in relation to a legislative instrument (the  
22 *principal legislative instrument*), that is registered, must include  
23 the following information:

- 24 (a) a reference to the Act or legislative instrument by which each  
25 amendment was made to the principal legislative instrument;  
26 (b) the amending history of each provision in the principal  
27 legislative instrument as amended by each Act or amending  
28 legislative instrument covered by the compilation;  
29 (c) the date the compilation was prepared;  
30 (d) such further information as is specified in the regulations.  
31

Section 36

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2 **Division 6—Early backcapturing**

3 **36 Inclusion in database established in anticipation of the enactment**  
4 **of this Act**

5 (1) If, before the commencing day, an electronic database comprising  
6 the text of:

7 (a) instruments that, on that day, will be legislative instruments  
8 within the meaning of subsection 4(1); and

9 (b) documents that, on that day, will be compilations, in relation  
10 to legislative instruments, within the meaning of subsection  
11 4(1);

12 is established within the Department in anticipation of the  
13 enactment of this Act, that database becomes, on that day, the  
14 Federal Register of Legislative Instruments established by  
15 section 20.

16 (2) If:

17 (a) before the commencing day, the text of an instrument referred  
18 to in subsection (1) is included in the database referred to in  
19 that subsection; and

20 (b) the instrument will, on the commencing day, be a legislative  
21 instrument to which section 28 applies;

22 that instrument is to be taken, on that day, to have been registered  
23 under Division 3 of this Part despite its inclusion in the database  
24 with effect from an earlier day.

25 (3) If:

26 (a) before the commencing day, the text of a compilation referred  
27 to in subsection (1) is included in the database referred to in  
28 that subsection; and

29 (b) the compilation will, on the commencing day, be a  
30 compilation to which section 33 applies;

31 that compilation is to be taken, on that day, to have been registered  
32 under Division 5 of this Part despite its inclusion in the database  
33 with effect from an earlier day.

Section 36

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- (4) For the purpose only of facilitating access to rules of court to which section 9 applies:
- (a) the reference in subsection (1) to instruments that, on the commencing day, will be legislative instruments is to be taken to include a reference to such rules; and
  - (b) such rules are, if included in the electronic database of the text of instruments referred to in that subsection, to be taken on that day to have been registered under Division 3 of this Part as that Division is applied in relation to such rules.

Section 37

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**Part 5—Parliamentary scrutiny of legislative instruments**

**37 The purpose of the Part**

The purpose of this Part is to facilitate the scrutiny by the Parliament of registered legislative instruments and to set out the circumstances and manner in which such instruments, or provisions of such instruments, may be disallowed, as well as the consequences of such disallowance.

Note: Section 44 provides that certain instruments are exempted from the operation of sections 42 and 43

**38 Tabling of legislative instruments**

- (1) The Department must arrange for a copy of each legislative instrument registered under Division 2 of Part 4 to be delivered to each House of the Parliament to be laid before each House within 6 sitting days of that House after the registration of the instrument.
- (2) For the avoidance of doubt, subsection (1) applies in relation to any legislative instrument made on or after the commencing day even though the enabling legislation for legislative instruments of that kind:
  - (a) may have been enacted or made before the commencing day; and
  - (b) may have provided that legislative instruments of that kind are not disallowable.
- (3) If a copy of a legislative instrument that is required to be laid before each House of the Parliament is not so laid in accordance with this section, the legislative instrument ceases to have effect immediately after the last day for it to be so laid.

**39 Additional material to be tabled with the legislative instrument**

- (1) If a rule-maker lodges an explanatory statement relating to a legislative instrument:
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## Section 40

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- 1 (a) at the time of lodging the legislative instrument for  
2 registration; or  
3 (b) at a later time before a copy of the legislative instrument is  
4 delivered to each House of the Parliament to be laid before it;  
5 the Department must also arrange for the delivery to that House, to  
6 be laid before it, with the copy of that legislative instrument, a copy  
7 of that explanatory statement.
- 8 (2) If a rule-maker fails to lodge an explanatory statement relating to a  
9 legislative instrument with the Department before the Department  
10 arranges for a copy of the legislative instrument to be delivered to a  
11 particular House of the Parliament, the rule-maker must, as soon as  
12 possible, deliver to that House, to be laid before it:  
13 (a) a copy of the explanatory statement; and  
14 (b) a written statement why the explanatory statement was not  
15 provided to the Department in time to be delivered to the  
16 House with the legislative instrument.

**40 Regulations may specify manner of delivery of certain documents**

17  
18 The regulations may specify the manner, which may include  
19 delivery by an electronic means, by which documents required to be  
20 laid before a House of the Parliament in accordance with section 38  
21 or 39 may be delivered to that House for that purpose.

**41 Incorporated material may be required to be made available**

22  
23 A House of the Parliament may, at any time while a legislative  
24 instrument is subject to disallowance, require any document  
25 incorporated by reference in the instrument to be made available for  
26 inspection by that House:  
27 (a) at a place acceptable to the House; and  
28 (b) at a time specified by the House.

