

INSTRUMENTS UPDATE (AUTUMN 2024) REGULATIONS 2024

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General
in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

- 1 This instrument makes minor and technical amendments of Commonwealth instruments.
- 2 The main purpose of Schedule 1 is to update references in Commonwealth instruments to Northern Territory Acts, for consistency with NT citation practices.
- 3 The main purpose of Schedule 2 is to correct technical errors that have occurred in instruments as a result of drafting and clerical mistakes. The amendments also enhance usability, support interpretation and administration, and promote consistency across the Commonwealth statute book.
- 4 The amendments are minor and technical in nature. The amendments either make no change or only minor changes to the substance of the law.

CONSULTATION

- 5 Before the instrument was made, the ministers responsible for administering regulations made under the Primary Acts considered the general obligation to consult required by section 17 of the *Legislation Act 2003*.
- 6 The Department of Employment and Workplace Relations consulted with state and territory government officials under the *Inter-governmental Agreement for a National Workplace Relations System for the Private Sector* in relation to the instrument's amendments of the *Fair Work (Registered Organisations) Regulations 2009*, the *Fair Work Regulations 2009* and the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*.
- 7 The Attorney-General's Department extensively consulted with the departments administering the legislation being amended. As the instrument only makes small technical changes to the text of the law and does not affect the interpretation of the law, it was not considered necessary to consult further.

POLICY IMPACT ANALYSIS

- 8 Statute Update Regulations are machinery of government instruments, and are therefore not subject to the regulatory impact assessment requirements set out by the Office of Impact Analysis (OIA). The OIA reference for this standing exemption is OIA23-06091.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Instruments Update (Autumn 2024) Regulations 2024

9 This instrument is 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*.

Overview of the instrument

10 This instrument makes minor and technical amendments of Commonwealth instruments.

11 The main purpose of Schedule 1 is to update references in Commonwealth instruments to Northern Territory Acts, for consistency with NT citation practices.

12 The main purpose of Schedule 2 is to correct technical errors that have occurred in instruments as a result of drafting and clerical mistakes. The amendments also enhance usability, support interpretation and administration, and promote consistency across the Commonwealth statute book.

13 The amendments are minor and technical in nature. The amendments either make no change or only minor changes to the substance of the law.

Human rights implications

14 This instrument does not engage any human rights issues as it makes minor improvements and technical corrections to the statute book. It makes either no change or only minor changes to the substance of the law.

Conclusion

15 This instrument is compatible with human rights as it does not engage any human rights issues.

NOTES ON SECTIONS

Section 1—Short title

16 Section 1 provides that the title of the instrument is the *Instruments Update (Autumn 2024) Regulations 2024*.

Section 2—Commencement

17 Section 2 provides that the instrument commences 28 days after it is registered under the *Legislation Act 2003*.

Section 3—Authority

18 Section 3 states that the instrument is made under the following Acts:

- (a) the *Aboriginal Land Rights (Northern Territory) Act 1976*;
- (b) the *Australian Crime Commission Act 2002*;
- (c) the *Civil Aviation Act 1988*;
- (d) the *Commonwealth Electoral Act 1918*;
- (e) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;
- (f) the *Customs Act 1901*;
- (g) the *Environment Protection and Biodiversity Conservation Act 1999*;
- (h) the *Explosives Act 1961*;
- (i) the *Extradition Act 1988*;
- (j) the *Fair Work Act 2009*;
- (k) the *Fair Work (Registered Organisations) Act 2009*;
- (l) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*;
- (m) the *Family Law Act 1975*;
- (n) the *Foreign Evidence Act 1994*;
- (o) the *Foreign States Immunities Act 1985*;
- (p) the *Independent Contractors Act 2006*;
- (q) the *Migration Act 1958*;
- (r) the *National Transport Commission Act 2003*;

- (s) the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*;
- (t) the *Primary Industries (Excise) Levies Act 1999*;
- (u) the *Primary Industries Levies and Charges Collection Act 1991*;
- (v) the *Renewable Energy (Electricity) Act 2000*;
- (w) the *Service and Execution of Process Act 1992*;
- (x) the *Trade Marks Act 1995*;
- (y) the *Trans-Tasman Proceedings Act 2010*;
- (z) the *Water Act 2007*;
- (aa) the *Work Health and Safety Act 2011*.

19 Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power conferred by those Acts to make regulations includes a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary the regulations.

Section 4—Schedules

20 Section 4 provides that the instruments set out Schedules 1 and 2 are amended as set out in the Schedules and any other item in a Schedule has effect according to its terms. This is a technical provision to give operational effect to the amendments contained in the Schedules.

Schedule 1—Updating references to Northern Territory legislation

21 The *Interpretation Legislation Amendment Act 2018* (NT) amended section 49 of the *Interpretation Act 1978* (NT) to change the way Northern Territory legislation may be cited. The new method of citation requires the year of enactment or making to be included in the short title of the legislation.

