



Legislative Instruments Regulations 2004

Statutory Rules 2004 No. 373 as amended

made under the

Legislative Instruments Act 2003

This compilation was prepared on 3 May 2008
taking into account amendments up to SLI 2008 No. 66

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

Contents

Part 1	Preliminary	
	1 Name of Regulations [see Note 1]	3
	2 Commencement	3
	3 Definition	3
	4 Meaning of <i>lodge</i>	3
Part 2	Federal Register of Legislative Instruments	
	5 Information to be lodged with legislative instrument for registration	5
Part 3	Registration	
	6 Lodgment for registration	6
Part 4	Exemptions and exclusions	
	7 Instruments that are not legislative instruments	7
	8 Legislative instruments not subject to disallowance	7
	9 Legislative instruments not subject to sunseting	7
	10 Existing disallowance provisions	7
Schedule 1	Instruments declared not to be legislative instruments	8
Part 1	General classes of instruments	8
Part 2	Instruments made under particular provisions	11
Schedule 2	Legislative instruments not subject to disallowance	14
Schedule 3	Legislative instruments not subject to sunseting	16
Schedule 4	Existing disallowance provisions	18
Notes		19

Part 1 Preliminary

1 Name of Regulations [see Note 1]

These Regulations are the *Legislative Instruments Regulations 2004*.

2 Commencement

These Regulations commence on 1 January 2005.

3 Definition

In these Regulations:

Act means the *Legislative Instruments Act 2003*.

4 Meaning of *lodge*

- (1) For the definition of *lodge* in subsection 4 (1) of the Act, this regulation applies.
- (2) An electronic document is lodged if:
 - (a) it is in one of the following word processing or data formats:
 - (i) Microsoft Word 97 or later version;
 - (ii) rich text format;
 - (iii) another format, agreed by the Secretary, that is compatible with the Register; and
 - (b) it is given to the Secretary:
 - (i) through the electronic lodgment facility at <https://lodgment.frli.gov.au>; or
 - (ii) in some other way agreed by the Secretary.

Regulation 4

- (3) A non-electronic document is lodged if it is:
- (a) delivered or posted to the Office of Legislative Drafting and Publishing at Robert Garran Offices, Barton ACT 2600; or
 - (b) otherwise given to the Secretary in a way agreed by the Secretary.

Part 2 Federal Register of Legislative Instruments

5 Information to be lodged with legislative instrument for registration

For section 21 of the Act, a person who is required to lodge a legislative instrument for registration must also lodge with the Secretary the following information about the instrument:

- (a) the name and relevant provision of the enabling legislation;
- (b) a brief description of the subject matter of the instrument;
- (c) a reference identifying any document incorporated by reference in the instrument;
- (d) the title of the instrument and of any instrument that it affects;
- (e) the number of pages in the instrument;
- (f) for an instrument to which section 28 of the Act applies:
 - (i) the reference number (if any) allocated to the instrument when it was made; and
 - (ii) if the instrument was required to be notified or published in the *Gazette* — the date of the notification or publication; and
 - (iii) if the instrument was required to be laid before each House of the Parliament — the date when the instrument was laid before each House; and
 - (iv) information about any partial disallowance of the instrument;
- (g) the name and contact details of a person who can answer questions about the instrument.

Regulation 6

Part 3 Registration**6 Lodgment for registration**

- (1) Subsection 29 (1) of the Act operates as if the table in that subsection were amended by omitting from item 1 “The first day of the 12th month after the commencing day” and substituting “1 October 2006”.

Note Under subsection 29 (1) of the Act, certain instruments must be backcaptured before 1 January 2006. Subregulation 6 (1) extends the period of backcapture to before 1 October 2006.

- (2) For paragraph 29 (4) (b) of the Act, the period of 6 months is prescribed.

Part 4 Exemptions and exclusions

7 Instruments that are not legislative instruments

For item 24 of the table in subsection 7 (1) of the Act, and subject to sections 6 and 7 of the Act, instruments mentioned in Schedule 1 are prescribed.

Note The inclusion of a kind of instrument in Schedule 1 does not imply that an instrument of that kind would be a legislative instrument if it were not included in that Schedule — see subsection 7 (2) of the Act.

8 Legislative instruments not subject to disallowance

For item 44 of the table in subsection 44 (2) of the Act, legislative instruments mentioned in Schedule 2 are prescribed.

Note The inclusion of a kind of instrument in Schedule 2 does not imply that every instrument of that kind is a legislative instrument — see subsection 44 (3) of the Act.

9 Legislative instruments not subject to sunseting

For item 51 of the table in subsection 54 (2) of the Act, legislative instruments mentioned in Schedule 3 are prescribed.

