



Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003

No. 140, 2003

An Act to deal with transitional and consequential matters arising from the enactment of the *Legislative Instruments Act 2003*, and for other purposes

Note: An electronic version of this Act is available in SCALEplus (<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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[Assented to 17 December 2003]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	17 December 2003
2. Sections 4 and 5	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	
3. Schedule 1	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule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

Part 2—Transitional provisions etc.

4 Transitional provisions

- (1) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:
 - (a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and
 - (b) is expressed to require that instrument to be published as a statutory rule under the *Statutory Rules Publication Act 1903*; any instrument so made is taken to be an instrument referred to in paragraph 6(b) of the *Legislative Instruments Act 2003* despite the repeal by this Act of the *Statutory Rules Publication Act 1903*.
- (2) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:
 - (a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and
 - (b) is expressed to declare that instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*; any instrument so made is taken to be an instrument referred to in subparagraph 6(d)(i) of the *Legislative Instruments Act 2003* despite the repeal by this Act of section 46A of the *Acts Interpretation Act 1901*.
- (3) If legislation that is in force immediately before the commencing day or that is introduced into the Parliament before that day but that commences on or after that day:
 - (a) authorised or authorises an instrument to be made in the exercise of a power delegated by the Parliament that adversely affects the rights of a person, or results in the imposition of liabilities on a person; and
 - (b) provided or provides that the instrument has effect, to the extent that it adversely affects those rights or results in the imposition of those liabilities, despite subsection 48(2) of the *Acts Interpretation Act 1901*, before the date of its notification in the *Gazette*;

that legislation is to be construed, on and after the commencing day or the day of its commencement, whichever last occurs, as if it had provided instead that the instrument, to the extent that it adversely affects those rights or results in the imposition of those liabilities, has effect, despite subsection 12(2) of the *Legislative Instruments Act 2003*, before its registration under that Act.

(4) If:

(a) legislation (the *enabling legislation*) in force immediately before the commencing day:

(i) authorises the making of an instrument; and

(ii) does not declare such an instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* but nonetheless makes provision for its disallowance by the application, with or without modification, of the provisions of Part XII of that Act; and

(b) an instrument is made in the exercise of that authority on or after the commencing day; and

(c) the instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* or otherwise;

the enabling legislation has effect, on and after the commencing day, as if:

(d) it had declared such instruments to be disallowable instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*; and

(e) it had provided for such modifications of the operation of that section as are necessary to ensure that the effect of the applied provisions of Part XII of the *Acts Interpretation Act 1901* is preserved.

(5) In this section:

commencing day means the commencing day within the meaning of the *Legislative Instruments Act 2003*.

5 Transitional regulations

(1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of the amendments made by Schedule 1 to this Act.

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- (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made under this section within one year after commencement of this section may take effect on a day earlier than the day on which they are registered under that Act, but not earlier than the commencement of this section.

Schedule 1—Amendments and repeals of other legislation

Aboriginal and Torres Strait Islander Commission Act 1989

1 Subclause 28(2) of Schedule 4

Repeal the subclause.

2 At the end of clause 28 of Schedule 4

Add:

Note: Section 59 of the *Federal Court of Australia Act 1976* provides that certain provisions of the *Legislative Instruments Act 2003* apply, with modification, to rules of court made by the Court. Section 59A of the *Federal Court of Australia Act 1976* provides that regulations may be made modifying or adapting certain provisions of the *Legislative Instruments Act 2003* in their application to the Court.

Acts Interpretation Act 1901

3 Subsection 4(6)

Repeal the subsection, substitute:

- (6) In the application of this section to an instrument of a legislative character (including such an instrument made by virtue of this section):
- (a) references in this section to the enactment of an Act are to be read as references to the making of such an instrument; and
 - (b) references in this section to an Act other than the Act concerned are to be read as references to instruments of a legislative character.

4 Paragraph 17(j) (definition of *Proclamation*)

Omit “published in the *Gazette*”, substitute “that is published in the *Gazette* or entered on the Federal Register of Legislative Instruments established under the *Legislative Instruments Act 2003*”.

