REVIEW OF THE LEGISLATIVE INSTRUMENTS ACT 2003

ISSUES PAPER

About this paper

This paper has been prepared for the 2008 review of the *Legislative Instruments Act 2003* (the LIA), to inform discussion and invite feedback on a range of issues.

Your feedback on these issues, and any other relevant issues, should be forwarded by close of business 9 May 2008 to:

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LIA Review Committee
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The Committee intends to make all submissions public unless requested otherwise.

Contents

Background

The LIA requires the Attorney-General to appoint persons to a body by 31 March 2008 to conduct a review of the operation of the LIA, receive its written report by 31 March 2009 and table its report within six sitting days of receipt.

The Attorney-General has appointed Mr Anthony Blunn AO, Mr Ian Govey and Professor John McMillan to the review body, which will be known as the LIA Review Committee. The Committee intends to report in the second half of 2008.

Terms of reference

Subsection 59(3) of the LIA requires the Committee to review all aspects of the LIA and any related matters that the Attorney-General specifies. The Attorney-General has asked the Committee to consider and report on:

- the extent to which the objectives listed in section 3 of the LIA have been realised
- factors, if any, which have limited achievement of the LIA's objectives
- the extent to which the objectives of the LIA are still appropriate, and
- how performance against those objectives might be improved.

The Attorney-General has also asked the Committee to consider and report on a number of specific issues, including relevant recommendations of the *Rethinking Regulation* (Banks) report of January 2006 and the Senate Standing Committee on Regulations and Ordinances (SSCRO) in its October 2003 report on the Legislative Instruments Bill 2003. These specific issues are identified later in this paper.

History and objectives of the LIA

For many years, the types of instruments issued by government were few in number; many were published in some form. From the late 1970s, however, many new types of instruments emerged and the process for determining how and when to make these public was largely ad hoc.

The first Legislative Instruments Bill was introduced into the Australian Parliament in 1994, in response to concerns about the lack of clear and consistent principles and procedures for making legislative instruments and for ensuring good public access to them.

After three Bills and substantial changes, the LIA was enacted and commenced on 1 January 2005. As set out in section 3, the objective of the LIA is to provide a comprehensive regime for the management of Commonwealth legislative instruments by:

a) establishing the **Federal Register of Legislative Instruments (FRLI)** as a repository of Commonwealth legislative instruments, explanatory statements and compilations

b) encouraging rule-makers to undertake appropriate **consultation** before making legislative instruments

c) encouraging high standards in the **drafting** of legislative instruments to promote their legal effectiveness, their clarity and their intelligibility to anticipated users

d) improving **public access** to legislative instruments

e) establishing improved mechanisms for **Parliamentary scrutiny** of legislative instruments, and

f) establishing mechanisms to ensure that legislative instruments are periodically reviewed and, if they no longer have a continuing purpose, repealed [**sunsetting**].

The LIA also requires two reviews to be conducted of its operation—this review, and a second review in 2017 with a specific focus on sunsetting.

Scope of the LIA and registration of legislative instruments

Background

The overarching objective of the LIA is to establish a comprehensive regime for the management of Commonwealth legislative instruments.

Part 1 of the LIA sets out what instruments are, or are to be treated as if they are, legislative instruments for the purposes of the LIA and processes for resolving doubt about whether an instrument is a legislative instrument for the purposes of the LIA. A chief obligation under the LIA is to register on FRLI a legislative instrument to which the LIA applies (s 24). If a rule-maker does not lodge a legislative instrument for registration as required, then it is not enforceable (s 31). A legislative instrument made before the LIA came into force will generally be taken to have been repealed unless lodged by certain deadlines now passed (s 32).

Issues referred to the Committee

The Committee has been asked to consider the appropriateness of:

- the definition of a legislative instrument, and
- exemptions from registration and whether these exemptions are applied consistently to instruments of a similar nature.

Issues

Many Acts of Parliament now specify whether the instruments to be made under them are legislative instruments for the purposes of the LIA. If an Act is silent on this issue, the LIA definition must be applied. The LIA definition picks up almost all instruments that are legislative in character—regardless of what they are called—as well as certain other instruments of Parliamentary or public interest.

Instruments of legislative character include (but are not necessarily restricted to) instruments that create, vary or remove an obligation or right or that determine the law or alter the content of the law, rather than applying the law to a particular case (sub-s 5(2)).

