

Defence (Spent and Redundant Instruments) Repeal Regulation 2014

EXPLANATORY STATEMENT

Select Legislative Instrument No. 15, 2014

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

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In 2012, changes were made to the LIA to enable thousands of unnecessary legislative instruments to be repealed in an efficient, streamlined process, without having to repeal them one by one.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 1103 legislative instruments administered by the Department of Defence. 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 Defence. Spent or redundant instruments administered by other agencies and departments, or by 2 or more departments, are being repealed separately.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 15240).

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 Defence, 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 *Defence (Spent and Redundant Instruments) Repeal Regulation 2014*. 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 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 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 containing substantive matter

This Part repeals 2 amending instruments that also contain substantive matter. 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 2 of Schedule 4—Other instruments no longer required

Item 1 repeals the *Australian Military Court Rules 2007*. In 2009 the High Court found aspects of the Australian Military Court to be unconstitutional, and relevant provisions of the *Defence Force Discipline Act 1982* were subsequently repealed. However, the rules of court were not repealed at that time. As the rules are no longer effective, their repeal does not alter existing arrangements.

Item 2 repeals the *War Gratuity Regulations 1945*. These regulations provide for the payment of a one-off gratuity to veterans of the Second World War. As the last gratuity payment was made more than 9 years ago, the regulations would appear to be redundant. In the unlikely event that an eligible veteran has yet to claim payment, their entitlements and the continuing application of the regulations is preserved by paragraph 8(2)(b).