

**LEGISLATION (EXEMPTIONS AND OTHER MATTERS) AMENDMENT (2024
MEASURES NO. 1) REGULATIONS 2024**

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Legislation Act 2003* (Legislation Act) establishes a comprehensive regime for the publication of Commonwealth Acts and instruments. It also provides for the registration, tabling, parliamentary scrutiny, disallowance and sunseting of instruments.

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

Part 2 of Chapter 3 of the Legislation Act provides for mechanisms that facilitate parliamentary scrutiny of legislative instruments, including the disallowance regime. Disallowance is the process by which instruments are subject to veto by Parliament where the Parliament, with a majority vote in either House of the Parliament, may disallow a disallowable instrument in part or in full. This may result in an instrument ceasing to have effect. Legislative instruments must be laid before each House of Parliament, and are subject to disallowance for 15 sitting days in each House after being tabled. The purpose of the disallowance process is to ensure full and comprehensive parliamentary oversight and scrutiny of legislative instruments, by enabling senators and members of the House of Representative to move a motion to disallow the instrument under consideration. It also provides a mechanism of checks and balances on the executive where it is empowered to make delegated legislation under an Act of Parliament.

Section 44 of the Legislation Act provides that the disallowance requirements in Part 2 of Chapter 3 do not apply to certain instruments, including instruments which are prescribed by the regulations as being exempt from disallowance for the purposes of paragraph 44(2)(b) of the Legislation Act.

Part 4 of Chapter 3 of the Legislation Act provides for the sunseting of legislative instruments. Sunseting is the process by which instruments are automatically repealed after a fixed period of time, generally 10 years after their registration, unless steps are taken to preserve their operation, or the instruments are exempt from sunseting. As set out in section 49 of the Legislation Act, the purpose of sunseting is to ensure that legislative instruments continue to be fit-for-purpose and are kept up to date through regular review.

Section 54 of the Legislation Act provides that the sunseting regime in Part 4 of Chapter 3

does not apply to certain instruments, including instruments which are prescribed by the regulations as being exempt from sunseting for the purposes of paragraph 54(2)(b) of the Legislation Act.

Relevantly, the *Legislation (Exemptions and Other Matters) Regulation 2015* (the Principal Regulations) prescribes instruments that are exempt from sunseting or disallowance. The Principal Regulations prescribe classes of legislative instruments (at section 9) and particular legislative instruments (at section 10) that are exempt from disallowance under paragraph 44(2)(b) of the Legislation Act. The Principal Regulations also prescribe classes of legislative instruments (section 11) and particular legislative instruments (section 12) that are exempt from sunseting under paragraph 54(2)(b) of the Legislation Act. In this way, the Principal Regulations serve as a central source of sunseting and disallowance exemptions, facilitating their whole-of-government management and ensuring that accurate sunseting and disallowance information can be readily provided to Australian Government agencies, the Parliament and the general public.

The *Legislation (Exemptions and Other Matters) Amendment (2024 Measures No. 1) Regulations 2024* (Amendment Regulations) amend the Principal Regulations to:

- a) repeal an existing exemption from disallowance under item 7 of section 10 for funding rules, and variations of funding rules, made under the *Australian Research Council Act 2001* (ARC Act);
- b) provide a transitional period between 1 July 2024 and 1 July 2025 during which variations of existing funding rules would continue to be exempt from disallowance; and
- c) prescribe two additional instruments to be exempt from sunseting under section 12, the *Air Navigation (Aircraft Engine Emissions) Regulations 1995* and the *Air Navigation (Aircraft Noise) Regulations 2018* (together ‘the Emissions and Noise Regulations’).

Repealing an exemption from disallowance – Funding rules and any variation of those rules made under sections 60 and 61 of the Australian Research Council Act 2001

Table item 7 of section 10 of the Principal Regulations provides an exemption from disallowance under section 44 of the Legislation Act for the following instruments:

- a) a rule made under section 60 of the *Australian Research Council Act 2001*; and
- b) a variation of a set of rules made under section 61 of that Act.