**42 Disallowance of legislative instruments**

- 29  
30 (1) If:  
31 (a) notice of a motion to disallow a legislative instrument or a  
32 provision of a legislative instrument is given in a House of the
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- 1 Parliament within 15 sitting days of that House after a copy of  
2 the instrument was laid before that House; and  
3 (b) within 15 sitting days of that House after the giving of that  
4 notice, the House passes a resolution, in pursuance of the  
5 motion, disallowing the instrument or provision;  
6 the instrument or provision so disallowed then ceases to have effect.
- 7 (2) If:  
8 (a) notice of a motion to disallow a legislative instrument or a  
9 provision of a legislative instrument is given in a House of the  
10 Parliament within 15 sitting days of that House after a copy of  
11 the instrument was laid before that House; and  
12 (b) at the end of 15 sitting days of that House after the giving of  
13 that notice of motion:  
14 (i) the notice has not been withdrawn, the motion has not  
15 been called on, and the House has not passed a resolution  
16 deferring its consideration; or  
17 (ii) the motion has been called on, moved and seconded and  
18 has not been withdrawn or otherwise disposed of;  
19 the instrument or provision specified in the motion is then taken to  
20 have been disallowed and ceases at that time to have effect.
- 21 (3) If:  
22 (a) notice of a motion to disallow a legislative instrument or a  
23 provision of a legislative instrument is given in a House of the  
24 Parliament within 15 sitting days of that House after a copy of  
25 the instrument was laid before that House; and  
26 (b) before the end of 15 sitting days of that House after the giving  
27 of that notice of motion, the House of Representatives is  
28 dissolved or expires, or the Parliament is prorogued; and  
29 (c) at the time of the dissolution, expiry or prorogation, as the  
30 case may be:  
31 (i) the notice has not been withdrawn, the motion has not  
32 been called on, and the House has not passed a resolution  
33 deferring its consideration; or  
34 (ii) the motion has been called on, moved and seconded and  
35 has not been withdrawn or otherwise disposed of;  
36 the legislative instrument is taken, for the purposes of  
37 subsections (1) and (2), to have been laid before the first-mentioned
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1 House on the first sitting day of that first-mentioned House after the  
2 dissolution, expiry or prorogation, as the case may be.

3 **43 Deferral of consideration of disallowance motion to enable**  
4 **remaking of legislative instrument**

5 (1) This section applies to a legislative instrument if:

- 6 (a) notice of a motion to disallow the legislative instrument or a  
7 provision of the legislative instrument is given in a House of  
8 the Parliament within 15 sitting days of that House after a  
9 copy of the instrument was laid before that House; and  
10 (b) within 15 sitting days of that House after the giving of that  
11 notice, the House passes a resolution deferring consideration  
12 of the motion for a period specified in the resolution (the  
13 *deferral period*) starting at the passing of the resolution and  
14 not exceeding 6 months; and  
15 (c) the resolution is expressed to defer consideration of the  
16 motion so as to enable the remaking or the amendment of the  
17 instrument or provision within the deferral period to achieve  
18 an objective specified in the resolution.

19 (2) If:

- 20 (a) notice of a motion to disallow a legislative instrument to  
21 which this section applies or a provision of such a legislative  
22 instrument is given in a House of the Parliament before the  
23 end of the first sitting day of that House after the end of the  
24 deferral period; and  
25 (b) at the end of 15 sitting days of that House after the giving of  
26 that notice of motion:  
27 (i) the notice has not been withdrawn and the motion has not  
28 been called on; or  
29 (ii) the motion has been called on, moved and seconded and  
30 has not been withdrawn or otherwise disposed of;  
31 the instrument or provision specified in the motion is then taken to  
32 have been disallowed and ceases at that time to have effect.

33 (3) If:

- 34 (a) notice of a motion to disallow a legislative instrument to  
35 which this section applies or a provision of such a legislative

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- 1 instrument is given in a House of the Parliament within 15  
2 sitting days of that House after a copy of the instrument was  
3 laid before that House; and  
4 (b) before the end of the deferral period applicable to that notice  
5 of motion the House of Representatives is dissolved or  
6 expires, or the Parliament is prorogued; and  
7 (c) at the time of the dissolution, expiry or prorogation, as the  
8 case may be:  
9 (i) the notice has not been withdrawn and the motion has not  
10 been called on; or  
11 (ii) the motion has been called on, moved and seconded and  
12 has not been withdrawn or otherwise disposed of;  
13 the legislative instrument is taken, for the purposes of subsections  
14 42(1) and (2), to have been laid before the first-mentioned House on  
15 the first sitting day of that first-mentioned House after the  
16 dissolution, expiry or prorogation, as the case may be.
- 17 (4) When a new instrument is made to remake or amend the instrument  
18 to which this section applies as referred to in paragraph (1)(c):  
19 (a) the rule-maker is required to lodge the instrument with the  
20 Department for registration in accordance with the  
21 requirements of this Act; and  
22 (b) the explanatory statement to be lodged with the Department  
23 concerning the instrument must indicate whether the  
24 instrument has been prepared in accordance with this section  
25 to achieve an objective specified in the resolution deferring  
26 consideration; and  
27 (c) the Department must arrange for the delivery of the  
28 instrument and the related explanatory statement to each  
29 House of the Parliament.

30 **44 Legislative instruments that are not subject to disallowance**

- 31 (1) Sections 42 and 43 do not apply in relation to a legislative  
32 instrument, or a provision of a legislative instrument, made on or  
33 after the commencing day, if the enabling legislation for the  
34 instrument (not being the *Corporations Act 2001*):



## Section 44

- 1 (a) facilitates the establishment or operation of an  
 2 intergovernmental body or scheme involving the  
 3 Commonwealth and one or more States; and  
 4 (b) authorises the instrument to be made by the body or for the  
 5 purposes of the body or scheme;  
 6 unless the enabling legislation has the effect that the instrument is  
 7 disallowable.
- 8 (2) Sections 42 and 43 do not apply in relation to a legislative  
 9 instrument, or a provision of a legislative instrument, that is  
 10 included in the table below unless the instrument or provision is  
 11 subject to disallowance under its enabling legislation:  
 12

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**Legislative instruments that are not subject to disallowance**


