

# Treasury (Spent and Redundant Instruments) Repeal Regulation 2013

## EXPLANATORY STATEMENT

### Select Legislative Instrument 2013 No. 215

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In 2012, changes were made to the LIA to enable thousands of unnecessary legislative instruments to be repealed in an efficient, streamlined process, without having to repeal them one by one.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 2,266 legislative instruments administered by the Treasury (or its portfolio agencies). 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 Treasury (or its portfolio agencies). Spent or redundant instruments administered by other agencies and departments, or by 2 or more departments, are being repealed separately.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 15134).

### 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 Assistant Treasurer, 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**

An explanation of the provisions and the Schedules to 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 *Treasury (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). The instruments, and compilations showing their effect on principal instruments, will remain on permanent public record on the Federal Register of Legislative Instruments, a part of the larger ComLaw website.

**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 therefore the instruments are no longer required. If any application, saving or transitional provision is included in one of these instruments, any ongoing operation of the provision is preserved. 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). The instruments, and compilations showing their effect on principal instruments, will remain on permanent public record on the Federal Register of Legislative Instruments, a part of the larger ComLaw website.

## **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). The instruments, and compilations showing their effect on principal instruments, will remain on permanent public record on the Federal Register of Legislative Instruments, a part of the larger ComLaw website.

## **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 instrument 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 therefore the instruments are no longer required. If any application, saving or transitional provision is included in one of these instruments, any ongoing operation of the provision is preserved. 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 182 instruments. These instruments are all expressed as applying or having effect until a date which has now passed, and are no longer required. The repeal of the instruments does not alter existing arrangements.

#### **Part 2 of Schedule 4—Redundant instruments**

This Part repeals 286 determinations made by the Australian Prudential Regulation Authority (APRA). The determinations make prudential standards or reporting standards and have been made redundant by the revocation of those standards. As such, these instruments serve no further purpose.

#### **Part 3 of Schedule 4—Instruments containing substantive matter**

This Part repeals 109 amending or repealing instruments that contain substantive matter. This includes 83 amendments to Australian Accounting Standards that may contain reasons for issuing the standard, main features of the standard, an appendix or basis for conclusions. The other various instruments also contain substantive matter. In all cases, the amending or repealing provisions are spent and the instruments are no longer required. The repeal of the instruments does not alter existing arrangements.

#### **Part 4 of Schedule 4—Transitional instruments**

This Part repeals 8 instruments, all of which contain provisions for transitional purposes.

Item 1 repeals the APRA transitional prudential standards. The instrument is a collection of the provisions that, on 1 July 1999, became APRA transitional prudential standards by operation of

regulation 12 of the *Financial Sector (Amendments and Transitional Provisions) Regulations 1999*. The instrument is no longer required and its repeal does not alter existing arrangements.

Item 2 repeals the *Business Names Registration (Transitional and Consequential Provisions) Regulations 2011*. These regulations dealt with matters of detail within the framework established by the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*. The Regulations set out rules for regulation of business names to businesses registered on State/Territory registers before the commencement of the National Business Names System, which was transitioned into the new national system. As the transfer of the register was completed in 2012, the regulations are no longer required and their repeal does not alter existing arrangements.

Item 3 repeals the Competition Policy Reform (Transitional Provisions) Regulations. These regulations formed part of a legislative package that established the Australian Competition and Consumer Commission in 1995. The regulations are no longer required and their repeal does not alter existing arrangements.

Item 4 repeals the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations 1998*. These regulations removed any doubt as to the validity of instruments made by the Insurance and Superannuation Commissioner pursuant to regulations under certain named insurance and superannuation legislation after the commencement of the Financial Sector Reform legislation. The regulations are no longer required and their repeal does not alter existing arrangements.

Item 5 repeals the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations 1999*. These regulations constituted part of the second stage of the financial system reforms involving the transfer of State and Territory-based institutions including friendly societies, building societies, credit unions and special services providers (SSPs) to the Commonwealth prudential regulatory regime. The regulations are no longer required and their repeal does not alter existing arrangements.

Item 6 repeals the *Governance Review Implementation (Treasury Portfolio Agencies) (Application and Transitional Provisions) Regulations 2007*. These regulations were to ensure that the transfer of ASIC to the *Financial Management Accountability Act 1997* did not affect the operation of the companies unclaimed monies account. The regulations also provided for the Minister to retain the power to apply interest income on investments of the companies unclaimed monies account made prior to 1 July 2007. The regulations are no longer required and their repeal does not alter existing arrangements.

Item 7 repeals the *National Consumer Credit Protection (Transitional and Consequential Provisions) Regulations 2010*. These regulations dealt with transitional matters such as the treatment of court proceedings, the application of the *National Consumer Credit Protection Act 2009* and the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* to contracts made before commencement of the Credit Act (pre-commencement contracts), conditions of registration with ASIC and exemptions and infringement notices. The regulations are no longer required and their repeal does not alter existing arrangements.

Item 8 repeals the *Trade Practices Amendment (Australian Consumer Law—Corded Internal Window Coverings) Transitional Regulations 2010*. These regulations saved State and Territory regulatory instruments under the Australian Consumer Law provisions related to corded internal window coverings when the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010* commenced on 1 January 2011. The regulations are no longer required and their repeal does not alter existing arrangements.

## **Part 5 of Schedule 4—Other instruments no longer required**

This Part repeals 6 instruments that are no longer required.

Item 1 repeals the *Competition and Consumer Amendment Regulation 2012 (No. 2)*. These regulations amend the *Competition and Consumer Regulations 2010* for purposes which are consequential to the application of the National Energy Retail Law in participating states and territories and for other purposes. The amendments contained in Schedule 2 of this instrument were due to commence on the commencement of section 4 of the *National Energy Retail Law (Victoria) Act 2012* of Victoria. These amendments will not commence because the Bill for that Act was withdrawn. The regulations are no longer required and their repeal does not alter existing arrangements.

Item 2 repeals the Environmental and Natural Resource Management Guidelines in relation to the establishment of trees for the purposes of carbon sequestration (made on 19 June 2008). These guidelines were superseded by the Environmental and Natural Resource Management Guidelines in relation to the establishment of trees for the purposes of carbon sequestration (made on 2 July 2008) (F2008L02397). The June 2008 guidelines are no longer required and their repeal does not alter existing arrangements.

Item 3 repeals the Environmental and Natural Resource Management Guidelines in relation to the establishment of trees for the purposes of carbon sequestration (made on 2 July 2008). These guidelines were superseded by the Environmental and Natural Resource Management Guidelines in relation to the establishment of trees for the purposes of carbon sequestration (made on 1 December 2008) (F2008L04546). The July 2008 guidelines are no longer required and their repeal does not alter existing arrangements.

Item 4 repeals the Occupational Superannuation Standards Regulations, now cited as the *Occupational Superannuation Standards Regulations 1987*. The operative provisions of the enabling Act, the *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987* (originally cited as the *Occupational Superannuation Standards Act 1987*), providing authority for the making of these regulations have been repealed. The regulations are no longer operative and their repeal does not alter existing arrangements.

Item 5 repeals the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations 2004*. These regulations were superseded by the *Competition and Consumer (Tobacco) Information Standard 2011* (F2011L02766). The regulations are no longer required and their repeal does not alter existing arrangements.

Item 6 repeals the *Trade Practices (Consumer Product Safety Standard) (Baby Walkers) Regulations 2002*. These regulations were superseded by the Consumer Protection Notice No. 1 of 2013 - Safety Standard: Baby Walkers (F2013L00190). The regulations are no longer required and their repeal does not alter existing arrangements.