Experience has shown that legal opinions can differ significantly on whether something is of a legislative character. Relevant court cases include:

- *Pro Health Products Pty Limited v McEwen* [2004] [1]
- *Roche Products Pty Limited v National Drugs and Poisons Schedule Committee* [2007][2], and
- *Telstra v Australian Competition and Consumer Commission* [2008][3].

In the most recent (Roche) judgment, the Federal Court decided that an instrument was of legislative character because it specified a particular situation where rules already set out in an Act or other legislation were to apply, even though the instrument itself did not contain any rules. Instruments of this kind were previously thought not to require registration. The consequence is that those made since the commencement of the LIA may not be enforceable, and those made before the commencement of the LIA may be taken to have been repealed.

Instruments of legislative character must also be made in the exercise of a power delegated by the Parliament (para 5(1)(b)).

[1] See FCA 1790 as available online at www.austlii.edu.au/au/cases/cth/federal_ct/2004/1790.html

[2] See FACT 1352 as available online at www.austlii.edu.au/au/cases/cth/federal_ct/2007/1352.html

[3] Case citation not available at time of writing.

Scope of the LIA (continued)

If an instrument does not meet the above criteria, the LIA may still declare it to be a legislative instrument where it (s 6):

- is described by legislation as regulations or a proclamation
- is made under an Act providing for the government of a non-self-governing territory
- was required to have been published under the *Statutory Rules Publication Act 1903* and its enabling provision predates the LIA, or
- was declared to be disallowable under section 46A or Part XII of the *Acts Interpretation Act 1901* and its enabling provision predates the LIA.

Despite the above, the definition of a legislative instrument does not include all instruments that determine the law. In particular, the requirement for powers to be delegated by the Parliament has the effect of excluding some instruments of legislative character including:

- Letters Patent, an ancient form of instrument still made without reference to the Parliament under royal prerogative
- Acts of Parliament
- applied laws, that is, the laws of a State as applied in a non-self-governing Territory and modified by Commonwealth legislative instrument, and
- the Building Code of Australia, which has been given the status of regulations by all States and Territories but not the Commonwealth.

In addition, the LIA exempts certain instruments from the LIA regime (s 7). Exemptions may also be set out in the *Legislative Instruments Regulations 2004* (the Legislative Instruments Regulations) or in the provision which enables the making of an instrument. Exemptions have been made to:

- avoid publication of material because of secrecy or personal privacy concerns
- avoid fettering employment arrangements
- avoid applying the LIA to some but not all trans-Tasman schemes created by agreement between the governments of Australia and New Zealand, or
- confirm that an instrument is not legislative where there is some prospect of doubt.

The LIA provides two further processes for resolving doubt about whether an instrument is a legislative instrument. An instrument that is registered is taken to be a legislative instrument regardless of its character (sub-s 5(3)). The Attorney-General can also certify whether or not an instrument is a legislative instrument (ss 10–11), although this provision has never been used.

Question 1.	Is there a need to provide greater clarity about what is, or is not, a legislative instrument? If so, what should be done to improve clarity and resolve doubt?
Question 2.	When (if ever) should instruments of legislative character be exempt from publication under the LIA?
Question 3.	Are the consequences for failing to register a legislative instrument appropriate? What if an instrument has been treated as not legislative for the purposes of the LIA on the basis of legal advice and that legal advice is later brought into doubt or a court rules to the contrary?

Consultation requirements

Background

Part 3 of the LIA requires rule-makers to be satisfied that appropriate consultation has taken place (s 17) and outlines the circumstances in which consultation may not be necessary or appropriate (s 18). However, the LIA does not make consultation mandatory—a failure to consult does not affect the validity or enforceability of a legislative instrument (s 19).

The LIA also requires that, in the explanatory statement for each legislative instrument, rule-makers describe the nature of any consultation undertaken or, if no consultation was undertaken, provide an explanation why. This requirement does not appear in Part 3, but is in the definition of an explanatory statement (s 4).

Issues referred to the Committee

In addition to considering the effectiveness and appropriateness of this objective, the Committee has been asked to consider:

- the operation of the consultation provisions in the LIA and the regulatory impact process, and
- recommendation 7.11 of the Banks report proposing amendment of the LIA to include requirements for good regulatory process.

Consultation requirements and practices

Consultation by Commonwealth law-makers has been an issue since the earliest days of Federation. A century later, the LIA clearly sets out the Parliament's expectation that all rule-makers should consult before making legislative instruments unless there are compelling reasons to the contrary, and should routinely disclose the approach they took.