5 Part XI (heading)

Repeal the heading, substitute:

Part XI—Non-legislative instruments and resolutions

6 Sections 46 and 46A

Repeal the sections, substitute:

46 Construction of instruments

- (1) If a provision confers on an authority the power to make an instrument that is neither a legislative instrument within the meaning of the *Legislative Instruments Act 2003* nor a rule of court, then, unless the contrary intention appears:
 - (a) this Act applies to any instrument so made as if it were an Act and as if each provision of the instrument were a section of an Act; and
 - (b) expressions used in any instrument so made have the same meaning as in the enabling legislation; and
 - (c) any instrument so made is to be read and construed subject to the enabling legislation, and so as not to exceed the power of the authority.
- (2) If any instrument so made would, but for subsection (1), be construed as being in excess of the authority's power, it is to be taken to be a valid instrument to the extent to which it is not in excess of that power.
- (3) If a provision confers on an authority the power to make an instrument (that is not a legislative instrument or a rule of court):
 - (a) specifying, declaring or prescribing a matter or thing; or
 - (b) doing anything in relation to a matter or thing;then, in exercising the power, the authority may identify the matter or thing by reference to a class or classes of matters or things.

Note: This provision has a parallel, in relation to legislative instruments, in section 13 of the *Legislative Instruments Act 2003*.

46AA Prescribing matters by reference to other instruments

- (1) If legislation authorises or requires provision to be made in relation to any matter in an instrument that is neither a legislative instrument within the meaning of the *Legislative Instruments Act*

2003 nor a rule of court, that instrument may, unless the contrary intention appears, make provision in relation to that matter:

- (a) by applying, adopting or incorporating, with or without modification, the provisions of any Act, or of any disallowable legislative instrument within the meaning of the *Legislative Instruments Act 2003*, as in force at a particular time or as in force from time to time; or
 - (b) subject to subsection (2), by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing as in force or existing at the time when the first-mentioned instrument takes effect.
- (2) Unless the contrary intention appears, the instrument may not make provision in relation to that matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

Note: This provision has a parallel, in relation to legislative instruments, in section 14 of the *Legislative Instruments Act 2003*.

46B Disallowable non-legislative instruments

- (1) This section applies to instruments:
- (a) that are neither legislative instruments within the meaning of the *Legislative Instruments Act 2003* nor rules of court; and
 - (b) that are made under a provision of an Act or legislative instrument (the *enabling provision*); and
 - (c) that are expressly declared by the enabling provision or by another provision of the Act or instrument to be disallowable instruments for the purposes of this section.
- (2) An instrument to which this section applies that is made on or after the commencing day within the meaning of the *Legislative Instruments Act 2003*, or a particular provision of such an instrument, takes effect from:
- (a) the day specified in the instrument for the purposes of the commencement of the instrument or provision; or
 - (b) the day and time specified in the instrument for the purposes of the commencement of the instrument or provision; or
 - (c) the day, or day and time, of the commencement of an Act, or of a provision of an Act, or of the occurrence of an event, that

- is specified in the instrument for the purposes of the commencement of the instrument or provision; or
- (d) in any other case—the first moment of the day next following the day of notification under subsection (5).
- (3) If:
- (a) an instrument to which this section applies is expressed to take effect before the day of its notification under subsection (5); but
- (b) the instrument, or a provision of the instrument:
- (i) would adversely affect the rights of a person (other than the Commonwealth or an authority of the Commonwealth) at a time before the instrument is notified; or
- (ii) would result in the imposition of liabilities on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done, or omitted to be done, at a time before the instrument is notified;
- the instrument or provision is taken to be of no effect in respect of the period before it is notified to the extent that it would have the effect described in subparagraph (b)(i) or (ii).
- (4) The effect of subsections (2) and (3) on an instrument is subject to any contrary provision for commencement of the instrument in the enabling legislation for the instrument if the enabling legislation is an Act or a provision of an Act.
- (5) An instrument to which this section applies must be notified in the *Gazette* and, if the instrument is not so notified by being published in full in the *Gazette*, a notice in the *Gazette* of the instrument's having been made, and of the place or places where copies of it can be purchased, is sufficient compliance with that requirement.
- (6) If a notice of the making of an instrument is published in accordance with subsection (5), copies of the instrument must, at the time of publication of the notice or as soon as practicable thereafter, be made available for purchase at the place, or at each of the places, specified in the notice.
- (7) If, on the day of publication of a notice referred to in subsection (5), there are no copies of the instrument to which the notice relates available for purchase at the place, or at one or more

