



Legislation Amendment (Sunsetting Review and Other Measures) Act 2018

No. 78, 2018

An Act to amend the *Legislation Act 2003* and *Acts Interpretation Act 1901*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 78, 2018

An Act to amend the *Legislation Act 2003* and *Acts Interpretation Act 1901*, and for related purposes

[Assented to 24 August 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Legislation Amendment (Sunsetting Review and Other Measures) Act 2018*.

No. 78, 2018 *Legislation Amendment (Sunsetting Review and Other Measures) Act* 1
2018

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 August 2018
2. Schedule 1	The day after this Act receives the Royal Assent.	25 August 2018
3. Schedule 2, Part 1, Division 1	The day after this Act receives the Royal Assent.	25 August 2018
4. Schedule 2, Part 1, Division 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
5. Schedule 2, Part 2	The day after this Act receives the Royal Assent.	25 August 2018
6. Schedule 2, Part 3	The day after this Act receives the Royal Assent. However, the provisions do not commence at all if Schedule 1 to the <i>National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018</i> commences at or before that time.	Never commenced

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation 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—Sunsetting review

Acts Interpretation Act 1901

1 Section 2B

Insert:

sitting day: see section 2M.

2 At the end of Part 2

Add:

2M Sitting day

- (1) In any Act, a *sitting day*, in relation to a House of the Parliament, is a day on which the House actually sits.
- (2) However, if the House sat without adjourning on a previous day (the *earlier sitting day*), any period during which the House continues to sit, with or without a suspension, on a later day, until it adjourns, is taken to be part of the earlier sitting day.

Example 1: The Senate begins sitting at 9 am on Thursday and extends (with or without a suspension of the sitting) until it is adjourned at 3 pm on Friday. Thursday is a sitting day for the Senate but Friday is not. This example applies equally to the House of Representatives.

Example 2: The House of Representatives begins sitting at 9 am on Wednesday and extends (with or without a suspension of the sitting) until it is adjourned at 1 am on Thursday. The House of Representatives then starts sitting again at 10 am on Thursday and adjourns at 3 pm on Thursday. Both Wednesday and Thursday are sitting days for the House of Representatives. This example applies equally to the Senate.

- (3) For the purposes of this section, a House is taken to have adjourned if:
 - (a) the Parliament is prorogued; or
 - (b) that House is dissolved; or
 - (c) if that House is the House of Representatives—that House expires.

3 Subparagraph 46AA(1)(a)(ii)

Omit “or”.

4 At the end of paragraph 46AA(1)(a)

Add:

(iii) the provisions of rules of court; or

5 Application provision

The amendments of paragraph 46AA(1)(a) of the *Acts Interpretation Act 1901* made by this Schedule apply to application, adoption or incorporation of provisions by an instrument made on or after the commencement of this item, whether the legislation authorising or requiring the instrument was made before, on or after that commencement.

Family Law Act 1975

6 Section 26E

After “and 16”, insert “and Part 4 of Chapter 3”.

7 Paragraph 26E(a)

After “legislative instrument”, insert “(other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act)”.

8 Subsection 37A(14)

After “and 16”, insert “and Part 4 of Chapter 3”.

9 Paragraph 37A(14)(a)

After “legislative instrument”, insert “(other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act)”.

10 Subsection 123(2)

After “and 16”, insert “and Part 4 of Chapter 3”.

11 Paragraph 123(2)(a)

After “legislative instrument”, insert “(other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act)”.

12 Application provision

The amendments of section 26E and subsections 37A(14) and 123(2) of the *Family Law Act 1975* made by this Schedule apply in relation to:

- (a) rules of court made on or after the commencement of this item; and
- (b) rules of court in force immediately before the commencement of this item.

Federal Circuit Court of Australia Act 1999

13 Subsection 81(3)

After “and 16”, insert “and Part 4 of Chapter 3”.