Data published by SSCRO indicates that over 90% of rule-makers are aware of the need for consultation and are disclosing their approach. There is nevertheless a question about whether the LIA has delivered high standards of consultation.

The Banks report, for example, cites many submissions expressing concerns about the adequacy of consultation undertaken by regulators. The report urges that the government's regulatory impact statement (RIS) regime be mandated for legislative instruments that affect business and competition.

Question 4.	To what extent are rule-makers undertaking appropriate consultation before making legislative instruments?
Question 5.	Are rule-makers providing enough information about consultation in their explanatory statements?
Question 6.	Should the LIA mandate compliance with the RIS requirements for proposed legislative instruments that affect business and competition?
Question 7.	What else could or should be done to encourage high standards of consultation, before and after a rule-maker makes a legislative instrument?

Drafting standards

Background

Part 2 of the LIA requires the Attorney-General's Department (AGD) to cause steps to be taken to promote the legal effectiveness, clarity and intelligibility of legislative instruments (s 16). These steps may include supervising drafting, scrutinising drafts and providing advice and training on drafting (sub-s 16(2)).

AGD is also required to prevent, advise rule-makers and report to Parliament on inappropriate use of gender-specific language in legislative instruments (sub-s 16(3)), although no instances of this have been identified to date. AGD has no power to decline to register or to amend such legislative instruments.

Issues referred to the Committee

In addition to considering the effectiveness and appropriateness of this objective, the Committee has been asked to consider the quality of compilations provided by rule-makers.

Standards for drafting of legislative instruments

AGD provides drafting services as well as some training for potential drafters and drafting instructors. However, actual drafting practices and standards for legislative instruments vary considerably, and the large majority of rule-makers can and do make legislative instruments without reference to AGD.

Question 8.	How effectively do the measures set out in the LIA ensure consistently high drafting standards?
Question 9.	What else could and should be done to promote and encourage high standards in the drafting of legislative instruments?

Standards for preparation of explanatory statements and compilations

The LIA does not mention the desirability of high standards in the preparation of explanatory statements and compilations, which form an important part of FRLI. Experience has shown that the quality of explanatory statements and compilations provided by rule-makers can vary considerably.

Question 10.	What (if any) further action is necessary to encourage high standards in the preparation of explanatory statements and compilations?

FRLI as a repository of legislative information

Background

Part 4 of the LIA requires AGD to maintain a public database (FRLI) of legislative instruments, explanatory statements and compilations (ss 20-21) and to rectify errors in it (s 23).

The LIA provides that FRLI is the authoritative record of legislative instruments as made or as in force since the LIA commenced (s 22). Compilations of legislative instruments as amended are also taken to be complete and accurate unless the contrary is proved (sub-s 22(2)).

The LIA also requires rule-makers to lodge relevant documents with AGD for registration, generally as soon as practicable after making (ss 24–26).

Issues referred to the Committee

In addition to considering the effectiveness and appropriateness of this objective, the Committee has been asked to consider several issues which go to the integrity of FRLI, namely:

- appropriate ways in which incorporated material might be made accessible
- the use of non-legislative instruments to commence or amend legislative instruments
- means of managing and recording instruments found to be legally ineffective, and
- the requirements of the LIA relating to the compilation of legislative instruments, including the timeliness of compilations provided by rule-makers.

Completeness of FRLI information

FRLI now contains more than 37,000 legislative instruments, running to well over 160,000 pages of law, but does not necessarily include the full text of the law. A legislative instrument can operate by applying the text of another document without setting out that text (s 14). Some legislative instruments mandate compliance with documents that are not freely available, such as Australian and international standards.

Question 11.	Should rule-makers be required to make documents incorporated by reference available to the public, and if so, how? Does the incorporation of documents such as Australian or international standards raise any issues?

Maintenance of FRLI information

Consistent with the authoritative status of FRLI information, AGD requires agencies to certify the accuracy of the information they provide, and undertakes a variety of checks before registering a legislative instrument or compilation.

AGD also updates the history of each legislative instrument for relevant events such as its tabling, disallowance and repeal, but AGD is not able to identify all the events that may affect the accuracy and completeness of FRLI information. In particular, it can be difficult to identify whether or when certain legislative instruments have:

- commenced, for example, where commencement is tied to the commencement of a treaty or the placement of newspaper advertisements
- been amended, for example, where an amending instrument is not of a legislative character, or
- been found to be ineffective or invalid, for example, by a court or tribunal.