22 The items in Schedule 1 to this instrument update references in the following Commonwealth instruments consistently with this new scheme for citing Northern Territory legislation and with other recent changes in the Northern Territory's statute book:

- (a) the *Aboriginal Land Rights (Northern Territory) Regulations 2007*;
- (b) the *Australian Crime Commission Regulations 2018*;
- (c) the *Environment Protection and Biodiversity Conservation Regulations 2000*;
- (d) the *Explosives Transport Regulations 2002*;
- (e) the *Fair Work Regulations 2009*;
- (f) the *Family Law (Child Protection Convention) Regulations 2003*;

- (g) the *Foreign Evidence (Foreign Material—Criminal and Related Civil Proceedings) Regulations 2018*;
- (h) the *Foreign States Immunities (Taxation) Regulations 2018*;
- (i) the *Independent Contractors Regulation 2016*;
- (j) the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009*;
- (k) the *Service and Execution of Process Regulations 2018*.

Schedule 2—Other amendments

Item 1

23 Subsection 2(15) of Part 2 of Schedule 5 to the *Civil Aviation Regulations 1988* contains a spelling error: “manuacturer’s” should be “manufacturer’s”. Item 1 corrects this spelling error.

Item 2

24 Item 2 repeals the redundant Subdivision 202.AJ.1.C of the *Civil Aviation Safety Regulations 1998*. That Subdivision is redundant as the only regulation in the Subdivision was regulation 202.052A. Under subregulation 202.052A(5), that regulation expired at the end of 1 March 2017.

Item 3

25 The *Civil Aviation Safety Regulations 1998* contains 2 regulations numbered 202.220. Item 3 rennumbers one of those regulations as regulation 202.217 to remove the duplication.

Item 4

26 Item 4 inserts notes under the heading to Subpart 202.FR of the *Civil Aviation Safety Regulations 1998*:

- (a) explaining why the heading is retained despite the Subpart currently containing no regulations; and
- (b) stating the regulation numbers reserved for use in that Subpart.

Item 5

27 The Dictionary to the *Civil Aviation Safety Regulations 1998* currently contains 2 definitions of ***certificate of validation***, one inserted by item 449 of Schedule 1 to the *Civil Aviation Legislation Amendment (Flight Crew Licensing and Other Matters) Regulation 2013* and the other by item 48 of Schedule 1 to the *Civil Aviation Legislation Amendment Regulation 2013 (No. 1)*. The definitions are the same in substance and simply point to regulation 61.010.

28 Item 5 repeals one of the definitions.

Item 6

29 Schedule 4 to the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* sets out modifications of applied *Corporations Act 2001* provisions. It is relevant to sections 49, 50, 51, 51A and 53 of the Regulations. However, the note to the heading of the Schedule does not refer to section 51A.

30 Item 6 corrects this omission.

Item 7

31 The note to subregulation 8A(1) of the *Customs (Prohibited Exports) Regulations 1958* refers to the ComLaw website.

32 The *Acts and Instruments (Framework Reform) Act 2015* commenced on 5 March 2016. It replaced the Federal Register of Legislative Instruments and the Acts database established under the *Acts Publication Act 1905* (accessible via ComLaw) with the Federal Register of Legislation website.

33 Item 7 removes the obsolete reference to the ComLaw website by repealing the note to subregulation 8A(1) of the *Customs (Prohibited Exports) Regulations 1958*.

Items 8, 9 and 11

34 Items 8, 9 and 11 are related.

35 The definition of ***Australia's Foreign Investment Framework*** in section 5 of the *Electoral and Referendum Regulation 2016*, and clause 1 of Schedule 1 to that Regulation, refer to the *Register of Foreign Ownership of Agricultural Land Act 2015*. That Act was renamed in 2016 as the *Register of Foreign Ownership of Water or Agricultural Land Act 2015*. Item 14 of Schedule 3 to the *Foreign Investment Reform (Protecting Australia's National Security) Act 2020* repealed the *Register of Foreign Ownership of Water or Agricultural Land Act 2015* on 1 July 2023.

36 Items 9 and 11 remove the references to the repealed Act. Item 8 makes an amendment that is consequential on the amendment made by item 9.

Item 10

37 Table item 13 of clause 1 of Schedule 1 to the *Electoral and Referendum Regulation 2016* contains an incorrect cross-reference as it refers to the *Quarantine Act 1908*. That Act was repealed by item 1 of Schedule 1 to the *Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015* and replaced by the *Biosecurity Act 2015*.