14 Paragraph 81(3)(a)

After “legislative instrument”, insert “(other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act)”.

15 Application provision

The amendments of subsection 81(3) of the *Federal Circuit Court of Australia Act 1999* made by this Schedule apply in relation to:

- (a) rules of court made on or after the commencement of this item; and
- (b) rules of court in force immediately before the commencement of this item.

Federal Court of Australia Act 1976

16 Subsection 59(4)

After “and 16”, insert “and Part 4 of Chapter 3”.

17 Paragraph 59(4)(a)

After “legislative instrument”, insert “(other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act)”.

18 Application provision

The amendments of subsection 59(4) of the *Federal Court of Australia Act 1976* made by this Schedule apply in relation to:

- (a) rules of court made on or after the commencement of this item; and
- (b) rules of court in force immediately before the commencement of this item.

Judiciary Act 1903

19 Subsection 86(2)

After “and 16”, insert “and Part 4 of Chapter 3”.

20 Paragraph 86(2)(a)

After “legislative instrument”, insert “(other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act)”.

21 Application provision

The amendments of subsection 86(2) of the *Judiciary Act 1903* made by this Schedule apply in relation to:

- (a) rules of court made on or after the commencement of this item; and
- (b) rules of court in force immediately before the commencement of this item.

Legislation Act 2003

22 Section 3A

Omit “after their commencement”.

23 Subparagraph 14(1)(a)(ii)

Omit “or”.

24 At the end of paragraph 14(1)(a)

Add:

- (iii) the provisions of rules of court; or

25 Subsection 38(3)

Omit “ceases to have effect”, substitute “is repealed”.

26 Subsection 38(3) (note)

Repeal the note.

27 Paragraphs 42(1)(a) and (b)

After “15 sitting days of that House”, insert “beginning on the first sitting day”.

28 Subsection 42(1)

Omit “then ceases to have effect”, substitute “is repealed immediately after the passing of that resolution”.

29 Subsection 42(1) (note)

Repeal the note.

30 Paragraphs 42(2)(a) and (b)

After “15 sitting days of that House”, insert “beginning on the first sitting day”.

31 Subsection 42(2)

Omit “ceases at that time to have effect”, substitute “is repealed at that time”.

32 Subsection 42(2) (note)

Repeal the note.

33 Paragraphs 42(3)(a) and (b)

After “15 sitting days of that House”, insert “beginning on the first sitting day”.

34 Paragraph 44(1)(a)

After “States”, insert “or Territories”.

35 Section 45 (heading)

Repeal the heading, substitute:

45 Reviving a legislative instrument, law or provision

36 Subsection 45(1)

Repeal the subsection.

37 Paragraph 45(2)(a)

Repeal the paragraph, substitute:

- (a) a legislative instrument (the *repealing instrument*) or a provision (the *repealing provision*) of a legislative instrument is repealed by subsection 38(3) or 42(1) or (2) at a particular time (the *repeal time*); and

38 Subsection 45(2)

Omit “the repealed instrument, law or provision revives from the cessation time”, substitute “the instrument, law or provision repealed by the repealing instrument or repealing provision revives from the repeal time”.

39 Subsection 47(1)

Omit “after the instrument has been”, substitute “of that House beginning on the first sitting day after the instrument was”.

40 Paragraph 47(2)(b)

After “15 sitting days”, insert “of that House beginning on the first sitting day”.

41 Section 48AA

Omit “after it has achieved this effect”.

42 Subsection 48A(1)

Omit “This”, substitute “Subject to subsection (2), this”.

43 Subsection 48A(2)

Omit “later of the following events occurs”, substitute “latest of the following events occurs, unless the instrument has been repealed earlier by subsection 38(3) or 42(1) or (2)”.

44 Before paragraph 48A(2)(a)

Insert:

- (aa) for a disallowable legislative instrument—the end of the last day on which the instrument or a provision of the instrument may be disallowed in a House of the Parliament;

45 Paragraph 48A(2)(a)

Before “whichever”, insert “for any legislative instrument or notifiable instrument—”.