of the places, specified in the notice, the Minister administering the enabling provision must cause to be laid before each House of the Parliament, within 15 sitting days of that House after that day, a statement that copies of the instrument were not so available and the reason why they were not so available.

- (8) Failure to comply with a requirement of subsection (6) or (7) in relation to any instrument does not constitute a failure to comply with subsection (5).
- (9) A copy of an instrument to which this section applies must be laid before each House of the Parliament not later than 6 sitting days of that House after the instrument is made and, for that purpose, must be delivered to the House by the person or body authorised to make the instrument.
- (10) If a copy of an instrument is not laid before each House of the Parliament in accordance with subsection (9), it thereupon ceases to have effect.
- (11) Unless the law otherwise provides, Part 5 of the *Legislative Instruments Act 2003*, other than sections 38, 39 and 40, applies in relation to an instrument to which this section applies as if:
 - (a) references to legislative instruments or to a legislative instrument were references to an instrument to which this section applies; and
 - (b) references to enabling legislation were references to the enabling provision; and
 - (c) references to repeal were references to revocation; and
 - (d) references in subsection 45(2) of the *Legislative Instruments Act 2003* to another legislative instrument included references to a provision of another non-legislative instrument made under the enabling provision.

7 Sections 48, 48A, 48B, 49, 49A and 50

Repeal the sections.

Air Navigation Act 1920

8 Section 28

Repeal the section.

Amendments Incorporation Act 1905

9 At the end of the Act

Add:

4 Incorporation of amendments in reprints of legislative instruments

- (1) If the Government Printer reprints a legislative instrument that has been amended at any time, the instrument must be reprinted as amended by:
 - (a) any repeal or omission of words or figures; and
 - (b) any substitution of words or figures for any repealed or omitted words or figures; and
 - (c) any insertion of words or figures.
- (2) If a legislative instrument prescribes a method of citing another legislative instrument (the ***amended instrument***), the amended instrument is taken to be amended by omitting the citation of the amended instrument and substituting the prescribed method of citation.
- (3) A reprint of an amended legislative instrument must include a reference to the amending legislative instrument or Act. The reference must be set out in the margin of, or in a footnote or endnote to, the reprint.

- (4) In this section:

legislative instrument has the same meaning as in the *Legislative Instruments Act 2003*.

words includes Part, Division, Subdivision, heading, regulation, clause, subregulation, subclause, paragraph, subparagraph, sub-subparagraph and Schedule.

Australian Capital Territory (Planning and Land Management) Act 1988

10 Section 52

Omit all the words before paragraph (a), substitute:

Neither paragraph 46(1)(a) of the *Acts Interpretation Act 1901* nor paragraph 13(1)(a) or (b) of the *Legislative Instruments Act 2003* applies to:

Australian Capital Territory (Self-Government) Act 1988

11 Section 33

Omit all the words before paragraph (a), substitute:

Neither paragraph 46(1)(a) of the *Acts Interpretation Act 1901* nor paragraph 13(1)(a) or (b) of the *Legislative Instruments Act 2003* applies to:

Australian Securities and Investments Commission Act 2001

12 Section 5A

Repeal the section, substitute:

5A Application of the *Acts Interpretation Act 1901*

- (1) Until the date of commencement of section 4 of the *Legislative Instruments (Transitional and Consequential Amendments) Act 2003* (the ***Legislative Instruments commencement day***), the *Acts Interpretation Act 1901* as in force on 1 November 2000 applies to this Act.
- (2) On and after the Legislative Instruments commencement day, the *Acts Interpretation Act 1901* as in force on that day applies to this Act.
- (3) Amendments of the *Acts Interpretation Act 1901* made after the Legislative Instruments commencement day do not apply to this Act.