38 Item 10 updates the cross-reference to refer to the *Biosecurity Act 2015*.

Item 12

39 Paragraph (b) of note 2 to regulation 3 of the *Explosives Transport Regulations 2002* (Cth) refers to the **Dangerous Goods Act 1985 (Vic)**. The Regulations' citation of the Victorian Act is in bold, consistent with section 1 of the Victorian Act. Item 12 changes the

reference to *Dangerous Goods Act 1985* (Vic.). This makes the appearance of the citation consistent with the other paragraphs of the note and current Commonwealth drafting practice and is provided for by subsection 10(2AA) of the *Interpretation of Legislation Act 1984* (Vic.). Subsection 10(2AA) provides that a “citation of an Act by the title appearing before the enacting words or, if there is a preamble, before the preamble, being a citation that is in italics without bolding, is sufficient for the purposes [of citing Acts]”.

Item 13

40 On 5 March 2016 the *Acts and Instruments (Framework Reform) Act 2015* replaced the Federal Register of Legislative Instruments and the Acts database established under the *Acts Publication Act 1905* (accessible via ComLaw) with the Federal Register of Legislation website.

41 Item 13 removes an obsolete reference to the ComLaw website from the note to subregulation 16(4) of the *Explosives Transport Regulations 2002*.

Item 14

42 Forms 12A and 16 in the Schedule to the *Extradition Regulations 1988* contain asterisked words. This asterisking indicates that the words are to be omitted if they are not applicable. However, unlike other forms in the Schedule, Forms 12A and 16 do not include an explicit statement to this effect.

43 Item 14 adds a note at the end of Forms 12A and 16 explaining the significance of the asterisking in the forms.

Item 15

44 Item 37 of Schedule 1 to the *Workplace Relations (Registration and Accountability of Organisations) Amendment Regulations 2009 (No. 1)* purported to amend paragraph 32(3)(b) of the *Fair Work (Registered Organisations) Regulations 2009* (then known as the *Workplace Relations (Registration and Accountability of Organisations) Regulations 2003*) to omit “the Registrar” and substitute “the General Manager”. The amendment was misdescribed as the paragraph refers to “a Registrar”, not “the Registrar”.

45 Item 15 makes the amendment to insert “the Registrar”.

Item 16

46 Item 16 omits a duplication of the word “the” in regulation 108 of the *Fair Work (Registered Organisations) Regulations 2009*.

Item 17

47 Form 8 in Schedule 3 to the *Fair Work (Registered Organisations) Regulations 2009* contains a typographical error as the words “COMMONWEALTH OF AUSTRALIA” appear in bold. There is no reason for these words to appear in bold.

48 Item 17 corrects that typographical error.

Item 18

49 Schedule 2.1 to the *Fair Work Regulations 2009* contains a grammatical error. The word “the” is missing before a reference to the Fair Work Commission.

50 Item 18 corrects this grammatical error.

Item 19

51 Schedule 1A to the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009* contains a spelling error: “accommodation” is misspelt as “accommodaton”.

52 Item 19 corrects this spelling error.

Item 20

53 The note to subsection 32(3) of the *Migration (Migration Agents Code of Conduct) Regulations 2021* contains an error. There is a redundant parenthesis at the end of the reference to subsection 56(9).

54 Item 20 corrects this error.

Item 21

55 Item 21 omits a duplication of the word “the” in paragraph 1.1.8(1)(a) of Schedule 2 to the *National Transport Commission (Model Legislation—Transport of Dangerous Goods by Road or Rail) Regulations 2007*.

Items 22

56 Subregulation 3.32(1) of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* states that it prescribes certain State laws for section 89 of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

57 Item 22 updates the reference for consistency with the amendments made by items 23, 25 and 28 by omitting “For subsection 80(1)” and substituting “For the purposes of subsection 89(1)”.

Item 23

58 Subregulation 3.32(2) of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* states that it prescribes certain Northern Territory laws for subsection 80(1) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. That subsection does not refer to regulations. Subregulation 3.32(2) is in fact prescribing laws for the purposes of subsection 89(1) of the Act.

59 Item 23 corrects this reference by omitting “For subsection 80(1)” and substituting “For the purposes of subsection 89(1)”.

Item 24

60 Paragraph 3.32(2)(c) of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* prescribes Part IIIA of the *Petroleum Act* (NT). That Part was repealed on 1 July 2010 by section 12 of the *Petroleum Amendment and Related Matters Act 2010* (NT).

61 Item 24 repeals the reference to the repealed Part.

Items 25 and 28

62 Items 25 and 28 are related.

63 Subregulations 3.32(3) and (4) of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* state that they prescribe certain State and Territory laws for the purposes of subsection 80(4) of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. That subsection does not refer to regulations. Subregulations 3.32(3) and (4) are in fact prescribing laws for the purposes of subsection 89(4) of the Act.

64 Items 25 and 28 correct these references by omitting “For subsection 80(4)” and substituting “For the purposes of subsection 89(4)” in subregulations 3.32(3) and (4).