46 Paragraph 48A(2)(b)

Before “the registration”, insert “for a legislative instrument to which section 42 does not apply or for a notifiable instrument—”.

47 Subsection 48A(4)

Repeal the subsection (including the note).

48 Subsection 48C(1)

Omit “This”, substitute “Subject to subsection (2), this”.

49 Subsection 48C(2)

Omit “later of the following events occurs”, substitute “latest of the following events occurs, unless the provision has been repealed earlier by subsection 38(3) or 42(1) or (2)”.

50 Before paragraph 48C(2)(a)

Insert:

- (aa) if the provision is in a disallowable legislative instrument—the end of the last day on which the instrument or a provision of the instrument may be disallowed in a House of the Parliament;

51 Paragraph 48C(2)(a)

Before “whichever”, insert “if the provision is in any legislative instrument or notifiable instrument—”.

52 Paragraph 48C(2)(b)

Before “the registration”, insert “if the provision is in a legislative instrument to which section 42 does not apply or is in a notifiable instrument—”.

53 Paragraph 48C(2)(b)

Omit “containing the provision”.

54 Subsection 48C(4)

Repeal the subsection.

55 Subsection 48D(1)

Omit “This”, substitute “Subject to subsection (2), this”.

56 Subsection 48D(2)

Omit “later of the following events occurs”, substitute “latest of the following events occurs, unless the commencement provision has been repealed earlier by subsection 38(3) or 42(1) or (2)”.

57 Before paragraph 48D(2)(a)

Insert:

- (aa) if the commencement provision is in a disallowable legislative instrument—the end of the last day on which the instrument or a provision of the instrument may be disallowed in a House of the Parliament;

58 Paragraph 48D(2)(a)

Before “whichever”, insert “if the commencement provision is in any legislative instrument or notifiable instrument—”.

59 Paragraph 48D(2)(b)

Before “the registration”, insert “if the commencement provision is in a legislative instrument to which section 42 does not apply or is in a notifiable instrument—”.

60 Paragraph 48D(2)(b)

Omit “containing the commencement provision”.

61 Subparagraph 51(1)(b)(i)

Omit “12”, substitute “24”.

62 At the end of paragraph 51(1)(b)

Add:

or (iii) that the Attorney-General has approved this Part not applying to the instrument;

63 Paragraph 51(1)(c)

Repeal the paragraph, substitute:

(c) the Attorney-General may issue a certificate providing that the first-mentioned instrument is repealed by this section on a 1 April or 1 October that is on or before the second anniversary of the sunsetting day and that is specified in the certificate; and

64 Subsection 51(2)

Repeal the subsection.

65 At the end of section 51

Add:

- (4) Section 42 does not apply to a certificate issued under paragraph (1)(c) if the day specified in the certificate is on or before the first anniversary of the sunsetting day.
- (5) The explanatory statement for a certificate issued under paragraph (1)(c) must include a statement of the reasons for the issue of the certificate.

66 Paragraph 51A(1)(b)

Omit “and”, substitute “or”.

67 At the end of section 51A

Add:

- (4) The explanatory statement for the sunset-altering instrument must include a statement of the reasons for the making of the instrument.

68 Subsection 53(1)

After “on a day”, insert “(the *repeal day*)”.

69 Subparagraph 53(1)(a)(i)

Omit “laid before a House of the Parliament under section 51”, substitute “under section 51 that is laid before a House of the Parliament in accordance with section 38”.

70 Paragraph 53(1)(b)

Omit “within 6 months after the copy or list is laid before the House”, substitute “before the repeal day”.

71 Paragraph 54(1)(a)

After “States”, insert “or Territories”.

72 Section 55

Omit “2017”, substitute “2027”.

73 Subsections 60(1) and (4)

Omit “2017”, substitute “2027”.