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<b>Item</b>	<b>Particulars of instrument</b>
1	Declarations under paragraph 5A(2)(d) or (e) of the <i>Australian Citizenship Act 1948</i>
2	Determinations specifying drugs, made under section 4A of the <i>Australian Federal Police Act 1979</i>
3	Statutes made under the <i>Australian National University Act 1991</i> or rules or orders made under those statutes
4	Instruments made under section 32 of the <i>Australian Postal Corporation Act 1989</i>
5	Rules made under section 60 of the <i>Australian Research Council Act 2001</i>
6	Standards issued under section 122 of the <i>Broadcasting Services Act 1992</i>
7	Amendments under section 128 of the <i>Broadcasting Services Act 1992</i> to standards under Part 9 of that Act
8	Fee waiver principles made under subsection 91(1A) of the <i>Classification (Publications, Films and Computer Games) Act 1995</i>
9	Notifications under section 28 or 43 of the <i>Commonwealth Authorities and Companies Act 1997</i>
10	Determinations made under paragraph 153J(1)(c), 153L(1)(c), 153P(2)(c) or 153Q(1)(c) of the <i>Customs Act 1901</i>

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<b>Legislative instruments that are not subject to disallowance</b>	
<b>Item</b>	<b>Particulars of instrument</b>
11	Revocations made under subsection 153K(3) or 153LA(3) of the <i>Customs Act 1901</i>
12	Instruments made under subsection 161J(2) or (3) of the <i>Customs Act 1901</i>
13	Tariff Concession Orders made under section 269P or 269Q of the <i>Customs Act 1901</i>
14	Instruments made under section 269SC or 269SD of the <i>Customs Act 1901</i>
15	By-laws made under section 271 of the <i>Customs Act 1901</i> for the purposes of Schedule 4 to the <i>Customs Tariff Act 1995</i>
16	Revocations of Commercial Tariff Concession Orders to which section 20 of the <i>Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Act 1992</i> applies
17	Instruments made under section 303CA, 344 or 350 of the <i>Environment Protection and Biodiversity Conservation Act 1999</i>
18	By-laws made under section 165 of the <i>Excise Act 1901</i> for the purposes of the Excise Tariff within the meaning of section 4 of the <i>Excise Act 1901</i>
19	Determinations made under subsection 20(3), agreements made under section 31, directions given under section 32, or instructions given under section 52, of the <i>Financial Management and Accountability Act 1997</i>
20	Determinations made under Order 6.2.1 of the Financial Management and Accountability Orders 1997 made under section 63 of the <i>Financial Management and Accountability Act 1997</i>
21	Guidelines issued under regulations made pursuant to section 64 of the <i>Financial Management and Accountability Act 1997</i>
22	Proclamations made under section 5, warrants made under section 6 or rules made under section 7, of the <i>Flags Act 1953</i>
23	Proclamations made under subsection 31(1) or (3) of the <i>Great Barrier Reef Marine Park Act 1975</i>

<b>Legislative instruments that are not subject to disallowance</b>	
<b>Item</b>	<b>Particulars of instrument</b>
24	Guidelines issued under section 13 of the <i>Higher Education Funding Act 1988</i>
25	Statutes made under the <i>Maritime College Act 1978</i> or rules made under those statutes
26	Legislative instruments (other than regulations) under Part 1, 2 or 9 of the <i>Migration Act 1958</i> , or legislative instruments under Part 1, 2 or 5, or Schedule 1, 2, 4, 5A, 6, 6A or 8, of the regulations made under that Act
27	Declarations made by Ministers under section 32 of the <i>Mutual Recognition Act 1992</i>
28	Instruments made under subsection 203AH(1) of the <i>Native Title Act 1993</i>
29	Directions issued under section 20 of the <i>Parliamentary Service Act 1999</i>
30	Instruments made under section 23 or subsection 24(3) of the <i>Parliamentary Service Act 1999</i>
31	Access regimes made under section 12, variations of such access regimes under section 14, revocation of access regimes made under section 15, determinations and variations of standards under section 18, or instruments made under section 25, of the <i>Payment Systems (Regulation) Act 1998</i>
32	Directions issued under section 21 of the <i>Public Service Act 1999</i>
33	Instruments made under section 23 or subsection 24(3) of the <i>Public Service Act 1999</i>
34	Instruments made under section 2A, 2B, or 12, subsection 13(1), section 20B, subsection 26(2) or section 26A of the <i>Quarantine Act 1908</i>
35	Instruments made under subsection 60(1) or 106(1) of the <i>Radiocommunications Act 1992</i>
36	Instruments made under subsection 463(1) of the <i>Telecommunications Act 1997</i>
37	Declarations made by Ministers under section 31 of the <i>Trans-Tasman Mutual Recognition Act 1997</i>
38	Instruments made under Annual Appropriation Acts

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<b>Legislative instruments that are not subject to disallowance</b>	
<b>Item</b>	<b>Particulars of instrument</b>
39	Instruments (other than regulations) relating to superannuation
40	Legislative instruments that, in accordance with the provisions of the enabling legislation, do not commence unless they are approved by either or both of the Houses of the Parliament
41	Ministerial directions to any person or body
42	Proclamations that provide solely for the commencement of Acts or of provisions of Acts
43	Certificates issued by the Attorney-General under section 10 or 11, or under subsection 51(1), of this Act
44	Instruments that are prescribed by the regulations for the purposes of this table

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1     **45 Effect of a legislative instrument ceasing to have effect**

2             (1) If a legislative instrument (the *affected instrument*), or a provision  
3             of a legislative instrument (the *affected provision*), ceases, at a  
4             particular time, to have effect under subsection 38(3), 42(1) or (2) or  
5             43(2), the operation of that subsection in relation to the affected  
6             instrument or provision has the same effect as if the affected  
7             instrument or provision had been repealed with effect from that  
8             time.

