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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Legislative Instruments Amendment
(Sunsetting Measures) Bill 2012**

No. , 2012

(Attorney-General)

**A Bill for an Act to amend the *Legislative
Instruments Act 2003*, and for related purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	1
Schedule 1—Legislative Instruments Act 2003		3
	Part 1—Repeal of spent instruments and provisions	3
	Part 2—Date of sunseting	9
	Part 3—Explanatory statements	13
	Part 4—Repeal of section 15	15
Schedule 2—Consequential amendment of other legislation		16
	<i>Human Rights (Parliamentary Scrutiny) Act 2011</i>	16

1 **A Bill for an Act to amend the *Legislative***
2 ***Instruments Act 2003, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Legislative Instruments Amendment*
6 *(Sunsetting Measures) Act 2012*.

7 **2 Commencement**

8 This Act commences on the day after this Act receives the Royal
9 Assent.

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

1 **Schedule 1—Legislative Instruments Act 2003**

2 **Part 1—Repeal of spent instruments and provisions**

3 **1 Title**

4 Omit “periodic”.

5 **2 Subsection 3(1)**

6 Omit “(1)”.

7 **3 After paragraph 3(1)(e)**

8 Insert:

9 (ea) repealing spent legislative instruments or provisions that
10 merely amend or repeal other legislative instruments, or
11 provide for the commencement of legislative instruments or
12 Acts; and

13 **4 Paragraph 33(1)(a)**

14 After “Act”, insert “except this Act”.

15 **5 After subsection 33(1)**

16 Insert:

17 (1A) If a legislative instrument (the *principal legislative instrument*) is
18 amended by section 48C or 48D, First Parliamentary Counsel may
19 cause to be registered a compilation, in electronic form, in relation
20 to the principal legislative instrument.

21 **6 Paragraph 33(2)(a)**

22 Before “the”, insert “under subsection (1) or (1A),”.

23 **7 Subsection 34(5)**

24 Omit “under subsection (2)”, substitute “given under subsection (2)
25 because of an amendment of the principal legislative instrument made
26 by a provision of an Act other than section 48C or 48D”.

27 **8 After subsection 34(5)**

28 Insert:

1 (5A) A notice given under subsection (2) because of an amendment of
2 the principal legislative instrument made by section 48C or 48D
3 must require the lodgement of the compilation concerned as soon
4 as practicable after the giving of the notice.

5 **9 Subsection 45(2)**

6 Repeal the subsection, substitute:

7 (2) If:

8 (a) a legislative instrument (the *repealing instrument*) or a
9 provision (the *repealing provision*) of a legislative
10 instrument either:

11 (i) ceases under subsection 38(3) or section 42 to have
12 effect at a particular time (the *cessation time*); or

13 (ii) would so cease to have effect then if it had not already
14 been repealed by section 48A or 48C; and

15 (b) the repealing instrument or repealing provision wholly or
16 partly repealed another legislative instrument or law, or a
17 provision of another legislative instrument or law, that was in
18 force immediately before the repealing instrument or
19 repealing provision commenced;

20 the repealed instrument, law or provision revives from the
21 cessation time as if the repealing instrument or repealing provision
22 had not been made.

23 **10 After Part 5**

24 Insert:

25 **Part 5A—Repeal of spent legislative instruments** 26 **and provisions**

27 **Division 1—Automatic repeal**

28 **Subdivision A—Repeal of amending and repealing instruments**

29 **48A Automatic repeal of amending and repealing instruments**

30 (1) This section repeals a legislative instrument that is made on or after
31 the commencement of this section and whose only legal effect is to
32 amend or repeal one or more other legislative instruments (without

1 making any application, saving or transitional provisions relating
2 to the amendment or repeal).

3 *Time of repeal*

- 4 (2) The repeal of the instrument by this section happens on the day
5 after the last occurrence of one of the following events:
6 (a) the commencement of the instrument or of the last of its
7 provisions to commence;
8 (b) the registration of the instrument.

9 *Effect of repeal*

- 10 (3) The repeal of the instrument by this section does not affect any
11 amendment or repeal made by the instrument. This does not limit
12 the effect of section 7 of the *Acts Interpretation Act 1901* as it
13 applies in relation to the repeal of the instrument by this section
14 because of section 13 of this Act.
- 15 (4) The repeal of the instrument by this section does not prevent
16 section 38 or 42 from applying to the instrument after the repeal.
17 That application does not delay the repeal of the instrument by this
18 section.

19 **Subdivision B—Repeal of commencement instruments**

20 **48B Automatic repeal of commencement instruments**

- 21 (1) This section repeals a legislative instrument that is made on or after
22 the commencement of this section and provides solely for the
23 commencement of another legislative instrument, an Act or a
24 provision of another legislative instrument or Act.

25 *Time of repeal*

- 26 (2) The repeal of the instrument by this section happens on the day
27 after the last occurrence of one of the following events:
28 (a) the commencement (or the last commencement) the
29 instrument provides for;
30 (b) the registration of the instrument.