74 Application and saving provisions

- (1) The amendments of paragraph 14(1)(a) of the *Legislation Act 2003* made by this Schedule apply to application, adoption or incorporation of provisions by an instrument made on or after the commencement of this item, whether the enabling legislation for the instrument was made before, on or after that commencement.
- (2) The amendments of section 38 of the *Legislation Act 2003* made by this Schedule apply in relation to a legislative instrument that is registered on or after the commencement of this item.
- (3) The amendments of section 42 of the *Legislation Act 2003* made by this Schedule apply in relation to a legislative instrument, a copy of which is laid before a House of Parliament on or after the commencement of this item.

- (4) The amendment of paragraph 44(1)(a) of the *Legislation Act 2003* made by this Schedule applies in relation to a legislative instrument that is made on or after the commencement of this item.
 - (5) Despite the repeal of subsection 45(1) of the *Legislation Act 2003* made by this Schedule, that subsection, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to:
 - (a) so far as that subsection relates to subsection 38(3) of that Act—a legislative instrument that was registered before that commencement; and
 - (b) so far as that subsection relates to subsection 42(1) or (2) of that Act—a legislative instrument, a copy of which was laid before a House of Parliament before that commencement.
 - (6) The amendments of subsection 45(2) of the *Legislation Act 2003* made by this Schedule apply in relation to a legislative instrument or a provision of a legislative instrument that is repealed by subsection 38(3) or 42(1) or (2) of that Act on or after the commencement of this item.
 - (7) Subsection 45(2) of the *Legislation Act 2003*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to:
 - (a) so far as that subsection relates to subsection 38(3) of that Act—a legislative instrument referred to in paragraph 45(2)(a) of that Act that was registered before that commencement; and
 - (b) so far as that subsection relates to section 42 of that Act—a legislative instrument referred to in paragraph 45(2)(a) of that Act, a copy of which was laid before a House of Parliament before that commencement.
 - (8) The amendments of sections 48A, 48C and 48D of the *Legislation Act 2003* made by this Schedule apply in relation to a legislative instrument, or a notifiable instrument, that is made on or after the commencement of this item.
 - (9) The amendments of subsection 51(1) of the *Legislation Act 2003* made by this Schedule apply in relation to a certificate issued on or after the commencement of this item, whether the relevant legislative instrument
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referred to in paragraph 51(1)(a) of that Act was registered before, on or after that commencement.

- (10) The repeal of subsection 51(2), and the addition of subsections 51(4) and (5), of the *Legislation Act 2003* made by this Schedule apply in relation to a certificate issued on or after the commencement of this item.
- (11) The amendments of section 51A of the *Legislation Act 2003* made by this Schedule apply in relation to a sunset-altering instrument that is made on or after the commencement of this item, whether the relevant instruments to be reviewed were made before, on or after that commencement.
- (12) The amendments of section 53 of the *Legislation Act 2003* made by this Schedule apply in relation to a legislative instrument, where the copy of the certificate, or the list, is laid before a House of the Parliament before, on or after the commencement of this item.
- (13) The amendment of paragraph 54(1)(a) of the *Legislation Act 2003* made by this Schedule applies in relation to:
 - (a) a legislative instrument made on or after the commencement of this item; and
 - (b) a legislative instrument in force immediately before the commencement of this item.

Schedule 2—Other measures

Part 1—Main amendments

Division 1—Amendments commencing day after Royal Assent

Acts Interpretation Act 1901

1 At the end of paragraph 10(c)

Add “(whether or not the re-enacted provision has the same number as the repealed provision)”.

2 At the end of paragraph 10A(c)

Add “(whether or not the re-enacted or re-made provision has the same number as the repealed provision)”.

3 Paragraph 46AA(1)(b)

Repeal the paragraph, substitute:

- (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:
 - (i) the time the first-mentioned instrument commences; or
 - (ii) a time before the first-mentioned instrument commences (whether or not the other instrument is still in force, or the other writing still exists, at the time the first-mentioned instrument commences).