FRLI as a repository of legislative information (continued)

The timely availability of compilations of legislative instruments also affects the integrity of FRLI. Compilations enable the public to understand what the law says at any given point and, without access to compilations, rule-makers sometimes make errors when amending laws.

AGD rectifies FRLI where it becomes aware of mistakes or omissions in the text of a legislative instrument or compilation, as required by the LIA (sub-s 23(1)). In the event of a rectification, the LIA provides that rectification does not affect the rights or responsibilities created or accrued by reason of reliance on FRLI (sub-s 23(2)).

Question 12.	Is a central register (FRLI) still the best option for keeping an authoritative record of legislative instruments and related information? If not, then what is?
Question 13.	How effectively do lodgement/registration processes support the integrity of FRLI?
Question 14.	If events occur that affect the accuracy and completeness of FRLI information, should rule-makers be obliged to lodge updates to FRLI? If so, how quickly?
Question 15.	How quickly should rule-makers be expected to lodge compilations?
Question 16.	What protections should there be for individuals or bodies that have relied on FRLI information that is later found to be in error or incomplete?

Public access to legislative instruments

Background

The LIA improves public access to legislative instruments by mandating the registration of legislative instruments (s 24) and by requiring AGD to ensure that instruments on FRLI are available to the public (s 20), including through gazettal if there are technical difficulties (s 31).

Issues referred to the Committee

In addition to considering the effectiveness and appropriateness of this objective, the Committee has been asked to consider the appropriateness of provisions providing for retrospective commencement of legislative instruments.

Public access to and use of FRLI

Before the LIA commenced, there was no systematic requirement for legislative instruments to be published and some had no publication requirements at all. As a result, some instruments were virtually impossible for either lawyers or the public to locate.

Since the LIA created FRLI, public demand for access to FRLI information has grown massively. FRLI is now being accessed online by up to 12,000 visitors a day, and up to 3,000 visitors use FRLI at least 15 times a month. AGD has also received requests to scan and publish material dating back to 1901, such as Administrative Arrangement Orders and regulations, but is not in a position to do so due to the considerable cost.

In response to user feedback, AGD has made significant changes to the ComLaw/FRLI website and is working on further enhancements. There is no charge for access to FRLI information but fees could be charged if new 'value added' services were made available. At present, the cost of maintaining FRLI is significant and is not covered by the fees that AGD levies on lodging agencies.

A broader question is how best to ensure that legislative information remains accessible into the future and is easily used and understood by others such as businesses operating across multiple jurisdictions. At present every jurisdiction in Australia follows different standards and uses different technology to prepare, publish and store legislative information.

Question 17.	How effective has FRLI been in improving public access to legislative instruments?
Question 18.	Is there any particularly useful legislative material extending back to 1901 which should be included on FRLI databases to the extent possible?
Question 19.	What could and should be done to enhance and to ensure the longevity and interoperability of legislative databases such as FRLI?
Question 20.	Who should bear the cost of publishing legislative information and of any 'value added' services associated with it? Why?

Public access to legislative instruments (continued)

Commencement dates for legislative instruments

While FRLI has delivered much better public access to the law, the public needs a reasonable opportunity to adapt to and comply with changes in the law.

The LIA allows rule-makers to specify when a legislative instrument commences in a number of different ways. Where a rule-maker does not do so, a legislative instrument takes effect from the start of the day after registration (para 12(1)(d)).

The LIA also restricts the power of rule-makers to make legislative instruments or provisions that commence before the date (but not the time) of registration (sub-s 12(2)). However, a legislative instrument can commence at 00:00 hours even if it is not registered until 23:59 hours the same day.

If a provision contravenes the requirements of subsection 12(2), the provision has no effect at all—even prospectively.

Question 21.	When (if ever) should legislative instruments be allowed to commence before the time of registration?
Question 22.	Should a legislative instrument that contravenes the restrictions on retrospective commencement remain valid prospectively?
Question 23.	Should the default commencement be later than the day after registration?
Question 24.	What else could and should be done to give the public better notice of legislative instruments coming into effect and/or to synchronise their commencement?

Parliamentary scrutiny of legislative instruments

Background

Part 5 of the LIA establishes, with some exceptions, a single regime for parliamentary scrutiny and disallowance of legislative instruments. All legislative instruments must be tabled in both Houses of the Parliament to remain in effect (s 38). Rule-makers cannot remake a legislative instrument that has been tabled pending scrutiny, and if that instrument is disallowed, for six months afterwards.