1 *Effect of repeal*

- 2 (3) The repeal of the instrument by this section does not affect any
3 commencement the instrument provides for. This does not limit the
4 effect of section 7 of the *Acts Interpretation Act 1901* as it applies
5 in relation to the repeal of the instrument by this section because of
6 section 13 of this Act.

7 **Subdivision C—Repeal of amending or repealing provisions of**
8 **legislative instruments containing other matter**

9 **48C Automatic repeal of amending and repealing provisions**

- 10 (1) This section repeals a provision of a legislative instrument if:
11 (a) the instrument is made on or after the commencement of this
12 section but is not an instrument described in subsection
13 48A(1); and
14 (b) the only legal effect of the provision (alone or in conjunction
15 with other provisions of the instrument) is:
16 (i) to amend or repeal one or more other legislative
17 instruments; or
18 (ii) to amend the instrument containing the provision.

19 *Time of repeal*

- 20 (2) The repeal of the provision by this section happens on the day after
21 the last occurrence of one of the following events:
22 (a) the commencement of the provision;
23 (b) the registration of the instrument containing the provision.

24 *Effect of repeal*

- 25 (3) The repeal of the provision by this section does not affect any
26 amendment or repeal made by the provision. This does not limit
27 the effect of section 7 of the *Acts Interpretation Act 1901* as it
28 applies in relation to the repeal of the provision by this section
29 because of section 13 of this Act.
- 30 (4) The repeal of the provision by this section does not prevent:
31 (a) section 38 from applying after the repeal to the instrument
32 containing the provision; or

- 1 (b) section 42 from applying after the repeal to the provision or
2 to the instrument containing the provision.
3 Neither of those applications delays the repeal of the provision by
4 this section.

5 **Subdivision D—Repeal of commencement provisions of**
6 **legislative instruments containing other matter**

7 **48D Automatic repeal of commencement provisions**

- 8 (1) This section repeals a provision of a legislative instrument if:
9 (a) the instrument is made on or after the commencement of this
10 section but is not an instrument described in subsection
11 48B(1); and
12 (b) the provision provides solely for the commencement of the
13 instrument, another legislative instrument or an Act or the
14 commencement of a provision of the instrument, another
15 legislative instrument or an Act.

16 *Time of repeal*

- 17 (2) The repeal of the provision by this section happens on the day after
18 the last occurrence of one of the following events:
19 (a) the commencement (or the last commencement) the provision
20 provides for;
21 (b) the registration of the instrument containing the provision.

22 *Effect of repeal*

- 23 (3) The repeal of the provision by this section does not affect any
24 commencement the provision provides for. This does not limit the
25 effect of section 7 of the *Acts Interpretation Act 1901* as it applies
26 in relation to the repeal of the provision by this section because of
27 section 13 of this Act.

1 **Division 2—Repeal by regulations**

2 **48E Regulations may repeal legislative instruments, or provisions of**
3 **legislative instruments, no longer required**

4 (1) The regulations may repeal a legislative instrument or a provision
5 of a legislative instrument.

6 (2) Before the Governor-General makes a regulation for the purposes
7 of subsection (1), the Attorney-General must be satisfied that the
8 legislative instrument or provision to be repealed is spent or is no
9 longer required.

10 **11 Subsection 54(2) (table item 48)**

11 Repeal the item.
12

1 **Part 2—Date of sunseting**

2 **12 Subsection 45(3)**

3 Omit “it would have ceased to have effect under Part 6 had it not been
4 repealed”, substitute “Part 6 would have repealed it had it not already
5 been repealed by the repealing instrument or the repealing provision”.

6 **13 Section 50**

7 Repeal the section, substitute:

8 **50 Sunseting**

- 9 (1) This subsection repeals a legislative instrument on the first 1 April
10 or 1 October falling on or after the tenth anniversary of registration
11 of the instrument, unless the instrument was registered on
12 1 January 2005.
- 13 (2) This subsection repeals a legislative instrument on the day worked
14 out using the table if the instrument was registered on 1 January
15 2005.
- 16

Day of repeal of legislative instrument registered on 1 January 2005

	Year the instrument was made	Day of repeal
1	A year before 1930	1 April 2015
2	A year in the decade starting on 1 January 1930	1 October 2015
3	A year in the decade starting on 1 January 1940	1 April 2016
4	A year in the decade starting on 1 January 1950	1 October 2016
5	A year in the decade starting on 1 January 1960	1 April 2017
6	A year in the decade starting on 1 January 1970	1 October 2017
7	A year in the decade starting on 1 January 1980	1 April 2018
8	1990, 1991, 1992, 1993 or 1994	1 October 2018
9	1995, 1996, 1997, 1998 or 1999	1 April 2019
10	2000, 2001 or 2002	1 October 2019
11	2003 or 2004	1 April 2020

- 1 (a) all the instruments to be reviewed:
2 (i) would, apart from this section, be repealed by section 50
3 or 51; and
4 (ii) are or will be the subject of a single review; and
5 (b) the making of the declaration will facilitate the undertaking
6 of the review and the implementation of its findings.
- 7 (2) The day specified in the sunset-altering instrument:
8 (a) must be 1 April or 1 October of a year; and
9 (b) must be not more than 5 years after the earliest day on which
10 any of the instruments to be reviewed would be repealed by
11 section 50 or 51 apart from this section; and
12 (c) may be the same as, or different from, any of the days on
13 which any of the instruments to be reviewed would be
14 repealed by section 50 or 51 apart from this section.
- 15 (3) The sunset-altering instrument has effect according to its terms
16 (subject to Part 5, and to section 53 operating on the instruments to
17 be reviewed).