Rules made under section 60 of the *Australian Research Council Act 2001* (ARC Act) are related to funding arrangements for the Australian Research Council (ARC) to administer grant programs.

The existing exemption from disallowance under item 7 of section 10 of the Principal Regulations applies to funding rules made under section 60 of the ARC Act and any variation

of those rules made under section 61 of that Act. The Government response to the 2023 Final Report, ‘Trusting Australia’s Ability: Review of the *Australian Research Council Act 2001*’, agreed that funding rules, and variations of funding rules, should be subject to disallowance. Accordingly, the Australian Research Council Amendment (Review Response) Bill 2023 (Amendment Bill) would repeal and replace sections 60 and 61 of the ARC Act. The new provisions would remove the legislative note providing that funding rules made under the provision are exempt from disallowance. This Bill was introduced in Parliament on 29 November 2023, and, subject to passage through Parliament, would commence on 1 July 2024.

To give effect to the Government response, the Amendment Regulations would repeal the substantive disallowance exemption under section 10 of the Principal Regulations. This change would subject all new funding rules, and variations of new funding rules, made after 1 July 2024, to the disallowance process, ensuring parliamentary oversight and scrutiny of the legislative instruments.

However, funding rules made before the commencement of the Amendment Bill, and instruments that vary those funding rules, will continue to be exempt from disallowance during the transitional period.

The Amendment Regulations provide for a transitional period between 1 July 2024 and 1 July 2025. During this period, existing funding rules and instruments which vary existing funding rules, remain subject to the existing provisions of the ARC Act as in force immediately before 1 July 2024, and remain exempt from disallowance under the Principal Regulations. Existing funding rules will continue to be relied upon by the ARC until 1 July 2025. These existing funding rules will continue to apply to grants that have been approved and are in progress, and grants that have yet to be approved but the relevant organisation has submitted an application for such a grant prior to 1 July 2024. As such, continuing to exempt the variations of these funding rules until 1 July 2025 is necessary to provide certainty for grant processes underway during this period.

Exemption from sunseting – Air Navigation (Aircraft Engine Emissions) Regulations 1995 and Air Navigation (Aircraft Noise) Regulations 2018

The Amendment Regulations exempt the *Air Navigation (Aircraft Engine Emissions) Regulations 1995* (Emissions Regulations) and the *Air Navigation (Aircraft Noise) Regulations 2018* (Noise Regulations) (together the ‘Emissions and Noise Regulations’) from sunseting under section 12 of the Principal Regulations.

The Emissions and Noise Regulations are made under the *Air Navigation Act 1920* and implement regimes to regulate intentional fuel venting, smoke emissions, gaseous emissions and aircraft noise.

The Emissions Regulations provide a regime for regulating the emission of pollutants from

aircraft engines. Aircraft are not permitted to engage in air navigation in Australia unless aircraft engines comply with certain internationally agreed standards for fuel venting and smoke and gaseous emissions. The overarching objective of the Emissions Regulations is to facilitate the safe development of civil aviation in line with formal standards relating to aircraft engine emissions that have an adverse impact on the environment.

The Noise Regulations provide a regime for regulating aircraft noise. Aircraft are not permitted to engage in air navigation in Australia unless they are compliant with certain internationally agreed noise standards. The overarching objective of the Noise Regulations is to facilitate the safe development of civil aviation in line with formal standards relating to aircraft noise by ensuring aircraft comply with Volume I of Annex 16 of the Convention on International Civil Aviation (Chicago Convention).

It is appropriate that the Emissions and Noise Regulations be exempt from sunseting as they are part of an intergovernmental scheme, pursuant to the criterion provided in the Attorney-General's Department's *Guide to managing sunseting of legislative instruments*.