9             (2) If:

- 10            (a) the affected instrument or provision ceases, at a particular  
11            time, to have effect under subsection 38(3), 42(1) or (2) or  
12            43(2); and  
13            (b) the affected instrument or provision repealed, in whole or in  
14            part, another legislative instrument or law, or a provision of  
15            another legislative instrument or law, that was in force  
16            immediately before the time when the affected instrument or  
17            provision commenced;

18            the operation of that subsection has the effect of reviving the other  
19            legislative instrument, law or provision, from that first-mentioned  
20            time, as if the affected instrument or provision had not been made.

- 
- 1 (3) Subsection (2) does not have the effect of reviving a legislative  
2 instrument, law or provision if, before the date when it would have  
3 been revived, it would have ceased to have effect under Part 6 had it  
4 not been repealed.

5 **46 Legislative instruments not to be remade while required to be**  
6 **tabled**

- 7 (1) If a legislative instrument (the *original legislative instrument*) has  
8 been registered, no legislative instrument the same in substance as  
9 the original legislative instrument is to be made during the period  
10 defined by subsection (2) unless both Houses of the Parliament by  
11 resolution approve the making of an instrument the same in  
12 substance as the original legislative instrument.
- 13 (2) The period referred to in subsection (1) is the period starting on the  
14 day on which the original legislative instrument was registered and  
15 ending at the end of 7 days after:
- 16 (a) if the original legislative instrument has been laid, in  
17 accordance with subsection 38(1), before both Houses of the  
18 Parliament on the same day—that day; or
- 19 (b) if the original legislative instrument was so laid before both  
20 Houses on different days—the later of those days; or
- 21 (c) if the original legislative instrument has not been so laid  
22 before both Houses—the last day on which subsection 38(1)  
23 could have been complied with.
- 24 (3) An instrument made in contravention of this section has no effect.

25 **47 Legislative instruments not to be remade while subject to**  
26 **disallowance**

- 27 (1) If notice of a motion to disallow a legislative instrument, or a  
28 provision of a legislative instrument, has been given in a House of  
29 the Parliament within 15 sitting days after the instrument has been  
30 laid before that House, a legislative instrument, or a provision of a  
31 legislative instrument, that is the same in substance as the  
32 first-mentioned instrument or provision, must not be made unless:
- 33 (a) the notice has been withdrawn; or

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- 1 (b) the instrument or provision is taken to have been disallowed  
2 under subsection 42(2) or 43(2); or  
3 (c) the motion has been withdrawn or otherwise disposed of; or  
4 (d) subsection 42(3) or 43(3) has applied in relation to the  
5 instrument.
- 6 (2) If:  
7 (a) because of subsection 42(3) or 43(3), a legislative instrument  
8 is taken to have been laid before a House of the Parliament on  
9 a particular day; and  
10 (b) notice of a motion to disallow the instrument or a provision of  
11 the instrument has been given in that House within 15 sitting  
12 days after that day;  
13 a legislative instrument, or a provision of a legislative instrument,  
14 that is the same in substance as the first-mentioned instrument or  
15 provision must not be made unless:  
16 (c) the notice has been withdrawn; or  
17 (d) the first-mentioned instrument or provision is taken to have  
18 been disallowed under subsection 42(2) or 43(2); or  
19 (e) the motion has been withdrawn or otherwise disposed of; or  
20 (f) subsection 42(3) or 43(3) has applied again in relation to the  
21 first-mentioned instrument.
- 22 (3) A legislative instrument or a provision of a legislative instrument  
23 made in contravention of this section has no effect.
- 24 (4) This section does not limit the operation of section 46 or 48.
- 25 (5) If a legislative instrument or a provision of a legislative instrument  
26 has been the subject of a resolution under subsection 43(1), this  
27 section does not prevent the making of an instrument whose sole  
28 effect is to remake or amend the legislative instrument or provision  
29 so as to achieve an objective specified in that resolution.

30 **48 Disallowed legislative instruments not to be remade unless**  
31 **disallowance resolution rescinded or House approves**

- 32 (1) If, under section 42 or 43, a legislative instrument or a provision of a  
33 legislative instrument is disallowed, or is taken to have been  
34 disallowed, a legislative instrument, or a provision of a legislative
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- 1 instrument, that is the same in substance as the first-mentioned  
2 instrument or provision, must not be made within 6 months after the  
3 day on which the first-mentioned instrument or provision was  
4 disallowed or was taken to have been disallowed, unless:
- 5 (a) if the first-mentioned instrument or provision was disallowed  
6 by resolution—the resolution has been rescinded by the  
7 House of the Parliament by which it was passed; or
  - 8 (b) if the first-mentioned instrument or provision was taken to  
9 have been disallowed—the House of the Parliament in which  
10 notice of the motion to disallow the instrument or provision  
11 was given by resolution approves the making of a legislative  
12 instrument or provision the same in substance as the  
13 first-mentioned instrument or provision.
- 14 (2) Any legislative instrument or provision made in contravention of  
15 this section has no effect.  
16

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**Part 6—Sunsetting of legislative instruments**

**49 The purpose of the Part**

The purpose of this Part is to ensure that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Note: Section 54 provides that certain instruments are exempted from the operation of this Part.

**50 The sunsetting of legislative instruments to which this Part applies**

(1) Subject to subsection 51(1), if a legislative instrument to which this Part applies (the *principal legislative instrument*):

- (a) is made before the commencing day and does not amend an earlier legislative instrument that continues in force after the making of the principal legislative instrument; and
- (b) is required to be lodged for registration before a day (the *deadline day*) determined in accordance with section 29;

then:

- (c) the principal legislative instrument; and
- (d) the provisions of any other legislative instrument (whether or not made before the commencing day) that amend, or otherwise affect the operation of, the principal legislative instrument;

as in force immediately before whichever of 1 April or 1 October falls on, or next follows, the tenth anniversary of the deadline day, cease to be in force on that 1 April or 1 October as if they had been repealed by another legislative instrument.