Items 26 and 27

65 Items 26 and 27 are related.

66 Subregulation 3.32(3) of the *Offshore Petroleum and Greenhouse Gas Storage (Safety) Regulations 2009* refers to laws mentioned in column 3 of the table in subregulation 3.32(1), and States mentioned in column 2 of that table. Subregulation 3.32(1) refers to the same columns as column 2 and column 1 respectively.

67 Items 26 and 27 correct the references in subregulation 3.32(3).

Item 29

68 Paragraph 3.4(d) of Schedule 15 to the *Primary Industries (Excise) Levies Regulations 1999* is about the rate of levy for juicing pears, but it refers to a weight of apples.

69 Item 29 corrects this error.

Item 30

70 Schedule 1 to the *Primary Industries Levies and Charges Collection Regulations 1991* sets out a form of a warrant. The form provides for the date to include a year starting with “19”.

71 Item 30 removes this aspect of the form.

Item 31

72 The note to subregulation 33(3) of the *Renewable Energy (Electricity) Regulations 2001* refers to section 70 of the *Crimes Act 1914*. That section was repealed in 2018.

73 Item 31 omits the redundant reference.

Item 32, 33, 37, 38, 39, 40 and 41

74 Items 32, 33, 37, 38, 39, 40 and 41 are related.

75 Regulation 2.1 of the *Trade Marks Regulations 1995* defines **ACCC**. That definition contains a citation error as it refers to the *Trade Practices Act 1974*. The short title of that Act was changed to the *Competition and Consumer Act 2010* in 2010.

76 Furthermore, the *Trade Marks Act 1995* already defines an expression, **Commission**, for the purposes of referring to the Australian Competition and Consumer Commission.

77 Item 32 inserts a note to remind readers of the Regulations that a number of expressions used in the Regulations are defined in the Act, including the expression “Commission”.

78 Item 33 repeals the definition of ACCC.

79 Items 37, 38, 39, 40 and 41 replace references to the ACCC with references to the Commission, for consistency.

Item 34

80 Paragraph 16.6(a) of the *Trade Marks Regulations 1995* refers to the *Trade Practices Act 1974*. The short title of that Act was changed in 2010 to the *Competition and Consumer Act 2010*.

81 Item 34 updates the citation.

Item 35

82 Paragraph 16.6(b) of the *Trade Marks Regulations 1995* refers to Part IVA of the *Trade Practices Act 1974*. The short title of that Act was changed in 2010 to the *Competition and Consumer Act 2010*, and Part IVA has been replaced by Part 2-2 of the Australian Consumer Law (set out in Schedule 2 to that Act).

83 Item 35 updates the citation.

Item 36

84 Paragraph 16.6(c) of the *Trade Marks Regulations 1995* refers to Part V of the *Trade Practices Act 1974*. The short title of that Act was changed in 2010 to the *Competition and Consumer Act 2010*, and Part V has been replaced by Parts 3-1, 3-3 and 3-4 of the Australian Consumer Law (set out in Schedule 2 to that Act).

85 Item 36 updates the citation.

Items 42, 43, 44, 45 and 46

86 Items 42 to 46 are related.

87 Section 3 of the *Trans-Tasman Proceedings Regulation 2012* contains an error as it defines **registrable NZ judgement** as having the meaning given by section 66 of the *Trans-Tasman Proceedings Act 2010*. However, the spelling of the word “judgement” in the label of this definition is incorrect as it does not align with the *Trans-Tasman Proceedings Act*, which instead spells the word as “judgment”. There is no reference in that Act to “registrable NZ judgement”, instead there is a reference to “registrable NZ judgment”, which is defined in section 66 of the Act.

88 Item 43 omits the incorrectly labelled definition and item 44 inserts the correctly labelled definition.

89 Item 45 repeals the current note to section 3 and item 42 replaces the omitted note in a location consistent with current Commonwealth drafting practice.

90 Item 46 fixes the spelling of “judgment” across the rest of the Regulation.

Item 47

91 Schedule 5 to the *Water Regulations 2008* contains a typographical error. In item 5A of the table in clause 1AA of Part 1 of that Schedule, “(NSW)” is italicised. This formatting is inconsistent with the other items of that table.

92 Item 47 corrects this formatting.

Items 48 and 49

93 Items 48 and 49 are related.

94 Item 48 repeals the redundant note 1 to subregulation 164(4) of the *Work Health and Safety Regulations 2011*. That note is redundant as it relates to the operation of subregulation 2(2). Regulation 2 was repealed by section 48D of the *Legislation Act 2003*.

95 As a consequence of the repeal of note 1 by item 48, there is now only one note to subregulation 164, and as such the remaining note does not need to be numbered. Item 49 removes the “2” from note 2.