

**Broadband, Communications and the Digital Economy  
(Spent and Redundant Instruments)  
Repeal Regulation 2013**

**EXPLANATORY STATEMENT**

**Select Legislative Instrument 2013 No. 207**

Issued under the Authority of the Attorney-General  
in compliance with section 26 of the *Legislative Instruments Act 2003*

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**INTRODUCTION**

This regulation was made under section 48E of the *Legislative Instruments Act 2003* (the LIA) and, as a regulation, is a legislative instrument under paragraph 6(a) of that Act.

**OUTLINE**

In 2012, changes were made to the LIA to enable thousands of unnecessary legislative instruments to be repealed in an efficient, streamlined process, without having to repeal them one by one.

The changes were recommended by the *2008 Review of the LIA*, and also responded to the finding of the 2010 Department of Finance and Deregulation *Review of pre-2008 Commonwealth subordinate legislation and other regulation* that a large number of legislative instruments are probably spent or redundant.

This regulation repeals a total of 748 legislative instruments administered by the Department of Broadband, Communications and the Digital Economy. Most of the instruments it repeals are spent—that is, they are solely commencing, amending or repealing and have taken effect in full. The rest are no longer required for other reasons.

Repeal of the instruments will reduce red tape, deliver clearer laws and make accessing the law simpler for both businesses and individuals. In all cases, the repeal of the instruments will not substantially alter existing arrangements.

This regulation deals with instruments administered solely by the Department of Broadband, Communications and the Digital Economy. Spent or redundant instruments administered by other agencies and departments, or by 2 or more departments, are being repealed separately.

**PROCESS BEFORE REGULATION WAS MADE**

**Regulatory impact analysis**

Before this regulation was made, its expected impact was assessed using the Preliminary Assessment tool approved by the Office of Best Practice Regulation (OBPR). That assessment indicated that it would have no or low impact on business, individuals and the economy. This assessment has been confirmed by the OBPR (OBPR reference 14981).

## **Statement of compatibility with human rights obligations**

Before this regulation was made, its impact on human rights was assessed using tools and guidance published by the Attorney-General's Department. It is fully compatible with human rights as defined in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

## **Consultation before making**

Before this regulation was made, the Attorney-General considered the general obligation to consult imposed by section 17 of the LIA, and the specific circumstances where consultation may be unnecessary or inappropriate set out in section 18. The Attorney-General consulted the Minister for Broadband, Communications and the Digital Economy, who advised that the regulation does not significantly alter existing arrangements and that further consultation is, therefore, unnecessary.

## **Statutory preconditions and Parliamentary undertakings relevant to this regulation**

Before an instrument can be repealed by regulation under subsection 48E(2) of the LIA, the Attorney-General must be satisfied that the instrument to be repealed is spent or no longer required. It is the Attorney-General's opinion that, in the case of this regulation:

1. all of the instruments repealed by Schedules 1 and 2 are spent, and
2. all of the instruments repealed by Schedules 3 and 4 are no longer required.

There are no other statutory preconditions or Parliamentary undertakings relevant to the making of this regulation.

## **PROCESSES FOR REVIEW OF THIS REGULATION**

This regulation is subject to tabling and disallowance under Part 5 of the LIA, and will cease as if repealed on the day after the last of its provisions commence.

The instruments repealed by this regulation are also subject to Part 5 of the LIA. All have been tabled, and all are either beyond their disallowance period or exempt from disallowance.

## **OTHER ISSUES**

### **Matter incorporated by reference**

This regulation does not apply, adopt or incorporate other matter by reference.

### **More information**

A provision by provision explanation of the regulation is provided in [Attachment A](#).

Copies of each instrument to be repealed, and information about its history, are available on the whole-of-government ComLaw website (<http://www.comlaw.gov.au>).

Further information about an instrument may be requested from the administering department or its relevant agencies.

**Section 1 Name of regulation**

This section provides for the regulation to be named as the *Broadband, Communications and the Digital Economy (Spent and Redundant Instruments) Repeal Regulation 2013*. The regulation may be cited by that name.

**Section 2 Commencement**

This section provides for the regulation to commence on the day after it is registered on the Federal Register of Legislative Instruments. This is the day that would apply under subsection 12(1) of the LIA, if no commencement provision were made.

**Section 3 Authority**

This section identifies the Act that authorises the making of the regulation.

**Section 4 Guide to this regulation**

This section explains how the regulation is structured. To assist the reader, the instruments repealed by this regulation are listed in 4 Schedules:

Schedule 1 deals with solely amending and repealing instruments.

Schedule 2 deals with commencement instruments.

Schedule 3 deals with amending and repealing instruments that contain application, saving or transitional provisions.

Schedule 4 deals with other instruments that are spent or no longer required.