(2) Subject to subsection 51(1), if a legislative instrument to which this Part applies (the *principal legislative instrument*) is made on or after the commencing day and does not amend an earlier legislative instrument that continues in force after the making of the principal legislative instrument, then:

- (a) the principal legislative instrument; and



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- 1 (b) the provisions of any other legislative instrument that amend,  
 2 or otherwise affect the operation of, the principal legislative  
 3 instrument;  
 4 as in force immediately before whichever of 1 April or 1 October  
 5 falls on, or next follows, the tenth anniversary of the day of  
 6 commencement of the principal legislative instrument, cease to be  
 7 in force on that 1 April or 1 October as if they had been repealed by  
 8 another legislative instrument.
- 9 (3) Subject to subsection 51(1), if a legislative instrument to which this  
 10 Part applies (the *partially amending legislative instrument*)  
 11 contains:
- 12 (a) provisions that amend an earlier legislative instrument that  
 13 continues in force after the making of the partially amending  
 14 legislative instrument; and  
 15 (b) other provisions that do not amend an earlier legislative  
 16 instrument;
- 17 then:
- 18 (c) the provisions of the partially amending legislative instrument  
 19 that do not amend an earlier legislative instrument; and  
 20 (d) the provisions of any other legislative instrument that amend,  
 21 or otherwise affect, the operation of the provisions referred to  
 22 in paragraph (c);  
 23 as in force immediately before whichever of 1 April or 1 October  
 24 falls on, or next follows, the tenth anniversary of a day (the *critical*  
 25 *day*) in relation to the partially amending legislative instrument,  
 26 determined in accordance with subsection (4), cease to be in force  
 27 on that 1 April or 1 October as if they had been repealed by another  
 28 legislative instrument.
- 29 (4) For the purposes of subsection (3):
- 30 (a) if a partially amending legislative instrument is made before  
 31 the commencing day—the critical day in relation to that  
 32 instrument is the day on which, under section 29, it is required  
 33 to be lodged for registration; and  
 34 (b) if a partially amending legislative instrument is made on or  
 35 after the commencing day—the critical day in relation to that  
 36 instrument is the date of commencement of the provisions that  
 37 do not amend an earlier legislative instrument.
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- 1 (5) If a principal legislative instrument referred to in subsection (2) has  
2 2 or more days of commencement, then, for the purposes of that  
3 subsection, the day of commencement of that instrument is the  
4 earliest of those days.
- 5 (6) If the provisions of a partially amending legislative instrument  
6 referred to in subsection (3) that do not amend an earlier legislative  
7 instrument have 2 or more days of commencement then, for the  
8 purposes of subsection (4), the day of commencement of those  
9 provisions is the earliest of those days.

10 **51 Attorney-General may defer sunsetting in certain circumstances**

- 11 (1) If:
- 12 (a) a legislative instrument or particular provisions of a  
13 legislative instrument would be taken to cease to be in force  
14 under this Part (whether because of the operation of  
15 subsection 50(1), (2) or (3) on a particular day (the *sunsetting*  
16 *day*); and
- 17 (b) the Attorney-General is satisfied, on written application by the  
18 rule-maker:
- 19 (i) that the instrument or provisions would (apart from the  
20 operation of this Part) be likely to cease to be in force  
21 within 12 months after the sunsetting day; or
- 22 (ii) that an instrument proposed to be made in substitution  
23 for the instrument or provisions will not be able to be  
24 completed before the sunsetting day for reasons that the  
25 rule-maker could not have foreseen and avoided or  
26 because the dissolution or expiration of the House of  
27 Representatives or the prorogation of the Parliament  
28 renders it inappropriate to make a replacement  
29 instrument before a new government is formed;
- 30 then:
- 31 (c) the Attorney-General may issue a certificate providing that the  
32 first-mentioned instrument or provisions are taken to cease to  
33 be in force under this section on whichever of the 1 April and  
34 1 October next following the sunsetting day the  
35 Attorney-General specifies as the more appropriate; and

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- 1 (d) if the Attorney-General issues the certificate, the  
 2 first-mentioned instrument or provisions are taken to cease to  
 3 be in force on the specified day instead of the sunsetting day  
 4 as if repealed by another legislative instrument, unless they  
 5 have earlier ceased to be in force.
- 6 (2) If the Attorney-General issues a certificate under paragraph (1)(c),  
 7 he or she must:
- 8 (a) include in the certificate a statement of the reasons for the  
 9 issue of a certificate; and
- 10 (b) cause a copy of the certificate to be laid before each House of  
 11 the Parliament not later than 6 sitting days of that House after  
 12 the issue of the certificate.
- 13 (3) A certificate issued under paragraph (1)(c) is a legislative  
 14 instrument and, as such, is required under Part 4 to be registered.

15 **52 Attorney-General must lay lists of instruments due for sunsetting**  
 16 **before each House of the Parliament**

- 17 (1) In this section:
- 18 *list tabling day*, in relation to a sunsetting day and to a House of the  
 19 Parliament, means the first sitting day of that House occurring  
 20 within 18 months before that sunsetting day.
- 21 *principal legislative instrument* means an instrument that is a  
 22 principal legislative instrument within the meaning of subsection  
 23 50(1) or (2), whichever is appropriate.
- 24 *sunsetting day* means the first possible day on which any legislative  
 25 instrument will cease to be in force because of the operation of this  
 26 Part and each 1 April and 1 October occurring after that day.
- 27 (2) The Attorney-General must arrange for the laying before each  
 28 House of the Parliament, on each list tabling day in relation to that  
 29 House, of a list of:
- 30 (a) the principal legislative instruments; and  
 31 (b) the provisions (if any) of other legislative instruments that  
 32 amend or otherwise affect, the operation of those principal  
 33 legislative instruments;
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1 that will, because of the operation of section 50 or 51, cease to be in  
2 force on the sunsetting day to which that list tabling day relates.

