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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

STATUTE UPDATE (REGULATIONS REFERENCES) BILL 2020

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Attorney-General, the Honourable Christian Porter MP)

STATUTE UPDATE (REGULATIONS REFERENCES) BILL 2020

GENERAL OUTLINE

The main purpose of this Bill is to update specific references to short titles of regulations in the statute law of the Commonwealth that have become out of date due to the remaking or renaming of the regulations or that are at risk of becoming out of date in future due to remaking or renaming.

Rather than referring to regulations by their specific name (for example, the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998*) Acts will refer to regulations using more general phrases (such as “prescribed regulations made under the *Family Law Act 1975*”) which are less likely to become out of date due to the remaking or renaming of the regulations. The regulations prescribed will be equivalent to the regulations that were previously specifically named in the relevant Acts.

This Bill replaces references to specific provisions of regulations with more general means of identifying the provisions, so that the correct links between the contents of regulations and Acts will remain even if the regulations are remade, renamed or renumbered.

This Bill also contains amendments to make associated minor consequential amendments to the statute law of the Commonwealth to support the operation of the amended provisions. For example, changes are made to include notes, alter headings, renumber provisions and repeal redundant provisions.

The amendments will enhance usability, facilitate interpretation and administration, and promote consistency across the Commonwealth statute book. The amendments are minor and technical in nature. The amendments either make no change or only minor changes to the substance of the law. Because some amendments may make minor changes, the amendments were not considered appropriate for inclusion in a Statute Law Revision Bill.

FINANCIAL IMPACT STATEMENT

This Bill will have no financial impact.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Statute Update (Regulations References) Bill 2020

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The main purpose of this Bill is to update specific references to regulations in the statute law of the Commonwealth that have become out of date due to the remaking or renaming of the regulations or that are at risk of becoming out of date in future due to those things.

Rather than referring to regulations by their specific name (for example, the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998*) Acts will refer to regulations using more general phrases (such as “prescribed regulations made under the *Family Law Act 1975*”) which are less likely to become out of date due to the repeal, sunseting or renaming of the regulations. The regulations prescribed will be equivalent to the regulations that were previously specifically named in the relevant Acts.

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The amendments also enhance usability, facilitate interpretation and administration, and promote consistency across the Commonwealth statute book.

Human rights implications

This Bill does not engage any human rights issues as it makes minor technical improvements to legislation. It makes either no change or only minor changes to the substance of the law.

Conclusion

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, as it does not engage any of the applicable rights or freedoms or alter any human rights safeguards currently in place.

Notes on clauses

Clause 1—Short title

1 Clause 1 provides for the short title of the Act to be the *Statute Update (Regulations References) Act 2020*.

Clause 2—Commencement

1 Subclause 2(1) provides that each provision of the Act specified in column 1 of the table set out in the subclause commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

2 Table item 1 of the table in subclause 2(1) provides for the whole of the Act to commence on a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day the Act receives the Royal Assent, they are to commence on the day after the end of that period. Providing for this type of commencement will enable associated changes being made to the regulations to commence at the same time. This commencement is in keeping with current Commonwealth drafting practice, which is to avoid retrospective commencements where practicable and provide that periods allowing for Proclamation should be capped.

3 The note at the end of the table explains that the table relates only to the provisions of the Act as originally enacted. The table will not be amended to deal with any later amendments of the Act.

4 Subclause 2(2) provides that any information in column 3 of the table is not part of the Act. It also clarifies that information may be inserted in column 3, or information in it may be edited, in any published version of the Act.

Clause 3—Schedules

5 Clause 3 provides that legislation specified in a Schedule to the Act is amended or repealed as set out in the applicable items in the Schedule and any other item in a Schedule has effect according to its terms. This is a technical provision to give operational effect to the amendments contained in the Schedules.

Schedule 1—Amendments

6 The items in this Schedule update specific references to regulations in the statute law of the Commonwealth that have become out of date due to the repeal, sunseting or renaming of the regulations or that are at risk of becoming out of date in future due to those things.

7 Rather than referring to regulations by their specific name (for example, the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998*) Acts will refer to regulations using more general phrases (such as “prescribed regulations made under the *Family Law Act 1975*”) which are less likely to become out of date due to the remaking or renaming of the regulations. The regulations prescribed will be the same as, or equivalent to, the regulations that were previously specifically named in the relevant Acts.

8 This Schedule replaces references to specific provisions of regulations with more general means of identifying the provisions, so that the correct links between the contents of regulations and Acts will remain even if the regulations are remade, renamed or renumbered.

9 This Schedule also contains amendments to make associated minor consequential amendments to the statute law of the Commonwealth to support the operation of the amended provisions. For example, changes are made to include notes, alter headings, renumber provisions and repeal redundant provisions.