18 **19 Subsection 52(1) (definition of *principal legislative***
19 ***instrument*)**

20 Repeal the definition.

21 **20 Subsection 52(1) (definition of *sunsetting day*)**

22 Omit “cease to be in force because of the operation of”, substitute “be
23 repealed by”.

24 **21 Subsection 52(2)**

25 Repeal the subsection, substitute:

- 26 (2) The Attorney-General must arrange for the laying before each
27 House of the Parliament, on each list tabling day in relation to that
28 House, of a list of legislative instruments that will be repealed by
29 section 50, 51 or 51A on the sunsetting day to which that list
30 tabling day relates.

31 **22 Subsection 52(3)**

32 Omit “principal legislative instrument, and each provision of a
33 legislative instrument,”, substitute “legislative instrument”.

1 **23 Section 53**

2 Repeal the section, substitute:

3 **53 Resolution that instrument continue in force**

4 (1) A legislative instrument that would otherwise be repealed on a day
5 by section 50, 51 or 51A continues in force, despite those sections,
6 if:

7 (a) the instrument is mentioned in:

8 (i) a copy of a certificate laid before a House of the
9 Parliament under section 51; or

10 (ii) a list laid before a House of the Parliament under
11 section 52; and

12 (b) the House indicates, by resolution passed within 6 months
13 after the copy or list is laid before the House, that the
14 instrument should continue in force.

15 (2) The legislative instrument continues in force, subject to:

16 (a) sections 50, 51 and 51A, which apply to it after the passage
17 of the resolution as if it were registered on the day on which
18 it would have been repealed by section 50, 51 or 51A apart
19 from this section; and

20 (b) any later instrument amending or repealing it.

21 Note: The legislative instrument is not required to be tabled again, and is not
22 liable to disallowance again.

23

1 **Part 3—Explanatory statements**

2 **24 Subsection 4(1) (definition of *explanatory statement*)**

3 Repeal the definition, substitute:

4 *explanatory statement*, in relation to a legislative instrument,
5 means the statement that relates to the instrument and meets the
6 requirements in subsection 26(1A).

7 **25 Subsection 17(3) (note)**

8 Omit “The definition of *explanatory statement* in subsection 4(1)
9 requires that the explanatory statement prepared in respect of each
10 legislative instrument”, substitute “Under subsection 26(1A), an
11 explanatory statement relating to a legislative instrument must”.

12 **26 After subsection 26(1)**

13 Insert:

14 (1A) For the purposes of this Act, an explanatory statement in relation to
15 a legislative instrument must:

- 16 (a) be prepared by the rule-maker; and
17 (b) explain the purpose and operation of the instrument; and
18 (c) if any documents are incorporated in the instrument by
19 reference—contain a description of the documents so
20 incorporated and indicate how they may be obtained; and
21 (d) if consultation was undertaken under section 17 before the
22 instrument was made—contain a description of the nature of
23 that consultation; and
24 (e) if no such consultation was undertaken—explain why no
25 such consultation was undertaken; and
26 (f) if section 42 applies to the instrument—contain a statement
27 of compatibility prepared under subsection 9(1) of the
28 *Human Rights (Parliamentary Scrutiny) Act 2011*; and
29 (g) contain such other information as is prescribed by the
30 regulations.

31 (1B) For the avoidance of doubt, the requirement in paragraph (1A)(b):

- 32 (a) may be met by an explanation that the instrument replaces a
33 specified earlier legislative instrument or a specified

1 provision of an earlier legislative instrument and is the same
2 in substance as the specified instrument or provision; and

3 (b) may be met in relation to a particular provision of the
4 instrument by an explanation that the provision replaces a
5 specified earlier legislative instrument or a specified
6 provision of an earlier legislative instrument and is the same
7 in substance as the specified instrument or provision.

8 (1C) Subsection (1B) does not limit the ways in which the requirement
9 in paragraph (1A)(b) may be met. Paragraph (1B)(b) does not
10 imply that paragraph (1A)(b) requires a separate explanation of the
11 purpose and operation of each provision of the instrument.

12 (1D) A single explanatory statement may relate to one or more
13 legislative instruments.
14

1 **Part 4—Repeal of section 15**

2 **27 Section 15**

3 Repeal the section.

4

1 **Schedule 2—Consequential amendment of**
2 **other legislation**
3

4 ***Human Rights (Parliamentary Scrutiny) Act 2011***

5 **1 Subsection 9(1) (note)**

6 Omit “the definition of *explanatory statement* in section 4”, substitute
7 “subsection 26(1A)”.