3 (3) As soon as practicable after the laying before either House of the  
4 Parliament of a list in accordance with subsection (2), the  
5 Department must arrange for a copy of that list to be provided to the  
6 rule-maker responsible for each principal legislative instrument,  
7 and each provision of a legislative instrument, appearing on the list.

8 (4) If subsection (2) requires the Attorney-General to arrange for the  
9 laying of a list of the kind referred to in that subsection before the  
10 Houses of the Parliament on different days, subsection (3) need  
11 only be complied with in relation to the earlier of those days.

12 **53 Resolution that instruments continue in force**

13 (1) Either House of the Parliament may, by resolution passed within 6  
14 months after:

15 (a) the laying before that House, under subsection 52(2), of a list;  
16 or

17 (b) the laying before that House, under subsection 51(2), of a  
18 copy of a certificate issued under paragraph 51(1)(c);

19 indicate the legislative instruments and provisions of legislative  
20 instruments on that list or referred to in that certificate (*selected*  
21 *instruments or provisions*) that that House considers should  
22 continue in force.

23 (2) A selected instrument or provision continues in force, subject to any  
24 later instrument amending or repealing it, as if it had been remade  
25 on the date on which if the resolution had not been passed, it would  
26 cease to be in force.

27 **54 Instruments to which this Part does not apply**

28 (1) This Part does not apply in relation to a legislative instrument made  
29 before, on or after the commencing day, if the enabling legislation  
30 for the instrument (not being the *Corporations Act 2001*):

31 (a) facilitates the establishment or operation of an  
32 intergovernmental body or scheme involving the  
33 Commonwealth and one or more States; and

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1 (b) authorises the instrument to be made by the body or for the  
2 purposes of the body or scheme.

3 (2) This Part does not apply to any legislative instrument that is  
4 included in the table below:  
5

<b>Legislative instruments that are not subject to sunsetting</b>	
<b>Item</b>	<b>Particulars of instrument</b>
1	Instruments made under section 8 or 9 of the <i>Aboriginal Land Grant (Jervis Bay Territory) Act 1986</i>
2	Instruments relating to aviation security made under the <i>Air Navigation Act 1920</i> or under the regulations made under that Act
3	Instruments relating to aviation safety made under the <i>Air Services Act 1995</i> or the Air Services Regulations
4	National Capital Plan made under the <i>Australian Capital Territory (Planning and Land Management) Act 1988</i>
5	Determinations specifying drugs, made under section 4A of the <i>Australian Federal Police Act 1979</i>
6	Statutes made under the <i>Australian National University Act 1991</i> or rules or orders made under those statutes
7	Instruments made under section 32 of the <i>Australian Postal Corporation Act 1989</i>
8	Instruments made under section 25 or 26 of the <i>Broadcasting Services Act 1992</i>
9	Instruments relating to aviation safety made under the <i>Civil Aviation Act 1988</i> , the <i>Civil Aviation Regulations 1988</i> or the <i>Civil Aviation Safety Regulations 1998</i>
10	Fee waiver principles made under subsection 91(1A) of the <i>Classification (Publications, Films and Computer Games) Act 1995</i>
11	Notifications under section 28 or 43 of the <i>Commonwealth Authorities and Companies Act 1997</i>
12	Determinations made under paragraph 153J(1)(c), 153L(1)(c), 153P(2)(c) or 153Q(1)(c) of the <i>Customs Act 1901</i>
13	Revocations made under subsection 153K(3) or 153LA(3) of the <i>Customs Act 1901</i>

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<b>Legislative instruments that are not subject to sunsetting</b>	
<b>Item</b>	<b>Particulars of instrument</b>
14	Instruments made under subsection 161J(2) or (3) of the <i>Customs Act 1901</i>
15	Instruments made under section 178, 181, 183, 184, 207A, 248, 249, 303CA, 303DB, 303DC, 303EB, 303EC, 303FG, 344 or 350 of the <i>Environment Protection and Biodiversity Conservation Act 1999</i>
16	Excise By-law No. 75, 114, 127, 129, 151 or 154 made under section 165 of the <i>Excise Act 1901</i>
17	Determinations made under subsection 20(1), (2) or (3), agreements made under section 31, directions given under section 32, or instructions given under section 52, of the <i>Financial Management and Accountability Act 1997</i>
18	Determinations made under Order 6.2.1 of the Financial Management and Accountability Orders 1997 made under section 63 of the <i>Financial Management and Accountability Act 1997</i>
19	Guidelines issued under regulations made pursuant to section 64 of the <i>Financial Management and Accountability Act 1997</i>
20	Plans of management made under section 17 of the <i>Fisheries Management Act 1991</i> and instruments amending such plans made under section 20 of that Act
21	Proclamations made under section 5, warrants made under section 6, or rules made under section 7, of the <i>Flags Act 1953</i>
22	Proclamations made under section 31 of the <i>Great Barrier Reef Marine Park Act 1975</i> , zoning plans prepared under section 32 of that Act, instruments made under section 37 of that Act amending or revoking such zoning plans, plans of management prepared in accordance with Part VB of that Act, instruments made under section 39ZG of that Act amending such plans of management, or instruments made under section 39ZH of that Act revoking such plans of management
23	Statutes made under the <i>Maritime College Act 1978</i> or rules made under those statutes
24	Instruments made under section 7 or 9 of the <i>Motor Vehicle Standards Act 1989</i>