Issues referred to the Committee

In addition to considering the effectiveness and appropriateness of this objective, the Committee has been asked to consider:

- the appropriateness of exemptions from disallowance and whether these exemptions are applied consistently to instruments of a similar nature
- whether Parliament should be able to disallow legislative instruments which give effect to or amend a national scheme of legislation
- the restrictions on remaking legislative instruments or provisions within legislative instruments until a certain amount of time has passed since tabling and disallowance, and
- the relationship between the LIA and the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act).

Appropriateness of exemptions from and special schemes for disallowance

Before the LIA, the process for determining which legislative instruments should be subject to Parliamentary scrutiny was largely ad hoc. Individual agencies were responsible for ensuring instruments were tabled as required. An instrument was only disallowable if its enabling legislation declared it to be so, and a variety of disallowance periods and regimes applied.

The LIA was a significant step forward in that all legislative instruments are now subject to disallowance—and to a standard disallowance regime—unless other provisions are made. Instruments have been exempted from disallowance where:

- the Parliament has an alternate role in relation to the instrument, for example, has the ability to directly amend the instrument
- the rule-making process should or needs to be separated from the political process
- executive control is intended
- the instrument is an internal management tool for government
- the exposure of instruments to potential disallowance would cause commercial delay or commercial uncertainty, or
- the instrument gives effect to or is made for the purposes of a national scheme of legislation.

Question 25.	When (if ever) should legislative instruments be exempt from disallowance?
Question 26.	What (if any) special disallowance regimes are still needed?

Parliamentary scrutiny of legislative instruments (continued)

Effects of parliamentary scrutiny on drafting practices

AGD's experience is that errors in drafting most often occur when instruments are amended rather than remade. Despite this, some rule-makers prefer to amend disallowable instruments because when such an instrument is remade, every provision is subject to disallowance even if it has previously passed Parliamentary scrutiny.

Question 27.	Should rule-makers be encouraged to remake rather than amend instruments? If so, how should the issue of disallowance be handled?

Restrictions on remaking pending and following Parliamentary scrutiny

The LIA does not generally allow rule-makers to make a legislative instrument that is the same in substance as an earlier legislative instrument (to remake an instrument) pending tabling. Rule-makers also cannot (re)use any provisions of a legislative instrument if notice of a motion to disallow is given and—if the instrument is disallowed—for six months following disallowance (ss 46-48). Any instrument or provision made in contravention of these restrictions has no effect.

Question 28.	Are the current restrictions on remaking legislative instruments pending Parliamentary scrutiny and following disallowance appropriate?
Question 29.	What (if anything) could and should be done to assist rule-makers to comply with such restrictions?

Judicial review of legislative instruments

All legislative instruments are subject to judicial review on the grounds of Constitutional validity.

The decision to make an instrument that is of purely legislative character is not subject to judicial review under the AJDR Act, which applies only to decisions and conduct of an administrative character (ADJR Act ss 5, 6). It is nevertheless possible that an instrument that is legislative for the purposes of the LIA, because of subsection 5(3), subsection 5(4), section 6 or the instrument's enabling legislation, will include provisions that are administrative in character. If so, the decision to make those administrative provisions may be challengeable under the ADJR Act.

The result is that some legislative instruments, by one means or another, may be subject to two forms of scrutiny: parliamentary scrutiny and disallowance under the LIA, as well as judicial review under the ADJR Act.

Question 30.	Are the current procedures for both parliamentary and judicial scrutiny of legislative instruments adequate? Should those procedures be altered or clarified in any way?

Periodic review and repeal of legislative instruments (sunsetting)

Background

Part 6 of the LIA establishes, with some exceptions, a single regime for the sunsetting of legislative instruments.

Under the LIA, legislative instruments automatically cease 10 years after they commence or are required to be registered, on either 1 April or 1 October (s 50). The general process is that:

- 18 months before a given sunsetting date, the Attorney-General tables a list of the legislative instruments subject to sunsetting in the Parliament (s 52)
- the Parliament then has six months in which to pass a resolution to allow a legislative instrument on that list or some of its provisions to remain in force (s 53), and
- rule-makers then have a year to consider the situation and may ask the Attorney-General to issue a certificate extending the life of a legislative instrument for six or 12 months (s 51).

Similar arrangements exist in some other jurisdictions.