In 1937 and 1938, all States enacted legislation (the State Air Navigation Acts) to apply the Air Navigation Regulations made under the Air Navigation Act 1920-1936 of the Commonwealth of Australia, to air navigation within the jurisdiction of each State. Other than in Victoria, all other State Air Navigation Acts remain in force.

As the Emissions and Noise Regulations are applied to intra-state air navigation through the intergovernmental scheme, it would be inappropriate for the Commonwealth to unilaterally permit the Emissions Regulations or Noise Regulations to sunset. Such an outcome would significantly undermine the regulation of aircraft noise and engine emissions, exacerbating existing community sensitivities around other unrelated engine emissions and noise issues.

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts will establish a review process so the Emissions and Noise Regulations remain fit for purpose, and only remain in force for as long as they are needed. Regular reviews will be undertaken, in accordance with Australia's obligations as a contracting State under the Chicago Convention.

Consequently, it is not suitable to subject the Emissions and Noise Regulations to the requirements of sunseting given the instruments are part of an intergovernmental scheme.

CONSULTATION

Before the Amendment Regulations were issued, the Attorney-General considered the general obligation to consult imposed by section 17 of the Legislation Act.

The Minister for Education, the Hon Jason Clare MP, has portfolio responsibility for funding rules, and variations of funding rules, made under the ARC Act. On 22 August 2023, the

Minister for Education announced at the Australian Financial Review Higher Education Summit the intention to make the funding rules a disallowable legislative instrument. In October-November 2023, the Department of Education conducted consultation on the amendments to the ARC Act with higher education research peak bodies and representative groups, and across Government. Interested parties were also invited to contribute through this consultation. Eleven formal submissions were received which have informed the final policy settings and amendments to the ARC Act. Peak bodies such as Universities Australia, Science and Technology Australia and Innovative Research Universities were supportive of the amendment to subject the making of funding rules to disallowance, recognising it as a sensible approach that provides appropriate scrutiny of funding arrangements. The Chair of the Review of the ARC Act also confirmed support for the change. The Australian Technology Network of Universities was also supportive but indicated a need for caution to ensure mitigations are in place if the funding rules are disallowed. The Regional Universities Network and the Australasian Research Management Society were not supportive of making the funding rules disallowable due to the perceived risk of delays to, or political interference with, the operations of the ARC.

The ARC will mitigate any perceived risk of delays, or risk of disallowance, of the funding rules by ensuring that there is advanced planning and communication with relevant groups regarding the making of funding rules for research programs. As the Review of the ARC Act recommended greater transparency and oversight of ARC funding, making funding rules as disallowable legislative instruments will enable them to be subject to Parliamentary scrutiny. The Department of Education also consulted the Attorney-General's Department on repealing the exemption from disallowance for the funding rules.

The Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Catherine King MP, who has portfolio responsibility for the Emissions and Noise Regulations, wrote to the Attorney-General requesting that the exemption be made. The Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) considered stakeholder views on the new exemption from sunseting, and key stakeholders will continue to be kept updated through the available consultation mechanisms, for instance through existing airport consultation forums, as well as DITRDCA's website. Consistent with Australia's obligations under the Chicago Convention, DITRDCA regularly reviews the ongoing appropriateness of the Emissions and Noise Regulations following changes to standards at Volume II of Annex 16 of the Chicago Convention, in consultation with relevant portfolio agencies. DITRDCA has not consulted with industry on the exemption as the Emissions and Noise Regulations contain strict requirements to meet Australia's obligations under the Chicago Convention. Given this, public consultation on the exemption was not considered appropriate and was not undertaken.

REGULATION IMPACT STATEMENT

The Amendment Regulations do not have any regulatory impact. The Office of Impact

Analysis (OIA) reference is OIA23-06111.

OTHER DETAILS

A Statement of Compatibility under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is at Attachment A.

Details of the Amendment Regulations are set out in Attachment B.

The Legislation Act specifies no conditions that need to be satisfied before the power to make the Amendment Regulations may be exercised.

The Amendment Regulations are a legislative instrument for the purposes of the Legislation Act.