Note The inclusion of a kind of instrument in Schedule 3 does not imply that every instrument of that kind is a legislative instrument — see subsection 54 (3) of the Act.

10 Existing disallowance provisions

For subsection 57 (5) of the Act, subsection 57 (2) of the Act does not apply to disallowance provisions mentioned in Schedule 4.

Schedule 1 Instruments declared not to be legislative instruments

(regulation 7)

Part 1 General classes of instruments

1. An instrument of delegation, including any directions to the delegate.
2. An instrument of authorisation (that is, an instrument the effect of which is to authorise a specified individual to take a particular action or act in a particular way) or an application for such an instrument.
3. An instrument the effect of which is to approve a manner of doing an act.
4. An evidentiary certificate.
5. An instrument prescribing or approving a form.
6. A practice direction made by a court or tribunal.
7. A Proclamation that provided solely for the commencement of an Act, or provisions of an Act, and had effect before 1 January 2005.
8. An instrument whose effect was spent before 1 January 2005.
9. An instrument of appointment, engagement or employment, or an instrument of suspension or termination of appointment, engagement or employment.
10. An instrument of resignation.
11. An instrument granting leave of absence or determining terms and conditions of appointment, engagement or employment.
12. An instrument constituting recommendations or advice.
13. An annual or periodic report.

14. Any of the following:
 - (a) an instrument granting, renewing, transferring, suspending or cancelling a licence or permit that authorises a specified person to do an act, or registration of a specified person;
 - (b) an instrument refusing to grant, renew or transfer such a licence, permit or registration;
 - (c) an instrument imposing conditions on such a licence, permit or registration.
15. A warrant, an application for a warrant, or an instrument supporting such an application.
16. An instrument authorising:
 - (a) the surveillance of a person or thing; or
 - (b) the retrieval of a device facilitating such surveillance; or
 - (c) the interception of a thing.
17. An application for an instrument mentioned in item 16, or an instrument supporting such an application.
18. An instrument acknowledging the receipt of something.
19. An instrument requesting or requiring a person to attend premises, give evidence, answer questions, produce documents or give information.
20. Any of the following:
 - (a) a notice of a decision or proposed decision;
 - (b) a notice of reasons for a decision or proposed decision;
 - (c) a notice of rights of review.
21. An instrument the making or issue of which is:
 - (a) a decision that is reviewable under the *Administrative Decisions (Judicial Review) Act 1977*; or
 - (b) a decision that would be reviewable under that Act except for an exemption under that Act or another Act.
22. An agreement, contract or undertaking authorised to be made or given under legislation, or an instrument made under such an agreement, contract or undertaking.
23. An acceptance or rejection of an undertaking.

24. A nomination, request or invitation, or a withdrawal of a nomination, request or invitation.
25. An application for an order, direction or other instrument, or a withdrawal of such an application, to any of the following:
 - (a) a court;
 - (b) a Judge, a Federal Magistrate or a Magistrate (including a Judge, Federal Magistrate or Magistrate acting in a personal capacity);
 - (c) an officer of a court;
 - (d) a tribunal;
 - (e) a member or an officer of a tribunal.
26. An order, direction, or other instrument made in response to an application, being an order, direction or other instrument made by any of the following:
 - (a) a court;
 - (b) a Judge, a Federal Magistrate or a Magistrate (including a Judge, Federal Magistrate or Magistrate acting in a personal capacity);
 - (c) an officer of a court;
 - (d) a tribunal;
 - (e) a member or an officer of a tribunal.
- 26A. An order, direction, or other instrument made in a proceeding before any of the following:
 - (a) a court;
 - (b) a Judge, a Federal Magistrate or a Magistrate;
 - (c) an officer of a court;
 - (d) a tribunal;
 - (e) a member or an officer of a tribunal.
27. An assessment of tax or an amendment of an assessment of tax.
28. A garnishee notice.
29. An instrument remitting or waiving a penalty, or discharging or extinguishing a liability, in relation to a particular person.
30. An infringement notice.

-
31. An instrument varying, in a particular case, the time for a particular act to be done or a particular event to occur, or an instrument extending or shortening, in a particular case, a time period in which a particular act is to be done or a particular event is to occur.
 32. An instrument that renews, transfers, suspends, cancels or terminates a right created or an obligation imposed by an instrument that is not a legislative instrument.
 33. An instrument that varies or revokes an instrument that is not a legislative instrument.
 34. A corporate plan.
 35. A notice published in the *Gazette* that announces the day on which an international agreement comes into force for Australia.