**Legislative instruments that are not subject to sunsetting**

<b>Item</b>	<b>Particulars of instrument</b>
25	Declarations made by Ministers under section 32 of the <i>Mutual Recognition Act 1992</i>
26	Instruments made under subparagraph 26(1)(c)(iv), subsection 26A(1), 26B(1) or 26C(2), paragraph 43(1)(b) or 43A(1)(b), section 203AD, 203AE, 203AF or 203AG, subsection 203AH(1) or (2), 207A(1), 207B(3), 245(4) or 251C(4) or (5), or paragraph (i) of the definition of <i>infrastructure facility</i> in section 253, of the <i>Native Title Act 1993</i>
27	Instruments made under section 421, or Marine Orders made under subsection 425(1AA), of the <i>Navigation Act 1912</i>
28	<i>Navigation (Collision) Regulations 1982</i> made pursuant to section 258, or <i>Navigation (Orders) Regulations 1980</i> made pursuant to subsection 425(1), of the <i>Navigation Act 1912</i>
29	Directions issued under section 20 of the <i>Parliamentary Service Act 1999</i>
30	Instruments made under section 23 or subsection 24(3) of the <i>Parliamentary Service Act 1999</i>
31	Approvals made under section 9 of the <i>Payment Systems and Netting Act 1998</i>
32	Access regimes imposed under section 12, variations of access regimes under section 14, revocation of access regimes under section 15, standards determined, or instruments varying or revoking such standards, under section 18, or instruments made under section 25, of the <i>Payment Systems (Regulation) Act 1998</i>
33	Marine Orders made under subsection 24(1) of the <i>Protection of the Sea (Powers of Intervention) Act 1981</i>
34	<i>Protection of the Sea (Powers of Intervention) Regulations</i> made under section 23 of the <i>Protection of the Sea (Powers of Intervention) Act 1981</i>
35	Marine Orders made under subsection 34(1) of the <i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>
36	<i>Protection of the Sea (Prevention of Pollution from Ships) (Orders) Regulations 1994</i> made under subsection 33(1) of the <i>Protection of the Sea (Prevention of Pollution from Ships) Act 1983</i>

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**Legislative instruments that are not subject to sunsetting**

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<b>Item</b>	<b>Particulars of instrument</b>
37	Directions issued under section 21 of the <i>Public Service Act 1999</i>
38	Instruments made under section 23 or subsection 24(3) of the <i>Public Service Act 1999</i>
39	Instruments required to be laid before the Parliament under subsection 7(7) of the <i>Remuneration Tribunal Act 1973</i>
40	Declarations made by Ministers under section 31 of the <i>Trans-Tasman Mutual Recognition Act 1997</i>
41	Instruments made under Annual Appropriation Acts
42	Instruments (other than regulations) relating to superannuation
43	Legislative instruments the sole purpose of which, or a primary purpose of which, is to give effect to an international obligation of Australia
44	Legislative instruments the sole purpose of which, or a primary purpose of which, is to confer heads of power on a self-governing Territory
45	Legislative instruments that establish a body having power to enter into contracts for the purposes of the body's functions
46	Ministerial directions to any person or body
47	Ordinances of the non self-governing Territories
48	Proclamations that provide solely for the commencement of Acts or provision of Acts
49	Certificates issued by the Attorney-General under section 10 or 11 of this Act
50	Regulations made for the purposes of item 24 of the table in subsection 7(1), item 44 of the table in subsection 44(2) or item 51 of this table
51	Legislative instruments that are prescribed by the regulations for the purposes of this table

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**Part 7—Miscellaneous****55 Instruments made but not finally dealt with before the commencing day**

- (1) This section applies to a legislative instrument made before the commencing day:
- (a) that was a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* as in force at any time before the commencing day; or
  - (b) that was a statutory rule or other instrument able to be disallowed under Part XII of the *Acts Interpretation Act 1901* as in force at any time before the commencing day; or
  - (c) that was otherwise required to be published, or to have notice of its making published, in the *Gazette*.
- (2) If a legislative instrument to which this section applies, or notice of the making of such an instrument, had not been published in the *Gazette* before the commencing day:
- (a) that instrument is to be treated, for all purposes of this Act, as if it had been made on the commencing day; and
  - (b) the obligations in relation to that instrument under the *Acts Interpretation Act 1901*, and under the *Statutory Rules Publication Act 1903*, as in force immediately before the commencing day, cease to apply;
- but the tenor of the instrument is not affected.
- (3) Despite subsection (2), section 39 does not apply in relation to a legislative instrument described in that subsection.
- (4) If a legislative instrument to which this section applies, or notice of the making of such an instrument, had been published in the *Gazette* before the commencing day, the obligations in relation to that instrument under Part XII of the *Acts Interpretation Act 1901*, and under the *Statutory Rules Publication Act 1903*, as in force at any time before the commencing day, continue to apply in relation to that instrument as if that Part and that Act had not been repealed.

Section 56

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1 **56 Relationship of certain gazettal requirements to registration**  
2 **requirements**

3 (1) If the enabling legislation in relation to a legislative instrument as in  
4 force at any time before the commencing day required the text of the  
5 instrument, or particulars of its making, to be published in the  
6 *Gazette*, the requirement for publication in the *Gazette* is taken, in  
7 relation to any such instrument made on or after that day, to be  
8 satisfied if the instrument is registered.