Issues referred to the Committee

In addition to considering the effectiveness and appropriateness of this objective, the Committee has been asked to consider:

- the appropriateness of exemptions from sunsetting and whether these exemptions are applied consistently to instruments of a similar nature, and
- recommendation 7.26 of the Banks report proposing amendment of the LIA to provide for a five year rather than 10 year sunset clause following implementation.

Expected operation of sunsetting provisions

The sunsetting provisions of the LIA are in force but will not come into operation until late 2013, when the first list of legislative instruments subject to sunsetting is due to be tabled in the Parliament.

Question 31.	Are the current arrangements for extending the life of a legislative instrument appropriate?
Question 32.	Should the LIA be amended to provide for sunsetting after five rather than 10 years?

Exemptions from sunsetting

Under the LIA, all legislative instruments are subject to sunsetting—and to a standard sunsetting regime—unless other provisions are made. Instruments have been exempted from sunsetting where:

- the rule-maker has been given a statutory role independent of government, or is operating in competition with the private sector
- the instrument is clearly designed to be enduring and not subject to regular review
- commercial certainty would be undermined by sunsetting, or
- the instrument gives effect to or is made for the purposes of a national scheme of legislation.

Periodic review and repeal of legislative instruments (sunsetting) (continued)

Instruments that are exempt from sunsetting are not generally subject to periodic review. However, the Banks report recommended that this occur as a matter of better practice.

Question 33.	When (if ever) should legislative instruments be exempt from sunsetting?
Question 34.	What (if any) special sunsetting regimes should be retained?
Question 35.	Should rule-makers be required to conduct periodic reviews of legislative instruments which are exempt from sunsetting?

Other issues

The LIA mandates a review of its sunsetting provisions in early 2017. However, the vast bulk of instruments on FRLI (backcapture instruments) will sunset on either 1 October 2016 or 1 April 2018.

Question 36.	When is the most appropriate time to review the operation of the LIA's sunsetting provisions?

Other issues

Clarity and intelligibility of the LIA

The structure and content of the LIA was altered, for various reasons, during the process that led to its passage. In addition, some parts of the LIA may no longer be required, for example, Division 6 of Part 4 which provides for a database to be created in anticipation of the LIA coming into operation.

Question 37.	How could or should the clarity of the LIA be improved?

Mechanisms for managing exemptions

Instruments can be exempted from some or all of the LIA in four different ways, all of which involve the Parliament to some extent. Exemptions can be found in the LIA, the Legislative Instruments Regulations, certificates issued by the Attorney-General under sections 10 and 51 of the LIA and the legislation which enables an instrument to be made.

Question 38.	How should exemptions from the requirements of the LIA be made and recorded?
Question 39.	Should the principles for making decisions about exemptions be made explicit? If so, where?

Alternative tabling and disallowance regimes

Informal feedback from the Parliamentary Table Offices and from Australian Government agencies indicates that the central tabling process for legislative instruments is generally working well. Over one million pages of FRLI material have been provided to the Parliament since the LIA commenced.

The Parliament requires a variety of other documents to be tabled, and has the power to disallow or amend some of these. These documents are lodged by many different agencies and the disallowance arrangements also vary considerably.

Question 40.	Would there be merit in bringing all disallowable instruments into the LIA disallowance regime? Should these also be subject to sunsetting?
Question 41.	Would there be merit in bringing other documents that must be tabled into the LIA registration and tabling regime?
Question 42.	Are there any documents subject to tabling or disallowance which should not be brought into the LIA regime? Why?

Gazettal versus registration

The Gazette is a concept that Australia has inherited from the England of the 1660s. The Gazette served as an early form of public register for laws and other information that the Parliament had decided was likely to be of public interest.

The LIA was expected to make some gazettes redundant, because it allows registration to replace gazettal of legislative instruments (s 56). However, a total of 11 gazettes are still published, by various Australian Government agencies.

Other issues (continued)

Nearly all gazette notices are published because of a legislative requirement. Some gazettes are still only available in hard copy, and even for gazettes which are available online there is no easy way to identify what notices have been published in compliance with what legislative provisions.

Question 43.	What if any legislative instruments are still gazetted as well as registered? Why?
Question 44.	Would there be merit in integrating other gazette notices into ComLaw/FRLI?
Question 45.	Are there any gazettes or gazette notices which should not be integrated into ComLaw/FRLI? Why?

Final question

This paper focuses on the Committee's terms of reference and early impressions of the LIA.

Question 46.	Do you have any other issues or concerns about what the LIA does or should do? If so, what?