

Spent and Redundant Instruments Repeal Regulation 2014

EXPLANATORY STATEMENT

Select Legislative Instrument No. 25, 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In 2012, changes were made to the LIA to enable thousands of unnecessary legislative instruments to be repealed in an efficient, streamlined process, without having to repeal them one by one.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 220 legislative instruments administered by multiple agencies and Departments. 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.

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 16145).

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 Ministers with responsibility for administering the relevant enabling legislation, 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 *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).

To assist the reader, the instruments are grouped by administering department, consistent with the Administrative Arrangements Order dated 12 December 2013. If 2 or more departments administer an instrument, the instrument is listed under the final Part heading, namely “Other”.

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).

To assist the reader, the instruments are grouped by administering department, consistent with the Administrative Arrangements Order dated 12 December 2013. If 2 or more departments administer an instrument, the instrument is listed under the final Part heading, namely “Other”.

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).

To assist the reader, the instruments are grouped by administering department, consistent with the Administrative Arrangements Order dated 12 December 2013. If 2 or more departments administer an instrument, the instrument is listed under the final Part heading, namely “Other”.

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).

To assist the reader, the instruments are grouped by administering department, consistent with the Administrative Arrangements Order dated 12 December 2013. If 2 or more departments administer an instrument, the instrument is listed under the final Part heading, namely “Other”.

Part 1 of Schedule 4—Attorney-General’s Department

This Part repeals 31 instruments administered by the Attorney-General’s Department.

Item 1 repeals the *Commonwealth Places (Application of Laws) Regulations 1998*. The regulations were primarily created to deal with an anomalous situation relating to a property known as Vicars Winery, where the Commonwealth’s separation of powers doctrine was found to be incompatible with NSW’s liquor licensing arrangements. The relevant *Liquor Act 1982* (NSW) was superseded in 2007 and these regulations are now redundant. Their repeal does not alter existing arrangements.

Items 2-3 repeal instruments that determine that a corporation which acquires the rights of a credit provider with respect to the repayment of a loan (whether by assignment, subrogation or other means) shall, in relation to that loan, be regarded as the credit provider for the purposes of the *Privacy Act 1988*. The instruments are expressed as having effect until a date which has now passed, and are no longer required. Their repeal does not alter existing arrangements.

Item 4 repeals the *Disclosure Log Determination No. 2011-1 (Exempt Documents)*. The determination prescribes two categories of information that an agency or Minister is not required to make available to members of the public as part of a disclosure log published under subsection 11C(3) of the *Freedom of Information Act 1982*. The determination is expressed as having effect until a date which has now passed, and is no longer required. Its repeal does not alter existing arrangements.

Items 5-9 repeal public interest determinations made under the *Privacy Act 1988*. The 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.

Items 10-31 repeal determinations made under subsection 1061L(2) of the *Social Security Act 1991* that set out the circumstances in which persons are to be taken to be adversely affected by a major disaster. The Australian Government Disaster Recovery Payment provides an immediate, one-off payment to Australians adversely affected by a major disaster. The determinations are no longer required. Their repeal does not alter existing arrangements.

Part 2 of Schedule 4—Department of Agriculture

This Part repeals 2 instruments administered by the Department of Agriculture.

Item 1 repeals the *Quarantine Service Fees 2000-03 (Australia Post) Determination 2000*. The determination applies to the 2000-01, 2001-02 and 2002-03 financial years which have now passed, and is no longer required. Its repeal does not alter existing arrangements.

Item 2 repeals the *Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 2 2011*. The direction is expressed as applying until a date which has now passed, and is no longer required. Its repeal does not alter existing arrangements.

Part 3 of Schedule 4—Department of Communications

Item 1 repeals the *Licence Area Plans – Omnibus (Community Television) Variation 2011*. The instrument is expressed as operating until 1 January 2014, at which time it ceases to have effect. As the date has now passed, the instrument is no longer required and its repeal does not alter existing arrangements.

Item 2 repeals the *Social Bonus Commencement Day Declaration 1999 (No. 1)*. The instrument declared 22 October 1999 as the social bonus commencement day under subsection 45(1) of the *Telstra Corporation Act 1991*. The declaration is spent and is no longer required. Its repeal does not alter existing arrangements.

Item 3 repeals the *Telecommunications (Carrier Licence Charges) Act 1997* - Determination under paragraph 15(1)(d) No. 1 of 2005. The determination is expressed as applying for a period which has now passed, and is no longer required. Its repeal does not alter existing arrangements.

Part 4 of Schedule 4—Department of Immigration and Border Protection

This Part repeals the *Customs Act 1901* - Subsection 153L(4) - Specified Percentage of Total Factory Costs - Determination No. 1 of 2010. The determination is expressed as being effective for a period which has now passed, and is no longer required. Its repeal does not alter existing arrangements.

Part 5 of Schedule 4—Department of Industry

This Part repeals 22 instruments administered by the Department of Industry.

Items 1-9 repeal instruments that are redundant as the Automotive Competitiveness and Investment Scheme (ACIS) has now concluded and all import credit duties have been issued. Unused credits expired on 31 December 2011. The instruments are no longer required and their repeal does not alter existing arrangements.