Sections 1 to 4 and Part 2 of Schedule 1 to the Amendment Regulations commence on the day after their registration.

Part 1 of Schedule 1 to the Amendment Regulations commence at the same time as Schedule 3 to the *Australian Research Council Amendment (Review Response) Act 2024* (Amendment Act) commences. This Part will not commence if Schedule 3 to the Amendment Act does not commence.

The Amendment Regulations, the Principal Regulations and the Legislation Act are available on the Federal Register of Legislation <https://www.legislation.gov.au/>.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Legislation (Exemptions and Other Matters) Amendment (2024 Measures No. 1) Regulations 2024

The *Legislation (Exemptions and Other Matters) Amendment (2024 Measures No. 1) Regulations 2024* (the Amendment Regulations) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Human Rights Act).

Overview

The *Legislation Act 2003* (Legislation Act) establishes a comprehensive regime for the publication of Commonwealth Acts and Instruments and provides for the sunseting and disallowance of legislative instruments. Sunseting is the process by which instruments are automatically repealed approximately 10 years after they are made unless steps are taken to preserve their operation or the instruments are exempt from sunseting. Disallowance is the process by which instruments are subject to parliamentary scrutiny for 15 sitting days in each House of Parliament and can be vetoed.

The *Legislation (Exemptions and Other Matters) Regulation 2015* (the Principal Regulations) prescribe classes of instruments (section 9) and particular instruments (section 10) that are exempt from disallowance under paragraph 44(2)(b) of the Act, and prescribe classes of instruments (at section 11) and particular instruments (at section 12) that are exempt from sunseting under paragraph 54(2)(b) of the Legislation Act.

The Amendment Regulations are made under section 62 of the Legislation Act and amend the Principal Regulations by repealing item 7 in section 10 of the Principal Regulations to remove an exemption from disallowance for funding rules under the *Australian Research Council Act 2001* (ARC Act). The Amendment Regulations also adds item 3A in section 12 to create exemptions from sunseting for the following instruments:

- *Air Navigation (Aircraft Engine Emissions) Regulations 1995*;
- *Air Navigation (Aircraft Noise) Regulations 2018*;

The Amendment Regulations repeal item 7 of section 10 of the Principal Regulations, which exempts the following instruments from disallowance:

- a) a rule made under section 60 of the ARC Act; and
- b) a variation of a set of rules made under section 61 of that Act.

Repealing the disallowance exemption through the Amendment Regulations gives effect to the Government response to the 2023 Review of the ARC Act, provides consistency with related legislation, and subjects instruments to greater parliamentary oversight through the possibility of disallowance.

The Amendment Regulations also exempt the *Air Navigation (Aircraft Engine Emissions) Regulations 1995* and the *Air Navigation (Aircraft Noise) Regulations 2018* (together the ‘Emissions and Noise Regulations’) from sunseting under section 12 of the Principal Regulations. These sunseting exemptions are made in accordance with established policy criteria for the granting of exemptions, provided for in the Attorney-General’s Department’s *Guide to managing sunseting of legislative instruments*. The Emissions and Noise Regulations are part of an intergovernmental scheme. As the Emissions and Noise Regulations are applied to intra-state air navigation through the intergovernmental scheme, it would be inappropriate for the Commonwealth to unilaterally permit either of the instruments to sunset.

Human Rights Implications

The Amendment Regulations repeal an exemption from disallowance for funding rules made under section 60 of the *Australian Research Council Act 2001* (ARC Act), and any variations to those rules made under section 61 of that Act. Repealing the disallowance exemption for these instruments does not raise human rights issues as the content of the instruments is not altered, nor do the exemptions affect the rights engaged under the original instruments. The Amendment Regulations would simply have the effect of ensuring that funding rules made or varied under the ARC Act are subject to disallowance and therefore subject to full and comprehensive parliamentary oversight and scrutiny, through the possibility of disallowance. All new funding rules made under the ARC Act would be assessed for compatibility with human rights and accordingly include compatibility statements.