4 Application provision

The repeal and substitution of paragraph 46AA(1)(b) of the *Acts Interpretation Act 1901* made by this Division applies to application, adoption or incorporation of provisions by an instrument made on or after the commencement of this item, whether the legislation authorising or requiring the instrument was made before, on or after that commencement.

Legislation Act 2003

5 After subsection 12(1)

Insert:

Retrospective commencement

- (1A) Despite any principle or rule of common law, a legislative instrument or notifiable instrument may provide that the instrument, or a provision of the instrument, commences before the instrument is registered.

Note: The effect of this subsection is to allow legislative and notifiable instruments to commence retrospectively (subject to subsection (2)). This subsection is subject to a contrary provision (see subsection (4)).

6 Subsections 12(2) and (3)

Repeal the subsections, substitute:

Retrospective application

- (2) However, if a legislative instrument or notifiable instrument, or a provision of such an instrument, commences before the instrument is registered, the instrument or provision does not apply in relation to a person (other than the Commonwealth or an authority of the Commonwealth) to the extent that as a result of that commencement:
- (a) the person's rights as at the time the instrument is registered would be affected so as to disadvantage the person; or
 - (b) liabilities would be imposed on the person in respect of anything done or omitted to be done before the instrument is registered.

7 Before subsection 12(4)

Insert:

Retrospective commencement or application subject to contrary provision

8 Subsection 12(4)

Omit "(2) or (3)", substitute "(1A) or (2)".

9 Paragraph 14(1)(b)

Repeal the paragraph, substitute:

- (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:
 - (i) the time the first-mentioned instrument commences; or
 - (ii) a time before the first-mentioned instrument commences (whether or not the other instrument is still in force, or the other writing still exists, at the time the first-mentioned instrument commences).

10 Application provisions

- (1) The amendments of section 12 of the *Legislation Act 2003* made by this Division apply in relation to any instrument made on or after the commencement of this item, whether the enabling legislation for the instrument was made before, on or after that commencement.
- (2) The repeal and substitution of paragraph 14(1)(b) of the *Legislation Act 2003* made by this Division applies to application, adoption or incorporation of provisions by an instrument made on or after the commencement of this item, whether the enabling legislation for the instrument was made before, on or after that commencement.

Division 2—Amendments commencing on Proclamation

Legislation Act 2003

11 Section 15D

Repeal the section, substitute:

15D Federal Register of Legislation—rectification of Register

- (1) If:
 - (a) the First Parliamentary Counsel becomes aware that the Register contains an error; and
 - (b) the error is that:

- (i) for an Act as assented to—the text of the Act as it appears in the Register is not the same as the text of the Act as assented to; or
- (ii) for a legislative instrument or notifiable instrument as made by the rule-maker—the text of the instrument as it appears in the Register is not the same as the text of the instrument as made by the rule-maker; or
- (iii) for a compilation—the compilation as it appears in the Register does not represent the state of the law that it purports to represent; or
- (iv) for any other document on the Register—the text of the document as it appears in the Register is not the same as the text of the original document;

the First Parliamentary Counsel must arrange for the error in the Register to be rectified as soon as possible.

Note: A disallowable legislative instrument may be required to be re-tabled in the Parliament as a result of the rectification (see section 15DA).

- (2) The First Parliamentary Counsel must include in the Register a statement that the rectification has been made, and a brief outline of the rectification in general terms.
- (3) The rectification:
 - (a) does not affect any right or privilege that was acquired, or that accrued, because of reliance on the content of the Register before the rectification was made; and
 - (b) does not impose or increase any obligation or liability that was incurred before the rectification was made.

Rectification does not affect time of registration

- (4) To avoid doubt, the rectification of an error under subsection (1) in relation to an instrument does not affect the time at which the instrument is taken to have been registered.

Note: For example, subsection (1) does not affect the commencement of an instrument that is expressed to commence on the day after registration.

