



Australian Government

Attorney-General's Department

# Fact Sheet: Acts and Instruments (Framework Reform) Act 2015

## Information on changes made to the Commonwealth legislative framework

March 2016

On 5 March 2016, substantial amendments to the *Legislative Instruments Act 2003* will commence to provide a single framework covering registration, publishing and management of all Commonwealth Acts and instruments. In recognition of these changes, the *Legislative Instruments Act* is renamed the *Legislation Act 2003*. There are also associated changes to the *Acts Interpretation Act 1901*, and the *Acts Publication Act 1905* is repealed. These amendments are made by the *Acts and Instruments (Framework Reform) Act 2015* (AIFR Act), which passed Parliament in March 2015. This document highlights some of the key changes which departments will need to take into account in developing bills and instruments, and managing legislation.

## Key changes

- The *Legislative Instruments Act 2003* becomes the *Legislation Act 2003*.
- Introduction of a new instrument type 'notifiable instruments'.
- Establishment of a new 'Federal Register of Legislation', which replaces the Federal Register of Legislative Instruments and the Acts database established under the *Acts Publication Act* (accessible via ComLaw). This new register contains all Acts, legislative instruments and notifiable instruments.
- Acts and instruments are available at [www.legislation.gov.au](http://www.legislation.gov.au). This replaces [comlaw.gov.au](http://comlaw.gov.au).
- Changes to the rules regarding retrospective operation of legislative instruments.
- Exemptions from the *Legislative Instruments Act* and the *Legislative Instruments Regulations 2004* are consolidated into the new *Legislation (Exemptions and Other Matters) Regulation 2015*. This regulation and the *Legislation (General) Regulation 2015* replace the *Legislative Instruments Regulations 2004*.
- Where legislation currently requires instruments to be published in the *Gazette*, this requirement will be satisfied by registration (as a notifiable instrument).

## Transitional matters

- Acts, instruments, explanatory statements and other documents which are registered prior to 5 March 2016 are automatically taken to be included on the new register.
- There is no change to the status of legislative or non-legislative instruments made prior to 5 March 2016.

## Things departments should do

- Update departmental websites to refer to the new register and link to [www.legislation.gov.au](http://www.legislation.gov.au) rather than [comlaw.gov.au](http://comlaw.gov.au).
- Update procedures for developing and maintaining legislation to reflect the new framework under the Legislation Act.
- When developing instruments, consider whether they should be registered as notifiable instruments.

## Key matters to be aware of in developing bills and instruments

### Concept of legislative instrument

The Legislation Act more clearly defines legislative instruments and legislative character, though these concepts are not substantially changed by the amendments.

Section 8 of the Legislation Act provides that an instrument is a legislative instrument where:

- a primary law provides for something to be done by legislative instrument, or
- the instrument is registered on the Register, or
- the instrument determines or alters the content of the law, rather than determining cases or particular circumstances in relation to which the law is to apply, *and* any provision has the direct or indirect effect of affecting a privilege or interest, imposing an obligation, creating a right or varying or removing an obligation or right.

It will continue to be possible to declare that an instrument is not a legislative instrument in its enabling Act. However, it will no longer be possible to declare in an instrument that other instruments made under it are not legislative instruments.

The lists of classes of instruments exempt from legislative instrument status in the Legislative Instruments Act and the Legislative Instruments Regulations are transferred to the Legislation (Exemptions and Other Matters) Regulation. The lists have been consolidated to remove unnecessary exemptions and address overlap between the scope of some exemptions currently in the Legislative Instruments Act and the Legislative Instruments Regulations.

### New category of notifiable instruments

The Legislation Act has a new category of instruments called notifiable instruments, which can be registered on the Federal Register of Legislation. Notifiable instruments are not legislative in character and are not subject to disallowance or sunseting.

The new category of notifiable instruments is designed to cover instruments that are not appropriate to register as legislative instruments, but for which public accessibility and centralised management is desirable. It provides an alternative to the gazettal of instruments, and is intended to gradually replace gazettal over time. The following instruments will be notifiable instruments:

- instruments registered as notifiable instruments

- instruments prescribed as notifiable instruments by regulation under the Legislation Act
- instruments declared as notifiable instruments in the enabling legislation
- commencement instruments for legislative and notifiable instruments
- instruments that include a provision that amends or repeals another notifiable instrument, and
- compilations of notifiable instruments.

If an Act or instrument requires an instrument that is not a legislative instrument to be published in the Gazette or in another way, registration as a notifiable instrument will satisfy that requirement.

## **Consultation**

Subsection 17(1) of the Legislative Instruments Act provides that before making a legislative instrument, the rule-maker is to be satisfied that any appropriate and reasonably practicable consultation has been undertaken, “particularly where the proposed instrument is likely to have a direct, or substantial indirect, effect on business, or restrict competition”.

The reference to instruments affecting business or competition is removed, so that the requirement to undertake appropriate consultation (which can include no consultation) will apply equally to instruments that affect business and/or competition and those that do not.

## **Retrospective operation of legislative instruments**

Legislative and notifiable instruments will commence on the day after the day of registration, unless the instrument or enabling legislation provides otherwise.

Section 12 of the Legislation Act provides that a legislative or notifiable instrument will not apply to a person retrospectively to the extent that it would affect the person’s rights so as to disadvantage them or impose liabilities on the person. This differs from section 12 of the Legislative Instruments Act, which provides that an instrument will have no effect at all if the retrospective application of any provision would disadvantage or impose liabilities on a person. The new provision is more targeted as it renders a retrospective provision ineffective only to the extent it has an adverse effect on a person, rather than rendering it completely ineffective. The application of the new provision can be displaced by expressly providing for retrospective operation in the enabling Act.