Items 1 to 10

10 Items 1 to 10 amend the *Age Discrimination Act 2004*. Items 1 to 4 make related amendments and are consequential on items 5 to 10.

11 Item 5 repeals table item 8 of the table in Schedule 1 to the *Age Discrimination Act 2004* to replace a specific reference to the *Airports (Control of On-Airport Activities) Regulations 1997* with a more general reference to prescribed regulations made under the *Airports Act 1996*.

12 Item 6 repeals table item 11 of the table in Schedule 1 to the *Age Discrimination Act 2004* to replace a specific reference to the *Australian Hearing Services Regulations 1992* with a more general reference to regulations made under the *Australian Hearing Services Act 1991*.

13 Items 7 and 9 make related amendments. Item 7 repeals table item 24 of the table in Schedule 1 to the *Age Discrimination Act 2004* to omit a specific reference to the *Defence (Personnel) Regulations 2002*, which have been repealed. Item 9 includes a general reference to prescribed provisions of regulations made under the *Defence Act 1903* in a new table item 3AA of the table in Schedule 2 to the *Age Discrimination Act 2004* to ensure that equivalent provisions are covered.

14 Item 8 repeals table item 37 of the table in Schedule 1 to the *Age Discrimination Act 2004* to replace a specific reference to the *Papua New Guinea (Members of the Forces Benefits) Regulations* with a more general reference to regulations made under the *Papua New Guinea (Members of the Forces Benefits) Act 1957*.

15 Item 10 repeals table item 11 in the table in Schedule 2 to the *Age Discrimination Act 2004* to repeal a specific reference to regulations 8.10, 9.1, 9.5 and 9.20 of the *Workplace Relations Regulations 2006*. Those regulations sunsetted in 2016 and are no longer in force.

16 The amendments made by items 5 to 10 have the effect that, rather than regulations being specifically “mentioned in” Schedules 1 and 2 to the *Age Discrimination Act 2004*, they are “covered by” those Schedules. Items 1 to 4 make consequential amendments to various provisions to state this.

Items 11 to 17

17 Items 11 to 17 amend the *Airports Act 1996*.

18 Item 11 amends subsection 251B(1) of that Act to replace a specific reference to “subregulation 1.03(1) of the *Airports Regulations 1997* declares a place specified in a paragraph of that subregulation” with a more general reference to “a prescribed provision (the ***declaration provision***) of regulations made under this Act declares a place”.

19 Item 12 amends the heading to subsection 251B(2) of that Act (which contains a specific reference to subregulation 1.03(1) of the *Airports Regulations 1997*) to repeal the heading and replace it with a subsection heading which does not include the reference.

20 Item 13 makes a consequential amendment to subsection 251B(2) of that Act to replace an indirect reference to subregulation 1.03(1) of the *Airports Regulations 1997* and its paragraphs with a reference to the declaration provision and its component provisions.

21 Item 14 makes a consequential amendment to repeal the heading to subsection 251B(4) of that Act. That heading is redundant once the specific reference to regulations is removed from it.

22 Item 15 amends subsection 251B(4) of that Act to replace a specific reference to “a paragraph of subregulation 1.03(1) of the *Airports Regulations 1997*” with a more general reference to “the declaration provision”.

23 Item 16 amends subsection 251B(4) of that Act to replace a specific reference to a “particular Part of Schedule 1 to those regulations,” with a “prescribed provision (the ***land description provision***) of regulations made under this Act,” and to replace a specific reference to “a regulation may amend that Part” with “a regulation may amend the land description provision”.

24 Item 17 makes a consequential amendment to repeal subsection 251B(6) of that Act. That subsection provides that a reference to a place made up of particular land is a specification of that place. That subsection is redundant as a result of amendments made by items 11 to 16 and the operation of the *Airports Regulations 1997*. In those regulations all of the places declared to be an airport site are places made up of particular land and these are specifications of places.

Item 18

25 Item 18 amends paragraph 38-7(2)(a) of the *A New Tax System (Goods and Services Tax) Act 1999* by replacing a specific reference to “prescribed circumstances within the meaning of regulation 14 of the Health Insurance Regulations made under the *Health Insurance Act 1973* (other than the prescribed circumstances set out in regulations 14(2)(ea), (f) and (g))” with a more general reference to “circumstances covered by a prescribed provision of regulations made under the *Health Insurance Act 1973*”. The prescribed provisions will cover the same prescribed circumstances as the existing law.

Items 19 and 20

26 Items 19 and 20 amend the *Australian Citizenship Act 2007*.

27 Item 19 amends the definition of ***Bilateral Arrangements regulations*** in subsection 19C(4) of that Act to replace a specific reference to the *Family Law (Bilateral Arrangements—Intercountry Adoption) Regulations 1998* with a more general reference to prescribed regulations made under the *Family Law Act 1975*.

