



Legislative Instruments Regulations 2004

Statutory Rules 2004 No. 373¹

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Legislative Instruments Act 2003*.

Dated 16 December 2004

P. M. JEFFERY
Governor-General

By His Excellency's Command

PHILIP RUDDOCK
Attorney-General

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Part 1 Preliminary

1 Name of Regulations

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 <http://frli.gov.au/lodgment.nsf>; 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) A rule-maker for a legislative instrument to which subsection 29 (1) or (2) of the Act applies is taken to have complied with that subsection if an electronic copy of each instrument required to be lodged under that subsection is already held by the Department.
- (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.

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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.
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.

Part 2 Instruments made under particular provisions

1. 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.
2. An Order made under the Program and Awards Statute 2004, made under the *Australian National University Act 1991* (course content).
3. A determination made under section 32 of the *Australian Postal Corporation Act 1989*.
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*.
10. An instrument made under subsection 42 (1) of the *Foreign Evidence Act 1994*.
11. An instrument made under section 8 of the *Intelligence Services Act 2001* or a direction made under paragraph 6 (1) (e) of that Act.
12. 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.

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*.
2. A variation of a set of rules made under section 61 of the *Australian Research Council Act 2001*.
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*.
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*.
7. Regulations made under section 7 of the *National Transport Commission Act 2003*.

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*.
2. Regulations made under the *Anglo-Australian Telescope Agreement Act 1970*.
3. A Proclamation made under section 3A or 3B of the *Control of Naval Waters Act 1918*.
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*.

Schedule 4 Existing disallowance provisions

(regulation 10)

1. Subsections 7 (8) and (8A) of the *Remuneration Tribunal Act 1973*.

Note

1. Notified in the *Commonwealth of Australia Gazette* on 23 December 2004.