9 (2) If the enabling legislation in relation to a legislative instrument as  
10 enacted, or as amended, at any time on or after the commencing day  
11 requires the text of the instrument, or particulars of its making, to be  
12 published in the *Gazette*, the requirement for publication in the  
13 *Gazette* is taken in respect of any such instrument to be in addition  
14 to any requirement under this Act for the instrument to be  
15 registered.

16 **57 Effect on existing tabling and disallowance requirements**

17 (1) Despite provisions in force immediately before the commencing  
18 day in relation to a document that is a legislative instrument for the  
19 purposes of this Act concerning:

- 20 (a) the time within which; and  
21 (b) the means by which;

22 such an instrument is required to be laid before the Parliament,  
23 compliance, on and after that day, with the requirements of this Act  
24 relating to laying of instruments before the Parliament is taken to  
25 constitute full compliance with the requirements of those  
26 first-mentioned provisions.

27 (2) Despite provisions in force immediately before the commencing  
28 day that provide for the disallowance of a document that is a  
29 legislative instrument (otherwise than because of the application,  
30 without modification, of the disallowance provisions of Part XII of  
31 the *Acts Interpretation Act 1901*), the disallowance provisions of  
32 this Act are taken to apply, subject to subsection (5), in respect of  
33 that document to the exclusion of those other provisions.

34 (3) If provisions in force immediately before the commencing day in  
35 relation to a document that is a legislative instrument specify

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- 1 particular consequences that follow a particular circumstance,  
 2 namely:
- 3 (a) the laying of that document, or the failure to lay that  
 4 document, before the Houses of the Parliament in accordance  
 5 with those provisions; or
- 6 (b) the disallowance or non-disallowance, in accordance with  
 7 those provisions, of a document that is so laid:
- 8 those same consequences follow a like circumstance under this Act,  
 9 namely:
- 10 (c) the laying of that document, or the failure to lay that  
 11 document, before the Houses of the Parliament in accordance  
 12 with this Act; and
- 13 (d) the disallowance or non-disallowance of that document, in  
 14 accordance with this Act, of a document that is laid before the  
 15 Houses of the Parliament in accordance with this Act;
- 16 as if the circumstance referred to in paragraph (c) or (d) were a  
 17 circumstance referred to in paragraph (a) or (b).
- 18 (4) If provisions in force immediately before the commencing day in  
 19 relation to a document that is a legislative instrument:
- 20 (a) require the document to be laid before the Houses of the  
 21 Parliament; and
- 22 (b) specify particular requirements to be complied with before, or  
 23 at the same time as, that document is so laid;
- 24 those provisions continue to have effect, on and after the  
 25 commencing day, as if they were requirements to be complied with  
 26 before, or at the same time as, the document is laid before the  
 27 Houses of the Parliament in accordance with this Act.
- 28 Note: This subsection applies, for example, if the enabling legislation in  
 29 respect of a legislative instrument required that a report concerning any  
 30 such instrument be prepared and laid before the Parliament at the same  
 31 time as the instrument is so laid.
- 32 (5) If particular disallowance provisions of the kind referred to in  
 33 subsection (2) are prescribed as provisions to which subsection (2)  
 34 does not apply, then those provisions continue to apply, on and after  
 35 the commencing day, despite the provisions to different effect in  
 36 sections 42 to 48 of Part 5 of this Act.

Section 58

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1 **58 Delegation**

2 The Secretary may, by signed instrument, delegate to an APS  
3 employee who is performing duty in the Department any of the  
4 powers or functions of the Secretary under this Act other than this  
5 power of delegation.

6 **59 Review of operation of this Act**

- 7 (1) During the 3 months starting on the third anniversary of the  
8 commencing day, the Attorney-General must appoint persons to a  
9 body to review the operation of this Act.
- 10 (2) A person appointed to the body may resign from it by giving the  
11 Attorney-General a signed notice of resignation.
- 12 (3) The body must review all aspects of the operation of this Act and  
13 any related matters that the Attorney-General specifies.
- 14 (4) The body must give the Attorney-General a written report on the  
15 review within 15 months after the third anniversary of the  
16 commencing day.
- 17 (5) The Attorney-General must cause the report to be laid before each  
18 House of the Parliament within 6 sitting days of the House after the  
19 Attorney-General receives the report.

20 **60 Review of operation of the sunseting provisions**

- 21 (1) During the 3 months starting on the 12th anniversary of the  
22 commencing day, the Attorney-General must appoint persons to a  
23 body to review the operation of Part 6.
- 24 (2) A person appointed to the body may resign from it by giving the  
25 Attorney-General a signed notice of resignation.
- 26 (3) The body referred to in subsection (1) must review all aspects of the  
27 operation of Part 6 and any related matters that the  
28 Attorney-General specifies.
- 29 (4) The body must give the Attorney-General a written report on the  
30 review within 9 months after the 12th anniversary of the  
31 commencing day.
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Section 61

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- 1 (5) The Attorney-General must cause the report to be laid before each  
2 House of the Parliament within 6 sitting days of the House after the  
3 Attorney-General receives the report.

4 **61 Existing references to Legislative Instruments Act**

- 5 Any reference in a law of the Commonwealth in force immediately  
6 before the commencement of this Act, to:  
7 (a) the *Legislative Instruments Act 1994*; or  
8 (b) the Legislative Instruments Act of any subsequent year before  
9 the year featuring in the correct citation of this Act;  
10 has effect, on and after the commencement of this Act, as if it were,  
11 and had always been, a reference to this Act.

12 **62 Regulations**

- 13 The Governor-General may make regulations prescribing all  
14 matters:  
15 (a) required or permitted by this Act to be prescribed; or  
16 (b) necessary or convenient to be prescribed for carrying out or  
17 giving effect to this Act.