

Legislative Instruments Amendment (Exemptions) Regulation 2014

EXPLANATORY STATEMENT

Select Legislative Instrument No. 187, 2014

Issued under the Authority of the Attorney-General

OUTLINE

Section 62 of the *Legislative Instruments Act 2003* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act establishes a comprehensive regime for the management of Commonwealth legislative instruments.

Section 7 of the Act lists categories of instruments that are not legislative instruments and therefore not subject to the Act. Item 24 of the table in section 7(1) of the Act provides that instruments prescribed by the regulations for the purposes of that table are not legislative instruments. Regulation 7 of the *Legislative Instruments Regulations 2004* (the Principal Regulations) provides that an instrument listed in Schedule 1 to the Principal Regulations is not a legislative instrument.

Part 6 of the Act provides a regime for the sunseting (automatic ceasing) of legislative instruments after 10 years of operation. The regime ensures that legislative instruments are kept up to date and only remain in force for so long as they are needed.

Item 51 of subsection 54(2) of the Act provides that Part 6 of the Act does not apply to legislative instruments prescribed by the regulations for the purposes of the table. Regulation 9 of the Principal Regulations provides that an instrument listed in Schedule 3 to the Principal Regulations is declared to be exempt from the sunseting provisions of the Act.

The purpose of the *Legislative Instruments Amendment (Exemptions) Regulation 2014* (the Regulations) is to amend Schedule 1 and Schedule 3 to the Principal Regulations to add and make corrections to items in those Schedules.

The amendments serve three purposes. Firstly, the Regulations insert an item in Schedule 1 of the Principal Regulations to confirm that total fire ban orders made under subsection 85(1) of the *Jervis Bay Territory Rural Fires Ordinance 2014* are not legislative instruments and are exempt from the operation of the Act.

The intention is to put beyond doubt that Jervis Bay Territory total fire ban orders are not legislative instruments, following consultation with the Department of Infrastructure and Regional.

Secondly, the Regulations add seven new items to Schedule 3 of the Principal Regulations. The instruments to be exempt from sunseting by this Regulation have each been assessed as not suitable for regular review under Part 6 of the Act.

Exemptions from sunseting for certain categories of legislative instruments were either requested by the responsible Minister or their Department, or were identified by the Attorney-General's Department. The Regulations were then developed in consultation with responsible Departments.

There is a long-standing principle that exemptions from sunseting should only be granted where the instrument is not suitable for regular review. To satisfy this principle an exemption should meet at least one of five established criteria:

- the rule-maker has been given a statutory role independent of the Government, or is operating in competition with the private sector
- the instrument is designed to be enduring and not subject to regular review
- commercial certainty would be undermined by sunseting
- the instrument is part of an intergovernmental scheme, or
- the instrument is subject to a more rigorous statutory review process.

Each exemption from sunseting made by the Regulations was analysed against the above criteria and found to be not suitable for regular review under Part 6 of the Act.

Thirdly, the Regulations update the title of the Act referred to in item 51 of Schedule 3 of the Principal Regulations, repealing the outdated reference to the *War Precautions Act Repeal Act 1920* and replacing it with the current title of *Protection of Word "Anzac" Act 1920*. This correction makes no substantive change to the law and merely reflects a change made to the title of the Act in question.

The Act does not specify any conditions that must be fulfilled before the power to make these Regulations may be exercised.

The Regulations will be a legislative instrument for the purposes of the Legislative Instruments Act.

The Regulations will commence on the day after they are registered on the Federal Register of Legislative Instruments.

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 will have no or low impact on business, individuals and the economy. This assessment has been confirmed by the OBPR (OBPR reference 17635).

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. This Regulation will make technical amendments to the Principal Regulations which will have no impact on the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This Regulation is compatible with human rights as it does not raise any human rights issues.

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.

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](#).

Section 1 Name of regulation

This section provides for the Regulations to be named as the *Legislative Instruments Amendment (Exemptions) Regulation 2014*. The Regulations may be cited by that name.

Section 2 Commencement

This section provides for the Regulations to commence on the day after they are registered on the Federal Register of Legislative Instruments.

Section 3 Authority

This section identifies the *Legislative Instruments Act 2003* (the LIA) as the Act that authorises the making of the Regulations.

Section 4 Schedule(s)

This section provides that the *Legislative Instruments Regulations 2004* (the Principal Regulations) are amended as set out in the Schedule.

Schedule 1 Amendments

Schedule 1 of the Regulations adds additional items to Schedules 1 and 3 of the Principal Regulations. Part 2 of Schedule 1 of the Regulations lists instruments made under particular provisions that are declared not to be legislative instruments. Instruments listed in this Schedule are not subject to the provisions of the LIA. Schedule 3 to the Principal Regulations lists instruments that are declared not to be subject to the sunseting regime provided under the LIA.

Item 1 provides that an order made under subsection 85(1) of the *Jervis Bay Territory Rural Fires Ordinance 2014* is not a legislative instrument.

Item 2 provides exemptions from sunseting for determinations made solely for the purposes of either or both of sections 13 and 13A of the *Currency Act 1965* (table item 15A), and for regulations made under that Act (table item 15B). These determinations and regulations provide for matters that are intended to be enduring and not subject to regular review under the LIA, such as the standard weight and dimensions of coins.

Item 3 provides exemption from sunseting for multiple instruments made under different Acts.

Table item 17A provides exemptions from sunseting for Disability Standards made under section 31 of the *Disability Discrimination Act 1992*. The Disability Standards set out rights and responsibilities with more detail than is provided under the Act. A more stringent statutory review process than sunseting applies to these provisions and should be preserved. Commercial certainty would also be undermined by the sunseting of these rules.

Table item 17B provides exemptions from sunseting for regulations made under the *Extradition Act 1988* that are not otherwise automatically exempt. These regulations that are

not automatically exempt were made to implement extradition arrangements with other nations that are of less than treaty status or reciprocal arrangements with other nations. These regulations are intended to be enduring and not subject to regular review under the LIA.

Table item 17C provides exemptions from sunseting for multiple instruments made under different provisions of the *Family Law Act 1975*. Proclamations made under the provisions referred to in paragraphs (a) to (d), (f), (g), and (i) define which Federal, State and Territory courts have jurisdiction to hear matters arising under the *Family Law Act 1975*.

Proclamations made under the provisions referred to in paragraphs (e) and (h) deal with the application of certain provisions of Part VII of the *Family Law Act 1975* in matters involving children who are subject to a child welfare law in Queensland, Tasmania, New South Wales, or Victoria. These proclamations are part of an intergovernmental scheme and are intended to be enduring.

Item 4 provides an exemption from sunseting for regulations made under the *International Transfer of Prisoners Act 1997* (table item 20A) that are not otherwise automatically exempt. These regulations that are not automatically exempt implement prisoner transfer arrangements with other nations that are of less than treaty status. These regulations are intended to be enduring and not subject to regular review under the LIA.

Item 5 provides an exemption from sunseting for regulations under *Mutual Assistance in Business Regulation Act 1992* (table item 23A). The regulations set out how Commonwealth business-regulating authorities may assist their foreign counterparts.

Item 6 repeals and replaces existing table item 51, to reflect the change in name of the *Protection of Word "Anzac" Act 1920*.