The Amendment Regulations also provide exemptions from sunseting for the *Air Navigation (Aircraft Engine Emissions) Regulations* and the *Air Navigation (Aircraft Noise) Regulations 2018*. As the effect of a sunseting exemption is to extend the operation of the substantive law, the human rights engaged under the Emissions and Noise Regulations has been assessed.

The Noise Regulations are compatible with human rights because, to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate. The Noise Regulations engage the criminal process rights in Article 14 of the International Covenant on Civil and Political Rights as sections 6, 20 and 21 include strict liability offences. Additionally, section 21 includes a reversal on the burden of proof (for inspectors to provide a reasonable excuse for failure to return a relevant identity card). The conduct in contravention of section 21 is entirely within the control of the defendant and the reversal of the evidential burden of proof relates to evidential matters likely to be within the particular knowledge of the defendant. The offence provisions have been developed consistent with the Attorney-General’s Department’s *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

These limitations on criminal process rights are reasonable, necessary and proportionate to protect against the significant harm of a breach of the Noise Regulations to society and industry.

The Emissions Regulations engage the right to health in Article 12 of the International Covenant on Economic, Social and Cultural Rights. The Emissions Regulations support individuals' right to health by giving effect to Volume II of Annex 16 to the Chicago Convention which sets out standards relating to vented fuel, smoke emissions, and gaseous emissions.

The Emissions and Noise Regulations appropriately engage human rights and freedoms as set out in the Human Rights Act. Therefore, the exemptions from sunseting of the Emissions and Noise Regulations do not raise human rights issues. Any instruments that amend the newly exempted instruments will be assessed for compatibility with human rights and accordingly include compatibility statements.

Conclusion

Repealing the disallowance exemption for funding rules under the ARC Act will require any future funding rules to be assessed for compatibility with human rights, and a statement will be prepared accordingly. The exemption from disallowance is technical in nature, and does not alter the content of the laws to which the exemption from disallowance applies. In respect of the exemption from disallowance, the Amendment Regulations are compatible with human rights because the exemption does not engage any of the rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Exemptions from sunseting may engage human rights by extending the operation of the laws to which the exemption applies by ensuring that the legislative instruments in question are not automatically repealed on the first day of April or October that falls on or after the tenth anniversary of their registration. The Emissions and Noise Regulations are compatible with human rights because they promote the protection of human rights and, to the extent that they may also limit human rights, those limitations are reasonable, necessary and proportionate.

NOTES ON SECTIONS

Details of the *Legislation (Exemptions and Other Matters) Amendment (2024 Measures No. 1) Regulations 2024*

Section 1 – Name

This section provides that the title of the instrument is the *Legislation (Exemptions and Other Matters) Amendment (2024 Measures No. 1) Regulations 2024* (Amendment Regulations).

Section 2 – Commencement

This section provides for the commencement of each provision under the Amendment Regulations.

Table items 1 and 3 provide, respectively, that sections 1 to 4 and Part 2 of Schedule 1 to the Amendment Regulations commence the day after registration.

Table item 2 provides that Part 1 of Schedule 1 to the Amendment Regulations commences at the same time as Schedule 3 to the *Australian Research Council Amendment (Review Response) Act 2024 (Amendment Act)* commences. This Part will not commence if Schedule 3 to the Amendment Act does not commence.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Legislation Act 2003*.

Section 4 – Schedules

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

Schedule 1 – Amendments

Legislation (Exemptions and Other Matters) Regulation 2015

Part 1 – Amendments relating to rules made under the *Australian Research Council Act 2001*

This Part repeals table item 7 under section 10 of the *Legislation (Exemptions and Other Matters) Regulations 2015* (the Principal Regulations) to remove an existing disallowance exemption, and sets out related transitional arrangements.

Item [1] – Section 10 (table item 7)

This item repeals the existing disallowance exemption (table item 7) in section 10 of the Principal Regulations.