Item 10 repeals the *Finance Scheme Guidelines No. 2 of 1995*. The guidelines are redundant as there is no longer a legislative reference to financial schemes under the R&D Tax Incentive. The guidelines are no longer required and their repeal does not alter existing arrangements.

Item 11 repeals the *Guidelines for Research and Development Plans 2001*. The guidelines are redundant as there is no longer a legislative requirement for plans under the R&D Tax Incentive. Their repeal does not alter existing arrangements.

Item 12 repeals the *IIF program Round Two, Policies and Practices Direction No. 1 of 1999*. The direction is redundant as all funds licensed under round 2 of the Innovation Investment Fund program have closed. Its repeal does not alter existing arrangements.

Item 13 repeals the *Industry Cooperative Innovation Program Directions No. 1 of 2007*. The directions are redundant as the Industry Cooperative Innovation Program has closed and there are no remaining active contracts. Its repeal does not alter existing arrangements.

Item 14 repeals the *Industry Research and Development (ACIS Stage 2 Motor Vehicle Producer Research and Development Scheme) Directions 2004*. The directions are redundant as the Automotive Competitiveness and Investment Scheme (ACIS) has now concluded and all import credit duties have been issued. Unused credits expired on 31 December 2011. The instruments are no longer required and their repeal does not alter existing arrangements.

Item 15 repeals the Industry Research and Development Board Guideline – Adequate Australian Content. The guideline is redundant as there is no longer a legislative requirement to consider the adequacy of Australian content under the R&D Tax Incentive. Its repeal does not alter existing arrangements.

Item 16 repeals the Industry Research and Development Board Guideline – Inclusion on the Register of Commercial Government Bodies. The guideline is redundant as there is no longer a legislative requirement for this register under the R&D Tax Incentive. Its repeal does not alter existing arrangements.

Items 17 and 18 repeal industry research and development guidelines. The guidelines are redundant as they have been superseded by the *Industry Research and Development Regulations 2011*. The guidelines are no longer required and their repeal does not alter existing arrangements.

Item 19 repeals the *Innovation Investment Fund program Round Two (Additional Function of the IR&D Board) Direction No. 1 of 1999*. The direction is redundant as the Innovation Investment Fund program has closed and there are no remaining active contracts. Its repeal does not alter existing arrangements.

Item 20 repeals the *R&D Start Program (additional function of the IR&D Board) Direction No. 1 of 1996*. This instrument is redundant as the Research and Development Start Program has closed and there are no remaining active contracts. Its repeal does not alter existing arrangements.

Item 21 repeals the *REEF Program, Policies and Practices Direction No. 1 of 1999*. The direction sets out policies and practices to be followed by the IR&D Board in developing and administering the Renewable Energy Equity Fund (REEF) program. As the program has now closed the instrument is redundant and can be repealed. Its repeal does not alter existing arrangements.

Item 22 repeals the *Renewable Energy Equity Fund Program (Additional Function of the IR&D Board) Direction No. 1 of 1999*. The direction provides an additional function to the IR&D Board in administering the Renewable Energy Equity Fund (REEF) program. As the REEF program is now closed, the instrument is redundant and can be repealed. Its repeal does not alter existing arrangements.

Part 6 of Schedule 4—Department of the Prime Minister and Cabinet

This Part repeals 4 instruments administered by the Department of the Prime Minister and Cabinet. The instruments were made under subsection 203AD(1A) of the *Native Title Act 1993* and recognise certain Aboriginal/Torres Strait Islander bodies as representative bodies for a described area for a transitional period. The instruments are expressed as having effect until a date which has now passed, and are no longer required. Their repeal does not alter existing arrangements.

Part 7 of Schedule 4—Department of the Treasury

This Part repeals 17 instruments administered by the Department of the Treasury.

Items 1-3 repeal amendments to Australian Accounting Standards that may contain other provisions such as reasons for issuing the standard, main features of the standard, an appendix or basis for conclusions. The amending provisions are spent and the instruments are no longer required. The repeal of the instruments does not alter existing arrangements.

Item 4 repeals ASIC Class Order [CO 10/333]. The class order is expressed as having effect until a date which has now passed, and is no longer required. Its repeal does not alter existing arrangements.

Items 5-14 repeal Consumer Protection Notices made under the *Competition and Consumer Act 2010* (or previously cited *Trade Practices Act 1974*). The instruments impose or extend interim or temporary bans on, or issue a compulsory recall notice for, consumer goods of a particular kind that will or may cause injury to any person. The bans remained in force for a specified period that has now passed. Any recalls have been complied with. The instruments are no longer required and their repeal does not alter existing arrangements.

Item 15 repeals the *HIH Royal Commission (Transfer of Records) Regulations 2005*. The regulations relate to the transfer of HIH Royal Commission records from the HIH Royal Commission to ASIC, on written consent by the Secretary of the Department of Prime Minister and Cabinet. ASIC's investigations arising out of the HIH Royal Commission have concluded and it no longer requires access to associated records. Accordingly, the regulation is redundant and is no longer required. Its repeal does not alter existing arrangements.

Items 16 and 17 repeal variations to standards relating to merchant surcharging made under the *Payment Systems (Regulation) Act 1998*. The instruments contain provisions stating their purpose and effect. The varying provisions are spent and the instruments are no longer required. Their repeal does not alter existing arrangements.