Commonwealth Electoral Act 1918

13 Subsection 375(2)

Repeal the subsection.

14 At the end of section 375

Add:

Note: Section 86 of the *Judiciary Act 1903* provides that certain provisions of the *Legislative Instruments Act 2003* apply, with modifications, to rules of court made by the Court. Section 88 of the *Judiciary Act 1903* provides that regulations may be made modifying and adapting certain provisions of the *Legislative Instruments Act 2003* in their application to the Court.

Corporations Act 2001

15 Section 5C

Repeal the section, substitute:

5C Application of the *Acts Interpretation Act 1901*

- (1) Until the date of commencement of section 4 of the *Legislative Instruments (Transitional and Consequential Amendments) Act 2003* (the ***Legislative Instruments commencement day***), the *Acts Interpretation Act 1901* as in force on 1 November 2000 applies to this Act.
- (2) On and after the Legislative Instruments commencement day, the *Acts Interpretation Act 1901* as in force on that day applies to this Act.
- (3) Amendments of the *Acts Interpretation Act 1901* made after the Legislative Instruments commencement day do not apply to this Act.

Criminal Code Act 1995

16 The Schedule (paragraph 9.4(2)(c) of the *Criminal Code*)

Repeal the paragraph, substitute:

- (c) at the time of the conduct, the subordinate legislation:
 - (i) has not been made available to the public (by means of the Register under the *Legislative Instruments Act 2003* or otherwise); and
 - (ii) has not otherwise been made available to persons likely to be affected by it in such a way that the person would have become aware of its contents by exercising due diligence.

Customs Act 1901

17 At the end of section 269SC

Add:

- (8) Subsections 269SC(6) and (7) have effect despite section 12 of the *Legislative Instruments Act 2003*.

18 At the end of section 269SD

Add:

- (6) This section has effect despite section 12 of the *Legislative Instruments Act 2003*.

Family Law Act 1975

19 Section 26E

Repeal the section, substitute:

26E Application of the *Legislative Instruments Act 2003* to rules of court

The *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made under sections 26B and 26C of this Act:

- (a) as if a reference to a legislative instrument were a reference to a rule of court; and
- (b) as if a reference to a rule-maker were a reference to the Chief Judge acting on behalf of the Judges; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1)(baa) of this Act.

20 Subsection 37A(14)

Repeal the subsection, substitute:

- (14) The *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made under this section:
- (a) as if a reference to a legislative instrument were a reference to a rule of court; and

- (b) as if a reference to a rule-maker were a reference to the Chief Judge acting on behalf of the Judges; and
- (c) subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1)(baa) of this Act.

21 Subsection 123(2)

Repeal the subsection, substitute:

- (2) The *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made under this section:
 - (a) as if a reference to a legislative instrument were a reference to a rule of court; and
 - (b) as if a reference to a rule-maker were a reference to the Chief Judge acting on behalf of the Judges; and
 - (c) subject to such further modifications or adaptations as are provided for in regulations made under paragraph 125(1)(baa) of this Act.
- (2A) Despite the fact that section 16 of the *Legislative Instruments Act 2003* does not apply in relation to rules of court made under this Act, the Department may provide assistance in the drafting of any of those Rules if the Chief Judge so desires.

22 After paragraph 125(1)(ba)

Insert:

- (baa) modifying or adapting the provisions of the *Legislative Instruments Act 2003* (other than the provisions of Part 5 of that Act or any other provisions whose modification or adaptation would affect the operation of that Part) in their application to the Family Court and any other court exercising jurisdiction under this Act; and

Federal Court of Australia Act 1976

23 Subsection 59(4)

Repeal the subsection, substitute:

- (4) The *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under this Act or another Act:
- (a) as if a reference to a legislative instrument were a reference to a rule of court; and
 - (b) as if a reference to a rule-maker were a reference to the Chief Justice acting on behalf of the Judges of the Court; and
 - (c) subject to such further modifications or adaptations as are provided for in regulations made under section 59A of this Act.
- (5) Despite the fact that section 16 of the *Legislative Instruments Act 2003* does not apply in relation to rules of court made by the Court under this Act or another Act, the Department may provide assistance in the drafting of any of those Rules if the Chief Justice so desires.