28 Item 20 amends the definition of ***Intercountry Adoption regulations*** in that subsection to replace a specific reference to the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* with a more general reference to prescribed regulations made under the *Family Law Act 1975*.

Items 21 and 22

29 Items 21 and 22 make related amendments to the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

30 Item 22 repeals subsection 20J(2) of that Act, which is a “to avoid doubt” provision referring to the Commonwealth Procurement Rules made under the *Financial Management and Accountability Regulations 1997*. The *Financial Management and Accountability Regulations 1997* were renamed the *Financial Framework (Supplementary Powers) Regulations 1997*. They no longer deal with Commonwealth Procurement Rules. This, in addition to the fact that the provision is merely for the avoidance of doubt, means that it can be repealed without any change to the law.

31 Item 21 makes a consequential amendment to renumber subsection 20J(1) (the only other subsection in that section) as section 20J.

Item 23

32 Item 23 amends the definition of ***GST regulations*** in subsection 105D(4) of the *Customs Act 1901* to replace a specific reference to the *A New Tax System (Goods and Services Tax) Regulations 1999* with a more general reference to regulations made under the *A New Tax System (Goods and Services Tax) Act 1999*.

Items 24 to 26

33 Items 24 to 26 amend the *Income Tax Assessment Act 1997*.

34 Item 24 amends table item 1.7 in section 51-5 of that Act to replace a specific reference to section 14 or 14B of the *Ombudsman Regulations 2017* with a more general reference to a prescribed provision of regulations made under the *Ombudsman Act 1976*.

35 Item 25 amends the note to section 51-5 of the *Income Tax Assessment Act 1997* to replace a specific reference to reparation payments under section 14 or 14B of the *Ombudsman Regulations 2017* with a more general reference to reparation payments referred to in item 1.7, relying on the amendment in item 24.

36 Item 26 amends subparagraph 307-5(7)(a)(ii) of the *Income Tax Assessment Act 1997* to replace a specific reference to the *Family Law (Superannuation) Regulations 2001* with a more general reference to prescribed regulations made under the *Family Law Act 1975*.

Items 27 and 28

37 Items 27 and 28 make related amendments to the *International Monetary Agreements Act 1947*.

38 Item 28 amends paragraph (e) of the definition of **World Bank organisation** in section 3 of that Act. That paragraph has the effect that **World Bank organisation** means “the International Centre for Settlement of Investment Disputes (referred to in the *International Centre for Settlement of Investment Disputes (Privileges and Immunities) Regulations 1991*)”. Item 28 replaces the specific reference to “(referred to in the *International Centre for Settlement of Investment Disputes (Privileges and Immunities) Regulations 1991*)” with a more general reference to “established by the Investment Disputes Convention”, which is an alternate means of identifying that Centre.

39 Item 27 defines **Investment Disputes Convention** to mean the Convention on the Settlement of Investment Disputes between States and Nationals of Other States signed by Australia on 24 March 1975, the English text of which is set out in Schedule 3 to the *International Arbitration Act 1974*.

Items 29 to 31

40 Items 29 to 31 make related amendments to the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012*.

41 Item 29 repeals and substitutes paragraph 44(3)(c) of that Act to replace a specific reference to a record being made available for public access “under subsection 31(5) of the *Archives Act 1983*, as that subsection applies because of a modification prescribed under subclause 9.6 of the Schedule to the Archives (Records of the Parliament) Regulations” with a more general reference to the record being “made available for public access under the *Archives Act 1983*”. The new text could theoretically be read more broadly than the replacement text. However, in practice, the record will either be a report tabled in Parliament or a record or report dealt with by section 82 of the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012*, and so will be what is currently described as a **class A record** in regulations made for the purposes of section 20 of the *Archives Act 1983*.

42 Item 30 is a consequential amendment to subsection 44(3) of the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012*, adding a note to assist users of the legislation find the links between the *Archives Act 1983* and the relevant regulations to identify the records covered by the amendment made by item 29.

43 Item 31 repeals and substitutes subsection 82(2) of the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012* to remove a specific reference to **class A records** (which is a concept introduced into the *Archives Act 1983* via a modification made by a Schedule item of the *Archives (Records of the Parliament) Regulations 2019*). The amendment replaces this specific reference with a more general provision ensuring that the records will be treated in a way corresponding to the treatment of certain records that are currently each a **class A record**.

Items 32 and 33

44 Items 32 and 33 make related amendments to the *Military Rehabilitation and Compensation Act 2004*.

45 Subsection 10(2) and paragraph 87(1)(d) of that Act both refer to “the commanding officer of the cadet’s unit (within the meaning of the *Cadet Forces Regulations 1977*)”. However, the *Cadet Forces Regulations 1977* were repealed by the *Cadet Forces Regulation 2013*. Items 32 and 33 omit the references to the repealed regulations. Even without those references, it will be clear who the commanding officer of the cadet’s unit is, so in practice there is no change to the law.