Part 2 Instruments made under particular provisions

- 1A. Each of the following:
 - (a) a declaration made under regulation 6 of the *Airspace Regulations 2007*;
 - (b) a determination made under subregulation 9 (2) of those Regulations.
1. Each of the following:
 - (a) an instrument made under the *Aviation Transport Security Act 2004*, other than regulations made under that Act or an instrument made under section 2 or 107 of that Act;
 - (b) an instrument made under regulations made under that Act.
2. An Order made under paragraph 4.1 (c) or (f) and subsection 6.2 of the Programs and Awards Statute 2006, made under the *Australian National University Act 1991*.
3. A determination made under section 32 of the *Australian Postal Corporation Act 1989*.

- 3AA. A notice under subsection 10 (2) of the *Census and Statistics Act 1905*.
- 3A. Each of the following:
- (a) a determination made under section 48, 65, 73, 76 or 76A of the *Commonwealth Electoral Act 1918*;
 - (b) a direction made under section 59 of that Act;
 - (c) a notice under section 80 or subsection 200D (2), 225 (1), 227 (3) or 227 (4) of that Act.
4. An instrument made under section 161J of the *Customs Act 1901*.
5. An instrument made under section 269P or 269Q of the *Customs Act 1901* before 1 January 2005.
6. An instrument under Part XVB of the *Customs Act 1901*.
7. An authorisation under section 16 of the *Customs Administration Act 1985*.
8. An instrument made under section 8, 9, 10 or 11 of the *Customs Tariff (Anti-Dumping) Act 1975*.
9. A determination made under regulation 14 or 23 of the *Defence (Personnel) Regulations 2002*.
- 9A. A certificate issued under regulation 5A of the *Diplomatic Privileges and Immunities Regulations 1989*.
10. An instrument made under subsection 42 (1) of the *Foreign Evidence Act 1994*.
11. Each of the following:
- (a) a direction made under paragraph 6 (1) (e) of the *Intelligence Services Act 2001*;
 - (b) an instrument made under section 8 of that Act;
 - (c) guidelines issued under subclause 1 (6) of Schedule 2 of that Act.
12. Each of the following:
- (a) an instrument made under the *Maritime Transport Security Act 2003*, other than regulations made under that

-
- Act or an instrument made under section 2 or 182 of that Act;
- (b) an instrument made under regulations made under that Act.
- 12F. A determination made under subsection 1084 (1) or 1118B (2) of the *Social Security Act 1991*.
13. A determination made under paragraph 154A (4) (c) of the *Superannuation Act 1976*.
14. A determination made under paragraph 3.1 (d) of the Trust Deed:
- (a) made under section 4 of the *Superannuation Act 1990*; and
- (b) as in force from time to time.
15. A determination made under paragraph 3.1 (e) of the Trust Deed made under section 10 of the *Superannuation Act 2005*.
16. Record-keeping rules made under subsection 151BU (1) of the *Trade Practices Act 1974* for and in relation to one or more specified carriers or one or more specified carriage service providers, other than a carrier or carriage service provider specified by inclusion in a specified class.
17. Each of the following:
- (a) an instrument issued by the Defence Force under paragraph 5B (2) (a) of the *Veterans' Entitlements Act 1986*;
- (b) an instrument signed by the Vice Chief of the Defence Force under paragraph 5B (2) (b) of that Act;
- (c) an instrument signed by the Minister for Defence under paragraph 5B (2) (c) of that Act;
- (d) a determination made under section 5R of that Act;
- (e) an instrument issued by the Defence Force under subsection 6D (1) of that Act;
- (ea) a determination made under subsection 46L (1) or 52AA (2) of that Act;
- (f) a designation made in accordance with paragraph (b) of the definition of ***Peacekeeping Force*** in subsection 68 (1) of that Act.

Schedule 2 **Legislative instruments not subject to disallowance**

(regulation 8)

1. An instrument made under section 19B or 19BA of the *Acts Interpretation Act 1901*.
- 1A. A notice given under subsection 17 (1) of the *Air Services Act 1995*.
- 1B. Each of the following:
 - (a) a determination made under regulation 5 of the *Airspace Regulations 2007*;
 - (b) a designation made under regulation 8 of those Regulations;
 - (c) a designation or determination made under regulation 11 of those Regulations;
 - (d) a direction given under regulation 12 of those Regulations;
 - (e) instructions given under subregulation 3.03 (3) or (4) of the *Air Services Regulations 1995*.
2. A variation of a set of rules made under section 61 of the *Australian Research Council Act 2001*.
- 2A. A notice given under section 12A of the *Civil Aviation Act 1988*.
- 2AA. Fee waiver principles made under subsection 91 (1B) of the *Classification (Publications, Films and Computer Games) Act 1995*.
- 2B. Each of the following:
 - (a) a notice under section 80, subsection 200D (2), 225 (1), 227 (3) or 227 (4) or paragraph 305A (1) (c) of the *Commonwealth Electoral Act 1918*;
 - (b) a declaration made under subsection 246 (1) of that Act for the purposes of the meaning of 'station'.