24 After section 59

Insert:

59A Regulations modifying or adapting the *Legislative Instruments Act 2003*

The Governor-General may make regulations for the purpose of subsection 59(4) modifying or adapting the provisions of the *Legislative Instruments Act 2003* (other than provisions of Part 5 of that Act or any other provisions whose modification or adaptation would affect the operation of that Part) in their application to the Court.

Federal Magistrates Act 1999

25 Subsection 81(3)

Repeal the subsection, substitute:

- (3) The *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under this Act or another Act:
- (a) as if a reference to a legislative instrument were a reference to a rule of court; and

- (b) as if a reference to a rule-maker were a reference to the Chief Federal Magistrate acting on behalf of the Federal Magistrates; and
 - (c) subject to such further modifications or adaptations as are provided for in regulations made under section 120 of this Act.
- (4) Despite the fact that section 16 of the *Legislative Instruments Act 2003* does not apply to rules of court made by the Court under this Act or another Act, the Department may provide assistance in the drafting of any of those Rules if the Chief Federal Magistrate so desires.

26 At the end of section 120

Add:

- (4) The regulations may make provision modifying or adapting provisions of the *Legislative Instruments Act 2003* (other than the provisions of Part 5 of that Act or any other provisions whose modifications or adaptation would affect the operation of that Part) in their application to the Federal Magistrates Court.

Income Tax Assessment Act 1936

27 Subsection 109N(4)

Omit all the words after “from time to time,”, substitute “despite any other Act”.

International Organisations (Privileges and Immunities) Act 1963

28 Subsections 13(3) and (4)

Repeal the sections, substitute:

- (3) Subsection (2) has effect despite anything in the *Legislative Instruments Act 2003*.
- (4) If a determination under subsection (2) is made after the commencement of the *Legislative Instruments Act 2003*, the determination is a legislative instrument for the purposes of that Act.

Judiciary Act 1903

29 At the end of section 86

Add:

- (2) The *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under this Act or another Act:
 - (a) as if a reference to a legislative instrument were a reference to a rule of court; and
 - (b) as if a reference to a rule-maker were a reference to the Chief Justice acting on behalf of the Justices of the Court; and
 - (c) subject to such further modifications or adaptations as are provided for in regulations made under paragraph 88(cb) of this Act.
- (3) Despite the fact that section 16 of the *Legislative Instruments Act 2003* does not apply in relation to rules of court made by the Court under this Act or another Act, the Department may provide assistance in the drafting of any of those Rules if the Chief Justice so desires.

30 Section 87

Repeal the section.

31 After paragraph 88(ca)

Insert:

- (cb) modifying or adapting provisions of the *Legislative Instruments Act 2003* (other than provisions of Part 5 of that Act or any other provisions whose modification or adaptation would affect the operation of that Part) in their application to the Court;

Public Service Act 1999

32 Subsection 42(4)

Repeal the subsection, substitute:

- (4) Commissioner's directions are disallowable non-legislative instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*.

Statutory Rules Publication Act 1903

33 The whole of the Act

Repeal the Act.

Sydney Airport Curfew Act 1995

34 Subsections 15(6) and 20(7)

Omit “, before the date specified in paragraph 16(1)(a) of the *Legislative Instruments Act 1995*,” (wherever occurring).

35 Paragraphs (a) and (b) of clause 1 of the Schedule

Omit “, before the date specified in paragraph 16(1)(a) of the *Legislative Instruments Act 1995*,” (wherever occurring).

Veterans' Entitlements Act 1986

36 Paragraph 196W(3)(a)

Repeal the paragraph, substitute:

- (a) the period within which the Statement of Principles may be disallowed under section 42 of the *Legislative Instruments Act 2003* has ended; and

*[Minister's second reading speech made in—
House of Representatives on 26 June 2003
Senate on 9 September 2003]*

(120/03)