For the purposes of paragraph 44(2)(b) of the Legislation Act, section 10 of the Principal Regulations provides that instruments contained in the table to that section are not subject to disallowance.

The Amendment Regulations give effect to the Government response to the 2023 Final Report of the Trusting Australia’s Ability: Review of the *Australian Research Council Act 2001*, in which the Government supported subjecting funding rules to disallowance. The Amendment Regulations repeal the exemption from disallowance for new funding rules made under the *Australian Research Council Act 2001* (ARC Act) after 1 July 2024 to ensure any new funding rules are subject to full parliamentary oversight and scrutiny.

For consistency, the Australian Research Council Amendment (Review Response) Bill 2023 (Amendment Bill) proposes to repeal and replace section 60 of the ARC Act to remove the legislative note providing that funding rules made under the provision are not subject to disallowance. This change would occur on the same day as item 2 commences, on 1 July 2024.

Repealing this disallowance exemption therefore gives effect to the Government response and enables consistency with the Amendment Bill.

Item [2] – Section 13 (Part 6, Division 1)

This item inserts a transitional provision in the Principal Regulations. New section 13 establishes a transitional period between 1 July 2024 and 1 July 2025 during which funding rules made before the commencement of the Amendment Bill and instruments which vary these existing funding rules will be subject to the existing provisions of the Principal Regulations as in force immediately before 1 July 2024, and therefore will remain exempt from disallowance. New section 13 reflects the transitional provisions under items 15 and 16 of Schedule 3 to the Amendment Bill. Items 15 and 16 establish a transitional period during which the provisions of the ARC Act that would have applied before the commencement of the Amendment Bill (including approved funding rules) will continue to apply to grants that have been approved and are in progress, and grants that have yet to be approved but the relevant organisation has submitted an application for such a grant prior to 1 July 2024. Continuing to exempt the variations of these funding rules until 1 July 2025 is necessary to provide certainty for grant processes underway during this period.

Section 13 provides that the repeal of the disallowance exemption does not apply in relation to a legislative instrument (including a legislative instrument varying a set of rules) if the

legislative instrument is made before 1 July 2024 under old Division 1, or between 1 July 2024 and 30 June 2025 under transitional Division 1.

‘Old Division 1’ refers to the funding arrangements provisions of the ARC Act, as in force before 1 July 2024.

‘Transitional Division 1’ refers to the funding arrangements provisions of the ARC Act, as in force before 1 July 2024, and as continuing to apply during the transitional period under items 15 and 16 of Schedule 3 to the Amendment Bill.

From 1 July 2025, the transitional period will be complete and all funding rules, and instruments that vary existing funding rules, that will guide the ARC in administering grants will be subject to disallowance. Therefore, the exemption from disallowance for funding rules made before 1 July 2024, and variations made before 1 July 2025 of existing funding rules, would only apply to a limited number of instruments and for a limited period.

Any new funding rules made from 1 July 2024, and any variations of these new funding rules, will be disallowable as reflected in the Amendment Bill.

Part 2 – Amendments relating to regulations made under the *Air Navigation Act 1920*

This Part amends section 12 of the Principal Regulations to insert a new exemption from sunseting.

Item [3] – Section 12 (after table item 3)

This item inserts a new sunseting exemption (item 3A) in section 12 of the Principal Regulations. New item 3A provides an exemption from sunseting for the *Air Navigation (Aircraft Engine Emissions) Regulations* and the *Air Navigation (Aircraft Noise) Regulations 2018*.

For the purposes of paragraph 54(2)(b) of the Legislation Act, section 12 of the Principal Regulations provides that instruments contained in the table to that section are not subject to sunseting.

Pursuant to the policy criteria provided for in the Attorney-General’s Department’s *Guide to managing sunseting of legislative instruments*, the exemption is appropriate as the instruments are part of an intergovernmental scheme, as outlined in more detail above, at pages 3 and 4. The sunseting exemption created by the Amendment Regulations is justified on this basis.