This section also notes that the regulation contains saving provisions that apply to the repeals, in addition to the provision made by section 7 of the *Acts Interpretation Act 1901*. That section applies to this regulation because of section 13 of the *Legislative Instruments Act 2003*.

**Section 5 Repeal of amending and repealing instruments**

Section 5 and Schedule 1 repeal amending and repealing legislative instruments that are spent, and that would have been repealed automatically under section 48A of the *Legislative Instruments Act 2003* if they had been made after the commencement of that section. They do not include instruments with an application, saving or transitional provision: see section 7 and Schedule 3.

The repeal of an instrument mentioned in Schedule 1 does not affect any amendment or repeal made by the instrument: see subsection 5(2).

**Section 6 Repeal of commencement instruments**

Section 6 and Schedule 2 repeal commencement instruments that are spent, and that would have been repealed automatically under section 48B of the *Legislative Instruments Act 2003* if they had been made after the commencement of that section.

The repeal of an instrument mentioned in Schedule 2 does not affect any commencement the instrument provides for: see subsection 6(2).

## **Section 7 Repeal of amending and repealing instruments containing other provisions**

Section 7 and Schedule 3 repeal amending and repealing legislative instruments that also contain application, saving or transitional provisions. The amendments and repeals have happened, and the application, saving or transitional provisions are no longer required. The instruments do not contain any other substantive provisions.

To assist the reader, the location of each application, saving or transitional provision in an instrument is identified in brackets after its name, with “s” used to indicate the provision (e.g. “s. 4” may refer to section 4, regulation 4, clause 4 or the fourth provision of some other type as appropriate).

The repeal of an instrument mentioned in Schedule 3 does not affect any amendment or repeal made by the instrument, or affect the continuing operation of any application, saving or transitional provision: see subsection 7(2).

## **Section 8 Repeal of other redundant instruments**

Section 8 and Schedule 4 repeal instruments that are no longer required for some other reason. Schedule 4 is divided into Parts along thematic lines as explained below.

The repeal of an instrument mentioned in Schedule 4 does not affect any amendment or repeal made by the instrument, or affect the continuing operation of any application, saving or transitional provision: see subsection 8(2).

## **Section 9 Expiry of regulation**

Section 9 provides for the regulation to cease on the day after it commences, consistent with the aim of delivering clearer laws and reducing red tape. If this provision was not made:

- the many provisions that are solely repealing or commencing would cease on the day after they commence under sections 48C and 48D of the LIA; and
- the rest of the regulation would remain in force until repealed by sunseting or some other means, even though it serves no ongoing purpose.

## **Schedule 1—Repeal of amending and repealing instruments**

This Schedule repeals amending and repealing legislative instruments that are spent, and that would have been repealed automatically under section 48A of the *Legislative Instruments Act 2003* if they had been made after the commencement of that section. This Schedule does not include instruments with an application, saving or transitional provision: see Schedule 3.

The repeal of an instrument by this Schedule does not affect any amendment or repeal made by the instrument: see subsection 5(2).

## **Schedule 2—Repeal of commencement instruments**

This Schedule repeals commencement instruments that are spent, and that would have been repealed automatically under section 48B of the *Legislative Instruments Act 2003* if they had been made after the commencement of that section.

The repeal of an instrument by this Schedule does not affect any commencement the instrument provides for: see subsection 6(2).

### **Schedule 3—Repeal of amending and repealing instruments containing other provisions**

This Schedule repeals amending and repealing legislative instruments that also contain application, saving or transitional provisions. The amendments and repeals have happened, and the application, saving or transitional provisions are no longer required. The instruments do not contain any other substantive provisions.

To assist the reader, the location of each application, saving or transitional provision in an instrument is identified in brackets after its name, with “s” used to indicate the provision (e.g. “s. 4” may refer to section 4, regulation 4, clause 4 or the fourth provision of some other type as appropriate).

The repeal of an instrument by this Schedule does not affect any amendment or repeal made by the instrument: see paragraph 7(2)(a). Also, to ensure that the repeal of the application, saving or transitional provisions does not have any unforeseen effect, and to remove any doubt that may otherwise exist, any continuing operation they may have is preserved: see paragraph 7(2)(b).

### **Schedule 4—Repeal of other redundant instruments**

This Schedule repeals legislative instruments that are spent or no longer required, and that are not covered by the previous Schedules.

The repeal of an instrument by this Schedule does not affect any amendment or repeal made by the instrument: see paragraph 8(2)(a). Also, to ensure that the repeal of any application, saving or transitional provision does not have any unforeseen effect, and to remove any doubt that may otherwise exist, any continuing operation it may have is preserved: see paragraph 8(2)(b).

