



Legislative Instruments Amendment (Sunsetting Measures) Act 2012

No. 135, 2012

An Act to amend the *Legislative Instruments Act 2003*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 135, 2012

An Act to amend the *Legislative Instruments Act 2003*, and for related purposes

[Assented to 22 September 2012]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Legislative Instruments Act 2003

Part 1—Repeal of spent instruments and provisions

1 Title

Omit “periodic”.

2 Subsection 3(1)

Omit “(1)”.

3 After paragraph 3(1)(e)

Insert:

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

4 Paragraph 33(1)(a)

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

5 After subsection 33(1)

Insert:

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

6 Paragraph 33(2)(a)

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

7 Subsection 34(5)

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

8 After subsection 34(5)

Insert:

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

9 Subsection 45(2)

Repeal the subsection, substitute:

- (2) If:
- (a) a legislative instrument (the *repealing instrument*) or a provision (the *repealing provision*) of a legislative instrument either:
 - (i) ceases under subsection 38(3) or section 42 to have effect at a particular time (the *cessation time*); or
 - (ii) would so cease to have effect then if it had not already been repealed by section 48A or 48C; and
 - (b) the repealing instrument or repealing provision wholly or partly repealed another legislative instrument or law, or a provision of another legislative instrument or law, that was in force immediately before the repealing instrument or repealing provision commenced;
- the repealed instrument, law or provision revives from the cessation time as if the repealing instrument or repealing provision had not been made.

10 After Part 5

Insert:

Part 5A—Repeal of spent legislative instruments and provisions

Division 1—Automatic repeal

Subdivision A—Repeal of amending and repealing instruments

48A Automatic repeal of amending and repealing instruments

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

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

Time of repeal

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

Effect of repeal

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

Subdivision B—Repeal of commencement instruments

48B Automatic repeal of commencement instruments

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

Time of repeal

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

Effect of repeal

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

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

48C Automatic repeal of amending and repealing provisions

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

Time of repeal

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

Effect of repeal

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

- (b) section 42 from applying after the repeal to the provision or to the instrument containing the provision.

Neither of those applications delays the repeal of the provision by this section.

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

48D Automatic repeal of commencement provisions

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

Time of repeal

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

Effect of repeal

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

Division 2—Repeal by regulations

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

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

11 Subsection 54(2) (table item 48)

Repeal the item.

Part 2—Date of sunseting

12 Subsection 45(3)

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

13 Section 50

Repeal the section, substitute:

50 Sunseting

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

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

Relationship with other provisions

- (3) This section has effect subject to Part 5A and sections 51, 51A, 53 and 54.

Note: A legislative instrument may be repealed under Part 5A before it could be repealed by this section. Section 51 or 51A may repeal a legislative instrument at a time different from the time when it would be repealed by this section. Sections 53 and 54 may prevent a legislative instrument from being repealed by this section.

14 Paragraph 51(1)(a)

Omit “or particular provisions of a legislative instrument would be taken to cease to be in force under this Part (whether because of the operation of subsection 50(1), (2) or (3))”, substitute “would (apart from this section) be repealed by section 50 or 51A”.

15 Subparagraphs 51(1)(b)(i) and (ii)

Omit “or provisions”.

16 Paragraph 51(1)(c)

Omit “or provisions are”, substitute “is”.

17 Paragraph 51(1)(d)

Omit “or provisions are taken to cease to be in force on the specified day instead of the sunseting day as if repealed by another legislative instrument, unless they have earlier ceased to be in force”, substitute “is repealed by this section on the specified day instead of the sunseting day, unless the instrument has been repealed earlier”.

18 After section 51

Insert:

51A Attorney-General may align sunseting of instruments to be reviewed together

- (1) The Attorney-General may by legislative instrument (the *sunset-altering instrument*) declare that 2 or more other legislative instruments (the *instruments to be reviewed*) are repealed by this section on a single specified day, if he or she is satisfied, on application by the rule-maker of the instruments to be reviewed, that:

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

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

Repeal the definition.

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

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

21 Subsection 52(2)

Repeal the subsection, substitute:

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

22 Subsection 52(3)

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

23 Section 53

Repeal the section, substitute:

53 Resolution that instrument continue in force

- (1) A legislative instrument that would otherwise be repealed on a day by section 50, 51 or 51A continues in force, despite those sections, if:
 - (a) the instrument is mentioned in:
 - (i) a copy of a certificate laid before a House of the Parliament under section 51; or
 - (ii) a list laid before a House of the Parliament under section 52; and
 - (b) the House indicates, by resolution passed within 6 months after the copy or list is laid before the House, that the instrument should continue in force.
- (2) The legislative instrument continues in force, subject to:
 - (a) sections 50, 51 and 51A, which apply to it after the passage of the resolution as if it were registered on the day on which it would have been repealed by section 50, 51 or 51A apart from this section; and
 - (b) any later instrument amending or repealing it.

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

Part 3—Explanatory statements

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

Repeal the definition, substitute:

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

25 Subsection 17(3) (note)

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

26 After subsection 26(1)

Insert:

- (1A) For the purposes of this Act, an explanatory statement in relation to a legislative instrument must:
- (a) be prepared by the rule-maker; and
 - (b) explain the purpose and operation of the instrument; and
 - (c) if any documents are incorporated in the instrument by reference—contain a description of the documents so incorporated and indicate how they may be obtained; and
 - (d) if consultation was undertaken under section 17 before the instrument was made—contain a description of the nature of that consultation; and
 - (e) if no such consultation was undertaken—explain why no such consultation was undertaken; and
 - (f) if section 42 applies to the instrument—contain a statement of compatibility prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*; and
 - (g) contain such other information as is prescribed by the regulations.
- (1B) For the avoidance of doubt, the requirement in paragraph (1A)(b):

- (a) may be met by an explanation that the instrument replaces a specified earlier legislative instrument or a specified provision of an earlier legislative instrument and is the same in substance as the specified instrument or provision; and
 - (b) may be met in relation to a particular provision of the instrument by an explanation that the provision replaces a specified earlier legislative instrument or a specified provision of an earlier legislative instrument and is the same in substance as the specified instrument or provision.
- (1C) Subsection (1B) does not limit the ways in which the requirement in paragraph (1A)(b) may be met. Paragraph (1B)(b) does not imply that paragraph (1A)(b) requires a separate explanation of the purpose and operation of each provision of the instrument.
- (1D) A single explanatory statement may relate to one or more legislative instruments.

Part 4—Repeal of section 15

27 Section 15

Repeal the section.

Schedule 2—Consequential amendment of other legislation

Human Rights (Parliamentary Scrutiny) Act 2011

1 Subsection 9(1) (note)

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

*[Minister’s second reading speech made in—
House of Representatives on 23 May 2012
Senate on 27 June 2012]*