## **Incorporation by reference**

Section 14 of the Legislative Instruments Act deals with prescribing matters by reference to other instruments. Section 14 of the Legislation Act clarifies and expands this provision to enable material to be incorporated into notifiable instruments. Forms approved or prescribed under an Act or instrument that are notifiable instruments or are required to be publically available in another specified way will be able to be incorporated by reference.

## **Disallowance and sunseting**

Exemptions from disallowance and sunseting provided by the Legislative Instruments Act and Legislative Instruments Regulations are moved to and consolidated in the Legislation (Exemptions and Other Matters) Regulation. These also include some exemptions provided by enabling Acts. The consolidated lists of exemptions address overlaps and remove unnecessary exemptions.

These changes are intended to make it easier for users to access exemptions.

Additional disallowance exemptions can be prescribed by regulation, and it will continue to be possible to declare in the enabling Act that an instrument is not subject to disallowance.

Further sunseting exemptions can also be prescribed by regulation. It is our policy that sunseting exemptions are not provided in enabling Acts, to facilitate their being consolidated in one place.

## Other matters to be aware of

### New Federal Register of Legislation

The new register contains:

- Acts
- legislative instruments and notifiable instruments as made
- compilations of Acts, legislative and notifiable instruments
- explanatory statements for legislative instruments
- other relevant documents and information which the First Parliamentary Counsel considers to be useful to users.

These changes do not substantially alter the way in which Acts are handled under the existing publication regime.

### Lodgement

The new website for lodgement of Acts and instruments is <https://lodge.legislation.gov.au>. You will not need to update lodgement passwords.

### Publication requirements and gazettal

Any requirement to publish a legislative instrument in the Gazette, whether in enabling legislation made before or after the commencement of the Legislative Instruments Act, will be taken to be satisfied by registration on the register. The Legislation Act provides flexibility by providing that a requirement to publish in another way, such as on a website or in a newspaper, is also taken to be satisfied by registration if the enabling legislation was enacted prior to the commencement of the Legislative Instruments Act. This will reduce the number of different publication methods being used and enhance the status of the register as the central repository of instruments (and Acts and other documents).

However, requirements for publication otherwise than in the Gazette in enabling legislation that is enacted (or made) *after* the commencement of the Legislative Instruments Act will be taken to be in addition to the requirement to register the relevant instruments on the Register.

### Legislation Rules

The First Parliamentary Counsel may make legislative instruments known as rules to address technical matters relating to the register and registration. An exposure draft of the *Legislation Rules 2016* has been

circulated by the Office of Parliamentary Counsel. The rules commence at the same time as the other changes on 5 March 2016.

## **Requirement to notify First Parliamentary Counsel of certain events**

The rule-maker for a registered instrument or the Minister responsible for administering a registered Act is required to notify the First Parliamentary Counsel:

- of certain events which affect the currency or accuracy of the register
- if they become aware of an error in the register relating to an Act or instrument, or
- if a provision of an Act or instrument is declared invalid or unenforceable.

## **Explanatory statements**

The Legislation Act deals with arrangements for lodgement, registration and tabling of explanatory statements for legislative instruments, including supplementary and replacement explanatory statements. Explanatory statements are not required for notifiable instruments.

## **Editorial changes**

The Legislation Act enables the First Parliamentary Counsel to make minor editorial changes to an Act or a legislative or notifiable instrument in preparing a compilation, to correct an error, give effect to a misdescribed amendment, or bring the Act or instrument into line with legislative drafting practice.

These changes must not alter the effect of the legislation. Editorial changes include matters of spelling, punctuation, grammar, numbering and gender-related language. The power allows minor errors to be corrected and changes to be made for reasons of style and consistency.

## **Authorised versions and judicial notice**

The Legislation Act provides for authorised electronic and printed versions of Acts, legislative and notifiable instruments, compilations and explanatory statements. The Legislation Act also provides that in court or tribunal proceedings, proof is not required of matters such as the day of assent of an Act, the day of making of a registered legislative instrument or notifiable instrument, the text of a registered Act, instrument or explanatory statement, or the commencement of a registered Act or instrument.

## **Power to make bulk amendments**

The Legislation Act enables amendment or repeal of multiple instruments through a single regulation made by the Governor-General on the advice of the Attorney-General, including where the instruments are made under different enabling Acts. The Attorney-General is required to be satisfied that the rule-maker has agreed to the amendment or repeal of each instrument.

## **Further information**

Please see the [Explanatory Memorandum](#) to the Acts and Instruments (Framework Reform) Act and the [Attorney-General's Department](#) website.

For further questions and general matters relating to the Legislation Act, please contact the AGD Administrative Law and Legislative Frameworks Section at [AdminLaw@ag.gov.au](mailto:AdminLaw@ag.gov.au).

For general inquiries relating to the website [www.legislation.gov.au](http://www.legislation.gov.au), please contact the Office of Parliamentary Counsel at [feedback@legislation.gov.au](mailto:feedback@legislation.gov.au). For matters relating to lodgement, compilations and Gazettes, please also contact the Office of Parliamentary Counsel at [lodge@legislation.gov.au](mailto:lodge@legislation.gov.au).