#### **Part 1 of Schedule 4— instruments past their date of effect**

This Part repeals 28 instruments. Most of these instruments are expressed as applying or having effect until a date which has now passed. The licence area plans have ceased to have effect as of dates which are now passed, by the operation of subsection 26(1H) of the *Broadcasting Services Act 1992*. As these instruments are no longer required, their repeal does not alter existing arrangements.

#### **Part 2 of Schedule 4—variations to licence plans**

This Part repeals a number of legislative instruments that have made variations to licence area plans. Those instruments may contain substantive material such as the reproduction of a whole schedule to show the variations made. In all cases, those instruments are spent or are no longer required. Their repeal does not alter existing arrangements.

#### **Part 3 of Schedule 4—Other instruments no longer required**

This Part repeals 10 instruments that are no longer required.

Item 1 repeals the Australian Broadcasting Corporation Regulations. Made in 1988, these regulations prescribe an amount for the purposes of paragraph 70(1)(a) of the *Australian Broadcasting Corporation Act 1983*. As that paragraph was repealed by the *Communications and the Arts Legislation Amendment Act (No. 1) 1995*, the regulations serve no ongoing purpose and their repeal does not alter existing arrangements.

Item 2 repeals the Australian Broadcasting Tribunal (Inquiries) (Transitional Provisions) Regulations. Made in 1987, these regulations clarify the application of the *Broadcasting and Television Amendment Act 1985* to inquiries by the Australian Broadcasting Tribunal. As the Tribunal’s functions were subsequently transferred to the then Australian Broadcasting Authority (now the Australian Communications and Media Authority), the regulations are no longer required and their repeal does not alter existing arrangements.

Item 3 repeals the *Australian Communications Authority (MF NAS Transmitter Licences) Direction No. 1 of 2003*. This direction requires the then Australian Communications Authority to impose certain conditions on all MF NAS transmitter licences ‘as soon as practicable’ unless certain criteria are met. As this requirement has been met, the repeal of the direction does not alter existing arrangements.

Item 4 repeals the *Broadcasting Services (Extension of Simulcast Period) Regulations 2007*. These regulations extend the simulcast period for commercial television licence areas that would otherwise apply under section 6A of Schedule 4 to the *Broadcasting Services Act 1992*. That Act was then amended in 2008 to authorise the Minister or the Australian Communications and Media Authority (depending on the type of licence area) to determine the end dates for simulcast periods. Consequently, the regulations are no longer required, and their repeal does not alter existing arrangements.

Item 5 repeals the *Broadcasting Services (Local Content on Regional Commercial Radio) Direction No. 1 of 2006*. This direction requires the Australian Communication and Media Authority to investigate specified matters and to report the outcomes to the relevant Minister by 30 June 2007. As this requirement has been met, the repeal of the direction does not alter existing arrangements.

Item 6 repeals the Postal and Telecommunications Commissions (Transitional Provisions) Regulations. Made in 1975, these regulations clarify the status of claims made under the *Public Service Arbitration Act 1920-1973* and prescribe which commission is responsible for what claims. As all claims have now been resolved, the regulations are no longer required and their repeal does not alter existing arrangements.

Item 7 repeals the *Radiocommunications (Spectrum Designation) Notice No. 1 of 1996 (Amendment No. 1 of 1999)*. This notice of variation prescribes coordinates for areas which are exempt from certain provisions of the *Radiocommunications (Spectrum Designation) Notice No. 1 of 1996*. As the original notice was repealed on 1 June 2012 by the *Radiocommunications (Spectrum Designation) Notice No. 1 of 1996 Instrument of Revocation No. 1 of 2010*, the variation to it is no longer required and the repeal of the notice of variation does not alter existing arrangements.

Item 8 repeals the Special Broadcasting Service Regulations. Made in 1995, these regulations prescribe an amount for the purposes of subsection 67(1) of the *Special Broadcasting Service Act 1991*. As that paragraph was repealed by the *Communications and the Arts Legislation Amendment Act (No. 1) 1995*, the regulations are no longer required and their repeal does not alter existing arrangements.

Item 9 repeals the *Telecommunications (Consumer Protection and Service Standards) (Communications Fund) Regulations 2005*. The regulations specify assets for the purposes of section 158ZF of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. As that paragraph was repealed by the *Nation-building Funds (Consequential Amendments) Act 2008*, the regulations are no longer required and their repeal does not alter existing arrangements.

Item 10 repeals the *Telecommunications (Consumer Protection and Service Standards) (Special Digital Data Service) Regulations 1999*. The regulations specify equipment for the purposes of section 14A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. As that paragraph was repealed by the *Statute Stocktake (Regulatory and Other Laws) Act 2009*, the regulations are no longer required and their repeal does not alter existing arrangements.