15DA Requirement for re-tabling and new disallowance period after rectification of Register

- (1) This section applies if:
- (a) the First Parliamentary Counsel rectifies an error in the Register referred to in subparagraph 15D(1)(b)(ii); and
 - (b) the rectification results in a version (the *originally tabled version*) of a disallowable legislative instrument that was previously registered being replaced by another version (the *correct version*) of the instrument; and
 - (c) at the time of the rectification, the originally tabled version of the instrument has been laid before either or both Houses of the Parliament under subsection 38(1).

Requirement for re-tabling

- (2) The First Parliamentary Counsel must arrange for a copy of the correct version of the instrument to be delivered to each House of the Parliament to be laid before each House within 6 sitting days of that House after the rectification.

Note: The re-tabling of the instrument does not affect any disallowance of the instrument. In all other cases, the re-tabling of the instrument starts a new disallowance period (see subsections (3) and (4)).

Application of new disallowance period

- (3) The following applies (subject to subsection (4)) for the purposes of this Act:
- (a) the instrument is taken to have been delivered to, and laid before, a House of the Parliament under subsection 38(1) when the instrument is delivered to, and laid before, that House under subsection (2) of this section (except for the purposes of subsection 39(2));
 - (b) the instrument becomes subject to disallowance under Part 2 of Chapter 3;
 - (c) section 46 applies as if the instrument had been registered at the time of the rectification;
 - (d) if the disallowance period for the originally tabled version has ended—any repeal of the instrument or a provision of the

instrument under section 48A or 48C is taken not to have occurred;

- (e) if:
- (i) a notice of motion to disallow the instrument or a provision of the instrument has been given in a House of the Parliament; and
 - (ii) the notice has not been withdrawn; and
 - (iii) the motion has not been disposed of;
- at the time the correct version of the instrument is laid before a House as mentioned in subsection (2)—that notice of motion is taken to have been given in that House on the sitting day of that House after the correct version of the instrument is laid before that House;
- (f) if a provision of the instrument (but not the whole instrument) has previously been disallowed—the laying before a House of the Parliament as mentioned in subsection (2) does not affect the previous disallowance of the provision.
- (4) Subsection (3) does not apply in relation to an instrument if, at the time the instrument is delivered to a House of the Parliament under subsection (2), the instrument has been disallowed.

Section does not affect time of registration

- (5) To avoid doubt, the laying before a House of the Parliament of an instrument as mentioned in subsection (2) does not affect the time at which the instrument is taken to have been registered (except as provided by paragraph (3)(c)).

12 Subparagraph 15L(1)(e)(i)

Omit “(correction of registration errors)”, substitute “(Federal Register of Legislation—rectification of Register)”.

13 Application provision

The repeal and substitution of section 15D of the *Legislation Act 2003* made by this Division applies in relation to errors rectified on or after the commencement of this item.

Part 2—Consequential amendments

Excise Act 1901

14 Subsection 164A(2)

Omit “12(3)”, substitute “12(1A)”.

Excise Tariff Act 1921

15 Subsection 6CA(1A) (note)

Omit “12(3)”, substitute “12(1A)”.

Income Tax Assessment Act 1997

16 Subsections 293-115(7) and 293-145(2A)

Omit “12(3)”, substitute “12(1A)”.

Independent Contractors Act 2006

17 Subsection 42(4)

Omit “12(3)”, substitute “12(1A)”.

Taxation Administration Act 1953

18 Subsection 133-130(4) in Schedule 1

Omit “12(3)”, substitute “12(1A)”.

Part 3—Contingent amendments

Criminal Code Act 1995

19 Subsection 80.1AA(2A) of the *Criminal Code*

Omit “12(3)”, substitute “12(1A)”.

*[Minister’s second reading speech made in—
House of Representatives on 28 June 2018
Senate on 15 August 2018]*

(129/18)

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2018