-
3. A Proclamation made under section 3A or 3B of the *Control of Naval Waters Act 1918*.
 4. A determination made under section 126DA of the *Customs Act 1901*.
 - 4A. A notice made under subsection 16A (1) of the *Customs Tariff Act 1995*.
 5. An instrument made under subsection 31 (1) of the *Disability Discrimination Act 1992*.
 6. An instrument made under section 59 of the *Education Services for Overseas Students Act 2000*.
 - 6A. A determination made under subsection 6 (1) of the *Military Rehabilitation and Compensation Act 2004*.
 7. Regulations made under section 7 of the *National Transport Commission Act 2003*.
 8. A privacy code approved under section 18BB of the *Privacy Act 1988*.
 - 8A. An approval, under section 18BD of the *Privacy Act 1988*, of a variation of an approved privacy code.
 - 8B. A revocation, under section 18BE of the *Privacy Act 1988*, of an approval of an approved privacy code, or of a variation of an approved privacy code under section 18BD of that Act.
 9. A determination made under section 16 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*.
 - 9A. A declaration made under section 6 of the *Terrorism Insurance Act 2003*.
 10. A determination made for the purposes of the definition of ***non-warlike service*** or ***warlike service*** in subsection 5C (1) of the *Veterans' Entitlements Act 1986*.

Schedule 3 **Legislative instruments not subject to sunseting**

(regulation 9)

1. An instrument made under section 19B or 19BA of the *Acts Interpretation Act 1901*.
- 1A. Instruments relating to aviation safety made under the *Airspace Regulations 2007*.
2. Regulations made under the *Anglo-Australian Telescope Agreement Act 1970*.
- 2A. Fee waiver principles made under subsection 91 (1B) of the *Classification (Publications, Films and Computer Games) Act 1995*.
3. A Proclamation made under section 3A or 3B of the *Control of Naval Waters Act 1918*.
- 3A. A determination made under subsection 6 (1) of the *Military Rehabilitation and Compensation Act 2004*.
4. Regulations made under section 7 of the *National Transport Commission Act 2003*.
5. An instrument made under paragraph 26 (3) (b) of the *Native Title Act 1993* as in force immediately before 30 September 1998.
6. A declaration made under section 6N or 34 of the *Telecommunications (Interception) Act 1979*.
- 6A. A declaration made under section 6 of the *Terrorism Insurance Act 2003*.
7. Each of the following:
 - (a) a determination made for the purposes of the definition of *non-warlike service* or *warlike service* in subsection 5C (1) of the *Veterans' Entitlements Act 1986*;

- (b) a determination made for the purposes of the definition of *hazardous service* in subsection 120 (7) of that Act.

Schedule 4 Existing disallowance provisions

(regulation 10)

1. *Financial Management and Accountability Act 1997* — section 22.
2. *Remuneration Tribunal Act 1973* — subsections 7 (8) and (8A).

Notes to the *Legislative Instruments Regulations 2004*

Note 1

The *Legislative Instruments Regulations 2004* (in force under the *Legislative Instruments Act 2003*) as shown in this compilation comprise Statutory Rules 2004 No. 373 amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
2004 No. 373	23 Dec 2004	1 Jan 2005	
2005 No. 14	25 Feb 2005 (see F2005L00362)	26 Feb 2005	—
2005 No. 27	11 Mar 2005 (see F2005L00540)	12 Mar 2005	—
2005 No. 184	19 Aug 2005 (see F2005L02290)	20 Aug 2005	—
2005 No. 266	24 Nov 2005 (see F2005L03682)	25 Nov 2005	—
2005 No. 300	16 Dec 2005 (see F2005L04094)	17 Dec 2005	—
2006 No. 196	27 July 2006 (see F2006L02426)	28 July 2006	—
2007 No. 152	22 June 2007 (see F2007L01676)	Schedule 2: 1 July 2007 (see r. 2 (b)) Remainder: 23 June 2007	—
2007 No. 249	27 Aug 2007 (see F2007L02582)	28 Aug 2007	—
2008 No. 66	2 May 2008 (see F2008L01257)	3 May 2008	—

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
R. 4	am. 2007 No. 249
Part 3	
R. 6	am. 2005 No. 266
Schedule 1	
Schedule 1	am. 2005 Nos. 27, 184 and 300; 2006 No. 196; 2007 No. 152
Schedule 2	
Schedule 2	am. 2005 Nos. 27, 184 and 300; 2007 Nos. 152 and 249; 2008 No. 66
Schedule 3	
Schedule 3	am. 2005 Nos. 27 and 300; 2007 Nos. 152 and 249; 2008 No. 66
Schedule 4	
Schedule 4	am. 2005 No. 14