

# Legislative Instruments Amendment (Exemptions—Emergency Management Ordinances) Regulation 2015

## EXPLANATORY STATEMENT

### Select Legislative Instrument No. 81, 2015

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.

The purpose of the *Legislative Instruments Amendment (Exemptions—Emergency Management Ordinances) Regulation 2015* (the Regulation) is to amend Schedule 1 of the Principal Regulations.

The amendments insert three items into Schedule 1 of the Principal Regulations to confirm that the following are not legislative instruments and are exempt from the operation of the Act:

- a. each of the following instruments made under the *Emergency Management Ordinance 2012 (CI)* (CI Ordinance) or the *Emergency Management Ordinance 2012 (CKI)* (CKI Ordinance) following their proposed amendment by the *Christmas Island and Cocos (Keeling) Islands Legislation Amendment (2015 Measures No. 1) Ordinance 2015* (Amendment Ordinance):
  - i. an emergency situation declaration
  - ii. an extension of an emergency situation declaration
  - iii. a state of emergency declaration or
  - iv. an extension of a state of emergency declaration
- b. a declaration of a state of emergency made under the proposed *Jervis Bay Territory Emergency Management Ordinance 2015* (Jervis Bay Ordinance).

The intention is to put beyond doubt that declarations and extensions of declarations, of emergency situations or states of emergency made for the Territories of Jervis Bay, Christmas Island or the Cocos (Keeling) Islands are not legislative instruments. The

desirability of confirming this was established through consultation with the Department of Infrastructure and Regional Development.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the Act.

The exemptions commence on the later of the day after registration of the proposed Regulation, and the day the Amendment Ordinance or Jervis Bay Ordinance, respectively, commence.

### **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 18850).

### **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 this Regulation is provided in [Attachment A](#).

**Section 1 Name of Regulation**

This section provides that the title of the Regulation is the *Legislative Instruments Amendment (Exemptions—Emergency Management Ordinances) Regulation 2015*.

**Section 2 Commencement**

This section provides for the preliminary sections of the Regulation to commence on the day after it is registered on the Federal Register of Legislative Instruments.

The amendments relating to Christmas Island and the Cocos (Keeling) Islands commence on the later of the day after the Regulation is registered, and the day the proposed *Christmas Island and Cocos (Keeling) Islands Legislation Amendment (2015 Measures No. 1) Ordinance 2015* (the Amendment Ordinance) commences. The Amendment Ordinance is intended to make amendments to the *Emergency Management Ordinance 2012 (Territory of Christmas Island)* (CI Ordinance) and the *Emergency Management Ordinance 2012 (Territory of Cocos (Keeling) Islands)* (CKI Ordinance).

The amendments relating to the Jervis Bay Territory commence on the later of the day after the Regulation is registered, and the day the proposed *Jervis Bay Territory Emergency Management Ordinance 2015* (Jervis Bay Ordinance) commences.

**Section 3 Authority**

This section provides that the Regulation is made under the *Legislative Instruments Act 2003* (the Act).

**Section 4 Schedule(s)**

This section provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Regulation has effect according to its terms.

**Schedule 1 Amendments**

Schedule 1 of the Regulation adds additional items to Schedule 1 to the Principal Regulation. Part 2 of Schedule 1 to the Principal Regulation lists instruments made under particular provisions that are declared not to be legislative instruments. Instruments listed in Schedule 1 of the Principal Regulation are not subject to the provisions of the Act.

**Item 1** inserts two new items into Part 2 of Schedule 1 to the Principal Regulation, confirming that:

- a) each of the following instruments made under the CI Ordinance:
  - a. an emergency situation declaration;
  - b. an extension of an emergency situation declaration;
  - c. a state of emergency declaration;
  - d. an extension of a state of emergency declaration, and
- b) each of the following instruments made under the CKI Ordinance:
  - a. an emergency situation declaration;

- b. an extension of an emergency situation declaration;
- c. a state of emergency declaration;
- d. an extension of a state of emergency declaration

are not legislative instruments for the purposes of the Act.

**Item 2** inserts one more new item into Part 2 of Schedule 1 to the Principal Regulation confirming that a declaration of a state of emergency made under the proposed Jervis Bay Ordinance is not a legislative instrument for the purposes of the Act.

The variation of a declaration of a state of emergency under the Jervis Bay Ordinance, and revocations of declarations or revocations of extensions made under the CI Ordinance or the CKI Ordinance, do not need to be formally exempted from the operation of the Act. This is because such revocations or variations would already be covered by item 33 of Part 1 of Schedule 1 to the Principal Regulation, which provides that an instrument that varies or revokes a non-legislative instrument is itself not a legislative instrument for the purposes of the Act.

An extension of an emergency situation declaration or a state of emergency declaration made under the CI Ordinance or the CKI Ordinance would be done by a separate instrument, and not by variation of the original declarations. As a result of this different mechanism for making extensions of such declarations, specific exemptions are necessary. Item 33 of Part 1 of Schedule 1 to the Principal Regulation would not apply to these extensions.